FOREWORD

This volume contains the Acts of the 1967 and 1968 Regular Sessions of the 58th Legislature, the one act of the First Extraordinary Session of 1968, and resolutions of general interest adopted by the Legislature during these sessions.

Regular Session, 1967

The Regular Session of 1967 convened on January 11 and adjourned *sine die* on March 14. The total number of bills introduced during this session exceeded the number introduced in any previous session. The total was 1064 for both Houses—649 House Bills and 415 Senate Bills.

The Legislature passed 228 bills—101 House Bills and 127 Senate Bills. Of the 228 enactments, the Governor approved 224, permitted two to become law without approval and vetoed one. The Budget Bill does not require executive action. The two that became law without approval were H. B. No. 609 and 912, relating to licensing of practical nurses, and licensing and regulation of hospitals and nursing homes, respectively. The Act vetoed was H. B. No. 573, allowable gross weights of vehicles and loads, disapproved because of a conflict with federal law which it was feared might result in a loss of federal-aid highway funds. The principal provisions of this Act were included in S. B. No. 62, which subsequently was passed and became law.

There were 49 House Concurrent, 26 House Joint and 40 House Resolutions introduced during the session, of which 16 House Concurrent, one House Joint (proposing a Budget Amendment to the State Constitution), and 29 House Resolutions were adopted. The Senate had 26 Senate Concurrent, five Senate Joint and 14 Senate Resolutions, of which 11 Concurrent and 13 Senate Resolutions were adopted.

The Senate failed to pass 82 House Bills, passed by the House, and 22 Senate Bills, passed by that body, failed passage by the House.

First Extraordinary Session of 1968

This extraordinary session was convened by the Governor for the sole purpose of apportioning the State's membership
in the House of Representatives of the Congress of the United States among the several counties of the State. It started on January 3 and adjourned January 10, 1968, after passing one bill.

Regular Session, 1968

The seventh 30-day session convened on January 10 and expired at midnight, February 8, 1968. However, the session was extended by the Governor for the purpose of completing action on the Budget Bill and sine die adjournment did not come until February 10.

A total of 290 bills were introduced during the session—151 House Bills and 139 Senate Bills. The Legislature passed 67 bills—40 House Bills and 27 Senate Bills. Of the 67 enactments, the Governor approved 64 and vetoed 2. The Budget Bill does not require executive action. The bills vetoed were H. B. No. 259, legalizing the playing of bingo games, and H. B. No. 334, creating a new 32nd judicial circuit and moving Wirt County from the 4th to the 5th judicial circuit.

There were 107 concurrent resolutions introduced in the two Houses during the session—65 House Concurrent and 42 Senate Concurrent, of which 31 House Concurrent and 24 Senate Concurrent were adopted. Seven House Joint and 2 Senate Joint Resolutions, proposing amendments to the State Constitution, were introduced. Only 1 of these was adopted by the Legislature, S. J. R. No. 2, submitting a proposal to the voters for the issuance and sale of $350,000,000 state road bonds for building and constructing free roads and highways. The House had 14 House Resolutions, and the Senate had 13 Senate Resolutions, all of which were adopted.

The Senate failed to pass 20 House Bills, passed by the House, and 5 Senate Bills, passed by that body, failed of passage in the House. Three Senate Bills died in conference.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia, 25305.

C. A. BLANKENSHIP, Clerk
June 20, 1968

House of Delegates
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### MEMBERS AND OFFICERS
#### FIFTY-EIGHTH LEGISLATURE
### SENATE
#### OFFICERS
*President—Howard W. Carson, Fayetteville*
*President pro Tempore—C. H. McKown, Wayne*
*Clerk—J. Howard Myers, Martinsburg*
*Sergeant-at-Arms—John E. Howell, Charleston*
*Doorkeeper—Guy Douglas, Lookout*

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(D) Democrats 25
(R) Republicans 9
Total 34

(* Senators elected in 1964, all others elected in 1966.
† Appointed December 1, 1967, to fill a vacancy caused by the death of George C. Porter.)
# HOUSE OF DELEGATES

## OFFICERS

**Speaker—H. Laban White, Clarksburg**  
**Clerk—C. A. Blankenship, Pineville**  
*Sergeant-at-Arms—Oce W. Smith, Jr., Fairmont**  
**Doorkeeper—D. Earl Brawley, Charleston**

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<td>Mason</td>
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(*) Elected January 31, 1967, to succeed Don Yoak, Spencer, resigned.
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(D) Democrats 65  
(R) Republicans 35  

Total 100

† Appointed July 28, 1987, to fill a vacancy caused by the resignation of Fred Thomason.
STANDING COMMITTEES OF THE SENATE

AGRICULTURE
Baker (Chairman), Bowling (Vice Chairman), Gainer, Hedrick, Holden, McKown, Mullins, Taylor, Carrigan, Hubbard and Lambert.

EDUCATION
McKown (Chairman), Hatcher (Vice Chairman), Barnett, Crawford, Floyd, Holden, Martin, McCourt, Montgomery, Moreland, Tompos, Carrigan, Lambert, Miller and Poffenbarger.

ELECTIONS
Hatcher (Chairman), Hylton (Vice Chairman), Barnett, Bowling, Holden, Martin, McCourt, McKown, Sawyers, Kinsolving and Miller.

FINANCE
McCourt (Chairman), Jackson (Vice Chairman), Bowling, Floyd, Hatcher, Holden, Hylton, Kaufman, Martin, Montgomery, Mullins, Sharpe, Smith, Deem, Kinsolving, Lambert and Wolfe.

HEALTH
Mullins (Chairman), Taylor (Vice Chairman), Baker, Brotherton, Hatcher, Moreland, Sharpe, Knapp and Miller.

INSURANCE AND CORPORATIONS
Kaufman (Chairman), Smith (Vice Chairman), Barnett, Bowling, Crawford, Gainer, Holden, Hylton, Mullins, Carrigan, Miller and Poffenbarger.

INTERSTATE COOPERATION
Jackson (Chairman), McKown (Vice Chairman), Floyd, Gainer and Hubbard.

JUDICIARY
Brotherton (Chairman), Moreland (Vice Chairman), Baker, Barnett, Crawford, Gainer, Hatcher, Hedrick, Jackson, McKown, Sawyers, Taylor, Tompos, Carrigan, Hubbard, Knapp, Miller and Poffenbarger.

LABOR
Hatcher (Chairman), Tompos (Vice Chairman), Crawford, Hedrick, Kaufman, Montgomery, Sawyers, Knapp and Wolfe.

LOCAL GOVERNMENT
Martin (Chairman), Holden (Vice Chairman), Floyd, Sawyers, Sharpe, Smith, Tompos, Knapp and Poffenbarger.

MILITARY
Hedrick (Chairman), Sawyers (Vice Chairman), Baker, Gainer, Montgomery, Sharpe, Smith, Kinsolving and Lambert.
MINES AND MINING
Jackson (Chairman), Holden (Vice Chairman), Brotherton, Hedrick, Hylton, McKown, Moreland, Tompos and Deem.

NATURAL RESOURCES
Gainer (Chairman), Hatcher (Vice Chairman), Baker, Bowling, Hedrick, Hylton, Kaufman, McCourt, Mullins, Smith, Taylor, Deem, Hubbard, Knapp and Lambert.

PUBLIC INSTITUTIONS
Sharpe (Chairman), Montgomery (Vice Chairman), Baker, Crawford, Floyd, Hylton, Martin, Taylor, Deem, Kinsolving and Poffenbarger.

RULES
Carson (Chairman), Brotherton, Jackson, Kaufman, McCourt, McKown, Moreland, Carrigan and Wolfe.

TRANSPORTATION
Barnett (Chairman), Hylton (Vice Chairman), Brotherton, Crawford, Gainer, Hatcher, Jackson, Kaufman, Martin, McCourt, Montgomery, Mullins, Sawyers, Smith, Carrigan, Hubbard and Wolfe.

JOINT COMMITTEES

ENROLLED BILLS
Tompos (Chairman), Baker, Kaufman, Sharpe and Kinsolving.

GOVERNMENT AND FINANCE
Carson (President), Barnett, Brotherton, McCourt, Moreland, Carrigan and Wolfe.

JOINT RULES
Carson (President), Moreland and Carrigan.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES

AGRICULTURE AND NATURAL RESOURCES
Edgar (Chairman), Allen, Bowman, Burke, England, Flanagan, Goodwin, Hawse, Hoard, Moyers, Queen (of Logan), Ritter, Rockefeller, Shiflet, Sommerville, Wooldridge, Wooten, Butcher, Davisson, Files, Lilly, Mulneix, Nelson (of Kanawha), Ours and Polen.

Subcommittee Chairmen
Agriculture—Mr. Hawse
Game and Fish—Mr. Bowman
Natural Resources—Mr. England

BANKING AND INSURANCE
Hill (Chairman), Anderson, Armistead, Boiarsky, Cann, Cookman, Frazer, Griffith, Hager (of Lincoln), Hager (of Logan), Hawse, Marstiller, McManus, Morasco, Myles, Watson, Wilt, Beneke, Buck, Burk, Nicely, Potter, Queen (of Upshur), Seibert and Stamp.

Subcommittee Chairmen
Banking—Mr. Frazer
Insurance—Mr. Marstiller

CONSTITUTIONAL REVISION
Steptoe (Chairman), Armistead (Vice Chairman), Auvil, Casey, Christian, Fantasia, Hill, Holliday, Marstiller, Matney, Morasco, Myles, Queen (of Logan), Shiflet, Tsapis, Watson, Wooten, Beneke, Butcher, Davisson, Jones (of Kanawha), Rogers, Seibert, Smirl and Stamp.

EDUCATION
Auvil (Chairman), Wilson (Vice Chairman), Christian, Church, Cookman, Davidson, England, Galperin, Hager (of Logan), Hoard, McManus, Paul, Ritter, Rockefeller, Schupbach, Simpkins, Woo, Ashley, Burk, Davisson, Grewe, Harman, Powell, Sayre and Smirl.

FINANCE
Boiarsky (Chairman), Cann (Vice Chairman), Auvil, Crandall, D'Aurora, Edgar, Fantasia, Frazer, Hager (of Logan), Hill, Kincaid, Lohr, McManus, Rockefeller, Shiflet, Wilt, Withrow, Buck, Carey, Harman, Kopelman, Nicely, Ours, Poling and Powell.

Subcommittee Chairman
Claims—Mr. Kincaid

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HEALTH AND WELFARE
Withrow (Chairman), Burke, Casey, Ellis, Flanagan, Goodwin, Griffith, Holliday, Howell, Kincaid, Kopp, Matney, Moyers, Ritter, Schupbach, Stalnaker, Wooldridge, Creel, Files, Jeter, Lilly, Polen, Potter, Queen (of Upshur) and Ranson.

Subcommittee Chairmen
Health—Mr. Holliday
Humane Institutions—Mr. Griffith
Penal and Correctional Institutions—Mr. Casey

INDUSTRY AND LABOR
Cann (Chairman), D'Aurora (Vice Chairman), Allen, Bowman, Cookman, Dickerson, Fantasia, Frazer, Goodwin, Griffith, Hager (of Lincoln), Howell, Kopp, Ragan, Simpkins, Varney, Wooten, Bobbitt, Butcher, Creel, Grewe, Jeter, Ranson, Roger­son and Zakaib.

INTERSTATE COOPERATION
Frazer (Chairman), Anderson, Hager (of Logan), McManus, Steptoe, Nicely and Seibert.

JUDICIARY
Watson (Chairman), Steptoe (Vice Chairman), Anderson, Armistead, Cain, Casey, Marstiller, Morasco, Moyers, Myles, Nelson (of Cabell), Payne, Sommerville, Stalnaker, Tsapis, Wilson, Woo, Ashley, Burk, Halbritter, Jones (of Kanawha), Potter, Sayre, Seibert and Stamp.

POLITICAL SUBDIVISIONS
Tsapis (Chairman), Kopp (Vice Chairman), Cain, Church, D'Aurora, Dickerson, Hoard, Holliday, Kincaid, Lohr, Nelson (of Cabell), Paul, Payne, Ragan, Simpkins, Stalnaker, Wooldridge, Bobbitt, Files, Grewe, Lilly, Nelson (of Kanawha), Polen, Smirl and Zakaib.

Subcommittee Chairmen
Redistricting—Mr. Nelson (of Cabell)

ROADS AND TRANSPORTATION
Wilt (Chairman), Lohr (Vice Chairman), Allen, Anderson, Bowman, Burke, Christian, Crandall, Davidson, Dickerson, Ellis, Hager (of Lincoln), Hawse, Ragan, Schupbach, Sommerville, Varney, Buck, Carey, Halbritter, Kinder, Kopelman, Queen (of Upshur), Ranson and Sayre.

Subcommittee Chairmen
Railroads—Mr. Christian

RULES
White (Chairman), Boiarisky, Cann, Hill, Myles, Payne, Steptoe, Watson, Jones (of Mason), Ours, Poling and Seibert.
STATE AND FEDERAL AFFAIRS
Payne (Chairman), Cain (Vice Chairman), Boiarsky, Church, Crandall, Edgar, Flanagan, Galperin, Howell, Matney, Nelson (of Cabell), Paul, Queen (of Logan), Steptoe, Varney, Wilson, Woo, Grewe, Harman, Jeter, Kinder, Mulneix, Poling, Rogerson and Zakaib.

Subcommittee Chairman
Military and Veterans Affairs—Mr. Howell

JOINT COMMITTEES
ENROLLED BILLS
Davidson (Chairman), Galperin (Vice Chairman), Ellis, Kinder and Mulneix.

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
White (ex officio), Boiarsky, Cann, Myles, Watson, Jones (of Mason) and Ours.

JOINT RULES
White (Speaker), Myles and Jones (of Mason).
ERRATA

Page 37, §19-20-10, line 8, should read “drafts payable therefrom, for the following purposes,“

Page 696, §36-8-12, line 3, Class I should be Class II.

Page 1292, HJR 3, paragraph 13, line 6, “eight” should be “nineteen.”

Page 1452, chapter 15, section 1, line 165, “eight” should be “nineteen.”
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 the recovery of damages in wrongful death actions, authorizing a personal representative to maintain such an action even though he be appointed in another state, territory or district of the United States, or in any foreign country, requiring a bond of any personal representative so appointed and providing that the amount recovered in any such action, with certain exceptions, shall not be subject to any debts or liabilities of the deceased.

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:

ARTICLE 7. ACTIONS FOR INJURIES.

Section

6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.
§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. Where the personal representative was duly appointed in another state, territory or district of the United States, or in any foreign country, such personal representative shall, before the action is heard, post bond, with a corporate surety thereon authorized to do business in this state, in a penal sum to be determined by the court, conditioned that such personal representative shall pay all costs adjudged against him and that he shall comply with the provisions of the third paragraph of this section. In every such action the jury may award such damages as they deem fair and just, not exceeding ten thousand dollars, and the amount recovered shall be distributed to the parties and in the proportion provided by law for the distribution of personal estate left by persons dying intestate. In addition, the jury may award such further damages, not exceeding the sum of one hundred thousand dollars, as shall equal the financial or pecuniary loss sustained by the dependent distributee or distributees of such deceased person, and shall be distributed as though part of the decedent's estate to decedent's dependent distributees in the proportions provided by the laws of descent and distribution.

In every such action and in addition to the damages awarded pursuant to the foregoing provisions hereof, the personal representative of the deceased shall be entitled to recover the reasonable funeral expenses of such deceased person and the reasonable hospital, medical and other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death.
In its verdict the jury shall set forth separately the amount of damages, if any, awarded by it for reasonable funeral, hospital, medical and said other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death, and any such amount recovered for such expenses shall be so expended by the personal representative. Except as provided in the preceding sentence, the amount recovered in accordance with the provisions of this section shall not be subject to any debts or liabilities of the deceased.

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

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

CHAPTER 2

(House Bill No. 553—By Mr. Holliday)

[Passed February 16, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, 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 fifteen, providing for immunity from civil liability for those who in good faith render, without remuneration, emergency care at the scene of an accident.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 fifteen, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

Section

15. Aid to victim of accident; immunity from civil liability.

§55-7-15. Aid to victim of accident; immunity from civil liability.
No person, including a person licensed to practice medicine or dentistry, who in good faith renders emergency care at the scene of an accident, without remuneration, shall be liable for any civil damages as the result of any act or omission in rendering such emergency care.

CHAPTER 3
(Senate Bill No. 98—By Mrs. Baker)

(Passed February 7, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section four, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of the commissioner.

Be it enacted by the Legislature of West Virginia:

That section four, article one, 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 1. DEPARTMENT OF AGRICULTURE.

Section 4. Duties of commissioner.

§19-1-4. Duties of commissioner.

The commissioner of agriculture shall perform the following duties:

(a) Devise means of advancing the agricultural interests of the state, and, in the performance of such duty, he shall have authority to call upon any state department, or officer of the state or county, to cooperate with him in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner, to render the assistance desired;

(b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state's agricultural,
horticultural and kindred interests, especially in production, processing for market and distribution;

(c) Conduct cooperative work with the United States department of agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers and shipping points;

(d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities and advantages of the state;

(e) Investigate and report upon the kinds, conditions and extent of the mineral products of the state and their value;

(f) Take charge of the museum of the department of agriculture, collect, preserve and exhibit therein specimens of agricultural, horticultural and kindred products, products of the forest, minerals, flora and fauna of the state;

(g) Publish and distribute from time to time such reports and bulletins concerning agriculture, horticulture and kindred subjects as may be of value to the farmers of the state, and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture and kindred interests;

(h) Submit a biennial report to the governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disbursements during the biennial period covered thereby, and giving the name of every person employed during such period, the time employed, and the amount paid each employee;

(i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law;

(j) Promulgate and adopt rules, regulations and standards for the purpose of carrying out the requirements of this chapter.
CHAPTER 4

(Senate Bill No. 95—By Mrs. Baker)

[Passed February 14, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the testing and inspection of livestock for infectious diseases.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-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:

ARTICLE 2A. PUBLIC MARKETS.

Section

14. Testing and inspection of livestock for infectious diseases; fees; records.


For the purpose of preventing the spread of infectious disease among livestock and poultry when and where the same is sold at a public market the commissioner shall have authority and shall establish and define an area surrounding a public market inside of which area, so defined, it shall be unlawful for any person, firm, association, partnership or corporation to buy or sell to, or exchange with, another, unless such person, firm, association, partnership or corporation shall comply with all the provisions of this article and the rules and regulations as provided in this article.

At any public market where livestock is received, sold, offered or exposed for sale for purposes other than slaughter, the same shall be inspected for livestock diseases by a licensed and accredited veterinarian or by a livestock inspector approved by the commissioner and working under the direct supervision of the veterinary director of the animal health division, which veterinarian and livestock
19 inspector shall be employed by the commissioner of agriculture and shall have authority to carry out the provisions of this section and enforce the provisions of article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one.

24 The management of such market shall collect a fee of fifty cents per head for cattle when tested for Bang's disease, and ten cents per head for hogs when treated for the prevention of cholera. In addition thereto they shall collect from the purchaser the actual cost of vaccines or biological products used in the testing of such animals. Such vaccines or biological products shall be approved by the commissioner.

32 It shall be the duty of each veterinarian or livestock inspector to keep a record of all animals tested by him on forms furnished by the commissioner; such records shall be made in duplicate, the original to be forwarded to the commissioner, and the duplicate to be furnished to the public market at which such testing was done.

38 On the first day of each month the public market shall forward to the commissioner all moneys due for testing done during the previous month.

CHAPTER 5

(House Bill No. 792—By Mr. Steptoe and Mr. Cookman)

[Passed February 20, 1967; in effect 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 five-a, relating to controlled atmosphere storage of certain fruits and vegetables; providing for licenses; enforcement; oxygen content; warehouse numbers; conditions; standards; air component determinations; hearings; subpoenas; injunctions; denials; suspension and revocation of licenses and providing remedies and penalties.
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 five-a, to read as follows:

ARTICLE 5A. CONTROLLED ATMOSPHERE STORAGE OF FRESH FRUITS AND VEGETABLES.

Section 19-SA. Purpose and construction.

1. Purpose and construction.
2. Definitions.
3. Commissioner to enforce article; rules and regulations; cooperation with other authorities.
4. License required for operation of warehouse; application; fees; term of license; inspections; refusal, suspension or revocation of license.
5. Access to warehouses, records, etc.
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7. Oxygen content, time and temperature requirements for classification of fruits or vegetables as controlled atmosphere stored.
8. Air component determinations; records; forms; contents.
9. Minimum condition and maturity standards.
10. Subpoena power; production of books, records, etc.; enjoining violation; admissibility of inspection certificates.
11. Unlawful acts; penalties.
12. Article cumulative and nonexclusive; severability.

§19-SA-1. Purpose and construction.

The purpose of this article is to regulate controlled atmosphere storage warehouses, for controlling the condition and maturity of fresh fruits and vegetables, so that upon removal therefrom they may be designated as CA stored.


(a) "Department" means the department of agriculture of the state of West Virginia.
(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his duly authorized representatives.
(c) "Controlled atmosphere storage" or "CA" means any storage warehouse consisting of one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits and vegetables in order that upon removal therefrom they may be designated as having been exposed to controlled atmosphere.
§19-5A-3. Commissioner to enforce article; rules and regulations; cooperation with other authorities.

(a) The commissioner shall administer and enforce the provisions of this article and for this purpose he is hereby authorized and empowered to promulgate rules and regulations and to employ or contract with such persons as may be appropriate.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments, and instrumentalities thereof, the state of West Virginia and any agencies, departments or political subdivisions thereof, and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

§19-5A-4. License required for operation of warehouse; application; fees; term of license; inspections; refusal, suspension or revocation of license.

No person shall engage in the business of operating a controlled atmosphere storage warehouse unless he shall have first obtained a license from the commissioner so to do, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by a fee required in this section. When a person operates two or more CA storage warehouses not on the same premises in this state, a separate license shall be required for each such storage warehouse. Each license shall expire on the thirtieth day of June next following its issuance, and the annual fee for each such license shall be twenty-five dollars. Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's CA storage warehouse and if the commissioner is satisfied that the warehouse is properly equipped and is in conformity with the provisions of this article and any rules and regulations...
promulgated by the commissioner, he shall issue the
license. Each applicant for a license shall specify the
name of the person applying for the license, the principal
business address, name of the person domiciled in this
state authorized to receive and accept service and legal
notices of all kinds, the storage capacity of the controlled
atmosphere storage warehouse by cubic capacity or
volume, kind of fruits or vegetables for which the ap-
plicant intends to provide controlled atmosphere storage,
and any other information prescribed by the commis-
sioner as necessary in carrying out the provisions of this
article.

The commissioner may refuse to grant a license or may
suspend or revoke a license issued under the provisions
of this section whenever he finds that the applicant's or
licensee's CA storage warehouse, as the case may be,
is not properly equipped, or is not in conformity with the
provisions of this article or any rules and regulations
promulgated by the commissioner.

No such revocation or suspension of a license shall be
effective until the licensee has received notice thereof,
which notice shall specify the grounds for such revocation
or suspension.

§19-5A-5. Access to warehouses, records, etc.

1 The commissioner shall have access to and is em-
powered to enter and make inspections during business
hours of all controlled atmosphere storage warehouses
licensed by this state. The licensee shall make available
on demand to the commissioner all records pertaining
to the conduct of said controlled atmosphere storage
warehouses.

§19-5A-6. CA warehouse numbers; issuance and use.

1 The commissioner when issuing a license shall assign
a warehouse number which shall be preceded by the
letters WV-CA.

4 No person in this state shall place, stamp, mark or
cause to be placed, stamped or marked the letters “CA”
or a similar designation in conjunction with a number or
numbers upon any container or subcontainer of any fruits
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or vegetables, or imply that such fruits and vegetables have been subjected to controlled atmosphere conditions unless the commissioner has inspected such fruits and vegetables and issued a state lot number in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this article and met the requirements of the article and regulations promulgated thereunder: Provided, That if such fruits and vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or subsequent similar inspection by the commissioner the letters "CA" and the state lot number shall be eradicated by the licensee.

§19-5A-7. Oxygen content, time and temperature requirements for classification of fruits or vegetables as controlled atmosphere stored.

The commissioner shall adopt regulations:

(a) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere warehouse.

(b) Prescribing the maximum period of time in which the oxygen content shall be reduced to the amount prescribed under subdivision (a) of this section.

(c) Prescribing the length of time and degree of temperature at which any fruits or vegetables shall be retained in a controlled atmosphere storage warehouse before they may be classed as having been stored in a CA storage.

§19-5A-8. Air component determinations; records; forms; contents.

The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the commissioner for a period of at least one year and shall include the following:

(a) Full name and address of licensee.

(b) Number and storage capacity of the warehouse.

(c) Date of sealing of the warehouse.
(d) Date of opening of the warehouse.
(e) A daily record of the date and time of tests including the percentage of carbon dioxide, oxygen and the temperature.
(f) Any records required by the commissioner to fulfill the provisions of this article.

The commissioner shall establish minimum condition and maturity standards for fruits and vegetables which are to be designated as “CA” stored.

§19-5A-10. Subpoena power; production of books, records, etc.; enjoining violation; admissibility of inspection certificates.
The commissioner shall have subpoena power to compel the attendance of witnesses and/or the production of books, records or documents anywhere in the state in a hearing affecting the authority or privilege granted by a license issued under the provisions of this article and may bring an action to enjoin the violation or threatened violation of any provision of this article or of any regulation adopted pursuant to this article in a court of record in the county in which violation occurs or is about to occur, notwithstanding the existence of any other remedy of law. Official inspection certificates issued by the commissioner shall be received in all courts of this state as prima facie evidence as statements of facts contained therein.

It shall be unlawful for any person to sell, offer for sale, hold or transport for sale any fruits or vegetables represented as having been exposed to controlled atmosphere storage or to use any terms or form of words or symbols of similar import unless such fruits and vegetables have been stored in a controlled atmosphere storage which meets the requirements of this article and the regulations adopted hereunder. Any person violating the provisions of this article or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not less
than fifty dollars nor more than two hundred fifty dollars
and upon conviction of each subsequent offense shall be
fined not less than two hundred fifty dollars nor more
than five hundred dollars.

§19-5A-12. Article cumulative and nonexclusive; severability.
The provisions of this article shall be cumulative and
nonexclusive and shall not affect any other remedy. If
any section or provision of this article shall be adjudged
invalid or unconstitutional, such adjudication shall not
affect the validity of the article as a whole or any sec-
tion, provision or part thereof not adjudged invalid or
unconstitutional.

CHAPTER 6
(Senate Bill No. 97—By Mrs. Baker)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nine, chap-
ter nineteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to consulting
veterinarians.

Be it enacted by the Legislature of West Virginia:

That section three, article nine, 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 9. DISEASES AMONG DOMESTIC ANIMALS.

Section 3. Consulting veterinarians to assist commissioner.

§19-9-3. Consulting veterinarians to assist commissioner.

The commissioner shall have authority to appoint, sub-
ject to dismissal by him at any time, such consulting vet-
erinarians as may be necessary from time to time to assist
him in discharging the duties imposed upon him by this
article. Each consulting veterinarian shall be registered
as required by article ten, chapter thirty of this code, and
shall receive a per diem, and actual expenses, to be determined by the commissioner, for the time actually engaged in carrying out the directions of the commissioner, which per diem and expenses shall be paid out of the current appropriation made for the enforcement of this article.

Whenever any incorporated city of this state shall have in its employ any veterinary sanitary officer engaged in the inspection of meat, milk or animals, and such officer is a registered veterinarian as aforesaid, the commissioner may appoint such city veterinary sanitary officer a consulting veterinarian, but such officer shall not be entitled to compensation or expenses from both the state and city for the same service.

CHAPTER 7
(Senate Bill No. 99—By Mrs. Baker)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special quarantines.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article nine, 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 9. DISEASES AMONG DOMESTIC ANIMALS.

Section 14. Establishment of special quarantine.


The commissioner or his authorized agent shall have the power to establish and maintain a special quarantine, whenever any domestic animal shall be affected with or exposed to any communicable disease, or whenever he deems it necessary to have any animal examined or tested.
When a special quarantine is established, the commissioner, or his agent, shall post on the building, structure, pen, coop, car, vessel, vehicle, field, or enclosure, wherein the animal or animals quarantined are confined or contained, a notice declaring the quarantine and containing a description of the animal or animals and of the premises where quarantined. Such quarantine may continue for such time as the commissioner, or his agent, may deem advisable.

CHAPTER 8

(Com. Sub. for House Bill No. 613—By Mr. Edgar and Mr. Hawse)

[Passed March 3, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, thirty and thirty-one, article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to slaughtering of diseased animals and indemnity therefor; agreements with owner as to cleaning and disinfecting premises; appraisal of infected or exposed animals and certificate of appraisal to be furnished owner thereof.

Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, thirty and thirty-one, article nine, 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 9. DISEASES AMONG DOMESTIC ANIMALS.

Section

28. Indemnity for slaughter of infected or exposed animals; agreement.
30. Appraisal of infected or exposed animals; amount; arbitration; fees of arbitrators.

§19-9-28. Indemnity for slaughter of infected or exposed animals; agreement.

1 Whenever, to prevent the spread of any communicable disease, which cannot be cured or controlled by isolation
and adequate or proper veterinary treatment, it shall be
deemed necessary by the commissioner or any of his
agents to cause any animal found to be infected with or
directly exposed to any infectious, contagious, or com-
municable disease, which cannot be cured or controlled
by isolation and adequate or proper veterinary treat-
ment, to be killed, and the owner of such animal shall
desire to receive indemnity therefor, he shall be required
by the commissioner before the appraisal and slaughter
of the animal to execute an agreement that he will thor-
oughly clean and disinfect all premises that may have
been infected by such animal in such manner as the com-
missioner may prescribe, and, in case such animal is tu-
berculous, that he will have his entire herd of bovine
animals tested with tuberculin by the commissioner or
his agent at such times as the commissioner may desig-
nate, and will not admit to his herd any bovine animal
that has not given a negative reaction to the test. Such
agreement shall be in duplicate, one copy to be retained
by the signer, and in such form as the commissioner shall
prescribe, and shall be signed by the owner or his agent,
and shall be effective for a period of two years from
the date thereof. All such animals, for which indemnity
is claimed by the owner, shall be appraised before being
slaughtered, and the owners indemnified as hereinafter
provided: Provided, however, That any animal infected
with rabies may be slaughtered by the owner or any per-
son authorized to do so without such agreement and ap-
praisal first being had, and if the disease is caused by
the bite of a dog, the animal shall be appraised and com-
pensation therefor obtained as provided in article twenty
of this chapter.

§19-9-30. Appraisal of infected or exposed animals; amount;
arbitration; fees of arbitrators.

The commissioner or his agent shall act as appraiser
and appraise each infected or directly exposed animal
within five days prior to the date of slaughter, basing
the amount upon the class and market value of the
animal at the time of the appraisal, whether for breed-
ing purposes or for milk or meat production. Animals
reacting to any approved test, but not exhibiting any
physical evidence of disease, shall be appraised without considering the presence of a diseased condition, but animals exhibiting any physical evidence of disease shall be appraised as infected animals: Provided, however, That where indemnities are claimed for directly exposed animals slaughtered on account of being infected with rabies, appraisement shall be based on the value of the animal before it became infected. The amount of appraisal for a nonregistered equine animal shall not exceed seventy-five dollars, for a registered equine animal one hundred dollars, for a nonregistered bovine animal one hundred and fifty dollars, for a registered bovine animal two hundred and fifty dollars, for a nonregistered swine twenty-five dollars, for a registered swine forty dollars, for a nonregistered sheep ten dollars, and for a registered sheep twenty-five dollars. If the amount of appraisal of any animal, as determined by the appraiser is not satisfactory to the owner of the animal, a written notice of such fact setting forth the reason for complaint shall be made at once to the appraiser. The amount of the appraisal shall then be determined by arbitrators, one to be appointed by the appraiser and one by the owner of the animal. If these arbitrators are not able to agree as to the amount of appraisal, a third arbitrator shall be appointed by them, whose decision shall be final. Each arbitrator shall be paid one dollar for each appraisement of five or less than five animals, and two dollars if more than five animals are appraised. Compensation for the arbitrators appointed by the owner and the appraiser shall be paid by the party appointing such arbitrator, and in case a third arbitrator is chosen, such arbitrator shall be paid by the party against whom the decision is made.


When the animal is to be slaughtered, the commissioner or his agent shall make and deliver to the owner a certificate of appraisal which may cover any number of animals belonging to the same owner, showing the age and description of each animal found to be infected or directly exposed, the name and place of test, if any, the mark or brand as tuberculous, and any other mark
8 or brand which the animal may bear, the date when
9 and the place to which the animal was sent for slaughter
10 by the veterinarian, the designation of the officer who
11 is to supervise the slaughter, the appraised value of each
12 animal, the name and address of the owner of the animal,
13 and the fact that he has executed the agreement as pro-
14 vided in section twenty-eight of this article.

CHAPTER 9

(Senate Bill No. 167—By Mrs. Baker)

[Passed March 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to repeal article twelve, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, and to enact in lieu thereof a new article
twelve, relating to the protection of agriculture and horti-
culture, including all field crops, vegetables, trees, shrubs,
vines, florist and nursery stock and all other plants and
parts, or products thereof, by preventing the introduction
into and dissemination within the state of insect pests and
plant diseases and by providing for their repression and
control; revising, consolidating and changing the law re-
lying thereto; defining the powers and duties of the com-
missoner of agriculture relating thereto; providing penal-
ties; and repealing present laws.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter nineteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be repealed and that a new article twelve be enacted in lieu
thereof to read as follows:

ARTICLE 12. INSECT PESTS AND PLANT DISEASES.

Section
1. Title.
2. Definitions.
3. Commissioner to enforce article; powers and duties generally.
4. Detection and abundance surveys; findings of commissioner; erad-
cation and suppression.
5. Rules and regulations for eradication, etc., of plant pests and other
insects; enjoining violations of article or rules and regulations.
6. Quarantines and other orders; plants or plant products entering
state.
§19-12-1. Title.

This article shall be known by the short title of “The Plant Pest Act.”

§19-12-2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article. All words shall be construed to import either the plural or the singular, as the case demands:

(a) “Department” means the department of agriculture of the state of West Virginia.

(b) “Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

(c) “Agent” means any person soliciting orders for nursery stock under the partial or full control of a nurseryman or dealer.

(d) “Dealer” means any person not a grower of nursery stock, who buys, receives on consignment or otherwise acquires and has in his possession nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

(e) “Nursery” means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored or otherwise prepared or offered for sale or movement to other localities.
(f) "Nurseryman" means and includes any person who owns, leases, manages or is in charge of a nursery.

(g) "Nursery stock" means all trees, shrubs and woody vines, including ornamentals, bush fruits, grape-vines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also means sod, including sod plugs and sod-producing plants, and such herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs as the commissioner declares by regulation to be so included whenever he considers control of the movement of such plants and bulbs necessary for the control of any destructive plant pest. Florists’ or greenhouse plants for inside culture or use, unless declared otherwise by the commissioner, as herein authorized, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as nursery stock.

(h) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, governmental organization, or other business entity and each officer, agent or employee thereof.

(i) "Plant and plant products" means trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber and all other parts of plants and plant products.

(j) "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

(k) "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

(l) "Regulated article" means any article of any char-
acter, as described in the quarantine or other order of the commissioner carrying or capable of carrying a pest.

(m) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.

(n) "Permit" means a document issued or authorized by the commissioner to provide for a movement of regulated articles to restricted destinations for limited handling, utilization or processing.

§19-12-3. Commissioner to enforce article; powers and duties generally.

(a) It shall be the duty of the commissioner to exercise the powers and duties imposed upon him by this article for the purpose of protecting agricultural, horticultural and other interests of the state from plant pests or other insects and for this purpose he is hereby authorized and empowered to promulgate such rules and regulations as are necessary to effectively eradicate, suppress or control plant pests or other insects or to retard the dissemination of plant pests or other insects as far as may be practical and to employ or contract with such persons as may be appropriate.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments and instrumentalities thereof, the state of West Virginia and any agencies, departments or political subdivisions thereof and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

§19-12-4. Detection and abundance surveys; findings of commissioner; eradication and suppression.

The commissioner shall cause detection and abundance surveys to be made for plant pests or other insects of a highly injurious nature that may be present in the state to determine the necessity for establishing control practices. When the commissioner determines that a new and dangerous plant pest or other insect exists within the state or that an established pest requires control and the
§19-12-5. Rules and regulations for eradication, etc., of plant pests and other insects; enjoining violations of article or rules and regulations.

The commissioner may promulgate rules and regulations under which he may proceed to eradicate or suppress and prevent the dissemination of plant pests or other insects as far as may be practical and such rules and regulations as are necessary to carry out the purpose of this article. Any person violating any of the provisions of this article or any rules or regulations promulgated thereunder may be enjoined from continuing such violation or violations upon proper application to the circuit court of any county, and a judge thereof shall not require a bond as a condition precedent to the issuance of the injunction.

§19-12-6. Quarantines and other orders; plants or plant products entering state.

The commissioner shall have power to establish and maintain quarantines and to adopt other orders and rules and regulations concerning the planting, exposing, sale and transportation of all plants or plant products and regulated articles capable of carrying plant pests of a highly injurious nature in any living stage within this state. The commissioner shall also have the power to prescribe like rules and regulations pertaining to all plants or plant products entering this state. The commissioner shall have the authority to rescind quarantines and other orders when he determines the need or practicability no longer exists.

§19-12-7. Infected or infested nursery stock, articles or materials subject to seizure, etc.

The commissioner is hereby authorized to stop the delivery of, destroy, stop sale, to seize, to treat or to order returned to point of origin, at the owner's expense, any nursery stock or any article or material whatsoever transported or moved within this state or being transported into this state from any place outside thereof, if such nursery stock, article or material is found by him to be
infested or infected with any dangerous plant pest or other insect or is in violation of any part of this article whether or not there is attached a valid certificate of inspection.

§19-12-8. Right of entry on premises.

To effectuate the purpose of this article, the commissioner is hereby invested with authority, during reasonable working hours, to enter upon any public or private premises, except private residences, to examine and sample all plants and trees, soil, articles, and substances which are suspected of being infested or infected with dangerous plant pests or other insects in discharge of the duties prescribed by this article. No person shall obstruct or hinder him in the discharge of his duties.

§19-12-9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.

It shall be unlawful for any nurseryman, dealer or agent to expose or offer for sale, sell, deliver or give away any plants or parts of plants commonly known as nursery stock unless such person shall have first secured from the commissioner a certificate of registration. The commissioner may refuse, suspend or cancel any certificate upon satisfactory evidence that any of the provisions of this article or rules and regulations governing the sale of nursery stock within this state have been violated. The commissioner shall for each certificate of registration issued and for each renewal thereof, collect an annual registration fee in the amount of ten dollars for each nurseryman, twenty dollars for each dealer and two dollars for each agent of such nurseryman or dealer. All certificates or registration shall expire on the thirtieth day of June next after issue.

§19-12-10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.

All stock in custody of any dealer or person shall be subject to inspection. It shall be the duty of the commissioner to provide for the annual inspection, or oftener if necessary, of all nurseries within the state.
The commissioner may order the owner or any person in charge of any infested or infected nursery stock or other material, article or host plants, including soil, to take such necessary measures as will eradicate or control the said infestation or infection as he may deem necessary or proper. Such owner or person in charge shall carry out the order of the commissioner within the period of time designated in the order. If such owner or person in charge shall refuse or fail to carry out any such order, the commissioner may cause to be performed such eradication or control measures as are required by the order which shall be at the expense of the owner or person in charge.

§19-12-11. Nursery stock brought into state to carry inspection certificate.

It shall be unlawful to deliver, transport or ship within this state, nursery stock which has not been inspected in accordance with the provisions of this article and which does not carry an inspection certificate attached to each carload, truckload, box, bale, package or item, or to deliver, ship, send or bring any such nursery stock into this state from any place outside thereof, unless there is attached to each carload, truckload, box, bale, package or item, in a conspicuous place, a valid certificate of inspection issued by the proper official of the state, territory, district or country from which it was shipped, sent or brought, showing that such nursery stock, including soil, was found to be free from plant pests at the time of inspection.

Nursery stock brought into the state under an inspection certificate, as above required, may be sold and moved under the certificate of a registered West Virginia nurseryman or dealer or agent, but this shall not preclude inspection at any time within the state.

§19-12-12. Disposition of fees collected.

The commissioner shall deposit all fees collected by him under the provisions of this article, into the state treasury to the credit of a special fund, which funds shall be expended by the commissioner for the enforcement of this article.
§19-12-13. Inspection of plants, etc., by commissioner upon request; certificate stating results of inspection.

Any person growing or possessing any plants or plant products or any other substance, material or thing may apply to the commissioner for a special inspection for the purpose of determining the presence of plant pests which might prevent the movement or use of same. The expenses incurred in making the inspection shall be paid by the person making such request. The commissioner may comply with such request and shall issue to the person requesting an inspection a certificate stating the results of the inspection.

§19-12-14. Permit required to sell, transport, etc., plant pests.

No person shall sell, barter, expose, offer for sale or move, transport, deliver, ship or offer for shipment into or within this state any plant pest or other insects in any living stage without first obtaining a permit from the commissioner. Such permit shall be issued only after it has been determined that the plant pests or other insects are not injurious, are generally present already or are for scientific purposes subject to specified safeguards.

§19-12-15. Information to be furnished and inspection allowed upon request of commissioner.

The commissioner may request any person who has plants or plant products or articles or substances suspected of being infested or infected with dangerous pests in his possession to present same for inspection and to give full information as to the origin, number and destination of same, and it shall be a misdemeanor for such person to refuse to give the information upon request or to allow inspection.

§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.

Any person violating any of the provisions of this article, or the rules or regulations adopted thereunder, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. It shall be the duty of the prosecuting attorney of the
§19-12-17. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the 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 10
(House Bill No. 1065—By Mr. Lohr and Mr. Edgar)

[Passed March 4, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, six and eight, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to agricultural and forest seeds.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six and eight, article sixteen, 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 16. AGRICULTURAL AND FOREST SEEDS.

Section
1. Definitions.
2. Label requirements.
3. Certificate of registration; seed fees; payment of fees; disposition of funds.
4. Prohibitions.
5. Duties and authority of commissioner of agriculture.
6. Violations and prosecutions.

§19-16-1. Definitions.

1 When used in this article:
2 (a) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his duly authorized representatives;
(b) The term “person” shall include any individual, partnership, corporation, company, society or association;

(c) The term “agricultural seeds” shall include the seeds of grass, forage, cereal, tobacco and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural or field seeds and mixtures of such seeds. Forest seeds shall include all deciduous and coniferous trees and shrubs and ornamentals;

(d) The term “vegetable seeds” includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this state;

(e) The term “seed potato” shall refer to the Irish potato (Solanum tuberosum);

(f) The term “weed seeds” shall include the seeds of all plants generally recognized as weeds within this state;

(g) Noxious weed seeds shall be divided into two classes, “prohibited weed seeds” and “noxious weed seeds,” as defined in (1) and (2) of this subdivision: Provided, That the commissioner of agriculture may, through promulgation of regulations, add to or subtract from the list of seeds included under either definition whenever he finds that such additions or subtractions are within the respective definitions;

(1) “Prohibited weed seeds” are the seeds of perennial weeds such as not only reproduce by seed, but also spread by underground roots or stems, and which when established are highly destructive and difficult to control in this state by ordinary cultural practice;

“Prohibited weed seeds” in this state are the seeds of dodder (Cuscuta spp.), quack grass (Agropyrons repens), Johnson grass (Sorghum halapense), Canada thistle (Carduus arvensis), perennial sow thistle (Sonchus arvensis);

(2) “Noxious weed seeds” are the seeds of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practice. “Noxious weed seeds” in this state are the seeds of wild onion (Allium vineale), hawk weed (Hieracum
spp.), buckhorn (Plantago lanceolata), English charlock or wild mustard (Brassica arvensis), corn cockle (Agrostemma githago), ox-eye daisy (Chrysanthemum leucanthemum), Indian mustard (Brassica juncea), star thistle (Centurea solstitialis), wild carrot (Daucus carota), horse nettle (Solanum carolinianum), field pepper grass (Lepidium compestre), wild morning glory (Ipomoea purpurea), bindweed (Convolvulus arvensis);

(h) The term "labeling" includes all labels and other written, printed or graphic representation, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices;

(i) The term "advertisement" means all representation, other than those on the label, disseminated in any manner or by any means, relative to seed within the scope of this article.

§19-16-2. Label requirements.

1 Each container of agricultural, forest or vegetable seed which is sold, offered for sale or exposed for sale within the state for sowing purposes, shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For agricultural and forest seeds:

(1) Commonly accepted name of kind and variety of each agricultural or forest seed component in excess of five per cent of the whole, and the percentage by weight of each in order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(b) If the variety is unknown, that fact shall be stated for each agricultural or forest seed component in excess of five per cent of the whole.

(2) Lot number or other lot identification.

(3) Origin, if known, of alfalfa, red clover, forest seeds and field corn (except hybrid corn). If the origin is unknown that fact shall be stated.

(4) Percentage by weight of all weed seeds.
(5) The name and approximate number of each kind of noxious weed seed: (a) Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed, canary grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group.

(b) Per pound in proso, sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group.

All determinations of noxious weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations under this article.

(6) Percentages by weight of agricultural seeds (which may be designated as “crop seeds”), other than those required to be named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agricultural or forest seed: (a) Percentage of germination exclusive of hard seed; (b) percentage of hard seed, if present; (c) the calendar month and year the test was completed to determine each percentage.

Following (a) and (b) the “total germination and hard seeds” may be stated as such, if desired.

(9) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

(10) For agricultural or forest seeds which germinate less than the standard last established by the commissioner under this article, the label shall show in addition to the previous requirements of this section, the words “germination below standard” in not less than eight point type.

(b) For vegetable seeds:

(1) Name of kind and variety;
(2) For seeds which germinate less than the standard last established by the commissioner under this article:

(a) Percentage of germination, exclusive of hard seed;
(b) percentage of hard seed, if present; (c) the calendar month and year the test was completed to determine such percentages; (d) the words "below standard" in not less than eight point type; and

(3) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within the state.

(c) For seed potatoes:

Only "certified" seed potatoes which grade from the standpoint of physical defects better than the minimum requirements of U. S. No. 1 may be offered for sale as seed. There shall be attached to each bag or container a tag showing by whom certified, the standard or conditions under which said certification is made, and the name of the official state or governmental agency making the inspection upon which the certification is made.

§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.

Every producer or distributor of agricultural, forest or vegetable seeds or seed potatoes who shall sell, offer or expose for sale or distribution in this state any seeds, shall before the same is offered or exposed for sale obtain from the commissioner a certificate of registration showing that he has registered with the commissioner to sell seeds in West Virginia. The commissioner shall have full power and is hereby authorized and required to cancel and withdraw any certificate upon satisfactory evidence that any provisions of this article or any rules and regulations covering the sale of any seed have been violated. The commissioner shall not issue any certificate of registration except upon filing with the commissioner an application for a certificate of registration, such application shall be on a form prescribed by the commissioner which shall include a consent for the commissioner or his agent to inspect and audit all sales invoices and records and shall include, but not be limited to, the following: The name and address of the seedsman, im-
porter, dealer, or agent, or other person, firm or corpo-
ration selling, offering or exposing for sale or distribution
any seeds in this state; a list of the seeds to be offered
for sale, and accompanied by a registration fee of one
dollar. Certificates so issued by the commissioner shall
become null and void on December thirty-first next after
date of issue unless sooner revoked as herein provided.

For the purpose of defraying the cost of inspection and
analysis of seeds and the enforcement of this article, every
producer or distributor of agricultural, forest or vegetable
seeds or seed potatoes who shall sell, offer or expose for
sale or distribution in this state any such seed shall pay
to the commissioner, a state seed fee as provided in the
following schedule:

(a) For forest, tobacco, alfalfa, clovers and all grass
or mixtures of any of these, and all vegetable seeds ex-
cept those contained in samples or display units, the
following rates: Ten cents for each one hundred pounds;
eight cents for each seventy-five pounds; five cents for
each fifty pounds and three cents for each twenty-five
pounds.

(b) For all other agricultural seeds the following
rates: Five cents for each one hundred pounds; four
cents for each seventy-five pounds; three cents for each
fifty pounds and two cents for each twenty-five pounds.

(1) Payment of the fee levied by paragraphs (a) and
(b) shall be based on a statement under oath in due
form of law which shall be filed with the commissioner
on or before the fifteenth day of July and January which
shall set forth the number of pounds of seed sold or
distributed in the state during the preceding six months
period.

(c) For seed potatoes: Two cents per one hundred
pounds.

(1) Payment of the fee levied in paragraph (c) shall
be based on a statement under oath in due form of law
which shall be filed with the commissioner on or before
the fifteenth day of each month for the preceding month
in which seed potatoes were bought or distributed, sold
or offered for sale.
(d) For vegetable seeds in primary consumer packages containing not more than eight ounces net: One dollar per sampler unit.

(1) Payment of the fee levied in paragraph (d) shall be through the purchase of seed stamps from the commissioner which seed stamps shall be attached to each and every display unit in a conspicuous place.

(e) For seeds not otherwise specified in primary consumer packages of ten pounds or less, the rate shall be as follows: For five pounds up to and including ten pounds, three cents; for less than five pounds, two cents.

(1) Payment of the fee levied in paragraph (e) shall be through the purchase of seed stamps from the commissioner which stamps shall be attached to the primary consumer container before such seed is offered or exposed for sale or distribution.

(f) A dealer shall not be required to register or pay the seed fee on any agricultural, forest, vegetable seed, or seed potato on which he can prove such seed was registered and fees paid by a person entitled so to do and such registration is then in effect.

All moneys collected in the enforcement of this article shall be deposited in a special revenue fund with the state treasurer, and shall be expended on order of the commissioner.

§19-16-4. Prohibitions.

(a) It shall be unlawful for any person to sell, offer or expose for sale any agricultural, forest or vegetable seed within this state:

(1) Unless the test to determine the percentage of germination required by section two shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation;

(2) Not labeled in accordance with the provisions of this article or having a false or misleading labeling;

(3) Pertaining to which there has been a false or misleading advertisement;
(4) Containing prohibited weed seeds, subject to tolerances and methods of determination prescribed in the rules and regulations under this article;

(5) Containing more than two per cent by weight of weed seeds.

(b) It shall be unlawful for any person within this state:

(1) To detach, alter, deface or destroy any label provided for in this article or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purposes of this article;

(2) To disseminate any false or misleading advertisement concerning agriculture, forest, vegetable or potato seed in any manner or by any means;

(3) To hinder or obstruct in any way any authorized person in the performance of his duties under this article;

(4) To fail to comply with a “stop sale” order.

§19-16-6. Duties and authority of commissioner of agriculture.

(a) The duty of enforcing this article and carrying out its provisions and requirements shall be vested in the commissioner of agriculture. It shall be his duty:

(1) To establish germination standards for agricultural, forest and vegetable seeds;

(2) To sample, inspect, make analysis of, and test agricultural, forest, vegetable and potato seeds transported, sold or offered or exposed for sale within this state for seeding purposes, at such time and place and to such extent as he may deem necessary to determine whether such seeds are in compliance with the provisions of this article, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation;

(3) To prescribe and adopt rules and regulations governing the methods of sampling, inspecting, analysis, tests and examination of agricultural, forest and vegetable seed, and the tolerances to be followed in the administration of this article, which shall be in general accord with officially prescribed practice in interstate commerce,
and such other rules and regulations as may be neces-
sary to secure the efficient enforcement of this article.

(b) Further for the purpose of carrying out the pro-
visions of this article the commissioner, individually or
through his authorized agents, is authorized:

(1) To enter upon any public or private premises
during regular business hours in order to have access to
seeds subject to this article and the rules and regulations
thereunder;

(2) To issue and enforce a written or printed “stop
sale” order to the owner or custodian of any lot of seed
which the commissioner finds is in violation of any pro-
visions of this article, which order shall prohibit further
sale or movement of such seed until the commissioner
has released the same;

(3) To establish and maintain or make provisions for
seed testing facilities, to employ qualified persons, and
to incur such expenses as may be necessary to comply
with these provisions;

(4) To make or provide for making purity and ger-
mination tests of seeds for farmers and dealers on re-
quest; to prescribe rules and regulations governing such
testing; and to fix and collect charges for the tests made.
Such fees shall be deposited with the state treasurer in
a special revenue fund and may be expended on order
of the commissioner;

(5) To cooperate with the United States department
of agriculture in seed law enforcement;

(6) To establish a certifying agency for seed grown in
this state.

§19-16-8. Violations and prosecutions.

Any person violating any of the provisions of this article
shall be deemed guilty of a misdemeanor, and, upon con-
viction thereof, shall be fined not less than twenty-five
dollars nor more than two hundred fifty dollars for the
first offense, and not less than two hundred dollars nor
more than five hundred dollars for each subsequent offense.
When the commissioner shall find that any person has
violated any of the provisions of this article, he or his
9 duly authorized agent or agents may institute proceed-
10 ings in a court of competent jurisdiction: Provided, how-
11 ever, That no prosecution under this article shall be in-
12 stituted without the defendant first having been given
13 an opportunity to appear before the commissioner or his
14 duly authorized agent to introduce evidence, either in
15 person or by agent or attorney, at a hearing. If, after
16 such hearing, or without such hearing in case the de-
17 fendant or his agent or attorney fails or refuses to ap-
18 pear, the commissioner is of the opinion that the evi-
19 dence warrants prosecution, he shall proceed according
20 to law.

CHAPTER 11
(Senate Bill No. 264—By Mr. McKown)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article twenty, chapter nineteen of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, by adding thereto a new section, design-
nated section six-a, and to amend and reenact section five,
article twenty-a of said chapter, relating to reimbursement
of private incorporated society or association for care,
maintenance, control and destruction of dogs; and type of
vaccine to be furnished for the vaccination of dogs, and the
fee therefor.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter nineteen 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-a, and that section five, article twenty-a of said code be
amended and reenacted to read as follows:

Article
20. Dogs.
20A. Vaccination of Dogs for Rabies.
ARTICLE 20. DOGS.

Section
6a. Authority of county court to contract with private society, etc., respecting care, etc., of dogs.

§19-20-6a. Authority of county court to contract with private society, etc., respecting care, etc., of dogs.

In addition to the powers granted to county courts by section six of this article, the county court of each county may contract with or reimburse any private incorporated society or association with respect to the care, maintenance, control and destruction of dogs in said county.

ARTICLE 20A. VACCINATION OF DOGS FOR RABIES.

Section
5. Type of vaccine to be furnished; fee.

§19-20A-5. Type of vaccine to be furnished; fee.

It shall be the duty of the veterinarian, or person vaccinating each animal to furnish vaccine of a type capable of establishing and maintaining immunity for a period of not less than twenty-four months and he shall charge and collect a fee of one dollar fifty cents for each animal vaccinated, if done at a clinic established by a county court or, if vaccinated at any other place, he shall charge and collect a reasonable fee for his services.

CHAPTER 12

(House Bill No. 687—By Mr. Shiflet)

[Passed February 16, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county dog fund.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.

Section
10. Dog and kennel fund; disposition thereof.

§19-20-10. Dog and kennel fund; disposition thereof.

1 All registration fees, head taxes, and fees and costs for
2 impounding and disposing of dogs, as provided in this
3 article, and collected thereunder, shall be paid into the
4 county treasury where they shall constitute and be set
5 aside as a special fund to be designated the “dog and
6 kennel fund.”

7 The county court shall expend such fund, and issue
8 senate, two of whom shall be representative of indus-
9 and no others: To pay the actual expenses incurred by
10 the county court, the county assessor, and the sheriff in
11 carrying out the provisions of this article; to pay for
12 the services of the dog warden, his deputies, pound-
13 keepers, and such other persons as may be employed, if
14 any, or may render services, in actually carrying out
15 the provisions of this article; to pay for the purchase,
16 procurement, rental, construction, operation, maintenance
17 and repair of any property, devices or facilities rea-
18 sonably necessary and required to carry out the provisions
19 of this article; to compensate any department of the
20 state government or any local board of health for any
21 necessary service rendered in connection with this article;
22 to pay the costs of any rabies control project or program
23 authorized by law; to compensate any persons who have
24 suffered loss or damage on account of the destruction,
25 loss, or injury by dogs of any sheep, lamb, goat, kid or
26 poultry, when such claims have been proved and allowed
27 as provided in this article: Provided, however, That
28 such compensation authorized by the county court shall
29 not exceed an amount double the assessed value of the
30 destroyed or injured animals or poultry as shown on the
31 assessor’s records, and in the event such animals are
32 not assessed, then compensation authorized by said court
shall not exceed the average assessed value of like animals or poultry, or if no like animal or poultry is assessed, then not to exceed the fair market value as determined by the county court.

In the event that the dog and kennel fund shall in any year be insufficient to pay the several items set forth in this section, then the county court may be, and it is hereby, authorized and empowered to pay such items out of the county general fund. Any surplus of the dog and kennel fund remaining unexpended in the county treasury, and, in the opinion of the county court, not needed for the payment and satisfaction of claims and expenses as herein provided, shall annually be paid into and credited to the county school fund, but the funds thus used shall be in an amount deemed proper and safe in the judgment and discretion of the county court.

CHAPTER 13

(Senate Bill No. 200—By Mr. Carson, Mr. President)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

Section
1. Declaration of policy and purpose.
2. Definitions.
4. Air pollution control commission—composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.
6. Issuance of cease and desist orders by director; service; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.
8. Penalties; recovery and disposition; duties of prosecuting attorneys.
9. Applications for injunctive relief.

§16-20-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated state-wide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

§16-20-2. Definitions.

The terms used in this article are defined as follows:

The term "person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.
The term "commission" shall mean the air pollution control commission, and the term "commissioner" shall mean a member of said commission.

The term "air pollutants" shall mean solids, liquids or gases which, if discharged into the air, will result in a statutory air pollution.

The term "discharge" shall refer to the release, escape or emission of air pollutants into the air.

The term "statutory air pollution" shall mean and be limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

The term "director" shall mean the director of the West Virginia air pollution control commission appointed as hereinafter provided.

§16-20-4. Air pollution control commission—Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

The "Air Pollution Control Commission," heretofore created, shall continue in existence as an agency of the state but on and after the effective date of this act shall consist of seven members, including the state director of health and the commissioner of agriculture, who shall be members ex officio, and five other members to be appointed by the governor with the advice and consent of the senate, two of whom shall be representative of industries engaged in business in this state, and three of whom shall be representative of the public at large. The three appointed members of the commission in office on the effective date of this act shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before June fifteen, one thousand nine hundred sixty-seven, the governor shall appoint one member to serve until June thirty, one thousand nine hundred seventy, and one member to serve until June thirty, one thousand nine
hundred seventy-one, or until their successors have been appointed and have qualified. As the terms of the three appointed members of the commission in office on the effective date of this act expire and as the terms of the two members to be appointed by the governor on or before June fifteen, one thousand nine hundred sixty-seven, expire, members shall be appointed for overlapping terms of five years, so that one term expires each year, or until their successors have been appointed and have qualified. Any vacancy in the office of an appointed member of the commission shall be filled by appointment by the governor for the unexpired term of the appointed member whose office shall be vacant.

The ex officio members of the commission shall receive no salary or remuneration for their services as such but they shall be reimbursed, out of moneys appropriated for such purpose, for all reasonable and necessary expenses actually incurred in the discharge of their duties as such.

As compensation for his services on the commission, each appointed member shall receive, out of moneys appropriated for such purpose, the sum of fifty dollars for each day or substantial portion thereof that he is actually engaged in the work of the commission. Each member shall also be entitled to be reimbursed, out of moneys appropriated for such purpose, for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the commission.

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall appoint a secretary, who need not be a member of the commission. The commission shall appoint and employ a director and such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

The commission may establish rules for the regulation
of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved. Copies of orders entered by the commission, as well as copies of papers or documents filed with it, or the records of proceedings before the commission, shall be attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two commissioners, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission.

§16-20-6. Issuance of cease and desist orders by director; service; appeals to commission; hearings, subpoenas, etc.; orders and findings of commission.

If, from any investigation made by him or from any complaint filed with him, the director shall be of the opinion that a person is violating the provisions of this article, or any rules and regulations promulgated pursuant thereto, he shall make and enter an order directing such person to cease and desist such activity. The director shall fix a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter such order.

The director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air pollution control commission in the manner hereinafter provided. The person so appealing shall be known as the appellant and the director shall be known as the appellee. Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the commission for such purpose, with the commission within fifteen days after the date upon which the appellant received a copy of the order. The notice of appeal shall set forth the order complained
of and the grounds upon which the appeal is based. The filing of such notice of appeal shall stay the effect of the order complained of until final determination thereof is made by the commission. A copy of the notice of appeal shall be filed by the commission with the director within eight days after the notice of appeal is filed with the commission.

Within seven days after receipt of his copy of the notice of appeal, the director shall prepare and certify to the commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the director's file relating to the matter in question. The commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal authorized by the provisions of this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except that any such appeal hearing shall be held in the county wherein the alleged statutory air pollution complained of originated.

Any such appeal hearing shall be conducted by a quorum of the commission. For the purpose of conducting any such appeal hearing, any member of the commission and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the commission, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

Any such hearing shall be held within twenty days after
the date upon which the commission received the timely
notice of appeal, unless there is a postponement or con-
tinuance. The commission may postpone or continue any
hearing on its own motion, or upon application of the ap-
pellant or the appellee for good cause shown. The director
shall be represented at any such hearing by the attorney
general or his assistants. At any such hearing the appel-
lant may represent himself or be represented by an at-
torney at law admitted to practice before any circuit court
of this state.

After such hearing and consideration of all of the testi-
mony, evidence and record in the case, the commission
shall make and enter an order affirming, modifying or
vacating the order of the director, or shall make and enter
such order as the director should have entered.

Such order shall be accompanied by findings of fact and
conclusions of law as specified in section three, article five,
chapter twenty-nine-a of this code, and a copy of such
order and accompanying findings and conclusions shall be
served upon the appellant, and his attorney of record, if
any, and upon the appellee in person or by registered or
certified mail. The order of the commission shall be final
unless vacated or modified upon judicial review thereof
in accordance with the provisions of section seven of this
article.

§16-20-8. Penalties; recovery and disposition; duties of prose-
cuting attorneys.

Any person who shall fail or refuse to comply with any
final order made and entered hereunder to correct a statu-
tory air pollution within the time fixed by such order, or
any extension of time granted by the commission, shall
be subject to a penalty of not more than one thousand
dollars for each day that such failure or refusal continues
after such time has expired, which penalty may be re-
covered in a civil action brought by the commission in the
name of the state of West Virginia in the circuit court of
any county wherein such person resides or is engaged in
the activity complained of. The amount of the penalty
shall be fixed by the court without a jury. The amount
of any such penalties collected by the commission shall be
14 deposited in the general fund of the state treasury ac-
15 cording to law. Upon a request in writing from the com-
16 mission, it shall be the duty of the prosecuting attorney of
17 the county in which any such action for penalties accruing
18 under this section may be brought to institute and prose-
19 cute all such actions on behalf of the commission.
20 For the purpose of this section, violations on separate
21 days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.

In addition to the remedy provided for in section eight
2 of this article and in the absence of reasonable progress
3 toward correction of the statutory air pollution, the com-
4 mission may request the prosecuting attorney of the
5 county in which the person resides or is engaged in the
6 activity complained of to apply to the circuit court of such
7 county for an injunction to restrain all violations of any
8 final order entered pursuant to section six of this article.

CHAPTER 14

(House Bill No. 669—By Mr. Speaker, Mr. White, and Mr. Jones, of Mason)

[Passed March 8, 1967; in effect ninety days from passage. Approved
by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated ar-
ticle one-g, providing for ratification of the interstate
compact on air pollution between the states of Ohio and
West Virginia, for the appointment and terms of the mem-
bers of the Ohio-West Virginia interstate air pollution
control commission, and the powers and duties of such
commission.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, be amended
by adding thereto a new article, designated article one-g, to
read as follows:
ARTICLE 1G. INTERSTATE COMPACT ON AIR POLLUTION.

Section
1. Definitions.
2. Enactment of compact.
3. Appointment of members of commission; state director of health and director of the air pollution commission members ex officio.
4. Appropriation.
5. Severability clause.

§29-1G-1. Definitions.
1. As used in this article, unless the context requires otherwise:
2. (1) "Compact" means the interstate compact on air pollution;
3. (2) "Commission" means the Ohio-West Virginia interstate air pollution control commission.

§29-1G-2. Enactment of compact.
1. The "Interstate Compact on Air Pollution" is hereby ratified, enacted into law, and entered into by the state of West Virginia, with the state of Ohio legally joining therein in accordance with its terms, in the form substantially as follows:

   INTERSTATE COMPACT ON AIR POLLUTION

   The contracting states solemnly agree that:

   Article I.

   The party states to this compact hereby provide for the control of the interstate movement of air pollutants through the establishment of an interstate agency with powers to prevent, abate, and control interstate air pollution.

   Each of the party states pledges to the other faithful cooperation in the control of air pollution which originates in one state and is injurious to human health or welfare, animal or plant life, or property, or which interferes with the enjoyment of life or property, in the other state.

   The party states recognize that no single standard for outdoor atmosphere is applicable to all areas within the two party states due to such variables as population densities, topographic and climatic characteristics, and existing or projected land use and economic development. The
guiding principle of this compact is that air pollution originating within a party state shall not be injurious to human health or welfare, animal or plant life, or property, or interfere with the enjoyment of life or property, in the other party state.

Article II.

As used in this compact “air pollution” means and shall be limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

Article III.

The party states hereby create the Ohio-West Virginia interstate air pollution control commission, hereafter called “the commission.”

The commission shall consist of five commissioners from each party state, each of whom shall be a citizen of the state he represents. The commissioners from each party state shall be chosen by the governor of such state in accordance with the laws of such state, as follows:

Two of the members from each state shall be chosen from appropriate state agencies, one of whom is the officer responsible for air pollution control, and one of whom is the director of health. Three other members shall be chosen, one of whom is experienced in the field of municipal government, one of whom is experienced in the field of industrial activities, and one of whom represents the public.

Except for the commissioners who shall be appointed by virtue of the offices which they hold and who may be commissioners during their continuance in office, the term of each commissioner shall be five years. However, the commissioner experienced in the field of municipal government, the commissioner experienced in the field of industrial activities, and the commissioner appointed to represent the public shall be appointed, one for an initial term of one year, one for an initial term...
of two years, and one for an initial term of three years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of five years. Vacancies on the commission shall be filled for the unexpired term in the same manner as appointments to full terms.

Each commissioner of each party state shall be entitled to one vote in the commission. No action of the commission shall be binding unless taken at a meeting in which a majority of the commissioners from each party state are present and unless a majority of those present at the meeting from each party state concur, but any action not binding for such a reason may be ratified within thirty days by the concurrence of a majority of the commissioners of each party state. In the absence of any commissioner, his vote may be cast by another commissioner of his state if such commissioner casting the vote shall have a written proxy in such form as may be required by the commission. Any tie or stalemate resulting from the above voting shall be decided by a majority vote of the commissioners from each separate state voting as a unit and the vote of a representative selected by the secretary of the United States department of health, education, and welfare, who shall cast the deciding vote.

The commission may sue and be sued, and shall have a seal.

The commission shall elect annually, from among its members, a chairman and vice chairman. The commission shall appoint an executive director who shall act as secretary, and who, together with such other commission personnel as the commission may determine, shall be bonded in such amount or amounts as the commission may require.

Notwithstanding the civil service, personnel, or other merit systems laws of any of the party states, the commission shall appoint, remove or discharge, and fix the compensation of such personnel as may be necessary for the performance of the commission's functions. To
the extent practicable, terms and conditions of employ-
ment for members of the staff of the commission shall
be similar to those pertaining to comparable employees
of the individual party states.

The commission may establish and maintain, inde-
dependently or in conjunction with one or more of the
party states, a suitable retirement system for its em-
ployees. Employees of the commission shall be eligible
for social security coverage in respect to old-age and
survivors insurance: Provided, That the commission takes
such steps as may be necessary pursuant to federal law
to participate in such program of insurance as a gov-
ernmental agency or unit. The commission may establish
and maintain or participate in such additional programs
of employee benefits as may be appropriate to afford
employees of the commission terms and conditions of
employment similar to those enjoyed by employees of
the party states generally.

The commission may accept or contract for the
services of personnel and other services or materials from
any state, the United States or any subdivision or agency
of either, from any interstate agency, or from any institu-
tion, person, firm, or corporation.

The commission may accept for any of its purposes
and functions under this compact any and all donations,
and grants of money, equipment, supplies, materials,
and services conditional or otherwise, from the United
States, or any agency thereof, from any state or any
subdivision or agency thereof, or from any institution,
person, firm, or corporation, and may receive, utilize,
and dispose of the same. The identity of any donor, the
amount and character of any assistance, and the con-
ditions, if any, attached thereto shall be set forth in the
annual report of the commission.

The commission may establish and maintain such
facilities as may be necessary for the transacting of its
business. The commission may acquire, hold, and con-
vey real and personal property and any interest therein.

The commission shall have power to formulate and
adopt rules and regulations and perform any act which
it may find necessary to carry out the provisions of this
compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the commission for public inspection and copies of such rules and regulations shall be filed in the office in each party state in which rules and regulations of state agencies are filed and shall thereafter be made available to interested persons upon request.

The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been adopted by the commission. The commission may issue such additional reports as it may deem desirable. These reports shall be available for public examination.

The commission shall have the authority to collect and disseminate information relating to its functions under, and the purpose of, this compact.

**Article IV.**

The commission may, whenever it finds air pollution which originates in one of the party states and has an adverse effect in the other party state, make a report recommending measures for the prevention, abatement, or control of any such air pollution. Copies of such report shall be furnished to all existing state and local air pollution control agencies with jurisdiction over the source or sources of air pollution identified in the report. In preparing any such report, the commission may confer with any appropriate national, regional, or local planning body, and any governmental agency authorized to deal with matters relating to air pollution problems and may conduct such hearings and investigations as it may deem appropriate. The commission may consult with and advise the states and local governments, corporations, persons, or other entities with regard to the adoption of programs and the installation of equipment and works for the prevention, abatement, or control of air pollution. For the enforcement of this compact the commission may also establish standards consistent with the provisions of this compact and any standards which may be adopted by the party states.
Before any report of the commission which specifically identifies a particular industrial or other installation, structure, or facility as a source of air pollution becomes final, the commission shall give the owner or operator of such installation, structure, or facility notice by certified mail of the anticipated adoption of such report and shall afford the owner or operator of the installation, structure, or facility not less than ten days after the mailing of such notice to file with the commission its written objections thereto. If no such objections are filed with the commission within such specified period, the report shall become final. If such objections are filed with the commission within such specified period, the commission shall afford such owner or operator not less than ten days from its receipt of such objections to discuss with the commission the findings, conclusions, and recommendations of the report before it is finally adopted by the commission.

Within a reasonable time after the commission furnishes a report to the appropriate existing state and local air pollution control agencies pursuant to this Article and, if the recommendations made in such report for the prevention, abatement, or control of air pollution from a specific source or sources have not been implemented, or if the appropriate state or local air pollution control agencies have not taken sufficient action to prevent, abate, or control the air pollution, the commission may, after a duly conducted and constituted hearing, on due notice issue an order or orders upon any municipality, corporation, person, or other entity causing or contributing to interstate air pollution. At any such hearing evidence may be received and a finding made on whether, in fact, interstate air pollution exists and on the sources of such pollution. Any such order or orders may prescribe a timetable for the abatement or control of the air pollution involved. Any such order shall become final and binding unless a petition for review of the same shall be filed and prosecuted pursuant to the provisions of Article V of this compact.

In a party state, any court of general jurisdiction in any county in which the air pollution originates or
any United States district court for the district in which
such pollution originates shall entertain and determine
any action or proceeding brought by the commission to
enforce an order against any municipality, corporation,
person, or other entity domiciled or located within such
state and whose discharge of air pollution takes place
within or adjoining such state, or against any employee,
department, or subdivision of such municipality, cor-
poration, person, or other entity, and shall entertain and
determine any petition for review pursuant to the pro-
visions of Article V of this compact.

Article V.

All hearings held by the commission shall be open
to the public. At any hearing held pursuant to Arti-
cle IV of this compact the party states, any agencies
thereof, and any affected person, corporation, municipal-
ity, or other entity shall be entitled to appear in per-
son or by representative, with or without counsel, and
can make oral or written argument, offer testimony,
or take any combination of such actions. All testimony
taken before the commission shall be under oath and
recorded in a written transcript. The transcript so re-
corded shall be made available to any member of the
public or to any participant in such hearing upon pay-
ment of reasonable charges as fixed by the commission.
No information relating to secret processes or methods
of manufacture or production shall be disclosed at any
public hearing or otherwise and all such information
shall be kept confidential.

All hearings shall be had before one or more mem-
ers of the commission, or before an officer or employee
of the commission expressly designated to act as a hear-
ing officer.

Any party state or person aggrieved by any order
made by the commission shall be entitled to a judicial
review thereof. Such review may be had by filing a
verified petition in any of the appropriate courts referred
to in Article IV, setting out such order and alleging
specifically that said order is:
(a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or
(b) Contrary to constitutional right, power, privilege, or immunity; or
(c) In excess of authority or jurisdiction conferred by this compact or statutes in implementation hereof; or
(d) Without observance of procedure required by law; or
(e) Not within the purposes of this compact; or
(f) Unsupported by the weight of the evidence.

The petition for review shall be filed within thirty-five days after receipt of written notice that such order has been issued. Written notice of the filing of a petition for review and a copy of said petition shall be personally served upon the commission. Any party or person filing a petition for review shall, within fifteen days thereafter, secure from the commission a certified copy of the transcript of any hearing or hearings held in connection with the issuance of the order, review of which is sought, and shall file the same with the clerk of the court in which the action or proceeding for review is pending. An extension of time in which to file a transcript shall be granted by said court in which such action or proceeding for review is pending for good cause shown. Inability to obtain a transcript within the specified time shall be good cause. Failure to file a transcript within the period of fifteen days, or to secure an extension of time therefor, shall be cause for the dismissal of the petition for review by the court or on petition of any party of record to the original action or proceeding. Where more than one person may be aggrieved by the order, only one proceeding for review may be had and the court in which a petition for review is first properly filed shall have jurisdiction.

The court may, for good cause shown, admit and consider additional evidence bearing upon the issue or issues before it.

No review of a commission order shall be had except in accordance with the provisions of this compact.
Article VI.

1 The commission may establish one or more advisory and technical committees composed of such as the following: Private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, and officials of local, state, and federal government, as it may determine, and may cooperate with and use the services of any such committee and the organizations which they represent in furthering any of its activities under this compact.

Article VII.

1 Nothing in this compact shall be construed to:

2 (a) Limit or otherwise affect the powers of either party state or any of their subdivisions to enact and enforce laws or ordinances for the prevention, abatement, or control of air pollution within their respective borders.

3 (b) Limit or otherwise affect the powers of either party state to enter into a compact or compacts with other states for the prevention, abatement, or control of interstate air pollution.

4 (c) Prevent or restrict either party state or any subdivision thereof in requiring or prescribing measures of air pollution prevention, abatement, or control in addition to those which may be required by either party state or the commission acting pursuant to this compact.

Article VIII.

1 The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

2 Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Aside from such support as may be available to the commission pursuant to Article III, the cost
of operating and maintaining the commission shall be borne equally by the party states.

The commission may meet any of its obligations in whole or in part with funds available to it under Article III of this compact: Provided, That the commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the commission makes use of funds available to it under Article III, the commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

The expenses and any other costs for each member of the commission shall be met by the commission in accordance with such standards and procedures as it may establish in its rules and regulations.

The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules and regulations. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article IX.

This compact shall become effective when enacted into law by the states of Ohio and West Virginia and approved by the Congress of the United States. The compact shall continue in force and remain binding upon each party state until expressly repealed by either party.
state, but no such repeal shall take effect until one year
after the enactment of the statute repealing this compact.

Any order of the commission issued prior to the ter-
mination of this compact shall be enforceable thereafter
by either party state in the same manner as though this
compact were still in force except that any appropriate
office or agency of the enforcing party state may act in
the place and stead of the commission.

Article X.

The provisions of this compact shall be reasonably and
liberally construed. The provisions of this compact shall
be severable and if any phrase, clause, sentence, or pro-
vision is declared to be contrary to the constitution of
either state or of the United States, or the applicability
thereof to any government, agency, person, or circum-
stance is held invalid, the validity of the remainder of
this compact and the applicability thereof to any gov-

§29-1G-3. Appointment of members of commission; state direc-
tor of health and director of the air pollution com-
mission members ex officio.

In pursuance to article three of said compact, there shall
be five members of the “Ohio-West Virginia Interstate
Air Pollution Commission” from the state of West Vir-

ginia. The governor, by and with the advice and consent
of the senate, shall appoint three persons as three of such
commissioners, each of whom shall be a resident and citi-

zen of this state. Said three commissioners shall be per-
sons, one of whom is experienced in the field of municipal
government, one of whom is experienced in the field of
industrial activities, and one of whom represents the pub-
ic. The term of one of said three commissioners first
appointed shall be one year, of another shall be two years,
and of the other shall be three years. As the term of each
such initial appointee expires the successor to fill the va-
cancy created by such expired term shall be appointed by
the governor, by and with the advice and consent of the
senate, for terms of five years each. Each commissioner
shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner from any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the senate, for the unexpired term. The fourth commissioner from this state shall be the state director of health, ex officio, and the fifth commissioner from this state shall be the director of the air pollution control commission, ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office, and his successor as a commissioner shall be his successor as said state director of health or director of the air pollution control commission. These five commissioners, acting jointly with like officers from the other party state, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The commissioners shall cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact and all such departments, agencies, and officers shall cooperate with the commissioners.


1. The Legislature may appropriate such funds as it deems necessary to carry out the provisions of this article.

§29-1G-5. Severability clause.

1. If for any reason any section or provision of this article shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of this article.

CHAPTER 15

(Com. Sub. for House Bill No. 691—By Mr. Nelson, of Cabell, and Mr. Bobbitt)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article eleven-a, relating to regional airports.

Be it enacted by the Legislature of West Virginia:

That chapter 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 eleven-a, to read as follows:

ARTICLE 11A. REGIONAL AIRPORTS.

Section
1. Regional airport authorities authorized; authority defined.
2. Authorities to be public corporations.
3. Authorities empowered to acquire, operate, etc., airports.
4. Management of authority vested in members; appointment and terms of members; vote of members.
5. Substitution of members.
6. Qualification of members.
7. Compensation of members.
9. Indebtedness of authorities.
10. Agreements in connection with obtaining funds.
11. Authorities to have right of eminent domain.
12. Property, bonds and obligations of authorities exempt from taxation.
13. Authorities may lease facilities.
14. Disposition of surplus of authorities.
15. Contributions to authorities; funds and accounts of authorities.
17. Sale of property.
18. Employees to be covered by workmen’s compensation.
19. Liberal construction of article.

§8-11A-1. Regional airport authorities authorized; authority defined.

1 Any two or more contiguous counties or municipalities located therein, of this state, however such municipalities were created, and whether such municipalities are operating under a legislative charter, home rule charter, or general law only, are hereby authorized to create and establish one or more authorities for the purpose of acquiring, equipping, constructing, maintaining and operating a regional airport or airports, as the case may be:
2 Provided, That no such county or municipality shall participate in such authority unless and until its govern-
11 ing body so provides. The term “authority” as used in
12 this article means such a regional airport authority
13 created pursuant to this article.

§8-11A-2. Authorities to be public corporations.
1 Each authority when created, and the members thereof,
2 shall constitute a public corporation and as such, shall
3 have perpetual succession, may contract and be contracted
4 with, sue and be sued, and have and use a common seal.

§8-11A-3. Authorities empowered to acquire, operate, etc.,
airports.
1 Each authority is hereby authorized and empowered
2 to acquire, equip, construct, maintain and operate a re-
3 gional airport or landing field and appurtenant facilities
4 so located to best serve the region in which they are
5 located.

§8-11A-4. Management of authority vested in members; ap-
pointment and terms of members; vote of members.
1 The management and control of each authority, its
2 property, operations, business and affairs shall be lodged
3 in a board or not less than five nor more than twenty-
4 one persons who shall be known as members of the
5 authority and who shall be appointed for terms of three
6 years each by the public corporations contributing to
7 the funds of the authority. However, the first board shall
8 be comprised of one member appointed by each par-
9 taking county court and one member from each par-
10 taking municipality contributing to the funds of the
11 authority, and such member shall serve one year. No
12 more than three members shall serve from one county
13 on the first board. Each county or municipality shall
14 have one vote for each five thousand dollars it has con-
15 tributed to the funds of said authority.

§8-11A-5. Substitution of members.
1 If any member of an authority die, or resign, or be
2 removed, or for any other reason cease to be a member
3 of the authority, the county court or the municipality
4 which such member represented shall appoint another
5 person to fill the unexpired portion of the term of such
6 member.
§8-11A-6. Qualification of members.
1 All members of the board of each authority shall be
2 bona fide residents of the county or municipality which
3 said members represent.

§8-11A-7. Compensation of members.
1 No member of the board of an authority shall receive
2 any compensation, whether in form of salary, per diem
3 allowance or otherwise, for or in connection with his
4 services as such member. Each member shall, however,
5 be entitled to reimbursement by the authority for any
6 necessary expenditures in connection with the perform-
7 ance of his general duties as such member.

1 Each authority is hereby given power and authority
2 as follows:
3 (1) To make and adopt all necessary bylaws, 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
13 of acquiring, equipping, constructing, maintaining, im-
14 proving, extending, financing and operating a public
15 airport to best serve the region in which it is located;
16 (4) To delegate any authority given to it by law to
17 any of its officers, committees, agents or employees;
18 (5) To apply for, receive and use grants-in-aid, do-
19 nations and contributions from any source or sources,
20 including 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;
(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it being hereby expressly provided that each authority is a "municipal authority" within the definition of that term as used in the said article four-a, chapter eight of the code for the purpose of the issuance and sale of revenue bonds;

(10) To expend its funds in the execution of the powers and authority herein given;

(11) To apply for, receive and use loans, grants, donations, technical assistance and contributions from any regional or area commissions that may be established; and

(12) To prescribe by bylaw the manner of financial participation by members.


Each authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary and advisable in connection with carrying out its purposes as hereinbefore mentioned.

No obligation incurred by an authority shall give any right against any member of the governing body of any of said counties or municipalities, or any member of the board of the authority. No indebtedness of any nature of an authority shall constitute an indebtedness of any county or municipality or the governing body of any such county or municipality, or be a charge against any
AIRPORTS

§8-11A-10. Agreements in connection with obtaining funds.
1 Each authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

§8-11A-11. Authorities to have right of eminent domain.
1 Whenever it shall be deemed necessary by an authority in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as theretofore and hereafter amended, and such purposes as hereby declared to be public uses for which private property may be taken or damaged: Provided, That under no circumstances shall an authority have the right of immediate entry.

§8-11A-12. Property, bonds and obligations of authorities exempt from taxation.
1 Each authority shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or to any officer or employee of the state or of any subdivision thereof.
5 The property of each authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public

Each authority may lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee at such rental and upon such terms and conditions as the authority shall deem proper. Such leases shall be for some purpose associated with airport activities.


If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the maintenance, improvement and operation of the airport and for meeting all required payments on its obligations, it shall set aside such reserve for future operations, improvements and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the counties and municipalities in direct proportion to their financial contribution.

§8-11A-15. Contributions to authorities; funds and accounts of authorities.

Contributions may be made to authorities from time to time by the counties and municipalities and persons, firms or corporations that shall desire to do so. All such funds and all other funds received by an authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. Each authority shall keep strict account of all of its receipts and expenditures and shall each quarter make a quarterly report to the counties and municipalities which have made contributions, and such report shall contain an itemized account of its instrumentalities, and, together with interest thereon, shall be exempt from taxes.
receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, each authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the counties and municipalities, as provided in section one. The books, records and accounts of each authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.


1 The counties and municipalities or any one or more of them, jointly or severally, are hereby authorized and empowered to appoint members of the said authorities and to contribute to the cost of acquiring, constructing, equipping, maintaining and operating the said regional airports and appurtenant facilities.

7 Any of the counties or municipal corporations as provided in section one are hereby authorized and empowered to transfer and convey to the authorities property of any kind heretofore acquired by the counties or municipal corporations for airport purposes.

§8-11A-17. Sale of property.

1 In the event a majority of the counties and municipalities contributing to the funds of an authority shall so determine the authority shall make sale of all or any part of its properties and assets and distribute the proceeds thereof among those counties and municipalities contributing to its funds.

§8-11A-18. Employees to be covered by workmen’s compensation.

1 All employees of each authority eligible thereto shall be deemed to be within the workmen’s compensation act
3 of West Virginia and premiums on their compensation
4 shall be paid by the authority as required by law.

§8-11A-19. Liberal construction of article.
1 It is the purpose of this article to provide for the ac-
2 quisition, construction, maintenance and operation of re-
3 gional airports in a prudent and economical manner and
4 this article shall be liberally construed as giving to the
5 authorities full and complete power reasonably required
6 to give effect to the purposes hereof. The provisions of
7 this article are in addition to and not in derogation of
8 any power existing in the county courts and municipal
9 corporations herein named under any constitutional, stat-
10 utory or charter provisions which they or either of them
11 may now have, or may hereafter acquire or adopt.

1 The several sections and provisions of this article are
2 severable, and if any section or provision hereof shall be
3 held unconstitutional, all the remaining sections and pro-
4 visions of the article shall nevertheless remain valid.

CHAPTER 16

(House Bill No. 652—By Mr. Boiarsky and Mr. Grewe)

[Passed February 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article
one, and sections one and seventeen, article three, all of
chapter sixty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, and to further
amend said chapter sixty by adding thereto a new article,
designated article seven, said sections three and four of
said article one and said sections one and seventeen of
said article three relating to restrictions on the sale, manu-
facture and consumption of alcoholic liquors, providing
certain exceptions, and providing for the handling and
depositing of moneys collected by the commissioner, and
said article seven relating to private clubs, the sale of alcoholic liquors thereby and the licensing thereof, providing legislative findings and definitions, authorizing the sale of alcoholic liquors by bona fide private clubs, providing for applications, fees and bond, and a procedure for such licensing, establishing certain taxes, and the West Virginia alcoholic beverage control licensing advisory board, relating to the powers and duties of the West Virginia alcohol beverage control commissioner, prohibiting certain acts by licensees, establishing penalties, providing for a hearing by the commissioner upon the refusal to issue a license, or the revocation or suspension of a license and judicial review thereof, providing for a forfeiture of bond, providing for the license for the sale of nonintoxicating beers, and providing severability and repealer clauses.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article one, and sections one and seventeen, article three, all of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said chapter sixty be further amended by adding thereto a new article to be designated article seven, all of same to read as follows:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
3. Sales by Commissioner.
7. Licenses to Private Clubs.

ARTICLE 1. GENERAL PROVISIONS.

Section
3. Restrictions on sale, manufacture or consumption; exceptions.
4. Sales to be made by or through West Virginia alcohol beverage control commissioner.

§60-1-3. Restrictions on sale, manufacture or consumption; exceptions.

1. Subject to the provisions of this chapter, alcoholic liquors, in this state:
3. (1) Shall be sold only in sealed packages, except by organizations licensed under authority of article seven of this chapter.
§60-1-4. Sales to be made by or through West Virginia alcohol beverage control commissioner.

Alcoholic liquors shall be sold at wholesale and retail in this state only by or through the West Virginia alcohol beverage control commissioner or retail agencies established by him or any predecessor commissioners or commission, except as authorized by article seven of this chapter.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-1. Sales at retail and wholesale.

1 The sale of alcoholic liquors at wholesale and retail in this state shall be a state monopoly, except for retail sales made by authority of article seven of this chapter.

Alcoholic liquors shall be sold at retail only through the state stores, agencies of the West Virginia alcohol beverage control commissioner, and may be sold by private clubs holding a license issued under the provisions of article seven of this chapter.

The commissioner may sell such liquors at wholesale to persons licensed to purchase at wholesale as provided in this chapter.

§60-3-17. Regulations as to handling and depositing of moneys collected; monthly remittances.

1 The commissioner, with the approval of the governor and the state treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commissioner. All receipts accruing to and available for the general revenue fund as profits from the
commissioner and the license fee and additional sales tax
imposed by the provisions of this chapter shall be remitted by the commissioner to the state treasury monthly within fifteen days next after the end of each calendar month.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

Section
1. Legislative findings and purposes.
2. Definitions.
3. Sale of alcoholic liquors by licensee authorized.
4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license.
5. Investigation by commissioner; issuance or refusal of license; license valid at one location only; expiration of license; commissioner to prescribe form; renewal; license not transferable; refund of fees and bond.
6. Annual license fee; partial fee.
7. Municipal fee.
8. Additional sales tax; municipal sales tax prohibited.
9. West Virginia alcoholic beverage control licensing advisory board; created; composition; qualifications, oaths, compensation, etc., of members; powers and duties.
10. Duties and powers of commissioner.
11. Licensee must purchase alcoholic liquors from or through commissioner; designation of such purchases.
12. Certain acts of licensee prohibited; penalties.
13. Revocation or suspension of license; investigation; right to a hearing; procedure upon refusal to issue license or suspension or revocation of license; costs and bond; hearing; judicial review; appeal; legal assistance for commissioner.
14. Forfeiture of bond; collection.
15. License for the sale of nonintoxicating beer.
17. Repealer.

§60-7-1. Legislative findings and purposes.

1. The Legislature of West Virginia, having carefully considered the provisions of section forty-six of article six of the constitution of this state and all of the matters giving rise to the enactment thereof and having further considered the operations of private clubs as defined in this article, hereby determines and finds that such private clubs are not saloons or other public places in which the sale and consumption of intoxicating liquors are required to be prohibited by the provisions of said section forty-six of article six of said constitution; but, to the contrary, are private places in which such sale and consumption of intoxicating liquors are constitutionally permitted and authorized.
§60-7-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

2 (a) "Private club" means any corporation or unincorporated association which either (1) belongs to or is affiliated with a nationally recognized fraternal or veterans organization, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or (3) is organized and operated for legitimate purposes, which has at least one hundred duly elected or approved dues paying members in good standing, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests.
(b) "Licensee" means the holder of a license to operate a private club granted under the provisions of this article, which license shall remain unexpired, unsuspended and unrevoked.

(c) "Applicant" means a private club applying for a license under the provisions of this article.

(d) "Commissioner" means the West Virginia alcohol beverage control commissioner.

(e) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

§60-7-3. Sale of alcoholic liquors by licensee authorized.

Notwithstanding any other provisions of this code to the contrary, licensees are hereby authorized to sell alcoholic liquors, other than in sealed packages, for consumption on the premises of said licensee, to its members and their guests in accordance with the provisions of this article, and such licensees are further authorized to keep and maintain on their premises a supply of said alcoholic liquors in such quantities as may be appropriate for the conduct of operations thereof.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license.

(a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

(1) The name of the applicant;

(2) If such applicant be an unincorporated association, the names and addresses of the members of its governing board;

(3) If such applicant be a corporation, the names and addresses of its officers and directors;

(4) The place at which such applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;
14 (6) The name or names of any national organizations
15 with which applicant is affiliated and the nature of such
16 affiliation;
17 (7) The size and nature of the dining and kitchen
18 facilities operated by applicant; and
19 (8) Such other information as the commissioner may
20 reasonably require which shall include, but not be limited
21 to, the criminal records, if any, of each member of
22 applicant's governing board and/or its officers and direc-
23 tors who have been convicted of a felony or a crime in-
24 volving moral turpitude.
25 (b) Such application shall be verified by each mem-
26 ber of the governing board of the applicant if an unincor-
27 porated association or, if the applicant be a corporation,
28 by each of its officers and all members of its board of
29 directors. Such application shall be accompanied by the
30 license fee hereinafter prescribed and by a bond of the
31 applicant in the penal sum of two thousand five hun-
32 dred dollars with a corporate surety authorized to trans-
33 act business in the state of West Virginia, payable to
34 the state of West Virginia, which bond shall be condi-
35 tioned on the payment of all taxes and fees herein pre-
36 scribed and on the faithful performance of and com-
37 pliance with the provisions of this article.
38 (c) Under no circumstance shall any college frater-
39 nity or sorority be issued a license to operate a private
40 club.

§60-7-5. Investigation by commissioner; issuance or refusal of
license; license valid at one location only; expiration
of license; commissioner to prescribe form; renewal;
license not transferable; refund of fees and bond.
1 (a) Upon receipt of the application referred to in
2 section four of this article, together with the accom-
3 panying fee and bond, the commissioner may conduct
4 such investigation as he may deem necessary to de-
5 termine the accuracy of the matters contained in
6 such application and whether applicant is a bona
7 fide private club of good reputation in the com-
8 munity in which it shall operate. For the purpose of
9 conducting such investigation, the commissioner may
withhold the granting or refusal to grant such license for a period not to exceed thirty days. If it shall appear that such applicant is a bona fide private club, of good reputation in the community in which it shall operate and that there is no false statement contained in such application, the commissioner shall issue a license authorizing the applicant to sell alcoholic liquors as provided in section three of this article, and otherwise shall refuse to issue such license.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying such application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of section thirteen of this article. When such refusal or denial becomes final the commissioner shall forthwith refund to the applicant his fees and bond accompanying said application.

(c) Such license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation, and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) Such license shall expire on the thirtieth day of June next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article shall not be transferable.

§60-7-6. Annual license fee; partial fee.

(a) The annual license fee for a license issued under the provisions of this article shall be as follows:

(1) For a licensee having one hundred members or less—five hundred dollars;

(2) For a licensee having more than one hundred but less than three hundred members—seven hundred fifty dollars;

(3) For a licensee having three hundred or more, but less than six hundred members—one thousand dollars;

(4) For a licensee having six hundred or more members—one thousand five hundred dollars.
(b) The fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one half of that prescribed by subsection (a) of this section six.

(c) All such fees shall be paid by the commissioner to the state treasurer and credited to the general revenue fund of the state.

§60-7-7. Municipal fee.

Municipal corporations of this state are hereby authorized to levy a fee for revenue purposes only upon any licensee whose premises are situate within such municipality, which fee shall not exceed the amount of the license fee levied by the state under the provisions of section six of this article. Such municipal corporations are hereby authorized and empowered to enact and adopt ordinances necessary for the collection and enforcement of such fee.

§60-7-8. Additional sales tax; municipal sales tax prohibited.

In addition to all fees and taxes imposed by this code, each licensee shall pay to the commissioner an additional sales tax in the amount of one dollar twenty-five cents for each one fifth of a gallon of alcoholic liquor, except beer and wine, and sixty cents for each one fifth of a gallon of wine which additional sales tax shall be paid at the time of the purchase of each such one fifth of a gallon from the commissioner: Provided, That, notwithstanding any other provisions of this code to the contrary, no municipal corporation in this state shall have any authority to impose a sales tax on the sale of alcoholic liquor by a licensee, or upon the purchase of said alcoholic liquor from such licensee.

§60-7-9. West Virginia alcoholic beverage control licensing advisory board; created; composition; qualifications, oaths, compensation, etc., of members; powers and duties.

There is hereby created in the office of the West Virginia alcohol beverage control commissioner a state advisory board composed of three members to be ap-
pointed by the governor, by and with the advice and consent of the senate, to advise the commissioner concerning the administration of the provisions of this article. The board shall be known and designated as the West Virginia alcoholic beverage control licensing advisory board. Not more than two members of the board shall belong to the same political party. The board shall select one of its members as chairman. The members shall serve at the will and pleasure of the governor. Any vacancies shall be filled in the same manner as original appointments are made. No member of the board shall be a candidate for, or hold, any other public office or trust, nor shall he be a member of any political committee, nor shall he serve as an election official, nor shall he engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in any election. Any violation by a member of any of the provisions of the preceding sentence shall automatically vacate his membership on the board. Members of the board shall take and subscribe to the oath prescribed in section five, article four of the constitution. Each member of the board shall receive a per diem allowance not to exceed twenty-five dollars for each day or any part thereof actually and necessarily spent in the discharge of his duties as a member of such board, and shall be entitled to reimbursement for any reasonable and necessary expenses actually incurred in the performance of his duties as a member of said board. Any requisition for expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the auditor and permanently preserved as a public record. The board shall meet in the office of the commissioner at such times as the commissioner and board may determine to be necessary. A majority of the members of the board shall constitute a quorum.

The board shall be an advisory body to the commissioner, and as such shall advise him as to the issuance, refusal or denial, or the suspension or revocation of any license sought or held in accordance with the provisions of this article.
§60-7-10. Duties and powers of commissioner.

1. The commissioner is hereby authorized:

2. (a) To enforce the provisions of this article;

3. (b) To enter the premises of any licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of said licensee with the provisions of this article;

4. (c) To promulgate such reasonable rules and regulations as may be necessary for the execution and enforcement of the provisions of this article, which may include but shall not be limited to the hours during which licensees may sell alcoholic liquors, and the use, handling, service and sale of such alcoholic liquors. Such rules and regulations shall be promulgated in accordance with the provisions of article three of chapter twenty-nine-a of the code in like manner as if said article three of said chapter twenty-nine-a was set forth in extenso in this subdivision;

5. (d) To issue subpoenas and subpoenas duces tecum for the purposes of conducting hearings under the provisions of section thirteen of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner, specified in section one, article five of chapter twenty-nine-a of this code with like effect as if said section one was set forth in extenso in this subdivision.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner; designation of such purchases.

1. All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by such commissioner for sales of such alcoholic liquors to the public generally. The commissioner shall prepare and cause to be affixed a distinctive marker, stamp or other designation to each bottle of alcoholic liquor purchased by a licensee, which marker, stamp or other designation shall remain on such bottle at all times while it is in the possession of the licensee.
§60-7-12. Certain acts of licensee prohibited; penalties.

(a) It shall be unlawful for any licensee, or agent, employee or member thereof, on such licensee’s premises to:

1. Sell or offer for sale any alcoholic liquors other than from the original package or container;
2. Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice;
3. Sell, give away, or permit the sale of, gift to, or the procurement of any alcoholic liquors, for any minor, mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor, or the use of drugs;
4. Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of two o’clock a. m. and one o’clock p. m. on any Sunday;
5. Permit the consumption by, or serve to, on the licensed premises, any alcoholic liquors, covered by this article, to any person under the age of twenty-one years; or
6. With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor.

(b) It shall further be unlawful for any licensee to advertise in any news media or other means, outside of the licensee’s premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed one year, or by both fine and imprisonment.

§60-7-13. Revocation or suspension of license; investigation; right to a hearing; procedure upon refusal to issue license or suspension or revocation of license; costs and bond; hearing; judicial review; appeal; legal assistance for commissioner.
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ALCOHOLIC LIQUORS

(a) The commissioner may on his own motion, or shall on the sworn complaint of any person, conduct an investigation to determine if any provisions of this article have been violated by any licensee. The commissioner may suspend or revoke any licensee's license if he finds that such licensee has violated any provision of this article, or if he finds the existence of any ground on which a license could have been refused, if such licensee were then applying for the same, and if the commissioner shall find that a licensee has wilfully violated any provision of this article he shall revoke such licensee's license. Upon final conviction of a licensee, or any employee thereof acting within the scope of his employment, of any violation of any municipal ordinance or statute of the state of West Virginia relating to the regulation and control of alcoholic liquors, gambling, prostitution, or the sale, possession or distribution of narcotics or dangerous drugs, before any justice of the peace, municipal court or court of record, the commissioner shall forthwith revoke the licensee's license. Such revoked license shall not be reissued or reinstated for a period of one year from the date of such revocation. The location used by the licensee whose license shall have been revoked shall not be used or occupied by any other licensee during said one-year period, and the commissioner shall not issue a new license to any applicant to use said premises during the period of one year from the date of revocation.

(b) Whenever the licensee fails or refuses to keep the bond required by section four of this article in full force and effect, such licensee's license shall be automatically suspended until such time as bond required by said section four is furnished to the commissioner, at which time such suspension shall be vacated.

(c) Whenever the commissioner shall refuse to issue a license, or shall suspend or revoke a license, he shall make and enter an order to that effect, and cause a copy of the same to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

(d) Any applicant or licensee, as the case may be, adversely affected by such order shall have a right to a
hearing thereon before the commissioner, providing that
demand in writing for such hearing is served upon the
commissioner, within ten days following the receipt by
such applicant or licensee of said certified copy of said
order. The service of such demand for a hearing upon
the commissioner shall operate to suspend the execu-
tion of the order with respect to which a hearing is being
demanded, except an order suspending a license under
the provisions of subsection (b) of this section. The
person demanding a hearing shall give security for the
cost of such hearing in such form and amount as the
commissioner may reasonably require. If the person de-
manding such hearing does not substantially prevail in
such hearing or upon judicial review thereof as here-
inafter provided, then the costs of such hearing shall
be assessed against him by the commissioner and may
be collected by an action at law or other proper remedy.

(e) The commissioner shall immediately set a date
for such hearing and notify the person demanding such
hearing thereof, which hearing shall be held within
thirty days after receipt of said demand. At such hear-
ing the commissioner shall hear evidence and thereafter
make and enter an order supported by findings of
facts, affirming, modifying or vacating the order with re-
spect to which such hearing was held, which order shall
be final unless vacated or modified upon judicial review
thereof.

(f) Such hearing and the administrative procedure
prior to, during and following the same shall be gov-
erned by and in accordance with the provisions of article
five, chapter twenty-nine-a of this code in like manner
as if the provisions of article five were set forth in ex-
tenso in this section.

(g) Any person adversely affected by an order en-
tered following such hearing shall have the right of
judicial review thereof in accordance with the provi-
sions of section four, article five, chapter twenty-nine-a
of this code with like effect as if the provisions of said
section four were set forth in extenso herein.

(h) The judgment of a circuit court reviewing such
order of the commissioner shall be final unless reversed,
vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(i) Legal counsel and services for the commissioner in all such proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§60-7-14. Forfeiture of bond; collection.

1 On conviction of a violation of any provision of this article or upon the revocation of a license in accordance with section thirteen of this article, which conviction or revocation has become final, the licensee or former licensee, as the case may be, shall forfeit his bond required by section four of this article. The penal sum of said bond shall forthwith be paid to the state treasurer to be credited to the general revenue fund of this state. Such sum may be collected by an action at law or other appropriate remedy.

§60-7-15. License for the sale of nonintoxicating beer.

1 Notwithstanding any other provision of this code to the contrary, no licensee shall be prohibited from obtaining a license for the sale of nonintoxicating beer under the provisions of article sixteen of chapter eleven of this code because such licensee sells alcoholic liquors, permits the consumption of alcoholic liquor on his premises, or is the holder of a federal tax stamp permitting the sale of such alcoholic liquor.

§60-7-16. Severability.

1 If any article, section, subsection, provision, clause or phrase of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, provision, clause and phrase of this chapter is declared
to be severable. The Legislature hereby declares that it
would have enacted the remaining articles, sections, sub-
sections, provisions, clauses and phrases of this chapter
even if it had known that any articles, sections, sub-
sections, provisions, clauses and phrases thereof would
be declared to be unconstitutional or invalid, and that
it would have enacted this chapter even if it had known
that the application thereof to any person or circum-
stance would be held to be unconstitutional or invalid.

§60-7-17. Repealer.

All parts of this code inconsistent with the provisions
of this article are hereby repealed to the extent of such
inconsistency.

CHAPTER 17

(Senate Bill No. 103—By Mr. Martin)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chap-
ter fifty-eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, and to amend and
reenact section two, article five of said chapter, relating
to certification from a court of limited jurisdiction to the
circuit court and certification from a circuit court to the
supreme court of appeals, and adding questions and mat-
ters which may be certified.

Be it enacted by the Legislature of West Virginia:

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

Article
4. Appeals from Courts of Record of Limited Jurisdiction.
5. Appellate Relief in Supreme Court of Appeals.
ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED JURISDICTION.

Section
2. Certification to appellate courts as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.

§58-4-2. Certification to appellate courts as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.

Any question arising in such court of limited jurisdiction upon the sufficiency of a summons or return of service, upon a challenge of the sufficiency of a pleading or the venue of such court of limited jurisdiction, upon the sufficiency of a motion for summary judgment where such motion is denied, or a motion for judgment on the pleadings, upon the jurisdiction of such court of limited jurisdiction of a person or subject matter, or upon failure to join an indispensable party, may, in the discretion of the court, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by it to the circuit court of the county for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back: Provided, That no such question shall be so certified except in a case in which, if it were in the circuit court, it might be certified from the circuit court to the supreme court of appeals under the provisions of section two of article five of this chapter. The manner and form of such certification, and the procedure thereupon, shall be governed by the provisions of said section two. After the question shall have been decided by the circuit court, and an order in pursuance thereof entered, it may, in the discretion of the circuit court, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by the circuit court to the supreme court of appeals for its decision, in the manner and with the effect provided in section two of article five of this chapter.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

Section
2. Certification to supreme court of appeals as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.; presentation of portions of record.
§58-5-2. Certification to supreme court of appeals as to sufficiency of summons, return of service, pleading, motion for summary judgment, etc.; presentation of portions of record.

Any question arising upon the sufficiency of a summons or return of service, upon a challenge of the sufficiency of a pleading or the venue of the circuit court, upon the sufficiency of a motion for summary judgment where such motion is denied, or a motion for judgment on the pleadings, upon the jurisdiction of the circuit court of a person or subject matter, or upon failure to join an indispensable party, in any case within the appellate jurisdiction of the supreme court of appeals, may, in the discretion of the circuit court in which it arises, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back. The forms of the certificates of such questions, as well as the time and manner of the hearing and notice thereof and the portion of the record to be sent up, shall be as prescribed by the supreme court of appeals. Entry of such certificate or the fact that it has been made, upon the record of the case in the trial court, shall be sufficient notice to the parties that the questions involved are on application for hearing and determination by the appellate court. Attested copies of the portions of the record of the case or cause necessary to a determination of the questions so certified shall forthwith be presented to the supreme court of appeals together with the question certified, and if the court be of the opinion that the rulings of the lower court ought to be reviewed, the case or cause shall be docketed for hearing without further notice to the parties; but if the court be of the opinion that there has been no error in the rulings, it shall refuse to docket the case or cause, and the action of the court in refusing to docket same shall then be certified forthwith to the lower court.
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
2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

Section
1. General policy.
2. Definitions.
3. Classification of appropriations.

Section 1. General Policy.—The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred sixty-eight.

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

1 “Board” shall mean the board of public works;
2 “Spending Unit” shall mean the department, agency or institution to which an appropriation is made;
3 The “fiscal year one thousand nine hundred sixty-eight” shall mean the period from July first, one thousand nine hundred sixty-seven through June thirtieth, one thousand nine hundred sixty-eight.
4 “From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the 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 5, article 4 and chapter 5-A, article 2 of the code of
19 West Virginia.

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, except from the appropriations
6 made to the spending units of State Government, there may
7 be transferred upon approval of the Board of Public Works,
8 to a special account an amount sufficient to match Federal
9 Grants-in-aid for the various programs under the Federal
10 Economic Opportunity Act and related Federal Acts;
11 Unless otherwise specified, appropriations for personal
12 services shall include salaries of heads of spending unit;
13 "Current Expenses" shall be expended only for operating
14 cost other than personal services or capital outlay;
15 "Repairs and Alterations" shall include all expenditures
16 for materials, supplies and labor used in repairing and alter-
17 ing buildings, grounds and equipment, other than personal
18 service;
19 "Equipment" shall be expended only for things which have
20 an appreciable and calculable period of usefulness in excess
21 of one year;
22 "Buildings" shall include construction and alteration of
23 structures and the improvements of lands, sewer and water
24 improvements, and shall include shelter, support, storage,
25 protection, or the improvement of a natural condition;
26 "Lands" shall be expended only for the purchase of lands
27 or interest in lands.

28 Appropriations otherwise classified shall be expended only
29 where the distribution of expenditures for different purposes
30 cannot well be determined in advance or it is necessary or
31 desirable to permit the spending unit freedom to spend an
32 appropriation for more than one of the above purposes.
Sec. 4. Method of Expenditure.—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of chapter 12, article 3 of the code of West Virginia, or according to any law detailing a procedure specifically limiting that article.

TITLE 2. APPROPRIATIONS.

Section

1. Appropriations from general revenue.

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Department of agriculture (marketing and research)—Acct. No. 513
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Department of banking—Acct. No. 480
Department of commerce—Acct. No. 465
Department of mines—Acct. No. 460
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Interstate education compact—Acct. No. 477
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Southern regional education board—Acct. No. 475
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Concord college—Acct. No. 325 103
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Glenville state college—Acct. No. 322 102
Marshall university—Acct. No. 320 101
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Shepherd college—Acct. No. 324 103
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State board of education (vocational division)—Acct. No. 294 99
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<table>
<thead>
<tr>
<th>Agency</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>State commissioner of public institutions</td>
<td>190</td>
<td>95</td>
</tr>
<tr>
<td>State tax department</td>
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<td>95,</td>
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<td>95</td>
</tr>
<tr>
<td>Treasurer's office</td>
<td>160</td>
<td>94</td>
</tr>
<tr>
<td>Secretary of state</td>
<td>250</td>
<td>98</td>
</tr>
<tr>
<td>Attorney general</td>
<td>240</td>
<td>97</td>
</tr>
<tr>
<td>Commission on uniform state laws</td>
<td>245</td>
<td>98</td>
</tr>
<tr>
<td>Barboursville state hospital</td>
<td>424</td>
<td>110</td>
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<tr>
<td>Berkeley Springs sanitarium</td>
<td>436</td>
<td>111</td>
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<tr>
<td>Colin Anderson Center</td>
<td>419</td>
<td>109</td>
</tr>
<tr>
<td>Commission of postmortem examinations</td>
<td>401</td>
<td>107</td>
</tr>
<tr>
<td>Denmar state hospital</td>
<td>432</td>
<td>111</td>
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<tr>
<td>Department of mental health</td>
<td>410</td>
<td>108</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>404</td>
<td>107</td>
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<tr>
<td>Department of welfare</td>
<td>405</td>
<td>108,</td>
</tr>
<tr>
<td>Fairmont emergency hospital</td>
<td>425</td>
<td>110</td>
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<tr>
<td>Hopemont state hospital</td>
<td>430</td>
<td>111</td>
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<tr>
<td>Huntington state hospital</td>
<td>422</td>
<td>109</td>
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<tr>
<td>Lakin state hospital</td>
<td>423</td>
<td>109</td>
</tr>
<tr>
<td>Pinecrest sanitarium</td>
<td>431</td>
<td>111</td>
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<tr>
<td>Spencer state hospital</td>
<td>421</td>
<td>109</td>
</tr>
<tr>
<td>State agency on aging</td>
<td>406</td>
<td>108</td>
</tr>
<tr>
<td>State board of education (rehabilitation division)</td>
<td>440</td>
<td>111</td>
</tr>
<tr>
<td>State health department</td>
<td>400</td>
<td>107</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>426</td>
<td>110</td>
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<tr>
<td>Weston state hospital</td>
<td>420</td>
<td>109,</td>
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<tr>
<td>Auditor's office</td>
<td>111</td>
<td>92</td>
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<tr>
<td>Judicial council</td>
<td>118</td>
<td>93</td>
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<tr>
<td>State law library</td>
<td>114</td>
<td>93</td>
</tr>
<tr>
<td>Supreme court of appeals</td>
<td>110</td>
<td>92</td>
</tr>
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<td>House of Delegates</td>
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<tr>
<td>Joint expenses</td>
<td>103</td>
<td>92</td>
</tr>
<tr>
<td>Senate</td>
<td>101</td>
<td>89</td>
</tr>
<tr>
<td>Board of architects</td>
<td>595</td>
<td>120</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>588</td>
<td>119</td>
</tr>
<tr>
<td>Board of dental examiners</td>
<td>589</td>
<td>119</td>
</tr>
<tr>
<td>Board of embalmers and funeral directors</td>
<td>593</td>
<td>120</td>
</tr>
<tr>
<td>Board of examiners for practical nurses</td>
<td>587</td>
<td>119</td>
</tr>
<tr>
<td>Board of law examiners</td>
<td>597</td>
<td>120</td>
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<tr>
<td>Board of optometry</td>
<td>592</td>
<td>120</td>
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<tr>
<td>Board of osteopathy</td>
<td>591</td>
<td>119</td>
</tr>
<tr>
<td>Board of pharmacy</td>
<td>590</td>
<td>119</td>
</tr>
<tr>
<td>Board of professional foresters</td>
<td>586</td>
<td>119</td>
</tr>
<tr>
<td>Board of registration for professional engineers</td>
<td>594</td>
<td>120</td>
</tr>
<tr>
<td>Board of sanitarians</td>
<td>599</td>
<td>121</td>
</tr>
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4. Awards for claims against the state.
5. Reappropriations.
6. Special revenue appropriations.
7. Specific funds and collection accounts.
8. Appropriation for refunding erroneous payments.
10. Appropriations from taxes and license fees.
11. Appropriations to pay costs of publications of delinquent corporations.
12. Appropriations for local governments.
13. Total appropriations.

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 5, article 4 and chapter 5-A, article 2 of the code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-eight.

LEGISLATIVE
1—Senate
Acct. No. 101

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1967-68</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members</td>
<td>$54,000.00</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and employees</td>
<td>100,000.00</td>
</tr>
<tr>
<td>4 Mileage of Members</td>
<td>3,000.00</td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund</td>
<td>200,000.00</td>
</tr>
<tr>
<td>6 To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state</td>
<td>10,000.00</td>
</tr>
</tbody>
</table>
To pay cost of printing the 1967 edition of Blue Book
Drafting Service

The appropriations for the Senate for the fiscal year 1966-67 are to remain in full force and effect, and are hereby reappropriated to June 30, 1968.

Any balances so reappropriated may be transferred and credited to the 1967-68 accounts.

Upon the written request of the Clerk of the Senate the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

2—House of Delegates
Acct. No. 102

1 Salaries of Members $153,000.00
2 Compensation and per diem of officers and employees 115,000.00
3 Mileage of Members 5,000.00
4 Current Expenses and Contingent Fund 190,000.00
5 Drafting Service 12,000.00

The appropriations for the House of Delegates for the fiscal year 1966-67 are to remain in full force and effect, and are hereby reappropriated to June 30, 1968.

Any balances so reappropriated may be transferred and credited to the 1967-68 accounts.
13 Upon the written request of the Clerk of the House of Delegates the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

18 The Clerk of the House of Delegates, with approval of the Speaker, is authorized to draw his requisitions upon the Auditor, payable out of the contingent fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates, and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates offices, the requisition for same to be accompanied by bills to be filed with the Auditor.

32 For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a salary of $1,175.00 per month, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at a salary to be determined by the Speaker of the House of Delegates.

41 The House Committee on Rules, with the approval of the Speaker, is hereby authorized to expend from the House Contingent Fund an amount, not to exceed the sum of $20,000.00, for the purpose of altering, furnishing and renovating that part of the Capitol assigned to the use of the House, and the Clerk of the House is hereby authorized to draw his requisition upon the State Auditor, payable out of the appropriation for Contingent Expenses for such purposes.
3—Joint Expenses
Acct. No. 103

1 To pay the cost of legislative printing and
2 stationery $ 175,000.00
3 Commission on Interstate Cooperation 20,000.00
4 Joint Committee on Government and Finance 455,000.00
5 Other Authorized Legislative Committees 75,000.00
6 The appropriation for Joint Expenses for the
7 fiscal year 1966-67 are to remain in full force
8 and effect, and are hereby reappropriated
9 to June 30, 1968.
10 Any balances so reappropriated may be trans-
11 ferred and credited to the 1967-68 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
15 amounts between items of the total appro-
16 priation in order to protect or increase the
17 efficiency of the service.

JUDICIAL
4—Supreme Court of Appeals
Acct. No. 110

1 Salaries of Judges $ 112,500.00
2 Other Personal Services 177,680.00
3 Current Expenses 32,000.00
4 Equipment 3,000.00
5 Total $ 325,180.00

5—Judicial—Auditor’s Office
Acct. No. 111

1 Salaries of Judges $ 459,000.00
2 Other Personal Services 109,000.00
3 Current Expenses 25,000.00
4 Judges’ Retirement System 50,000.00
5 Criminal Charges 355,000.00
6 Total $ 998,000.00
7 This appropriation shall be administered by
8 the State Auditor who shall draw his req-
uisition for warrants in payment of salaries

in the form of payrolls, making deductions

therefrom as required by law, for taxes and

other items. The appropriation for Judges’

Retirement System is to be transferred to

the Judges’ Retirement Fund, in accordance

with the law relating thereto, upon requisition

of the State Auditor.

6—State Law Library

Acct. No. 114

1 Personal Services ........................................... $ 36,000.00
2 Current Expenses ............................................ 14,414.00
3 Equipment ..................................................... 26,000.00
4 Total .......................................................... $ 76,414.00

7—Judicial Council

Acct. No. 118

1 To pay expenses of Members of the Council... $ 12,000.00

EXECUTIVE

8—Governor’s Office

Acct. No. 120

1 Salary of Governor ........................................ $ 25,000.00
2 Other Personal Services ................................. 111,400.00
3 Current Expenses .......................................... 35,000.00
4 Equipment ..................................................... 5,000.00
5 Civil Contingent Fund ...................................... 175,000.00
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 .............................................. 75,000.00

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 house-

16 hold expenses occasioned by such official

17 functions.
18 Federal State Coordination ........................................ 620,000.00
19 To match and aid Federal Programs, and any part of this appropriation may be transferred to any department for such purposes.
22 Office of Public Information ..................................... 75,000.00
23 Advisory Committee on Potomac River Basin ............... 15,000.00
24 Total ........................................................................ $1,136,400.00

25 Any balance remaining in Federal State Coordination at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68 to match and aid Federal Programs.

9—Department of Personnel

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>1 Personal Services</th>
<th>$ 48,048.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>$ 9,560.00</td>
<td></td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$ 2,000.00</td>
<td></td>
</tr>
<tr>
<td>4 Total</td>
<td>$ 59,608.00</td>
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</tr>
</tbody>
</table>

FISCAL

10—Auditor’s Office—General Administration

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>1 Salary of State Auditor</th>
<th>$ 18,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$ 425,240.00</td>
<td></td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$ 125,000.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$ 10,000.00</td>
<td></td>
</tr>
<tr>
<td>5 Microfilm Program</td>
<td>$ 7,500.00</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 585,740.00</td>
<td></td>
</tr>
</tbody>
</table>

11—Treasurer’s Office

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>1 Salary of State Treasurer</th>
<th>$ 17,500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$ 144,615.00</td>
<td></td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$ 22,000.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$ 7,500.00</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 191,615.00</td>
<td></td>
</tr>
</tbody>
</table>
### 12—Sinking Fund Commission

**Acct. No. 170**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$9,150.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$35,150.00</strong></td>
</tr>
</tbody>
</table>

Above appropriation includes amounts heretofore made available for administration and enforcement of Cigarette Tax and Store and General Licenses Division.

### 13—State Tax Department

**Acct. No. 180**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,197,786.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$620,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$28,600.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,846,386.00</strong></td>
</tr>
</tbody>
</table>

### 14—State Tax Department

**Acct. No. 185**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Property Appraisal</td>
<td>$250,000.00</td>
</tr>
</tbody>
</table>

### 15—State Commissioner of Public Institutions

**Acct. No. 190**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$13,000.00</td>
</tr>
<tr>
<td>2 Salaries of Board Members—Board of Probation and Parole</td>
<td>$27,000.00</td>
</tr>
<tr>
<td>3 Other Personal Services</td>
<td>$378,839.00</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$143,325.00</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$567,164.00</strong></td>
</tr>
</tbody>
</table>

16—Department of Finance and Administration

Acct. No. 210

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$725,617.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>325,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>125,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>17,000.00</td>
</tr>
<tr>
<td>5 Postage</td>
<td>130,000.00</td>
</tr>
<tr>
<td>6 Records Management</td>
<td>34,000.00</td>
</tr>
<tr>
<td>7 Office of State Emergency Planning</td>
<td>25,000.00</td>
</tr>
<tr>
<td>8 Transportation Division—Vehicles</td>
<td>150,000.00</td>
</tr>
<tr>
<td>9 State Agency Surplus Property</td>
<td>26,250.00</td>
</tr>
</tbody>
</table>

Total: $1,557,867.00

11 The Workmen’s Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Road Commission, State Health Department and State Tax Department—Income Tax Division, shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the Postage account of the Department of Finance and Administration such amounts. Should this appropriation for Postage be insufficient to meet the mailing requirements of the State spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for that Department for postage in excess of this appropriation.

Any unexpended balance remaining in the "Postage Account" and "Records Manage-
38 "ment Account" at the close of the fiscal
39 year 1966-67 is hereby reappropriated for
40 expenditure during the fiscal year 1967-68.
41 The State Road Commissioner shall reimburse
42 the appropriation of the Department of Fi-
43 nance and Administration monthly for all
44 actual expenses incurred pursuant to (the
45 provisions of) chapter 17, article 2-A, sec-
46 tion 13 of the code of West Virginia.

17—The Board of Public Works
Acct. No. 220

| 1 Contingent Fund                      | $50,000.00 |

18—State Board of Insurance
Acct. No. 225

| 1 Personal Services                   | $16,400.00 |
| 2 Current Expenses                    | 6,000.00   |
| 3 Equipment                           | 400.00     |
| 4 Fire Insurance Premiums             | 150,000.00 |

| 5 Total                               | $172,800.00 |

LEGAL

19—Attorney General
Acct. No. 240

| 1 Salary of Attorney General          | $18,500.00 |
| 2 Other Personal Services             | 292,983.00 |
| 3 Current Expenses                    | 36,000.00  |
| 4 Equipment                           | 14,500.00  |
| 5 To protect the resources or tax structure of the State in controversies or legal proceedings affecting same | 3,250.00 |

| 8 Total                               | $365,233.00 |

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

20—Commission on Uniform State Laws
Acct. No. 245
1 Total $3,000.00
2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING
21—Secretary of State
Acct. No. 250
1 Salary of Secretary of State $17,000.00
2 Other Personal Services 85,470.00
3 Current Expenses 25,000.00
4 Equipment 7,500.00
5 Total $134,970.00

EDUCATIONAL
22—State Board of Education—Vocational Division—Adult Basic Education
Acct. No. 289
1 Total $100,000.00

23—Department of Education
Acct. No. 290
1 Comprehensive Educational Program $1,000,000.00
2 To be used in accordance with Senate Bill No. 102, 1965 Regular Session of the Legislature.

24—Educational Broadcasting Authority
Acct. No. 291
1 Total $70,000.00
2 Administration of Educational Broadcasting.

25—Department of Education
Acct. No. 292
1 Safety Education $150,000.00
26—State Board of Education—Vocational Division
Acct. No. 293

1 To implement Vocational Education Act of 1963 P.L. 88-210 $ 600,000.00
2 Manpower training $ 100,000.00

4 Total $ 700,000.00

5 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

27—State Board of Education—Vocational Division
Acct. No. 294

1 Total $ 200,000.00

2 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

28—State Board of School Finance—State Aid to Schools
Acct. No. 295

1 State Aid to supplement the General School Fund $ 94,700,000.00

2 To be transferred to the General School Fund upon the requisition of the Governor.

29—Department of Education—Aid for Exceptional Children
Acct. No. 296

1 Personal Services $ 30,563.00
2 Current Expenses $ 7,600.00
3 Out-of-State Instruction $ 54,000.00
4 Aid to Counties $ 569,000.00

5 Total $ 661,163.00

6 The appropriation for “Out-of-State Instruction” may be expended to provide instruction, care and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.
### 30—Department of Education—Textbook Aid
**Acct. No. 297**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Textbooks for Schools</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>2 To be distributed according to chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-nine.</td>
<td></td>
</tr>
</tbody>
</table>

### 31—Teachers Retirement Board
**Acct. No. 298**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Benefit Fund—Payments to Retired Teachers.</td>
<td>$4,830,000.00</td>
</tr>
<tr>
<td>2 Employers’ Accumulation Fund—To match contributions of members</td>
<td>$3,525,000.00</td>
</tr>
<tr>
<td>3 Expense Fund</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$8,390,000.00</td>
</tr>
</tbody>
</table>

### 32—State Commission on Higher Education
**Acct. No. 299**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total Unclassified</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

### 33—West Virginia University
**Acct. No. 300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$14,640,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,200,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,200,000.00</td>
</tr>
<tr>
<td>5 Oak Wilt Control Research</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>6 State aid to students of Veterinary Medicine</td>
<td>$36,000.00</td>
</tr>
<tr>
<td>7 Office of Research and Development</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>8 Bureau for Coal Research</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>9 National Youth Science Camp</td>
<td>$65,600.00</td>
</tr>
<tr>
<td>10 Forestry Products</td>
<td>$72,000.00</td>
</tr>
<tr>
<td>11 Appalachian Center—Third Phase</td>
<td>$122,000.00</td>
</tr>
<tr>
<td>12 Educational TV Program</td>
<td>$180,000.00</td>
</tr>
<tr>
<td>13 Regional Research Institute</td>
<td>$70,000.00</td>
</tr>
<tr>
<td>14 Title I</td>
<td>$130,000.00</td>
</tr>
<tr>
<td>15 To match Federal Funds under the Higher Education Act of 1965—PL89-329.</td>
<td></td>
</tr>
<tr>
<td>17 West Virginia University Centennial Preparation</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>19 Parkersburg Branch College</td>
<td>$56,491.00</td>
</tr>
<tr>
<td>20 Total</td>
<td>$19,747,091.00</td>
</tr>
</tbody>
</table>
The above appropriation for “Parkersburg Branch College” is to be used in accordance with Senate Bill No. 78, 1967 Regular Session of the Legislature.

Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.

### 34—West Virginia University
Kanawha Valley Graduate Center
Acct. No. 301

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$350,000.00</td>
</tr>
</tbody>
</table>

The above appropriation is to be used in accordance with Senate Bill No. 79, 1967 Regular Session of the Legislature.

### 35—Potomac State College of West Virginia University
Acct. No. 315

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$621,400.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>85,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>48,100.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>66,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$820,500.00</td>
</tr>
</tbody>
</table>

### 36—Marshall University
Acct. No. 320

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$4,945,900.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>412,700.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>237,700.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>310,500.00</td>
</tr>
<tr>
<td>Flood Wall Assessment</td>
<td>3,200.00</td>
</tr>
<tr>
<td>Experimental Projects in Teacher Education</td>
<td>40,000.00</td>
</tr>
<tr>
<td>Educational TV Program</td>
<td>125,000.00</td>
</tr>
<tr>
<td>Branch Colleges</td>
<td>63,239.00</td>
</tr>
<tr>
<td>Total</td>
<td>$6,138,239.00</td>
</tr>
</tbody>
</table>
The above appropriation for “Branch Colleges” is to be used in accordance with Senate Bill No. 80, 1967 Regular Session of the Legislature.

Any unexpended balance remaining in the appropriation “Educational TV Program” at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

37—Fairmont State College

<table>
<thead>
<tr>
<th>Account No. 321</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,019,700.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$87,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,282,200.00</strong></td>
</tr>
</tbody>
</table>

38—Glenville State College

<table>
<thead>
<tr>
<th>Account No. 322</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,116,102.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$85,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$62,500.00</td>
</tr>
<tr>
<td>5 Community Development and Research</td>
<td>$15,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,324,102.00</strong></td>
</tr>
</tbody>
</table>

39—West Liberty State College

<table>
<thead>
<tr>
<th>Account No. 323</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,760,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$140,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$93,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$107,000.00</td>
</tr>
<tr>
<td>5 Branch College</td>
<td>$30,270.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,130,270.00</strong></td>
</tr>
</tbody>
</table>

The above appropriation for “Branch College” is to be used in accordance with Senate Bill No. 80, 1967 Regular Session of the Legislature.
### Appropriations

**40—Shepherd College**  
Acct. No. 324

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,016,167.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$115,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$99,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,280,667.00</strong></td>
</tr>
</tbody>
</table>

**41—Concord College**  
Acct. No. 325

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,660,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$135,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$113,000.00</td>
</tr>
<tr>
<td>5 Center for Economic Action</td>
<td>$30,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,978,000.00</strong></td>
</tr>
</tbody>
</table>

7 Any unexpended balance remaining in the appropriation “Center for Economic Action” at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

**42—West Virginia Institute of Technology**  
Acct. No. 327

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,750,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$145,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$150,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,120,000.00</strong></td>
</tr>
</tbody>
</table>

**43—West Virginia State College**  
Acct. No. 328

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,187,897.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$90,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$92,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,570,397.00</strong></td>
</tr>
</tbody>
</table>
## APPROPRIATIONS

### 44—Bluefield State College

**Acct. No. 329**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$800,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$85,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$70,000.00</td>
</tr>
</tbody>
</table>

**Total** $1,015,000.00

### 45—West Virginia State College—4-H Camp

**Acct. No. 330**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$18,500.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$7,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,500.00</td>
</tr>
</tbody>
</table>

**Total** $35,000.00

### 46—West Virginia Schools for the Deaf and Blind

**Acct. No. 333**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$750,020.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$176,430.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$40,700.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$70,850.00</td>
</tr>
</tbody>
</table>

**Total** $1,038,000.00

### 47—State FFA-FHA Camp and Conference Center

**Acct. No. 336**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$36,910.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$8,200.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$8,500.00</td>
</tr>
</tbody>
</table>

**Total** $61,610.00

### 48—Department of Archives and History

**Acct. No. 340**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$56,815.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$13,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$14,000.00</td>
</tr>
</tbody>
</table>
4 Antiquities Commission .................................................. $ 4,900.00

5 Total ............................................................................. $ 88,715.00

49—West Virginia Library Commission
Acct. No. 350
1 Personal Services ....................................................... $ 128,320.00
2 Current Expenses ....................................................... 5,000.00
3 Equipment .................................................................. 5,000.00
4 Books and Periodicals ................................................ 31,480.00
5 To Match Federal Funds ............................................... 105,200.00

6 Total ............................................................................. $ 275,000.00

CHARITIES AND CORRECTION

50—West Virginia Industrial School for Boys
Acct. No. 370
1 Personal Services ....................................................... $ 479,790.00
2 Current Expenses ....................................................... 174,700.00
3 Repairs and Alterations .............................................. 44,400.00
4 Equipment .................................................................. 22,250.00

5 Total ............................................................................. $ 721,140.00

51—Forestry Camp for Boys
Acct. No. 371
1 Personal Services ....................................................... $ 124,536.00
2 Current Expenses ....................................................... 86,500.00
3 Repairs and Alterations .............................................. 10,500.00
4 Equipment .................................................................. 13,500.00

5 Total ............................................................................. $ 235,036.00

52—West Virginia Industrial Home for Girls
Acct. No. 372
1 Personal Services ....................................................... $ 249,000.00
2 Current Expenses ....................................................... 104,300.00
3 Repairs and Alterations .............................................. 16,700.00
4 Equipment .................................................................. 13,500.00
5 Vocational Training ..................................................... 5,000.00

6 Total ............................................................................. $ 388,500.00
### West Virginia State Prison for Women

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$62,580.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,400.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$118,980.00</strong></td>
</tr>
</tbody>
</table>

### West Virginia Penitentiary

**Acct. No. 375**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$890,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$525,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$63,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$33,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,511,200.00</strong></td>
</tr>
</tbody>
</table>

### Medium Security Prison

**Acct. No. 376**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$508,152.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$25,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$753,152.00</strong></td>
</tr>
</tbody>
</table>

6 Out of the above appropriation for Personal Services the amount of $25,000.00 shall be used for Prison Inmate Labor.

### West Virginia Children’s Home

**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$68,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$43,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$14,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$6,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$131,500.00</strong></td>
</tr>
</tbody>
</table>
### 57—Andrew S. Rowan Memorial Home

**Acct. No. 384**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$280,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$194,300.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$8,500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$517,800.00</strong></td>
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### HEALTH AND WELFARE

58—State Health Department

**Acct. No. 400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$120,000.00</td>
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<td>3 Equipment</td>
<td>$19,000.00</td>
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<tr>
<td>4 Cancer Control and Treatment</td>
<td>$150,000.00</td>
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<tr>
<td>5 Tuberculosis Field Clinic and Nursing Service</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>6 Out-Patient Pneumothorax Treatment</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>7 Local Health Services</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>8 Dental Clinics</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>9 Heart Disease Control</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>10 Maternal and Child Health-</td>
<td></td>
</tr>
<tr>
<td>11 Mobile Medical Examination Clinic</td>
<td>$57,500.00</td>
</tr>
<tr>
<td>12 Radiological Health</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>13 Mobile Chest X-Ray</td>
<td>$39,000.00</td>
</tr>
<tr>
<td>14 Hospital and Medical Facilities Construction</td>
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</tr>
<tr>
<td>15 Program</td>
<td>$17,500.00</td>
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<tr>
<td>16 Solid Wastes</td>
<td>$24,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,700,000.00</strong></td>
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59—Commission of Postmortem Examinations

**Acct. No. 401**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
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60—Department of Veterans Affairs

**Acct. No. 404**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$213,696.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$46,490.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,500.00</td>
</tr>
</tbody>
</table>
4 To provide Educational Opportunities for
5 Children of War Veterans as provided by
6 chapter thirty-nine, acts of the Legislature,
7 one thousand nine hundred forty-three ....... $15,000.00

8 Total ........................................................................ $278,686.00

9 Any unexpended balance remaining in the ap-
10 propriation “To Provide Educational Op-
11 portunities for Children of War Veterans”
12 at the close of the fiscal year 1966-67 is
13 hereby reappropriated for expenditure dur-
14 ing the fiscal year 1967-68.

### 61—Department of Welfare
Acct. No. 405

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,919,828.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$1,398,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$31,000.00</td>
</tr>
<tr>
<td>4 Public Assistance Grants (Classified Aid)</td>
<td>$9,300,000.00</td>
</tr>
<tr>
<td>5 Includes grants for persons in mental and tubercular hospitals.</td>
<td></td>
</tr>
<tr>
<td>6 Aid to Crippled Children</td>
<td>$620,000.00</td>
</tr>
<tr>
<td>7 Medical Services and M.A.A.</td>
<td>$5,000,000.00</td>
</tr>
<tr>
<td>8 Conservation of Vision and Prevention of Blindness</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>9 Child Welfare Services</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>10 General Relief and Boarding Care</td>
<td>$1,340,000.00</td>
</tr>
<tr>
<td>11 Social Security Matching Fund</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>12 Prescription Drugs for Medically Indigent Age</td>
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</tr>
<tr>
<td>13 65 and over</td>
<td>$1,100,000.00</td>
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<tr>
<td>14 Title XIX—Medical Assistance for Eligible 18-21 Age Group</td>
<td>$1,043,000.00</td>
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<tr>
<td>15 Total</td>
<td>$25,291,828.00</td>
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### 62—State Agency on Aging
Acct. No. 406

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Total</td>
<td>$36,500.00</td>
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</table>

### 63—Department of Mental Health
Acct. No. 410

<table>
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<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$590,978.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$136,522.00</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>3 Equipment</th>
<th>17,500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Research and Training</td>
<td>30,000.00</td>
</tr>
<tr>
<td>5 Civil Service Costs</td>
<td>65,000.00</td>
</tr>
<tr>
<td>6 Division of Health Education</td>
<td>20,000.00</td>
</tr>
<tr>
<td>7 Day Care Center</td>
<td>60,000.00</td>
</tr>
<tr>
<td>8 Commission on Mental Retardation</td>
<td>18,000.00</td>
</tr>
</tbody>
</table>

9 Total $ 938,000.00

10 Any unexpended balance remaining in the appropriation for "Research and Training" at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

#### 64—Colin Anderson Center

**Acct. No. 419**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 1,572,346.00</th>
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</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>365,100.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>67,700.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>37,300.00</td>
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</tbody>
</table>

5 Total $ 2,042,446.00

#### 65—Weston State Hospital

**Acct. No. 420**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 2,942,962.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>1,034,878.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>165,000.00</td>
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<tr>
<td>4 Equipment</td>
<td>106,546.00</td>
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</tbody>
</table>

5 Total $ 4,249,386.00

#### 66—Spencer State Hospital

**Acct. No. 421**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 1,393,565.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>569,505.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>80,000.00</td>
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<tr>
<td>4 Equipment</td>
<td>52,090.00</td>
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</tbody>
</table>

5 Total $ 2,095,160.00

#### 67—Huntington State Hospital

**Acct. No. 422**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$ 1,978,980.00</th>
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</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>796,291.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>4 Equipment</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>104,750.00</td>
<td>76,700.00</td>
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</table>

68—Lakin State Hospital
Acct. No. 423

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>2 Current Expenses</th>
<th>3 Repairs and Alterations</th>
<th>4 Equipment</th>
<th>5 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 947,896.00</td>
<td>$ 304,200.00</td>
<td>$ 117,800.00</td>
<td>$ 89,500.00</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$ 1,459,396.00</td>
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</table>

69—Barboursville State Hospital
Acct. No. 424

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>2 Current Expenses</th>
<th>3 Repairs and Alterations</th>
<th>4 Equipment</th>
<th>5 Total</th>
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</thead>
<tbody>
<tr>
<td>$ 496,000.00</td>
<td>$ 169,800.00</td>
<td>$ 46,660.00</td>
<td>$ 16,720.00</td>
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<td>$ 729,180.00</td>
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</table>

70—Fairmont Emergency Hospital
Acct. No. 425

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>2 Current Expenses</th>
<th>3 Repairs and Alterations</th>
<th>4 Equipment</th>
<th>5 Total</th>
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</thead>
<tbody>
<tr>
<td>$ 215,440.00</td>
<td>$ 106,985.00</td>
<td>$ 40,000.00</td>
<td>$ 13,100.00</td>
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<td></td>
<td>$ 375,525.00</td>
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71—Welch Emergency Hospital
Acct. No. 426

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>2 Current Expenses</th>
<th>3 Repairs and Alterations</th>
<th>4 Equipment</th>
<th>5 Total</th>
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<tbody>
<tr>
<td>$ 307,480.00</td>
<td>$ 175,300.00</td>
<td>$ 45,000.00</td>
<td>$ 22,500.00</td>
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<td></td>
<td></td>
<td></td>
<td>$ 550,280.00</td>
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<td></td>
<td>Ch. 18] APPROPRIATIONS</td>
<td>111</td>
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<td></td>
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<tr>
<td>-------------------------</td>
<td>-------------------------</td>
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<td></td>
<td></td>
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<tr>
<td><strong>72—Hopemont State Hospital</strong></td>
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<td></td>
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<tr>
<td>Acct. No. 430</td>
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<tr>
<td>1 Personal Services</td>
<td>$779,238.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$333,410.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>30,500.00</td>
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<tr>
<td>4 Equipment</td>
<td>$33,500.00</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
<td>$1,176,648.00</td>
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<tr>
<td><strong>73—Pinecrest Sanitarium</strong></td>
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<tr>
<td>Acct. No. 431</td>
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<td>1 Personal Services</td>
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</tr>
<tr>
<td>2 Current Expenses</td>
<td>$500,000.00</td>
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<td></td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>33,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$20,000.00</td>
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<td></td>
<td><strong>Total</strong></td>
<td>$1,569,000.00</td>
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<td><strong>74—Denmar State Hospital</strong></td>
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<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<tr>
<td>3 Repairs and Alterations</td>
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<tr>
<td>4 Equipment</td>
<td>$31,615.00</td>
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<td></td>
<td><strong>Total</strong></td>
<td>$1,000,000.00</td>
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<td><strong>75—Berkeley Springs Sanitarium</strong></td>
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<td>1 Personal Services</td>
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<tr>
<td>2 Current Expenses</td>
<td>$10,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>9,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,000.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td>$80,000.00</td>
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<tr>
<td><strong>76—State Board of Education—Rehabilitation Division</strong></td>
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<td>Acct. No. 440</td>
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<tr>
<td>1 Personal Services</td>
<td>$417,140.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$47,895.00</td>
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<tr>
<td>3 Rehabilitation Center</td>
<td>$349,887.00</td>
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<tr>
<td>4 Case Services</td>
<td>$476,965.00</td>
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</tr>
</tbody>
</table>
5 Supervisory Services for Vending Stand Program for the Blind 21,000.00
6 Training and Special Projects 57,113.00
8 Social Security Matching Fund 30,000.00

9 Total 1,400,000.00

BUSINESS AND INDUSTRIAL RELATIONS

77—Bureau of Labor and Department of Weights and Measures
Acct. No. 450

1 Personal Services 479,925.00
2 Current Expenses 145,200.00
3 Equipment 4,500.00

4 Total 629,625.00

78—Department of Mines
Acct. No. 460

1 Personal Services 915,710.00
2 Current Expenses 193,375.00
3 Equipment 90,915.00

4 Total 1,200,000.00

79—Department of Commerce
Acct. No. 465

1 Personal Services 497,000.00
2 Current Expenses 373,500.00
3 Equipment 11,000.00
4 Mt. State Forest Festival 15,000.00
5 Alpine Festival 500.00
6 Governor's Conference on Wood Utilization 3,000.00
7 Industrial Development Revolving Fund 300,000.00
8 West Virginia Historical Drama Association 35,000.00
9 Arts and Humanities Fund 20,000.00

10 Total 1,255,000.00

11 The above appropriations, Mountain State Forest Festival, Alpine Festival, Governor's Conference on Wood Utilization, and West Virginia Historical Drama Association shall
be expended only upon authorization of the
Commerce Commissioner and in accordance
with the provisions of chapter 5-A of the
code of West Virginia.

All Federal moneys heretofore or hereafter
received as reimbursements to the Depart-
ment of Commerce, for moneys expended
from General Revenue funds, are hereby re-
appropriated for the purposes as originally
made, including Personal Services, Current
Expenses, Equipment, in-service training
programs.

Special Revenue Account be created and out-
standing loans in Urban Planning Revolv-
ing Fund be deposited into Special Revenue
Account instead of General Revenue Fund.

Industrial Development Revolving Fund may
be transferred to Special Revenue.

80—State Commissioner on Manpower, Technology
and Training
Acct. No. 470

1 Total ...........................................$ 30,000.00

81—Southern Interstate Nuclear Board
Acct. No. 471

1 Total ...........................................$ 7,970.00

82—Commission on Interstate Cooperation
Acct. No. 472

1 Total ...........................................$ 9,000.00

Out of the above appropriation the sum of
$8,750.00 may be made available for West
Virginia’s membership in The Council of
State Governments.

83—Interstate Commission on Potomac River Basin
Acct. No. 473

1 West Virginia’s contribution to Potomac River
2 Basin Interstate Commission ..........$ 4,500.00
### Appropriations

#### 84—Ohio River Valley Water Sanitation Commission
Acct. No. 474

1. West Virginia's contribution to the Ohio River Valley Water Sanitation Commission $20,657.00

#### 85—Southern Regional Education Board
Acct. No. 475

1. West Virginia's contribution to Southern Regional Education Board $49,000.00
2. To be expended upon requisition of the Governor.

#### 86—West Virginia Air Pollution Commission
Acct. No. 476

1. Personal Services $93,780.00
2. Current Expenses $29,220.00
3. Repairs and Alterations $400.00
4. Equipment $12,600.00
5. Total $136,000.00

#### 87—Interstate Education Compact
Acct. No. 477

1. West Virginia's contribution to Interstate Education Compact $4,750.00
2. To be used in accordance with House Bill No. 746, 1967 Regular Session of the Legislature.

#### 88—Department of Banking
Acct. No. 480

1. Personal Services $139,300.00
2. Current Expenses $52,450.00
3. Equipment $4,100.00
4. Total $195,850.00

#### 89—West Virginia State Aeronautics Commission
Acct. No. 485

1. Personal Services $24,000.00
2. Current Expenses $13,000.00
3. Equipment $1,000.00
## Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Aerial Markers</td>
<td>$1,000.00</td>
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<tr>
<td>5</td>
<td>Civil Air Patrol Expenses</td>
<td>$8,000.00</td>
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<tr>
<td>6</td>
<td>Total</td>
<td>$47,000.00</td>
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### West Virginia Nonintoxicating Beer Commissioner

#### Acct. No. 490

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$148,800.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$60,000.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
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### West Virginia Racing Commission

#### Acct. No. 495

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$101,000.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$30,000.00</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$132,000.00</td>
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### Agriculture

#### Department of Agriculture

#### Acct. No. 510

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$641,922.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$255,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$928,922.00</td>
</tr>
</tbody>
</table>

#### Department of Agriculture—Soil Conservation

#### Acct. No. 512

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$89,835.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Watershed Program</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$229,835.00</td>
</tr>
</tbody>
</table>
94—Department of Agriculture—Marketing and Research  
Acct. No. 513

1 For cooperation with the Federal Government in a program of marketing and research...$ 155,000.00
2 Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.

95—Department of Agriculture—Meat Inspection  
Acct. No. 514

1 Personal Services ........................................ $ 131,000.00
2 Current Expenses ........................................ 24,000.00

3 Total ......................................................... $ 155,000.00

96—Department of Agriculture—Agricultural Awards  
Acct. No. 515

1 West Virginia State Fair ................................ $ 25,000.00
2 Agricultural Awards ..................................... 43,000.00
3 Walnut Festival .......................................... 3,500.00
4 Apple Festival ........................................... 1,500.00

5 Total ......................................................... $ 73,000.00

CONSERVATION AND DEVELOPMENT

97—Geological and Economic Survey Commission  
Acct. No. 520

1 Personal Services ........................................ $ 200,000.00
2 Current Expenses ........................................ 55,000.00
3 Equipment .................................................. 10,000.00
4 Cooperative Mapping Program ......................... 60,000.00

5 Total ......................................................... $ 325,000.00
6 Of the above appropriation for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.
98—Department of Veterans Affairs
Acct. No. 564

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

99—Department of Natural Resources
Acct. No. 565

1 Personal Services $1,740,000.00
2 Current Expenses 612,680.00
3 Repairs and Alterations 94,150.00
4 Equipment 98,170.00
5 Clarke-McNary—Fire Prevention 120,000.00
6 ARA-EDA Park Programs 200,000.00
7 Water Resources Board 5,000.00
8 Rabies Control 30,000.00

9 Total $2,900,000.00

Out of the above appropriation for Current
Expenses, subsistence for conservation offi-
cers shall be paid at the rate of two dollars
and fifty cents per calendar day to the chief
conservation officer and to each full-time
uniformed conservation officer, under his
direct supervision, whose primary duties and
responsibilities are law enforcement.

Any unexpended balance remaining in the ap-
propriation “Clarke-McNary—Fire Preven-
tion” at the close of the fiscal year 1966-
67 is hereby reappropriated for expenditure
during the fiscal year 1967-68.

PROTECTION

100—Department of Public Safety
Acct. No. 570

1 Personal Services $2,419,062.00
2 Current Expenses 1,090,000.00
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$67,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$311,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$3,887,062.00</td>
</tr>
</tbody>
</table>

**101—Adjutant General—State Militia**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$73,800.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$7,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$2,600.00</td>
</tr>
<tr>
<td>5</td>
<td>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>$85,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Property Maintenance</td>
<td>$45,600.00</td>
</tr>
<tr>
<td>7</td>
<td>State Armory Board</td>
<td>$786,000.00</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$1,100,000.00</td>
</tr>
</tbody>
</table>

**102—Department of Civil and Defense Mobilization**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$38,400.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,300.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$52,700.00</td>
</tr>
</tbody>
</table>

**103—Auditor’s Office—Social Security**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To match contributions of state employees for social security</td>
<td>$2,300,000.00</td>
</tr>
<tr>
<td>3</td>
<td>The above appropriation is intended to cover the state’s share of social security costs for those spending units operating from General Revenue Fund and General School Fund Appropriations. The State Road Commission, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.</td>
<td></td>
</tr>
</tbody>
</table>
15 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

MISCELLANEOUS BOARDS AND COMMISSIONS

104—State Board of Professional Foresters
Acct. No. 586

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

105—West Virginia Board of Examiners for Practical Nurses
Acct. No. 587

1 To pay the per diem of members and other
2 general expenses $22,000.00
3 From Collections 22,000.00

106—State Board of Chiropractic Examiners
Acct. No. 588

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

107—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

108—State Board of Pharmacy
Acct. No. 590

1 To pay the per diem of members and other
2 general expenses $11,500.00
3 From Collections 11,500.00

109—State Board of Osteopathy
Acct. No. 591

1 To pay the per diem of members and other
2 general expenses $1,610.00
3 From Collections 1,610.00
110—State Board of Optometry  
Acct. No. 592  
1 To pay the per diem of members and other general expenses $ 2,500.00  
3 From Collections $ 2,500.00  

111—State Board of Embalmers and Funeral Directors  
Acct. No. 593  
1 To pay the per diem of members and other general expenses $ 10,000.00  
3 From Collections $ 10,000.00  

112—State Board of Registration for Professional Engineers  
Acct. No. 594  
1 To pay the per diem of members and other general expenses $ 33,500.00  
3 From Collections $ 33,500.00  

113—State Board of Architects  
Acct. No. 595  
1 To pay the per diem of members and other general expenses $ 4,000.00  
3 From Collections $ 4,000.00  

114—State Veterinary Board  
Acct. No. 596  
1 To pay the per diem of members and other general expenses $ 500.00  
3 From Collections $ 500.00  

115—State Board of Law Examiners  
Acct. No. 597  
1 To pay the per diem of members and other general expenses $ 3,000.00  

116—Human Rights Commission  
Acct. No. 598  
1 Personal Services $ 54,140.00  
2 Current Expenses $ 23,060.00  
3 Equipment $ 1,700.00  
4 Total $ 78,900.00
117—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

118—West Virginia Public Employees Retirement Board

Acct. No. 614

1 Employers Accumulation Fund ................. $ 1,250,000.00
2 Expense Fund .................................................. 25,000.00
3 Total .............................................................. $ 1,275,000.00

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 chapter 5, article 10 of the
8 code of West Virginia for those departments
9 operating from General Revenue Fund and
10 General School Fund appropriations. The
11 State Road Commission, Department of Mo-
12 tor Vehicles, State Tax Department—
13 Gasoline Tax Division, Workmen's Com-
14 pensation Commission, Public Service Com-
15 mission, and other departments operating
16 from Special Revenue Funds 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 from
21 the balances in the various Special Revenue
22 Funds in excess of specific appropriations.

119—Insurance Commissioner

Acct. No. 616

1 Personal Services ................................................. $ 187,000.00
2 Current Expenses ............................................... 33,000.00
3 Equipment ......................................................... 3,000.00
4 Total .............................................................. $ 223,000.00
120—Insurance Commissioner—Fire Marshal
Acct. No. 617

1 Personal Services ........................................... $ 134,000.00
2 Current Expenses ........................................... 42,000.00
3 Repairs and Alterations ................................. 6,000.00
4 Equipment ................................................... 1,600.00

5 Total ........................................................... $ 183,600.00

121—State Road Commission
Acct. No. 641

1 Total ........................................................... $ 6,500,000.00
2 The purpose of the above appropriation is to aid in payment of interest and principal on outstanding road bonds and may be transferred to the State Road Fund upon the requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter 5, article 4, and chapter 5-A, article 2, of the code of West Virginia the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-eight.

122—State Road Commission
Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Federal-Aid Construction—Interstate Pro-gram .................................. $ 99,020,500.00
2 Federal-Aid Construction—ABC Program .................. 28,395,000.00
3 Appalachian Program ..................................... 29,780,000.00
4 Interstate Maintenance .................................. 1,586,500.00
5 Special Maintenance and State Construction— Expressway and Trunkline .................................. 9,485,500.00
6 Special Maintenance and State Construction— Feeder and State Local Service .............................. 10,696,500.00
7 Expressway and Trunkline ................................ 6,555,000.00
8 Feeder and State Local Service ............................. 6,555,000.00
9 Emergency Operations—Snow and Ice Control—Flood and Slides .................................. 3,000,000.00
14 General Operations ........................................... 22,362,600.00
15 Equipment Purchases ........................................ 1,000,000.00
16 Inventory Purchases ........................................ 3,000,000.00
17 Debt Service ................................................ 10,515,500.00

18 Total .................................................................. $231,952,100.00

19 It is the intent to appropriate and make available for expenditure, the balances and all
20 revenues and income of the State Road Fund, including the proceeds from the sale of
21 bonds, for the maintenance, construction and reconstruction of state roads and for
22 other purposes in accordance with the provisions of chapter 17, code of West Virginia,
23 one thousand nine hundred thirty-one, as amended.

24 Funds in excess of amounts herein appropriated may be made available by budget
25 amendment upon request of the Road Commissioner and approval of the Board of
26 Public Works.

27 The State Road Commissioner shall have the authority to operate revolving funds within
28 the state road fund for the operation and purchase of various types of equipment
29 used directly and indirectly in the construction and maintenance of roads and for the
30 purchase of inventories of materials and supplies: Provided, however, That the op-
31 eration of such revolving funds shall not cause expenditures in excess of the fore-
32 going appropriations.

33 There is hereby appropriated, within the above line items, sufficient moneys for the
34 payment of claims, accrued or arising during this budgetary period, to be paid in ac-
35 cordance with chapter 14, article 2, sections 7 and 8, code of West Virginia, one thou-
36 sand nine hundred thirty-one, as amended.
### Appropriations

#### 123—Department of Motor Vehicles
Acct. No. 671

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$998,600.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$451,400.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>4 Purchase of License Plates</td>
<td>$240,000.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$40,300.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>$47,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,807,300.00</strong></td>
</tr>
</tbody>
</table>

#### 124—State Tax Department—Gasoline Tax Division
Acct. No. 672

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$202,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$69,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$8,300.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$283,800.00</strong></td>
</tr>
</tbody>
</table>

#### 125—State Board of Education
Acct. No. 700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$62,892.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$80,392.00</strong></td>
</tr>
</tbody>
</table>

#### 126—State Board of Education—Vocational Division
Acct. No. 701

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$71,900.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$17,600.00</td>
</tr>
</tbody>
</table>

127—Department of Education—Veterans Education
Acct. No. 702
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$25,380.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,800.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$31,180.00</strong></td>
</tr>
</tbody>
</table>

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

Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Board of Public Works for any emergency which might arise in the operation of this Division during the fiscal year.

128—Department of Education
Acct. No. 703
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Superintendent</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$439,284.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$120,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,950.00</td>
</tr>
<tr>
<td>5 National Defense Education Act</td>
<td>$198,270.00</td>
</tr>
<tr>
<td>6 State-wide Testing Program</td>
<td>$176,000.00</td>
</tr>
<tr>
<td>7 Experimental Projects</td>
<td>$16,480.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$971,984.00</strong></td>
</tr>
</tbody>
</table>

Any part or all of the appropriation for "National Defense Education Act" may be transferred to a Special Revenue Fund for the purpose of matching Federal Funds for this program.
## 129—State Board of School Finance
**Acct. No. 704**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$29,100.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$10,210.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$39,310.00</strong></td>
</tr>
</tbody>
</table>

## 130—Department of Education—School Lunch Program
**Acct. No. 705**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$69,375.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>3 Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$300,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$387,375.00</strong></td>
</tr>
</tbody>
</table>

## 131—Department of Education
**Acct. No. 706**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of County Superintendents</td>
<td>$61,000.00</td>
</tr>
</tbody>
</table>

## 132—Department of Education
**Acct. No. 707**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 State Aid to Children’s Home</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

## 133—Treasurer’s Office
**Acct. No. 800**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Abandoned and Unclaimed Property—Trust and Expense Fund</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

## 134—Real Estate Commission
**Acct. No. 801**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$17,650.00</td>
</tr>
</tbody>
</table>
3 Social Security Matching Fund ................. 1,250.00
4 Public Employees Retirement Matching Fund 1,600.00

5 Total ........................................... $ 52,500.00
6 The total amount of this appropriation shall be
7 paid from Special Revenue Fund out of colle-
8 ctions of license fees as provided by law.

135—West Virginia Racing Commission
Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses .................................. $ 5,000.00
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.

136—Auditor’s Office—Land Department Operating Fund
Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................. $ 20,000.00
2 Current Expenses .................................. 15,000.00

3 Total ........................................... $ 35,000.00
4 The total amount of this appropriation shall
5 be paid from Special Revenue Fund out of
6 fees and collections as provided by law.
7 Special funds in excess of the amount herein
8 appropriated may be made available by
9 budget amendment upon request of the
10 State Auditor and the approval of the Board
11 of Public Works.
137—Department of Finance and Administration  
Division of Purchases—Revolving Fund  
Acct. No. 814  
TO BE PAID FROM SPECIAL REVENUE FUND  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$101,100.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$13,130.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$4,450.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$5,120.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$140,800.00</strong></td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall  
8 be paid from Special Revenue Fund as pro-  
9 vided by chapter 5, article 4 and chap-  
10 ter 5-A, article 2, of the code of West Vir-  
11 ginia.  
12 The above appropriation includes salaries and  
13 operating expenses.  
14 There is hereby appropriated from this fund,  
15 in addition to the above appropriation, the  
16 necessary amount for the purchase of sup-  
17 plies for resale.  
18 Special funds in excess of the amounts hereby  
19 appropriated may be made available by  
20 budget amendment upon request of the  
21 Department of Finance and Administration  
22 and approval of the Board of Public Works.  

138—Department of Agriculture  
Acct. No. 818  
TO BE PAID FROM SPECIAL REVENUE FUND  

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$175,800.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$36,200.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$6,893.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$8,707.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$232,600.00</strong></td>
</tr>
</tbody>
</table>


7 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agriculture as provided by law. It is the intention that special funds in excess of the amounts hereby appropriated shall be made available by budget amendment upon request of the Commissioner of Agriculture, and approval of the Board of Public Works.

139—State Committee of Barbers and Beauticians
Acct. No. 822
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$56,917.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$888.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$2,900.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$95,205.00</strong></td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the State Committee of Barbers and Beauticians as provided by law.

140—Public Service Commission
Acct. No. 828
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Commissioners</td>
<td>$42,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$431,619.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$49,770.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$6,440.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$12,884.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>$21,587.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$564,300.00</strong></td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law. Out
of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission of the Department of Natural Resources for use in cooperation with the U. S. Geological Survey in a program of stream gauging.

141—Public Service Commission—Motor Carrier Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$244,600.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>69,210.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>4,860.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>6,940.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>10,900.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$336,510.00</strong></td>
</tr>
</tbody>
</table>

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

142—Department of Natural Resources

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,202,620.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>520,149.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>74,050.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>257,240.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,054,059.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected.
12 at state parks. Special Funds in excess of the
13 amounts hereby appropriated may be made
14 available by budget amendment upon re-
15 quest of the Department of Natural Re-
16 sources and approval of the Board of Public
17 Works.

143—Department of Public Safety—Inspection Fees
Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$128,302.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$55,980.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$13,100.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$818.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$203,200.00</strong></td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall be
8 paid from Special Revenue Fund out of fees
9 collected for inspection stickers as provided
10 by law.
11 Special Funds in excess of the amounts hereby
12 appropriated may be made available by
13 budget amendment upon request of the De-
14 partment of Public Safety and approval of
15 the Board of Public Works for the purpose
16 of repairs to or construction of police
17 barracks.

144—West Virginia Alcohol Beverage Control
Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$14,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$3,500,238.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$859,200.00</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>6 Social Security Matching Fund</td>
<td>$143,184.00</td>
</tr>
<tr>
<td>7 Public Employees Retirement Matching Fund</td>
<td>$175,763.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,787,385.00</strong></td>
</tr>
</tbody>
</table>
9 The total amount of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.

12 The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.

17 There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor, as provided by law.

145—West Virginia Civil Service System
Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................................. $ 163,930.00
2 Current Expenses .................................................. 37,000.00
3 Social Security Matching Fund ................................. 7,208.00
4 Public Employees Retirement Matching Fund .................. 8,342.00

5 Total ........................................................................ $ 216,480.00

6 The total amount of this appropriation shall be paid from Special Revenue Fund supported by participating agencies as provided by law.

10 The Board of Public Works is hereby authorized to make available by budget amendment, upon request of the Civil Service Commission, funds in excess of the amounts hereby appropriated.

146—West Virginia University—Special Capital Improvement Fund
Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ........................................................... $ 665,000.00
2 Creative Arts Building ............................................... 700,000.00
3 Small Projects ......................................................... 400,000.00
4 Property Acquisition ................................................ 600,000.00
5 Utilities, Roads, and Parking ........................................ 235,000.00
6 Renovating of Existing Building .................................. 200,000.00

7 Total ........................................................................... $ 2,800,000.00

8 The total amount of this appropriation shall
9 be paid from the nonrevolving Capital Im-
10 provement Fund created by the 1959 Legis-
11 lature, amended by the 1963 Legislature.
12 Any unexpended balance remaining in this
13 appropriation at the close of the fiscal year
14 1966-67 is hereby reappropriated for ex-
15 penditure during the fiscal year 1967-68.

147—State Board of Education—Special Capital
Improvement Fund
Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ................................................................... $ 1,546,800.00
2 Marshall University—Twin Dormitory and
3 Cafeteria furniture ....................................................... 734,000.00
4 West Liberty State College—Dormitories and
5 furniture ....................................................................... 356,400.00
6 Concord College—Dormitory and Cafeteria
7 furniture ....................................................................... 128,000.00
8 West Virginia State College—Cafeteria furni-
9 ture .............................................................................. 50,000.00
10 Fairmont State College—Cafeteria furniture
11 and equipment ............................................................ 8,000.00
12 Glenville State College—Installation of an
13 elevator for Women's Hall and purchase of
14 land ........................................................................... 50,000.00
15 West Virginia Institute of Technology—
16 Cafeteria furniture—Men's Dormitory.............. 20,000.00
17 The above appropriations are to be made
18 available from passage date of this act.
<table>
<thead>
<tr>
<th>College</th>
<th>Project</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 Bluefield State College</td>
<td>Basic Science Building</td>
<td>$2,100,000.00</td>
</tr>
<tr>
<td></td>
<td>Land Acquisition</td>
<td>$70,000.00</td>
</tr>
<tr>
<td></td>
<td>Renovation-Conley Hall</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>20</td>
<td>Total</td>
<td>$2,320,000.00</td>
</tr>
<tr>
<td>21</td>
<td>Basic Science Building</td>
<td>$2,170,000.00</td>
</tr>
<tr>
<td>22</td>
<td>Land Acquisition</td>
<td>$125,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$2,295,000.00</td>
</tr>
<tr>
<td>23</td>
<td>Science Building</td>
<td>$2,130,000.00</td>
</tr>
<tr>
<td>24</td>
<td>Total</td>
<td>$2,100,000.00</td>
</tr>
<tr>
<td>25</td>
<td>Health P.E. Building</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>26</td>
<td>Land Acquisition</td>
<td>$100,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$2,100,000.00</td>
</tr>
<tr>
<td>27</td>
<td>Science Building</td>
<td>$1,800,000.00</td>
</tr>
<tr>
<td>28</td>
<td>Total</td>
<td>$1,900,000.00</td>
</tr>
<tr>
<td>29</td>
<td>Science Building</td>
<td>$4,000,000.00</td>
</tr>
<tr>
<td>30</td>
<td>Total</td>
<td>$4,850,000.00</td>
</tr>
<tr>
<td>31</td>
<td>Maintenance Building</td>
<td>$1,400,000.00</td>
</tr>
<tr>
<td>32</td>
<td>Total</td>
<td>$1,855,000.00</td>
</tr>
</tbody>
</table>

Note: The table continues with similar entries for each college.
West Liberty State College

50 Library—Classroom Building ........................................... $ 1,800,000.00
51 Maintenance Building ...................................................... 300,000.00
52 Renovation Main Hall ..................................................... 250,000.00
53 Renovation Annex II ....................................................... 100,000.00

54 Total .................................................................................. $ 2,450,000.00

West Virginia State College

56 Land Acquisition ............................................................... $ 130,000.00
57 Classroom-Office Building ................................................. 2,300,000.00

58 Total .................................................................................. $ 2,430,000.00

Fairmont State College

60 Health, P.E. Building .......................................................... $ 1,000,000.00

61 West Virginia Institute of Technology

62 Community and Technical College ...................................... $ 1,000,000.00

63 Total .................................................................................. $ 27,223,200.00

As required by law, the above projects are listed in a stated order of priority. The appropriation on lines 1 through 16 is to be paid on a cash basis, and the costs of projects on lines 19 through 62 are to be paid from the proceeds of revenue bonds issued as authorized by law. It is intended that only complete and usable units or projects be constructed and then only in the listed order of priority: Provided, however, That whenever the amount in the Capital Improvement Fund, including both cash collections and the proceeds of bonds sales, shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them, or any one or more, may be constructed as soon as plans can be prepared and contracts let therefor.

The total amount of this appropriation shall be paid from the nonrevolving Capital Im-
provement Fund created by the 1959 Legislature, amended by the 1963 Legislature.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1966-67 is hereby reappropriated for expenditure during the fiscal year 1967-68.

148—West Virginia University—Medical School
Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Supplemental Retirement</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Social Security</td>
<td>$111,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Physical Planning</td>
<td>$2,280.00</td>
</tr>
<tr>
<td>4</td>
<td>Purchasing Inventory</td>
<td>$22,302.00</td>
</tr>
<tr>
<td>5</td>
<td>Registrar</td>
<td>$19,950.00</td>
</tr>
<tr>
<td>6</td>
<td>Medical Center Library</td>
<td>$52,888.00</td>
</tr>
<tr>
<td>7</td>
<td>Physical Plant</td>
<td>$238,600.00</td>
</tr>
<tr>
<td>8</td>
<td>Animal Quarters</td>
<td>$16,012.00</td>
</tr>
<tr>
<td>9</td>
<td>Multilith Department</td>
<td>$5,300.00</td>
</tr>
<tr>
<td>10</td>
<td>Electronics Laboratory</td>
<td>$14,910.00</td>
</tr>
<tr>
<td>11</td>
<td>Academic Communication</td>
<td>$8,450.00</td>
</tr>
<tr>
<td>12</td>
<td>Medical Center Information (News Media)</td>
<td>$20,240.00</td>
</tr>
<tr>
<td>13</td>
<td>Photography and Illustrations</td>
<td>$23,520.00</td>
</tr>
<tr>
<td>14</td>
<td>Vice President's Office</td>
<td>$53,109.00</td>
</tr>
<tr>
<td>15</td>
<td>School of Medicine Administration</td>
<td>$1,407,370.00</td>
</tr>
<tr>
<td>16</td>
<td>Medical Technology</td>
<td>$45,948.00</td>
</tr>
<tr>
<td>17</td>
<td>School of Dentistry</td>
<td>$587,868.00</td>
</tr>
<tr>
<td>18</td>
<td>School of Nursing</td>
<td>$238,340.00</td>
</tr>
<tr>
<td>19</td>
<td>School of Pharmacy</td>
<td>$18,240.00</td>
</tr>
<tr>
<td>20</td>
<td>Medical Biochemistry</td>
<td>$849,523.00</td>
</tr>
<tr>
<td>21</td>
<td>University Hospital</td>
<td>$3,386,250.00</td>
</tr>
<tr>
<td>22</td>
<td>Other Operating Expenses</td>
<td>$2,800,000.00</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$9,997,100.00</strong></td>
</tr>
</tbody>
</table>

Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Board of Governors of West Virginia University and approval of the Board of Public Works.
149—Workmen’s Compensation Commission
Acct. No. 900

TO BE PAID FROM WORKMEN’S COMPENSATION FUND

1 Personal Services ......................... $ 908,000.00
2 Current Expenses ......................... 282,730.00
3 Equipment ............................... 14,189.00
4 Social Security Matching Fund .......... 35,000.00
5 Public Employees Retirement Matching Fund ...... 44,081.00

6 Total ...................................... $ 1,284,000.00

7 There is hereby authorized to be paid out of
8 the above appropriation for current ex-
9 penses the amount necessary for the premi-
10 ums on bonds given by the State Treasurer
11 and bond custodian for the protection of the
12 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-seven to supplement the
6 1966-67 appropriations, and to be available for expenditure
7 upon date of passage.

150—Governor’s Office
Acct. No. 120

1 Civil Contingent Fund ...................... $ 115,000.00
2 Any unexpended balance remaining in this
3 appropriation at the close of the fiscal year
4 1966-67 is hereby reappropriated for ex-
5 penditure during the fiscal year 1967-68.

151—State Tax Department
Acct. No. 180

1 Equipment .................................. $ 93,500.00

152—Department of Finance and Administration
Acct. No. 210

1 Records Management ...................... $ 15,000.00
153—Department of Education—Aid for Exceptional Children
Acct. No. 296

1 Out-of-State Instruction ........................................ $ 24,000.00

154—West Virginia Schools for the Deaf and Blind
Acct. No. 333

1 Repairs for heating system ....................................... $ 25,000.00

155—West Liberty State College
Acct. No. 323

1 Purchase of Library Books and Laboratory Equipment to be used on the Wheeling Campus ...................... $ 12,050.00
4 The above appropriation is from proceeds of sale of property at 2227 Chapline Street, Wheeling, West Virginia.

156—West Virginia Institute of Technology
Acct. No. 327

1 Purchase of Land and Improvements thereto .................. $ 21,175.00
2 The above appropriation is from proceeds of right-of-way for State Route 61.

157—West Virginia Penitentiary
Acct. No. 375

1 Building Repairs and Alterations ................................ $ 30,000.00

158—West Virginia Children’s Home
Acct. No. 380

1 To construct and equip school Building ....................... $ 37,800.00

159—Department of Welfare
Acct. No. 405

1 Medical Services .................................................. $ 2,000,000.00
2 General Relief ...................................................... 200,000.00
3 Total ...................................................................... $ 2,200,000.00
### 160—Weston State Hospital

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>420</td>
<td>$204,294.00</td>
<td>$74,800.00</td>
<td>$279,094.00</td>
</tr>
</tbody>
</table>

### 161—Department of Labor

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Equipment</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>450</td>
<td>$21,000.00</td>
<td>$13,000.00</td>
<td>$4,000.00</td>
<td>$38,000.00</td>
</tr>
</tbody>
</table>

### 162—Department of Commerce

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Current Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>465</td>
<td>$4,000.00</td>
<td>$4,000.00</td>
</tr>
</tbody>
</table>

### 163—Department of Natural Resources

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Personal Services</th>
<th>Current Expenses</th>
<th>Repairs and Alterations</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>565-11</td>
<td>$69,000.00</td>
<td>$50,000.00</td>
<td>$3,000.00</td>
<td>$122,000.00</td>
</tr>
</tbody>
</table>

### 164—West Virginia Alcohol Beverage Control

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>837</td>
<td>$18,273.00</td>
</tr>
</tbody>
</table>

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

From the funds designated there are hereby appropriated for the remainder of the fiscal year 1966-67, and to remain in effect until June 30, 1968, for payment of claims against the state, the following amounts as itemized.

**Claims versus Secretary of State**

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson-Watson Printing Co.</td>
<td>$9,702.76</td>
</tr>
<tr>
<td>Casto &amp; Harris, Inc.</td>
<td>$2,711.13</td>
</tr>
</tbody>
</table>
Claims versus the State Tax Commissioner
TO BE PAID FROM GENERAL REVENUE FUND
1 Jackson Pipeline Construction Co. $ 5,521.37
2 Jones Motor Co., a corporation 366.84
3 Lewis J. Fuccy, d/b/a Weston Stone Co. 3,555.17
4 Pipeline Maintenance & Construction Co. 5,198.05
5 John Murphy 5,400.00

Claims versus Department of Public Institutions
TO BE PAID FROM GENERAL REVENUE FUND
1 Kenneth E. and Audrey Getz, and Alma and Betty Green $ 90.00
2 Robert H. Doan 209.59

Claims versus the Department of Health
TO BE PAID FROM GENERAL REVENUE FUND
1 Dr. Gerald R. Guine $ 7,890.87

Claims versus the Department of Welfare
TO BE PAID FROM GENERAL REVENUE FUND
1 Claudis Van Meter, owner of Van Meter's Cold & Dry Storage $ 1,400.00
2 R. W. Ashworth Construction, Inc. 54,862.02
3 Robert Larrabee 5,000.00
4 Fay M. Henson 1,170.00

Claims versus the Department of Mental Health
TO BE PAID FROM GENERAL REVENUE FUND
1 First National Bank of Philippi $ 3,200.00
2 Schering Corporation 27.86

Claims versus Vocational Rehabilitation
TO BE PAID FROM GENERAL REVENUE FUND
1 Herbert J. Thomas Memorial Hospital $ 161.40
2 Cooke & Pauley Funeral Home 65.75

Claims versus the Department of Mines
TO BE PAID FROM GENERAL REVENUE FUND
1 Laird Office Equipment Company $ 76.90

Claims versus Department of Commerce
TO BE PAID FROM GENERAL REVENUE FUND
1 L. D. Van Osdo $ 700.00
2 Elk Refining Co. 20.00
### Claims versus the Department of Natural Resources

**TO BE PAID FROM GENERAL REVENUE FUND**

1. Michael Lombard, an infant, through his mother, Mrs. Lauretta D. Lombard: $214.00
2. Appalachian Power Company: $317.88
3. Point Towing Company: $20,500.00

### Claims versus the State Road Commission

**TO BE PAID FROM STATE ROAD FUND**

1. Mrs. T. E. Williams: $48.33
2. Carroll Eugene Luttrell: $50.65
3. Archie V. Iddings, C. R. Iddings, R. M. Iddings, Billie Iddings: $25.00
4. Mrs. Mildred J. Saul, Administratrix of the Estate of W. D. Saul: $175.00
5. Eugene W. Collins: $75.00
6. Harlan Collins: $75.00
7. Bennie Cline Pennington: $95.05
8. Noah Rose: $300.00
9. Arthur Charles: $200.00
10. Otis Skeans: $82.19
11. Oscar L. Davis: $19.65
12. Winnie L. Hearn: $500.00
13. B. T. Reed: $115.02
14. Manuel Sias: $225.00
15. Ollie Jones: $110.75
16. Edward E. Martin: $27.82
17. Richard H. Ashby: $45.34
18. Roy A. Harrison: $56.99
19. Mrs. Jacob Moales: $30.80
20. L. B. Hunt: $100.00
21. C & O Railway Co.: $822.42
22. Edwin L. Legg: $594.00
23. Vernon G. Deese & Christina H. Deese: $53.59
24. Charles E. Jordan: $63.39
25. Alfred L. Cook: $36.05
26. Larry M. Baker & Wilda B. Baker: $900.00
27. Edward Hall: $205.98
28. Albert W. Shughart: $37.00
### Appropriations

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<td>Nay Flesher, Jr.</td>
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<td>Gabriel Harris &amp; Evelyn Harris</td>
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### Claims versus the Department of Motor Vehicles

**TO BE PAID FROM STATE ROAD FUND**

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<th>Number</th>
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<tr>
<td>1</td>
<td>International Business Machines Corp.</td>
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<td>R. L. Polk &amp; Co.</td>
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<td>Joe L. Smith, Jr., Inc.</td>
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<td>Remington Records Retrieval</td>
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<td>Lewis Chevrolet Company</td>
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<td>Pitney-Bowes, Inc.</td>
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<td>Xerox Corporation</td>
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<td>Humble Oil &amp; Refining Co.</td>
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<td>National Cash Register Co.</td>
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<td>Mrs. Bobbie Bayliss</td>
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Claims versus West Virginia Board of Education

TO BE PAID FROM GENERAL REVENUE FUND

1 Continental Can Company, Inc. $ 5,974.82
2 Stuart-McMunn Company $ 6,750.00

Claims versus the Department of Welfare

TO BE PAID FROM SPECIAL COUNTY GENERAL RELIEF FUND

1 R. W. Ashworth Construction, Inc. $ 56,392.42
2 Tygart Realty, Inc. $ 2,500.00
3 M. O. Abdoney $ 6,600.00

Sec. 5. Reappropriations.—The date for expiring the unexpended balances, if any, in item 39, in the appropriations made by and under authority of Section 6 of the 1964 Budget Act and items I, II, III, V, XVI and XVII in the appropriations made by and under authority of Section 6 of the 1965 Budget Act are hereby reappropriated from their respective dates of expiration to June 30, 1968.

Item III—Governor's Office as herein reappropriated may be used to match and aid Federal Programs, and any part of this appropriation may be transferred to any department for such purposes.

Item 151—Forestry Camp for Boys in the supplemental and deficiency appropriation in the 1966 Budget Act is deemed not to have expired in accordance with section twelve, article three, chapter twelve, code of West Virginia, one thousand nine hundred thirty-one, as amended.

Sec. 6. Special Revenue Appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred sixty-eight appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of chapter 12, article 2, section 2, of the code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of chapter 12, articles 2 and 3, chapter 5, article 4 and chapter 5-A, article 2, of the code of West Virginia, unless the spending unit has filed with the
state director of the budget and the state auditor prior to the
beginning of each fiscal year:
(a) An estimate of the amount and sources of all revenues
accruing to such fund;
(b) A detailed expenditure schedule showing for what
purposes the fund is to be expended.

Sec. 7. Specific Funds and Collection Accounts.—A fund
or collection account, which by law is dedicated to a specific
use is hereby appropriated in sufficient amount to meet all
lawful demands upon the fund or collection account, and
shall be expended according to the provisions of chapter 12,
article 3, of the code of West Virginia.

There is hereby appropriated to Marshall University the
sum of $100,000.00 representing interest earned on construc-
tion funds in the hands of the State Sinking Fund Com-
mission for the purpose of purchasing additional land and/
or equipment, and/or for matching federal funds which
may become available, all for the purpose of improving
existing facilities at Marshall University.

Sec. 8. Appropriation for Refunding Erroneous Payments.
—Money that has been erroneously paid into the state treas-
ury is hereby appropriated out of the fund into which it
was paid for refund to the proper person.

When the officer authorized by law to collect money for
the state finds that a sum has been erroneously paid, he shall
issue his requisition upon the auditor for the refunding of
the proper amount. The auditor shall issue his warrant to
the treasurer and the treasurer shall pay the warrant out of
the fund into which the amount was originally paid.

Sec. 9. Sinking Fund Deficiencies.—There is hereby ap-
propriated to the Board of Public Works a sufficient amount
to meet a deficiency that may arise in the funds of the State
Sinking Fund Commission because of the failure of any state
agency for either general obligation or revenue bonds or any
local taxing district for general obligation bonds to remit
funds necessary for the payment of interest and sinking fund
requirements. The Board of Public Works is authorized to
transfer from time to time such amounts to the State Sink-
ing Fund Commission as may be necessary for this purpose.
The State Sinking Fund Commission shall reimburse the State of West Virginia through the Board of Public Works from the first remittance collected from any state agency or local taxing district for which the Board of Public Works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 10. Appropriations from Taxes and License Fees.—There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the Tax Commissioner through the state treasury out of gross collections.

Sec. 11. Appropriations to Pay Costs of Publications of Delinquent Corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the auditor and/or the Governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by chapter 11, article 12, sections 75 and 77, of the code of West Virginia.

Sec. 12. Appropriations for Local Governments.—There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district, and municipal corporations and which have been paid into the treasury:
(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 13. Total Appropriations.—Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay, except as otherwise provided in Title I, Section 3.

Sec. 14. General School Fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with chapter 18, article 9, section 6, of the code of West Virginia.
TITLE 3. ADMINISTRATION.

Section 1. Appropriations Conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of chapter 5, article 4 and chapter 5-A, article 2, of the code of West Virginia.

Where former spending units have been absorbed by or combined with other spending units by acts of this Legislature, it is the intent of this act that reappropriation shall be to the succeeding or later spending unit created unless 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 portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 19

(House Bill No. 900—By Mr. Myles)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, creating the West Virginia historic commission, and to amend article one, chapter twenty-nine of said code, by adding to said article one, five new sections, designated sections four, five, six, seven and eight, establishing within the department of archives and history a division of historic road markers, providing that the state historian and archivist shall be director of
the division, declaring legislative determination and policy, prescribing powers and duties of the director, imposing certain responsibilities upon the state road commissioner; creating an advisory committee; and providing for a special highway marker fund.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one, chapter twenty-nine of said code be amended by adding thereto five new sections, designated sections four, five, six, seven and eight, to read as follows:

ARTICLE 1. DEPARTMENT OF ARCHIVES AND HISTORY.

Section

4. Division of historic road markers—created; state historian and archivist director.
5. Same—legislative determination and declaration of policy.
6. Same—powers and duties of director, assistance of state road commissioner; acceptance of gifts, donations, contributions, bequests or devises; publication of marker booklet.
7. Same—advisory committee.
8. Same—special fund created.

§29-1-4. Division of historic road markers—Created; state historian and archivist director.

There is hereby created and established within the department of archives and history a division of historic road markers. The state historian and archivist shall be ex officio the director of the division, and is hereinafter referred to as the director.

§29-1-5. Same—Legislative determination and declaration of policy.

It is hereby declared as a matter of legislative determination and policy:

(a) That the state of West Virginia, being richly endowed in historic achievement, should erect and maintain adequate and appropriate historic markers along its roads and highways to point out to tourists and identify for future generations the important role played by the state in the development of the United States of America.
(b) That since in past years several hundred historic road markers have been placed along the highways of the
state, many of which have only recently been repaired
and renovated, it is necessary to create an agency au-
thorized and empowered to preserve and maintain such
markers and to place such additional markers at appro-
priate places as shall be determined fitting and appro-
priate.

§29-1-6. Same—Powers and duties of director; assistance of
state road commissioner; acceptance of gifts, dona-
tions, contributions, bequests or devises; publication
of marker booklet.

The director shall be authorized and empowered to
purchase new historical road markers; replace old histori-
cal road markers; protect, preserve and display the Fair-
fax stones; purchase historical road markers for new
highways, and, with the consent of the West Virginia
turnpike commission, purchase historical road markers
for said turnpike; and formulate and prepare appropriate
copy for such markers.

The director shall determine the location of such mark-
ers, and it shall be the duty and responsibility of the
state road commissioner to handle the actual physical
placement thereof, the painting and repainting thereof
and the general maintenance of such markers. The cost
of such placement, painting and maintenance shall be
paid out of the appropriation made for such purposes.

The director is also authorized and empowered, with
the consent of the governor, to accept and receive gifts,
donations, contributions, bequests or devises of money,
security, or property, both real and personal, or any
interest therein; and said director may accept, receive
and administer same subject to any terms, limitations,
or restrictions placed thereon by the donor.

The director is authorized to publish and revise from
time to time a booklet entitled "West Virginia Historic
and Scenic Highway Markers," or any other document
deemed to be consistent with his powers and duties. The
director may establish a reasonable price for such book-
let or other document published and sell the same. Any
money received from the sale of such booklet or docu-
ments shall be deposited in the special fund hereinafter
created.
§29-1-7. Same—Advisory committee.
1 There is hereby created an advisory committee of five
2 members to advise and make recommendations to the
3 director with respect to his duties regarding historic road
4 markers.
5 The members of the committee shall be the state road
6 commissioner, the commissioner of the department of
7 commerce, the commissioner of motor vehicles, and two
8 members of the West Virginia historical society. The
9 two members of the West Virginia historical society
10 shall be appointed and their appointments furnished to
11 the director in writing by the president of said society.
12 The members of said committee shall serve without pay,
13 but shall be entitled to reimbursement for actual ex-
14 penses incurred in the performance of duties authorized
15 and approved by the director.

§29-1-8. Same—Special fund created.
1 There is hereby created a special revenue fund to be
2 designated the “Historic Highway Marker Fund.” All
3 moneys appropriated by the Legislature for the purposes
4 set out herein and received from the sale of publications
5 authorized by section six shall be deposited in said fund
6 and shall be expended therefrom for authorized pur-
7 poses only.

CHAPTER 20
(Senate Bill No. 168—By Mr. Kaufman and Mr. Hubbard)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article seventeen, relating to the creation of an arts and
humanities council; specifying its powers and duties;
authorizing the council to employ an executive director
and other personnel; and authorizing the council to make
cash awards in certain instances.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. THE WEST VIRGINIA ARTS AND HUMANITIES COUNCIL.

Section 1. Creation; appointment and terms of members; organization; reimbursement for expenses.
2. Powers and duties of the council.
3. Council administrative personnel.
4. Hearings; power of council to contract and accept funds; assistance from other departments.
5. Receipt and disbursement of federal funds.
7. State aid to arts; monetary and other premiums or prizes authorized.

§29-17-1. Creation; appointment and terms of members; organization; reimbursement for expenses.

There is hereby created within the department of commerce an arts and humanities council to be known as “The West Virginia Arts and Humanities Council,” to consist of fifteen members, to be appointed by the governor, by and with the advice and consent of the senate, from among the citizens of the state. The members of the council shall elect the council chairman and such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred sixty-seven, five to serve for a term of one year, five to serve for a term of two years, and the remaining five to serve for a term of three years. The successors of the members initially appointed as provided herein, shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his successor.

No member shall receive any salary for his services, but each shall be reimbursed for actual and necessary expenses incurred by him in the performance of his duties.
§29-17-2. Powers and duties of the council.

It shall be the duty of the council:

(a) To take such steps as may be deemed necessary and appropriate to stimulate and encourage the study and presentation of the performing and creative arts, and to foster public interest in and support of the arts in this state.

(b) To make such surveys, as may be deemed advisable, of public and private institutions within the state engaged in the performing and creative arts, and to make recommendations for appropriate action to enlarge the state's resources in the performing and creative arts.

(c) To encourage and assist freedom of expression in the performing and creative arts.

(d) To encourage the use of local resources for the development and support of the arts.

(e) To promote and stimulate public understanding and recognition of the importance of West Virginia cultural institutions.

(f) To encourage and foster the growth and development of local cultural institutions and agencies, both public and private.

(g) To stimulate and facilitate the touring of professional and nonprofessional performances and exhibits to local communities.

(h) To encourage and develop performances and exhibits of the arts by teachers and students, and to encourage the practice as well as the teaching of the arts.

The council shall report in writing to the governor as soon as possible after the close of each fiscal year. The report shall contain a summary of the council's proceedings and activities during the preceding fiscal year, and such other information as may be deemed necessary and useful.

§29-17-3. Council administrative personnel.

The council may employ an executive director and such other personnel as may be deemed necessary to accomplish its objectives. All persons so employed by the council shall be employed under the state civil service
§29-17-4. Hearings; power of council to contract and accept funds; assistance from other departments.

The council shall be authorized and empowered to hold public and private hearings and to enter into contracts with individuals, organizations, and institutions for services or endeavors furthering the objectives of the council's programs; to accept gifts, grants and bequests of funds from individuals, foundations, corporations, governmental agencies, and other organizations or institutions; to make and sign any agreements and to do and perform any acts that may be necessary to carry out the purposes of this article. The council may request and shall receive from any department or agency of the state government such assistance, information and advice as will enable it to carry out its powers and duties hereunder.

§29-17-5. Receipt and disbursement of federal funds.

The council shall be the official agency of this state to receive and disburse all funds made available to the state government by the national endowment for the arts or by any successor agency, or from any other similar federal agency.

§29-17-6. Rules and regulations.

The council shall adopt rules and regulations concerning the operation of the council, the functions and responsibilities of its officers and employees and such other matters as may be necessary to carry out the purpose of this article.

§29-17-7. State aid to arts; monetary and other premiums or prizes authorized.

For the purpose of encouraging the arts and humanities in this state and fostering public interest therein, the council is hereby authorized, within the limits of available funds, to make awards as premiums or prizes for exhibits in either the performing or creative arts. Such awards may be made either directly to the performer or artist, or may be made in the form of grants to public or private
corporations or associations, local or otherwise, whose objects and purposes are the encouragement and development of the arts, and which are sponsoring or conducting art exhibits, fairs or competition.

The council shall govern the granting and disposition of such grants, premiums or prizes by general rules and regulations.

CHAPTER 21
(House Bill No. 706—By Mr. Speaker, Mr. White, and Mr. Cann)

[Passed March 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article eight, 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 forty-six, relating to machine operations, sales and services, limitations.

Be it enacted by the Legislature of West Virginia:

That article eight, 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 forty-six to read as follows:

ARTICLE 8. BUSINESS OPERATIONS AND SUPERVISION OF BANKING INSTITUTIONS, INDUSTRIAL LOAN COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Section 46. Sale of machine operations, and services; limitations.

§31-8-46. Sale of machine operations, and services; limitations.

Any banking institution or institutions, or institution or institutions jointly with a national banking association or associations, owning, leasing or renting, directly or through a subsidiary corporation wholly owned by it or them, computer, bookkeeping, or other like or similar machines or equipment for its or their own business operations, may contract for the sale of and sell the services, use and products of the machines or equipment to other financial institutions and businesses, upon such
10 terms and conditions as may be the subject of agreement
11 between the parties, but only when the use and services
12 of the machines and equipment are not employed in the
13 orderly operations of such banking institution, institu-
14 tions, association or associations: Provided, That any
15 such sale to a business shall be conditioned upon the
16 supervision by the certified public accountant or public
17 accountant, if any, of the business, of the work to be
18 done other than the planning and programming of the
19 work and the operation of the machines and equipment.

CHAPTER 22
(Senate Bill No. 100—By Mr. Moreland)

(Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.)

AN ACT to amend and reenact section three, article fourteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment, qualifications, terms, officers, powers and duties of the state committee of barbers and beauticians and increasing compensation of members of said committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. BARBERING, BEAUTY CULTURE AND MANICURING.
Section
3. Appointment, qualifications and terms of committee members; chairman; secretary; compensation and expenses of members; powers and duties of committee; inspectors.

§16-14-3. Appointment, qualifications and terms of committee members; chairman; secretary; compensation and expenses of members; powers and duties of committee; inspectors.

The committee shall consist of the director of health, ex officio, and four other members to be appointed by the governor, by and with the advice and consent of the
senate, to serve at the will and pleasure of the governor. Of the four members thus appointed, one shall be an employing barber, one an employee barber, one an employing beautician, and one an employee beautician. Each member of the committee so appointed shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of eight years immediately prior to his appointment, and not more than two of the four members of the committee so appointed shall belong to the same political party.

On or before the thirtieth day of June of each year the governor shall appoint one member of the committee to serve for a term of four years, to begin on the first day of July. Any member of the committee shall be eligible for reappointment.

The director of health shall be ex officio chairman of the committee, and the enforcement of all rules and regulations promulgated by the committee pertaining to sanitary conditions of barbering and beauty shops and pertaining to the registration and qualifications of barbers, beauticians and manicurists shall be under his supervision and direction; no order, rule or regulation promulgated by the committee shall be in force and effect until approved by the director of health. The committee shall designate one of its members, or some other person, to act as secretary of the committee, and it shall be the duty of the secretary to perform such duties as may be prescribed by the committee.

Each member of the committee, except the chairman, shall receive as compensation a per diem of twenty-five dollars for each day he is in attendance upon the sessions of the committee, but such compensation for each member shall not exceed the sum of five hundred dollars in any calendar year. Each member shall be reimbursed for actual and necessary expenses incurred in the performance of his duties, upon presentation of an itemized sworn statement thereof.

The committee shall examine all applicants for certificates of registration and shall issue certificates to those
entitled thereto; collect examination and registration fees; promulgate rules and regulations governing the operation of barbershops, beauty shops, and schools of barbering and beauty culture, including the prescribing of curriculums and standards of instructions for such schools; promulgate rules and regulations for the physical examination of barbers, beauticians, manicurists, junior barbers and beauticians, and students, and fix the standard form of report of such examinations; establish and enforce sanitary regulations in barbershops, beauty shops, and schools of barbering and beauty culture; enforce all such rules and regulations as are herein authorized; and do all other things necessary to effectuate the purposes of this article in the interest and protection of public health.

The director of health shall appoint not to exceed six inspectors, who shall be registered barbers and beauticians of this state, as herein provided, and it shall be their duty to make frequent inspections of all barber and beauty shops, and all schools of barbering and beauty culture in this state, and to report all violations to the director of health. The salaries and allowances for expenses of such inspectors shall be that fixed and allowed by the director of health and approved by the director of the budget, pursuant to his power to classify employment in the state government and its agencies.

CHAPTER 23

(Com. Sub. for Senate Bill No. 101—By Mr. Moreland)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fourteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the management of barber and beauty shops; restricting other businesses from being carried on in barber and beauty shops; relating to the physical arrangement of barber and beauty shops; prohibiting signs advertising prices; and regulating employment of junior beauticians.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. BARBERING, BEAUTY CULTURE AND MANICURING.

Section 9. Shop to be managed by registered barbers and beauticians; number of junior barbers and beauticians permitted; restrictions as to other businesses; sign; advertising of prices prohibited.

§16-14-9. Shop to be managed by registered barbers and beauticians; number of junior barbers and beauticians permitted; restrictions as to other businesses; sign; advertising of prices prohibited.

Every barber or beauty shop in this state shall be operated under the supervision and management of a barber or beautician who is registered as such in this state. Each barbershop in this state may employ at least one junior barber therein. However, in shops regularly employing more than three registered barbers only one such junior barber may be employed for every three such registered barbers, but in no event can more than three such junior barbers be employed in any one barbershop, and each beauty shop shall have the right to employ one junior beautician for each registered beautician therein. No business or trade other than that of barbering shall be conducted in a barbershop and no business or trade other than that of beauty culture shall be conducted in a beauty shop, except the display and/or sale of commodities or other articles used in connection with barbering or beauty culture, and no such barber or beauty shop shall be operated in a store, dwelling house, or other building or space used for any purpose other than barbering or beauty culture unless such barber or beauty shop is separated by stationary partitions extended from floor to ceiling: Provided, That nothing herein contained shall be construed as prohibiting a barbershop from carrying on the business of shoe shining or manicuring or both shoe shining and manicuring. A suitable sign shall be displayed at the main entrance of all barber and beauty shops, plainly indicating the business conducted therein:
Provided, however, That no sign shall be displayed outside any barber or beauty shop or inside the same, so as to be clearly visible from the outside and for the ostensible purpose of attracting trade, which in any way advertises the prices to be charged in such barber or beauty shop for services to be therein performed.

CHAPTER 24

(Senate Bill No. 49—By Mr. Gainer and Mr. Carrigan)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the membership, powers and duties of the state building commission of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of the state office building commission changed; members; chairman and secretary; expenses; powers and duties generally.

“The State Office Building Commission of West Virginia,” heretofore created, shall continue in existence but on and after the effective date of this section shall be known and designated as “The State Building Commission of West Virginia” and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the effective date of this section, the commission shall consist of the governor, and four additional members to be appointed by the governor, by and with the advice and consent of the senate. The terms of office
for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years, respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees of the executive, legislative or judicial branches of government of West Virginia or any political subdivision thereof. The governor shall be chairman of the commission. The secretary of state shall be a member of the commission and serve as its secretary, but shall not have the right to vote upon matters before the commission. All members of the commission shall be citizens and residents of this state. The members of the commission shall be paid or reimbursed for their necessary expenses incurred under this article, but shall receive no compensation for their services as members or officers of the commission: Provided, however, That each member of the commission appointed by the governor shall, in addition to such reimbursement for necessary expenses receive a per diem of thirty-five dollars for each day or substantial portion thereof that he is engaged in the work of the commission. Such expenses and per diem shall be paid solely from funds provided under the authority of this article, and the commission shall not proceed to exercise or carry out any authority or power herein given it to bind said commission beyond the extent to which money has been provided under the authority of this article. The commission shall have the duties, powers and responsibilities provided for in this article.

CHAPTER 25

(House Bill No. 977—By Mr. Speaker, Mr. White)

(Passed March 11, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section seven, article six, chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the duties, powers and responsibilities of the state building commission with respect to the issuance of revenue bonds and the maximum interest rate thereon, eligibility of such bonds as investments for workmen's compensation fund and certain retirement funds established by law, use of such bonds as security for deposit of public funds, and the acceptance of gifts and grants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

Section 7. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-7. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

1 The commission is hereby empowered to raise the cost of a project, as defined hereinabove, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall be authorized by resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any funds, grant or grants, gift or gifts received, or in the opinion of the commission expected to be received from the United States of America or from any other source. The acceptance by the commission of any and all such funds, grants and gifts, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments. Such bonds shall bear interest at not more than five per cent
per annum, payable semiannually, and shall mature in
not more than twenty-five years from their date or dates,
and may be made redeemable at the option of the state,
to be exercised by the commission, at such price and
under such terms and conditions as the commission may
fix prior to the issuance of such bonds. The commis-
sion shall determine the form of such bonds, including
coupons to be attached thereto to evidence the right of
interest payments, which bonds shall be signed by the
chairman and secretary of the commission, under the
great seal of the state, attested by the secretary of state,
and the coupons attached thereto shall bear the facsimile
signature of said chairman of the commission. In case
any of the officers whose signatures appear on the bonds
or coupons issued as hereinbefore authorized shall cease
to be such officers before the delivery of such bonds, such
signatures shall nevertheless be valid and sufficient for
all purposes the same as if they had remained in office
until such delivery. The commission shall fix the de-
nominations of said bonds, the principal and interest of
which shall be payable at the office of the treasurer of
the state of West Virginia, at the capitol of said state,
or, at option of the holder, at some bank or trust com-
pany in the city of New York to be named in the bonds
in such medium as may be determined by the commis-
sion. The said bonds and interest thereon shall be exempt
from taxation by the state of West Virginia, or any county
or municipality therein. The commission may provide for
the registration of such bonds in the name of the owner as
to principal alone, and as to both principal and interest
under such terms and conditions as the commission may
determine, and shall sell such bonds in such manner as
it may determine to be for the best interest of the state,
taking into consideration the financial responsibility of
the purchaser, and the terms and conditions of the pur-
chase, and especially the availability of the proceeds
of the bonds when required for payment of the cost of
the project, such sale to be made at a price not lower than
a price which, computed upon standard tables of bond
values, will show a net return of not more than five per cent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project for which bonds were issued, and shall be deposited and checked out as provided by section four of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Revenue bonds issued under the authority herein granted shall be eligible as investments for the workmen's compensation fund, teachers' retirement fund, department of public safety death, disability and retirement fund, West Virginia public employees' retirement system and as security for the deposit of all public funds. Such revenue bonds may be issued without any other proceedings or the happenings of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state: Provided, That the aggregate amount of all issues of bonds outstanding at one time for all projects authorized hereunder shall not exceed twenty-five million dollars including the renegotiation, reissuance or refinancing of any such bonds: Provided, however, That no bonds or other obligations shall be issued or incurred hereunder, unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project.
AN ACT to amend chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to the business of issuing and selling checks, drafts, money orders, personal money orders, or other instruments for the transmission or payment of money; requiring proof of financial responsibility to engage in such business and the deposit of adequate security; providing for an annual fee to engage in such business; providing certain exemptions; providing for judicial review; authorizing actions for injunctive relief; providing criminal penalties; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.

Section
1. Definitions.
2. Legislative findings and declaration of public policy.
3. Financial responsibility must be established and security given; fee required.
4. Persons who establish financial responsibility and give security may engage in business; agents need not comply with section three.
5. Exemptions.
7. Injunctive relief.
8. Penalties.

§32-4-1. Definitions.

As used in this article:

2 (1) “Person” means any individual, partnership, association, joint-stock association, trust, or corporation, but

3
does not include the United States of America, any department, agency, commission or officer thereof, the state of West Virginia, any department, agency, commission or officer thereof, or any political subdivision of or any municipality in this state;

(2) "Commissioner" means the commissioner of banking of this state;

(3) "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money;

(4) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission, or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person;

(5) "Securities" means all bonds, debentures or other evidences of indebtedness (a) issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by such other state and if such other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district or municipality in this state issued pursuant to law and payable from ad valorem taxes levied on all of the taxable property located therein, if such county, school district or municipality is not in default in the payment of any part of the principal or interest on any debt evidenced by its bonds, debentures or other evidences of indebtedness.

§32-4-2. Legislative findings and declaration of public policy.

The Legislature hereby determines and finds that many innocent persons in various states have suffered severe
financial losses as a result of financially irresponsible persons engaging in the business of issuing and selling checks; that many of these states have, following the discovery of such losses, promptly enacted legislation to assure that persons engaged in the business of issuing and selling checks are financially responsible; and that it is imperative that legislation be enacted to assure that persons engaged in the business of issuing and selling checks in this state are financially responsible. It is, therefore, declared to be the public policy of this state that the business of issuing and selling checks affects the general welfare of this state and its individual citizens; and that financial losses as aforesaid may best be prevented in this state and the interests of the citizens of this state best served by requiring persons now engaged or to be engaged in the business of issuing and selling checks to meet the requirements set forth in this article.

§32-4-3. Financial responsibility must be established and security given; fee required.

On and after the effective date of this article, no person shall engage in the business of issuing and selling checks as a service or for a fee or other compensation, unless (a) the net worth of such person is at all times at least fifty thousand dollars, computed according to generally accepted accounting principles and shown by financial statements filed with and satisfactory to the commissioner, and (b) such person either (1) keeps on deposit at all times with the commissioner, or a bank in this state designated by such person and approved for such purpose by the commissioner, one hundred thousand dollars in cash or securities satisfactory to the commissioner, or (2) posts and maintains with the commissioner at all times a surety bond in the penal sum of one hundred thousand dollars, in form and with conditions satisfactory to the commissioner and with corporate surety thereon authorized to do business in this state and acceptable to the commissioner. When securities are deposited as aforesaid, the value of such securities must at all times be one hundred thousand dollars, computed on the basis of the principal amount or the market value thereof, whichever is lower.
The deposit or bond, as the case may be, shall be for the benefit and protection of the purchasers or holders of checks sold in this state by the person making the deposit or posting the bond as principal, and the commissioner or any aggrieved person may by appropriate civil actions enforce claims on any such check or checks against such deposit or bond. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. So long as the person making a deposit is not in violation of any of the provisions of this article, such person shall be permitted to receive all interest and dividends on said deposit, and shall have the right, with the approval of the commissioner, to substitute other securities. If the deposit is made at a bank, any custodial fees therefor shall be paid by the person making such deposit. At the time any such deposit is made or any such bond is posted, and annually thereafter, the person making such deposit or posting such bond shall pay to the commissioner a fee of one hundred dollars. All such fees shall be deposited in the state treasury to the credit of the general revenue fund.

§32-4-4. Persons who establish financial responsibility and give security may engage in business; agents need not comply with section three.

Any person who complies with the provisions of section three of this article may engage in the business of issuing and selling checks at one or more locations in this state and through or by means of such agent or agents as such person may designate and appoint from time to time, and no such agent shall be required to comply with the provisions of said section three.

§32-4-5. Exemptions.

The provisions of section three of this article shall not apply to banks, trust companies, building and loan associations, savings and loan associations, industrial loan companies and small loan companies organized under
the laws of this state or authorized to do business in this
state, or to the receipt of money by an incorporated tele-
graph company at any office or agency thereof for trans-
mission by telegraph.

§32-4-6. Judicial review.

Any person aggrieved by any action of the commissioner-
er under the provisions of this article may appeal such
action by filing a petition, at the election of such person,
in either the circuit court of Kanawha county, West Vir-
ginia, or with the judge thereof in vacation, or in the cir-
cuit court of the county in which such person resides or
does business, or with the judge thereof in vacation, with-
in ninety days after such action.

The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme
court of appeals. Any such appeal shall be sought in the
manner and within the time provided by law for appeals
from circuit courts in other civil cases.

§32-4-7. Injunctive relief.

Whenever it appears to the commissioner that any per-
son has been or is violating or is about to violate any pro-
vision of this article, the commissioner may apply in the
name of the state, to the circuit court of the county in
which the violation or violations or any part thereof has
occurred, is occurring or is about to occur, or the judge
thereof in vacation, for an injunction against such person
and any other persons who have been, are or are about to
be involved in any practices, acts or omissions, so in viola-
tion, enjoining such person or persons from any such
violation or violations. Such application may be made
and prosecuted to conclusion whether or not any such
violation or violations have resulted or shall result in
prosecution or conviction under the provisions of section
eight of this article.

Upon application by the commissioner, the circuit courts
of this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article.
The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.
21 The judgment of the circuit court upon any application
22 permitted by the provisions of this section shall be final
23 unless reversed, vacated or modified on appeal to the
24 supreme court of appeals. Any such appeal shall be
25 sought in the manner and within the time provided by
26 law for appeals from circuit courts in other civil cases.

§32-4-8. Penalties.

Any person who directly or through another violates
2 or attempts to violate any provision of this article shall
3 be guilty of a misdemeanor, and, upon conviction thereof,
4 shall be punished by a fine of not less than one hundred
5 dollars nor more than one thousand dollars. Each transac-
6 tion in violation of this article and each day that a viola-
7 tion continues shall be a separate offense.

§32-4-9. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect the remainder of the article or the
4 application of such provision to other persons or circum-
5 stances, and to this end the provisions of this article are
6 declared to be severable.

CHAPTER 27

(Senate Bill No. 332—By Mr. Jackson)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal sections one, three, four, five, six, seven,
eight, nine, ten, eleven and twelve, article two, chapter
fourteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend said article
two by adding thereto twenty-eight new sections, design-
nated sections one, three, four, five, six, seven, eight, nine,
ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
seventeen, eighteen, nineteen, twenty, twenty-one, twenty-
two, twenty-three, twenty-four, twenty-five, twenty-six,
twenty-seven, twenty-eight and twenty-nine, creating a court of claims; providing a legislative purpose and definitions; providing for a clerk and other employees thereof; the terms and meeting place of said court, the compensation, oath and qualifications of the judges thereof; providing the general powers and jurisdiction of the court; establishing exclusions to the jurisdiction; providing for the rules of practice and procedure; establishing a regular procedure, shortened procedure, and advisory determination procedure; providing for claims under existing appropriations and special appropriations; establishing a period of limitation; providing for compulsory process, inclusion of awards in the budget, records to be preserved, and for the reports of the court; prohibiting fraudulent claims and providing a penalty and forfeiture upon conviction thereof; providing for the conclusiveness of the court's determination; specifying policy concerning awards; providing for representation of the state by the attorney general; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, six, seven, eight, nine, ten, eleven and twelve, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and to amend said article two by adding thereto twenty-eight new sections designated, sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

Section

1. Purpose.
2. Definitions.
3. Creation of court of claims; appointment and terms of judges; vacancies.
4. Court clerk and other personnel.
5. Terms of court.
6. Meeting place of the court.
7. Compensation of judges; expenses.
8. Oath of office.
10. Attorney general to represent state.
16. Regular procedure.
17. Shortened procedure.
18. Advisory determination procedure.
19. Claims under existing appropriations.
20. Claims under special appropriations.
21. Periods of limitation made applicable.
22. Compulsory process.
23. Inclusion of awards in budget.
24. Records to be preserved.
25. Reports of the court.
26. Fraudulent claims.
27. Conclusiveness of determination.
28. Award as condition precedent to appropriation.
29. Severability.

§14-2-1. Purpose.

The purpose of this article is to provide a simple and expeditious method for the consideration of claims against the state that because of the provisions of section thirty-five, article six of the constitution of the state, and of statutory restrictions, inhibitions or limitations, cannot be determined in the regular courts of the state; and to provide for proceedings in which the state has a special interest.


For the purpose of this article:

"Court" means the state court of claims established by section four of this article.

"Claim" means a claim authorized to be heard by the court in accordance with this article.

"Approved claim" means a claim found by the court to be one that should be paid under the provisions of this article.

"Award" means the amount recommended by the court to be paid in satisfaction of an approved claim.

"Clerk" means the clerk of the court of claims.

"State agency" means a state department, board, commission, institution, or other administrative agency of state government: Provided, That a "state agency" shall not be considered to include county courts, county boards of education, municipalities, or any other political or local subdivision of the state regardless of any state aid that might be provided.
§14-2-4. Creation of court of claims; appointment and terms of judges; vacancies.

The "Court of Claims" is hereby created. It shall consist of three judges, to be appointed by the president of the senate and the speaker of the house of delegates, by and with the advice and consent of the senate, one of whom shall be appointed presiding judge. Each appointment to the court shall be made from a list of three qualified nominees furnished by the board of governors of the West Virginia state bar.

The terms of the judges of this court shall be six years, except that the first members of the court shall be appointed as follows: One judge for two years, one judge for four years and one judge for six years. As these appointments expire, all appointments shall be for six-year terms. Not more than two of the judges shall be of the same political party. An appointment to fill a vacancy shall be for the unexpired term.

§14-2-5. Court clerk and other personnel.

The court shall have the authority to appoint a clerk. The clerk's salary shall be fixed by the joint committee on government and finance, and shall be paid out of the regular appropriation for the court. The clerk shall have custody of all records and proceedings of the court, shall attend meetings and hearings of the court, shall administer oaths and affirmations, and shall issue all official summonses, subpoenas, orders, statements and awards.

The joint committee on government and finance may employ other persons whose services shall be necessary to the orderly transaction of the business of the court, and fix their compensation.

§14-2-6. Terms of court.

The court shall hold at least two regular terms each year, on the second Monday in April and September. So far as possible, the court shall not adjourn a regular term until all claims then upon its docket and ready for hearing or other consideration have been disposed of.

Special terms or meetings may be called by the clerk at the request of the court whenever the number of claims
8 awaiting consideration, or any other pressing matter of
9 official business, make such a term advisable.

§14-2-7. Meeting place of the court.

The regular meeting place of the court shall be at the
2 state capitol, and the joint committee on government and
3 finance shall provide adequate quarters therefor. When
4 deemed advisable, in order to facilitate the full hearing
5 of claims arising elsewhere in the state, the court may
6 convene at any county seat.


Each judge of the court shall receive seventy-five dol-
2 lars for each day actually served, and actual expenses
3 incurred in the performance of his duties. The number of
4 days served by each judge shall not exceed one hundred
5 in any fiscal year, except by authority of the joint com-
6 mittee on government and finance. Requisitions for com-
7 pensation and expenses shall be accompanied by sworn
8 and itemized statements, which shall be filed with the
9 auditor and preserved as public records. For the purpose
10 of this section, time served shall include time spent in the
11 hearing of claims, in the consideration of the record, in
12 the preparation of opinions, and in necessary travel.


Each judge shall before entering upon the duties of his
2 office, take and subscribe to the oath prescribed by article
3 four, section five of the constitution of the state. The oath
4 shall be filed with the clerk.

§14-2-10. Qualifications of judges.

Each judge appointed to the court of claims shall be an
2 attorney at law, licensed to practice in this state, and
3 shall have been so licensed to practice law for a period of
4 not less than ten years prior to his appointment as judge.
5 A judge shall not be an officer or an employee of any
6 branch of state government, except in his capacity as a
7 member of the court and shall receive no other compensa-
8 tion from the state or any of its political subdivisions. A
9 judge shall not hear or participate in the consideration of
10 any claim in which he is interested personally, either di-
11 rectly or indirectly.
§14-2-11. Attorney general to represent state.

The attorney general shall represent the interests of the state in all claims coming before the court.


The court shall, in accordance with this article, consider claims which, but for the constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the court of claims approving a claim and recommending an award, unless the claim is (1) made under an existing appropriation, in accordance with section nineteen of this article, or (2) a claim under a special appropriation, as provided in section twenty of this article. The court shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. Each claim shall be considered by the court and if, after consideration, the court finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The court shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.


The jurisdiction of the court, except for the claims excluded by section fourteen, shall extend to the following matters:

1. Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state or any of its agencies, which the state as a sovereign commonwealth should in equity and good conscience discharge and pay.

2. Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, which may be asserted in the
Nature of set-off or counterclaim on the part of the state or any state agency.

3. The legal or equitable status, or both, of any claim referred to the court by the head of a state agency for an advisory determination.


The jurisdiction of the court shall not extend to any claim:

1. For loss, damage, or destruction of property or for injury or death incurred by a member of the militia or national guard when in the service of the state.

2. For a disability or death benefit under chapter twenty-three of this code.

3. For unemployment compensation under chapter twenty-one-a of this code.

4. For relief or public assistance under chapter nine of this code.

5. With respect to which a proceeding may be maintained against the state, by or on behalf of the claimant in the courts of the state.


The court shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the court. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his own behalf or be represented by counsel.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh, in accordance with its evidential value, any information that will assist the court in determining the factual basis of a claim.

§14-2-16. Regular procedure.

The regular procedure for the consideration of claims shall be substantially as follows:

1. The claimant shall give notice to the clerk that he desires to maintain a claim. Notice shall be in writing and
shall be in sufficient detail to identify the claimant, the circumstances giving rise to the claim, and the state agency concerned, if any. The claimant shall not otherwise be held to any formal requirement of notice.

2. The clerk shall transmit a copy of the notice to the state agency concerned. The state agency may deny the claim, or may request a postponement of proceedings to permit negotiations with the claimant. If the court finds that a claim is prima facie within its jurisdiction, it shall order the claim to be placed upon its regular docket for hearing.

3. During the period of negotiations and pending hearing, the state agency, represented by the attorney general, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.

4. The court shall so conduct the hearing as to disclose all material facts and issues of liability and may examine or cross-examine witnesses. The court may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

5. After the close of the hearing the court shall consider the claim and shall conclude its determination, if possible, within thirty days.

§14-2-17. Shortened procedure.

The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.

2. The state agency concerned concurs in the claim.

3. The amount claimed does not exceed one thousand dollars.

4. The claim has been approved by the attorney gen-
The state agency concerned shall prepare the record of the claim consisting of all papers, stipulations and evidential documents required by the rules of the court and file the same with the clerk. The court shall consider the claim informally upon the record submitted. If the court determines that the claim should be entered as an approved claim and an award made, it shall so order and shall file its statement with the clerk. If the court finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under this section shall not bar its resubmission under the regular procedure.


The governor or the head of a state agency may refer to the court for an advisory determination the question of the legal or equitable status, or both, of a claim against the state or a state agency. This procedure shall apply only to such claims as are within the jurisdiction of the court. The procedure shall be substantially as follows:

1. There shall be filed with the clerk, the record of the claim including a full statement of the facts, the contentions of the claimant, and such other materials as the rules of the court may require. The record shall submit specific questions for the court's consideration.

2. The clerk shall examine the record submitted and if he finds that it is adequate under the rules, he shall place the claim on a special docket. If he finds the record inadequate, he shall refer it back to the officer submitting it with the request that the necessary additions or changes be made.

3. When a claim is reached on the special docket, the court shall prepare a brief opinion for the information and guidance of the officer. The claim shall be considered informally and without hearing. A claimant shall not be entitled to appear in connection with the consideration of the claim.

4. The opinion shall be filed with the clerk. A copy shall be transmitted to the officer who referred the claim.
An advisory determination shall not bar the subsequent consideration of the same claim if properly submitted by, or on behalf of, the claimant. Such subsequent consideration, if undertaken, shall be de novo.


A claim arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies, and falling within the jurisdiction of the court, may be submitted by:

1. A claimant whose claim has been rejected by the state agency concerned or by the state auditor.
2. The head of the state agency concerned in order to obtain a determination of the matters in issue.
3. The state auditor in order to obtain a full hearing and consideration of the merits.

The regular procedure, so far as applicable, shall govern the consideration of the claim by the court. If the court finds that the claimant should be paid, it shall certify the approved claim and award to the head of the appropriate state agency, the state auditor, and to the governor. The governor may thereupon instruct the auditor to issue his warrant in payment of the award and to charge the amount thereof to the proper appropriation. The auditor shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be subject to further review by the auditor upon any matter determined and certified by the court.

§14-2-20. Claims under special appropriations.

Whenever the Legislature makes an appropriation for the payment of claims against the state, then accrued or arising during the ensuing fiscal year, the determination of claims and the payment thereof may be made in accordance with this section. However, this section shall apply only if the Legislature in making its appropriation specifically so provides.

The claim shall be considered and determined by the regular or shortened procedure, as the case may be, and the amount of the award shall be fixed by the court. The clerk shall certify each approved claim and award, and
requisition relating thereto, to the auditor. The auditor
thereupon shall issue his warrant to the treasurer in
favor of the claimant. The auditor shall issue his warrant
without further examination or review of the claim ex-
cept for the question of a sufficient unexpended balance
in the appropriation.


The court shall not take jurisdiction of any claim,
whether accruing before or after the effective date of this
article, unless notice of such claim be filed with the clerk
within such period of limitation as would be applicable
under article two, chapter fifty-five of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, if the claim were against a private person, firm
or corporation and the constitutional immunity of the
state from suit were not involved; but the foregoing pro-
vision shall not be held to limit or restrict the right of
any person, firm or corporation who or which has a claim
against the state or any state agency, pending before the
attorney general on the effective date of this article, from
presenting such claim to the court of claims, nor shall it
limit or restrict the right to file such a claim as may be,
on the effective date of this article, pending in any court
of record as a legal claim and which, after such date, may
be adjudicated in such court to be invalid as a claim
against the state because of the constitutional immunity
of the state from suit.


In all hearings and proceedings before the court, the
evidence and testimony of witnesses and the production
of documentary evidence may be required. Subpoenas
may be issued by the court for appearance at any desig-
nated place of hearing. In case of disobedience to a sub-
poena or other process, the court may invoke the aid of
any circuit court in requiring the evidence and testimony
of witnesses, and the production of books, papers and
documents. Upon proper showing, the circuit court shall
issue an order requiring witnesses to appear before the
court of claims; produce books, papers and other evidence;
and give testimony touching the matter in question.
person failing to obey the order may be punished by the
circuit court as for contempt.

§14-2-23. Inclusion of awards in budget.

The clerk shall certify to the director of the budget, on
or before the twentieth day of November of each year, a
list of all awards recommended by the court to the Legis-
lature for appropriation. The clerk may certify supple-
mentary lists to the board of public works to include sub-
sequent awards made by the court. The board of public
works shall include all awards so certified in its proposed
budget bill transmitted to the Legislature.

§14-2-24. Records to be preserved.

The record of each claim considered by the court, in-
cluding all documents, papers, briefs, transcripts of testi-
mony and other materials, shall be preserved by the clerk
and shall be made available to the Legislature or any
committee thereof for the reexamination of the claim.

§14-2-25. Reports of the court.

The clerk shall be the official reporter of the court. He
shall collect and edit the approved claims, awards and
statements, and shall prepare them for publication and
submission to the Legislature in the form of an annual
report.

Claims and awards shall be separately classified as
follows:

1. Approved claims and awards not satisfied but re-
ferred to the Legislature for final consideration and ap-
propriation.

2. Approved claims and awards satisfied by payments
out of regular appropriations.

3. Approved claims and awards satisfied by payment
out of a special appropriation made by the Legislature to
pay claims arising during the fiscal year.

4. Claims rejected by the court with the reasons there-
for.

5. Advisory determinations made at the request of the
governor or the head of a state agency.
The court may include any other information or recommendations pertaining to the performance of its duties. The court shall transmit its annual report to the presiding officer of each house of the Legislature. The annual reports of the court shall be published by the clerk as a public document.


A person who knowingly and wilfully presents or attempts to present a false or fraudulent claim, or a state officer or employee who knowingly and wilfully participates or assists in the preparation or presentation of a false or fraudulent claim, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be.


Any final determination against the claimant on any claim presented as provided in this article shall forever bar any further claim in the court arising out of the rejected claim.

§14-2-28. Award as condition precedent to appropriation.

It is the policy of the Legislature to make no appropriation to pay any claims against the state, cognizable by the court, unless the claim has first been passed upon by the court.

§14-2-29. Severability.

If any provision of this article or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of the 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 28
(House Bill No. 1129—Originating in the House Committee on Finance)

[Passed March 11, 1967; in effect July 1, 1967. 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 state road commission; department of motor vehicles; department of natural resources; vocational rehabilitation division, state board of education; department of health; department of mental health; state tax commissioner; department of welfare; department of public institutions; department of commerce; secretary of state; department of mines; and West Virginia board of education, to be moral obligations of the state, and directing payment thereof.

§1. Finding and declaring certain claims against the state road commission; department of motor vehicles; department of natural resources; vocational rehabilitation division, state board of education; department of health; department of mental health; state tax commissioner; department of welfare; department of public institutions; department of commerce; secretary of state; department of mines; and West Virginia board of education, to be moral obligations of the state, and directing payment thereof.

1 The Legislature has considered the findings of fact and recommendations reported to it by the attorney general concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.
<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
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<tr>
<td>Mrs. T. E. Williams</td>
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<td>Carroll Eugene Luttrell</td>
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<td>Archie V. Iddings, C. R. Iddings, R. M. Iddings, Billie Iddings</td>
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<td>Mrs. Mildred J. Saul, Administratrix of the Estate of W. D. Saul</td>
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<td>Eugene W. Collins</td>
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<td>Bennie Cline Pennington</td>
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<td>Noah Rose</td>
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<td>Winnie L. Hearn</td>
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<td>Raymond Judy</td>
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<tr>
<td>Merlin B. Feaster</td>
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</table>
CLAIMS AGAINST THE STATE 183

52. (38) John S. Arnold, Jr. .......................... 161.00
53. (39) Raymond E. DeBolt .......................... 51.97
54. (40) Cluster M. Goodbar .......................... 184.29
55. (41) Robert Vincent .............................. 15,000.00
56. (42) Oliver W. Kitzmiller ........................ 108.00
57. (43) Quayle R. Shupe ............................ 22.49
58. (44) Mrs. Blanch Duling .......................... 240.24
59. (45) Carl Lee White ............................... 25.00
60. (46) A. H. Rigdon ................................. 1,655.44
61. (47) Milton & Lucy Williams ....................... 480.00
62. (48) Thelma V. Leasure .......................... 3,000.00
63. (49) Giovino John & Rita Louise D'Aurora .. 1,000.00
64. (50) Gabriel Harris and Evelyn Harris .. 32.17

(b) Claims versus the Department of Motor Vehicles:

66. (1) International Business Machines ......... 29,250.87
67. (2) R. L. Polk & Co. ............................. 21,846.35
68. (3) Friden, Inc. .................................. 493.52
69. (4) West Virginia Business Forms, Inc. ...... 7,292.26
70. (5) Joe L. Smith, Jr., Inc. ....................... 92.97
71. (6) Remington Office Machines .................. 231.61
72. (7) Remington Records Retrieval .............. 18,700.00
73. (8) Lewis Chevrolet Company ..................... 113.89
74. (9) Pitney-Bowes, Inc. ........................... 89.23
75. (10) Xerox Corporation ........................... 924.61
76. (11) Humble Oil & Refining Co. ................. 226.34
77. (12) National Cash Register Co. ................. 731.40
78. (13) Mrs. Bobbie Bayliss ........................ 38.58

(1) Michael Lombard, an infant, through
his mother, Mrs. Lauretta D. Lombard 214.00

(c) Claims versus the Department of Natural Resources:

82. (2) Appalachian Power Company ............... 317.88
83. (3) Point Towing Company ....................... 20,500.00

(d) Claims versus Vocational Rehabilitation
Division, State Board of
Education:

88. (1) Herbert J. Thomas
Hospital ........................................... 161.40
89. (2) Cooke & Pauley Funeral Home .............. 65.75

(e) Claims versus the Department of Health:

91. (1) Dr. Gerald R. Guine .......................... 7,890.87
CLAIMS AGAINST THE STATE

(f) Claims versus the Department of Mental Health:
   (1) First National Bank of Philippi  3,200.00
   (2) Schering Corporation  27.86

(g) Claims versus the State Tax Commissioner:
   (1) Jackson Pipeline Construction Co.  5,521.37
   (2) Jones Motor Company, a corporation  366.84
   (3) Lewis J. Fucky, d/b/a Weston Stone Company  3,555.17
   (4) Pipeline Maintenance & Construction Company  5,198.05
   (5) John Murphy  5,400.00

(h) Claims versus the Department of Welfare:
   (1) Claudis Van Meter, owner of Van Meter's Cold & Dry Storage  1,400.00
   (2) R. W. Ashworth Construction, Inc.  54,862.02
   (3) Robert Larrabee  5,000.00
   (4) Fay M. Henson  1,170.00

(i) Claims versus the Department of Welfare, to be paid out of the “Special County General Relief Fund”:
   (1) R. W. Ashworth Construction, Inc.  $56,392.42
   (2) Tygart Realty, Inc.  2,500.00
   (3) M. O. Abdoney  6,600.00

(j) Claims versus Department of Public Institutions:
   (1) Kenneth E. & Audrey Getz, and Alma & Betty Green  90.00
   (2) Robert H. Doan  209.59

(k) Claims versus Department of Commerce:
   (1) L. D. Van Osdol  $ 700.00
   (2) Elk Refining Company  20.00

(l) Claims versus Secretary of State:
   (1) Johnson-Watson Printing Co.  $9,702.76
   (2) Casto & Harris, Inc.  2,711.13

(m) Claims versus the Department of Mines:
   (1) Laird Office Equipment Company  $ 76.90

(n) Claims versus West Virginia Board of Education:
   (1) Continental Can Company, Inc.  $5,974.82
   (2) Stuart-McMunn Company  6,750.00
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payment to any claimant provided for in this bill, the attorney general shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The attorney general shall deliver all releases obtained from claimants to the department which the claim was allowed against.

CHAPTER 29
(House Bill No. 707—By Mr. Payne)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring agreements of incorporation and all amendments to the charter of any corporation to contain a statement of the name and address of the person who, or the firm which, prepared such agreement or amendment.

Be it enacted by the Legislature of West Virginia:

That section six, article one, 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 1. PROVISIONS RELATING TO CORPORATIONS GENERALLY.

Section 6. Agreement of incorporation; contents; execution; filing with secretary of state.

§31-1-6. Agreement of incorporation; contents; execution; filing with secretary of state.

1 The persons desiring to form a corporation as pro-
vided in section four hereof, shall sign, acknowledge and
file with the secretary of state an agreement, in the gen-
eral form prescribed by the secretary of state, in which
shall be set forth:
(a) The name of the corporation, which name shall
contain one of the words "association," "company," "cor-
poration," "club," "incorporated," "society," "union," or
"syndicate," or one of the abbreviations, "co." or "inc.";
but no name shall be assumed already in use by another
existing corporation of this state, or by a foreign corpora-
tion lawfully doing business in this state, or so similar
thereto, in the opinion of the secretary of state, as to
lead to confusion. The name desired by the incorpo-
rators may be reserved for a period of sixty days prior
to the formal filing of an application for incorporation.
In no case shall the period of reservation exceed sixty
days.
(b) The address, including the street name and street
number, if any, and the city, town or village, of its prin-
cipal office or place of business and the location of its
chief works, if any.
(c) The object or objects for which the corporation
is formed.
(d) If the corporation is to be authorized to issue only
one class of stock, the total number of shares of stock
which the corporation shall have authority to issue and
(1) the par value of each of such shares, or (2) a state-
ment that all such shares are to be without par value;
or, if the corporation is to be authorized to issue more
than one class of stock, the total number of shares of
all classes of stock which the corporation shall have
authority to issue and (1) the number of the shares of
each class thereof that are to have a par value and the
par value of each share of each such class, and/or (2)
the number of such shares that are to be without par
value, and (3) a statement of all or any of the designa-
tions and the powers, preferences and rights, and the
qualifications, limitations or restrictions thereof, which
are permitted by the provisions of section twenty-two of this article in respect of any class or classes of stock of the corporation and the fixing of which by the agreement of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by such agreement. In each case the agreement of incorporation shall also set forth the minimum amount of capital with which the corporation will commence business, which shall not be less than one thousand dollars. The provisions of this subdivision (d) shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the agreement of incorporation, and the conditions of membership shall be stated therein.

(e) The full names and addresses, including street and street numbers, if any, and the city, town or village, of the incorporators, and, if a stock corporation, the number of shares subscribed by each.

(f) Whether or not the corporation is to have perpetual existence. If not, the time when its existence is to commence and the time its existence is to cease.

(g) The agreement may also contain any provision which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class of the stockholders, or, in the case of a corporation which is to have no capital stock, of the members of such corporation: Provided, That such provisions are not contrary to the laws of this state.

(h) The agreement may also contain the following provision in haec verba, viz:

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stock-
holders or any class of them, any court of equitable juris-
diction within the state of West Virginia may, on the
application in a summary way of this corporation or of
any creditor or stockholder thereof, or on the applica-
tion of trustees in dissolution or of any receiver or re-
ceivers appointed for this corporation under the laws
of the state of West Virginia, order a meeting of the
creditors or class of creditors, and/or of the stockholders
or class of stockholders of this corporation, as the case
may be, to be summoned in such manner as the court
directs. If a majority in number representing three
fourths in value of the creditors or class of creditors,
and/or of the stockholders or class of stockholders of
this corporation, as the case may be, agree to any com-
promise or arrangement and to any reorganization of
this corporation as consequence of such compromise or
arrangement, such compromise or arrangement and such
reorganization shall, if sanctioned by the court to which
such application has been made, be binding on all the
creditors or class of creditors, and/or on all the stock-
holders or class of stockholders of this corporation, as
the case may be, and also on this corporation.

(i) The agreement may also contain such provisions
as may be desired limiting or denying to the stockholders
the preemptive right to subscribe to any or all addi-
tional issues of stock of the corporation of any or all
classes.

(j) The agreement may also contain provisions re-
quiring for any corporate action the vote of a larger
proportion of the stock or any class thereof than is re-
quired by this chapter.

(k) The agreement and all amendments to the charter
issued pursuant to such agreement shall contain a state-
ment of the name and address of the person who, or the
firm which, prepared such agreement or amendment.

The agreement of incorporation shall be acknowledged
by the incorporators before a notary public and trans-
mitted with the proper fees to, and shall be filed with,
the secretary of state.
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 seven-a, relating to the restatement of corporate charters.

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 seven-a, to read as follows:

ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS GENERALLY.

Section 7a. Restatement of charters.

§31-1-7a. Restatement of charters.

1 Any corporation of this state may at any time restate its charter in the following manner:

2 (a) The board of directors, or, in the event that the restated charter includes an amendment not previously certified to the secretary of state pursuant to section twelve of this article, the stockholders, shall adopt a re-statement resolution setting forth the text of the corporation’s charter as amended or restated, or both, omitting provisions which are not then in effect and, if desired, including any new amendment or amendments then authorized by law. The resolution shall be entitled a re-statement resolution under this section and shall state (i) that it is adopted under this section; (ii) the name of the corporation; (iii) if its name has been changed at any time, the name under which it was formed; (iv) the date on which its charter was issued by the secretary of state; (v) the county in which its certificate of incorpora-
tion is recorded pursuant to section ten of this article;
(vi) the then current amount of authorized capital stock;
and (vii) the restated charter. The resolution shall
identify each amendment to the charter included therein
which has not been previously certified to the secretary
of state pursuant to section twelve of this article or, if
there is no such amendment, shall so state.

(b) If the restated charter includes, or is to include,
an amendment to the charter of the corporation which
has not previously been certified to the secretary of state
pursuant to section twelve of this article, the restatement
resolution shall be adopted by the stockholders in
the same manner, upon the same notice and under all the
same terms and conditions as any amendment to the
charter adopted pursuant to section twelve of this article.

(c) The president or vice president of the corporation,
under his signature and the seal of the corporation, shall
certify to the secretary of state the resolution adopted
by the directors or by the stockholders, as the case may be,
and the fact and the manner of its adoption by the
directors, or by the directors and the stockholders, and,
if the resolution includes any amendment not previously
certified to the secretary of state pursuant to section
twelve of this article, the fact of the assenting of all stock-
holders, the consent of whom is required under this article
for the making of the amendment.

(d) Upon the filing of such a certificate in the office of
the secretary of state, and the payment of a fee equal to
the fee for the issuance of a certificate of incorporation,
he shall issue his certificate under the great seal of the
state, to the following effect: "I, A. B., Secretary of State
of West Virginia, hereby certify that restatement resolu-
tion, duly certified, has been this day filed in my office,
stating a restated charter, in words and figures follow-
ing: (here insert restated charter). Wherefore, I do de-
clare said restated charter as set forth above is authorized
by law and is in effect from the date hereof. Given under
my hand and the great seal of the said State, at Charles-
ton, this _____ day of ______________________, 19_______." The sec-
retary of state shall preserve the restatement resolution
certificate in his office and shall record his said certifi-
cate in the manner provided for the recordation of cer-
tificates of incorporation; and the secretary of state may
at any time make and certify a copy thereof. Such cer-
tificate or certified copy thereof shall be recorded and
received in evidence as provided for recordation and ad-
mission in evidence of an original certificate of incorpora-
tion or a certified copy of such original. Upon the issuance
of such certificate by the secretary of state, the restated
charter shall become effective, shall supersede the original
certificate of incorporation, all amendments thereto and
all prior restated charters, and shall be the charter of the
corporation.

CHAPTER 31

(Corn. Sub. for Senate Bill No. 42—By Mr. Moreland
and Mr. McKown)

[Passed March 10, 1967; in effect ninety days from passage. Approved
by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article seven-
teen, relating to secondary mortgage loans; providing for
the qualification, regulation and licensing of persons en-
gaged as lenders or brokers in the secondary mortgage
loan business; relating to the responsibilities, duties and
powers of the commissioner of banking in connection
therewith; specifying the interest and charges to be paid
by a borrower with respect to a secondary mortgage loan;
authorizing injunctive relief; declaring secondary mortgage
loans made in violation of certain provisions of the article
to be void; and providing penalties and a severability
clause.

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 seventeen, to
read as follows:
ARTICLE 17. SECONDARY MORTGAGE LOANS.

Section
1. Definitions and general provisions.
2. License required for lender or broker; exemptions.
3. Supervision by commissioner of banking; rules and regulations; personnel.
4. Applications for licenses; requirements; bonds; fees; renewals.
5. Refusal or issuance of license.
6. Minimum net assets to be maintained; bond to be kept in full force and effect; broker residency qualifications to be maintained; foreign corporation to remain qualified to do business in this state.
7. Form of license; posting required; license not transferable or assignable; one location only; renewal of license.
8. Maximum period of loan; maximum interest and charge or charges; insurance; other prohibitions.
9. Disclosure; closing statements; other records required.
10. Advertising requirements.
11. Records and reports; examination of records; analysis.
12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.
13. Notice of refusal, or suspension or revocation, of license; relinquishing license.
14. Hearing before commissioner; provisions pertaining to hearing.
16. Actions to enjoin violations.
17. Loans made in violation of this article void; agreements to waive article void.
18. Violations and penalties.

§31-17-1. Definitions and general provisions.
As used in this article:

2 (1) "Secondary mortgage loan" means a loan made to an individual or partnership which is secured in whole or in part by a mortgage or deed of trust upon any interest in real property used as a dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages, deeds of trust or vendor's liens.

9 (2) "Person" means an individual, partnership, association, trust, corporation, or any other legal entity, or any combination thereof.

12 (3) "Lender" means any person who makes or offers to make or accepts or offers to accept any secondary mortgage loan in the regular course of business. A person shall be deemed to be acting in the regular course of business if he makes or accepts, or offers to make or
accept, more than five secondary mortgage loans in any one calendar year.

(4) "Broker" means any person who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, a secondary mortgage loan between a lender and a borrower.

(5) "Brokerage fee" means the fee or commission or other consideration charged by a broker for the services described in subdivision (4) of this section.

(6) "Principal" or "principal sum" means the sum delivered to the borrower by the lender, or expended by the lender to third party creditors of the borrower for the discharge of preexisting debts of such borrower.

(7) "Charge" or "charges" means every type of charge incident to or arising out of the making or acceptance of a secondary mortgage loan, except interest, including, by whatever name called, but not by way of limitation, title search fees, title report fees, title opinion fees, title guarantee fees, credit report fees, investigation costs, investigation report costs, legal fees, fees for the preparation of instruments, placement fees, discount fees, brokerage fees, recording fees, appraisal costs, closing costs, and insurance costs, except as provided in subsection (c), section eight of this article with respect to hazard insurance.

(8) "Interest" means the compensation, other than a charge or charges, to be paid for the loan of the principal or principal sum.

(9) "Placement fee" or "discount fee" means a deduction from the principal or principal sum by the lender at the time of the making or accepting of a secondary mortgage loan, which deduction is ultimately charged to or placed upon the borrower.

(10) "Commissioner" means the commissioner of banking of this state.

(11) "Applicant" means a person who has applied for a lender's or broker's license.

(12) "Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender or broker.
§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall, notwithstanding the provisions of section seventy-nine-a, article one of this chapter, engage in such business in this state unless it shall qualify to hold property and transact business in this state: Provided, That during the first ninety days after the effective date of this article any person who has filed an application for a lender's or broker's license and whose application for such license has not been denied and the license sought refused may engage in the business of lender or broker, as the case may be, without a lender's or broker's license, until his application is ruled upon and thereafter if the same is granted and the license sought is issued.

(b) The provisions of this article do not apply to loans made by banking institutions, trust companies, savings and loan associations, building and loan associations, industrial loan companies, insurance companies, credit unions or small loan companies pursuant to article seven-a, chapter forty-seven of this code, or to loans made by any other lender licensed by and under the supervision of the commissioner by authority of any other provisions of this code or licensed by and under the supervision of any agency of the federal government, or to loans made by any agency of the federal government.

§31-17-3. Supervision by commissioner of banking; rules and regulations; personnel.

It shall be the duty of the commissioner to enforce the provisions of this article, and, to implement and make effective such provisions, he is hereby authorized and empowered to promulgate reasonable rules and regulations, in accordance with the provisions of article three, chapter twenty-nine-a of this code, and to employ such personnel as may be necessary.
§31-17-4. Applications for licenses; requirements; bonds; fees; renewals.

(a) Application for a lender's or broker's license shall be in writing under oath, in the form prescribed by the commissioner, and shall contain the full name and address (both of the residence and place of business) of the applicant and, if the applicant is a partnership or association, of every member thereof, and, if a corporation, of each officer, director and owner of five per cent or more of the capital stock thereof, and such further information as the commissioner may reasonably require. Any application shall also disclose the location in this state at which the business of lender or broker is to be conducted.

(b) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he has available for the operation of the business at the location specified in the application net assets of at least two hundred fifty thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of one hundred thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state; and

(4) Pay to the commissioner a license fee of one thousand dollars and an investigation fee of two hundred fifty dollars. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of such investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner, and the applicant shall pay or shall have returned to him, as the case may be, the difference between his payment in ad-
vance of the estimated cost and the actual cost of such in-
vestigation.

(c) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that such applicant has qualified to hold property and transact business in this state;

(2) Submit proof that he has available for the operation of the business at the location specified in the application net assets of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state in the amount of ten thousand dollars, in such form and with such conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state; and

(4) Pay to the commissioner a license fee of one hundred dollars and an investigation fee of fifty dollars.

Every individual applicant for a broker's license, and if the applicant is a partnership or association, every member thereof, shall be at the time of the filing of the application for such license a bona fide resident of this state and shall have been such a resident for a period of at least one year prior to the date of such filing. In the case of a corporate applicant for a broker's license, the owner or owners of at least fifty-one per cent of the capital stock of such corporation shall be at the time of the filing of the application for such license bona fide residents of this state and shall have been such residents for a period of at least one year prior to the date of such filing.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of such bond.

§31-17-5. Refusal or issuance of license.

(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to such applicant and his application for a lender's or broker's
license, as the case may be. Upon the basis of the appli-
cation and all other information before him, the commis-
sioner shall make and enter an order denying the applica-
tion and refusing the license sought if the commissioner
finds that:

(1) The applicant does not have available the net
assets required by the provisions of section four of this
article;

(2) The applicant (individually, if an individual,
or the partners, if a partnership, or the officers and direc-
tors, if a corporation) is of such character and reputation
as reasonably to warrant the belief that the business will
not be operated lawfully and properly in accordance with
the provisions of this article;

(3) In the case of an application for a broker's
license, the applicant does not meet the residency qualifi-
cations specified in said section four;

(4) The applicant has habitually defaulted on
financial obligations; or

(5) The applicant has done any act or has failed or
refused to perform any duty or obligation for which the
license sought could be suspended or revoked were it then
issued and outstanding.

Otherwise, the commissioner shall issue to the applicant
a lender's or broker's license which shall entitle such ap-
plicant to engage in the business of lender or broker, as
the case may be, during the period, unless sooner sus-
pended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license
shall be passed upon and the license issued or refused
within forty-five days after the applicant therefor has
fully complied with the provisions of section four of this
article. Under no circumstances whatever shall the same
person hold both a lender's and a broker's license. When-
ever an application for a lender's or broker's license is
denied and the license sought is refused, which refusal
has become final, the commissioner shall retain the in-
vestigation fee or fees but shall return the license fee to
the applicant.
§31-17-6. Minimum net assets to be maintained; bond to be kept in full force and effect; broker residency qualifications to be maintained; foreign corporation to remain qualified to do business in this state.

At all times, a licensee shall (1) have available the net assets required by the provisions of section four of this article, (2) keep the bond required by said section four in full force and effect, (3) if such licensee be a broker, continue to meet the residency qualifications set forth in said section four, and (4) if such licensee be a foreign corporation, remain qualified to hold property and transact business in this state.

§31-17-7. Form of license; posting required; license not transferable or assignable; one location only; renewal of license.

(a) It shall be stated on the license whether it is a lender's or broker's license, the location at which the business is to be conducted and the full name of the licensee. A broker's license shall be conspicuously posted in the licensee's place of business in this state, and a lender's license shall be conspicuously posted in the licensee's place of business if in this state. No license shall be transferable or assignable. Not more than one location or place of business in this state shall be maintained under the same license, but the commissioner is authorized to issue more than one license to the same licensee upon compliance with all the provisions of this article governing the original issuance of a license. Whenever a licensee changes his place of business to a location other than that set forth in his license, he shall give written notice within thirty days of such change to the commissioner.

(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on December thirty-first of each year, and any such license may be renewed each year in the same manner, for the same license fee and investigation fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. All applications for the renewal of licenses shall be filed with
the commissioner at least forty-five days before the expiration thereof.

§31-17-8. Maximum period of loan; maximum interest and charge or charges; insurance; other prohibitions.

(a) A secondary mortgage loan shall be payable over a period not in excess of sixty months, and the maximum rate of interest and maximum total charge or charges on or in connection with any such secondary mortgage loan shall be as follows:

(1) The maximum rate of interest on the principal sum shall be six dollars upon each one hundred dollars for a year, and proportionately for a greater or lesser sum, or for a longer or shorter time: Provided, That the borrower shall have the right to anticipate payment of his debt in whole or in part at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the "Standard Rule of 78";

(2) The total charge or charges may equal, but shall not be in excess of, ten per cent of the principal sum: Provided, however, That where the principal sum at the inception of the secondary mortgage loan is one thousand five hundred dollars or less, the total charge or charges may exceed said ten per cent, but shall not be in excess of one hundred fifty dollars: Provided further, That such charges may not be imposed more often than once each thirty-six months by renewal of a secondary mortgage loan or an additional secondary mortgage loan on the same residential property.

(b) Notwithstanding the provisions of subsection (a) of this section, a delinquent or "late charge" not exceeding five per cent of the monthly payment, may be charged on any installment made fifteen or more days after the regularly scheduled due date, said charge to be made only once on any one installment during the term of the secondary mortgage loan.

(c) Hazard insurance may be required by the lender of the borrower and the premium shall not be considered
as a charge. Decreasing term life insurance, in an amount
not exceeding the amount of the secondary mortgage
loan and for a period not exceeding the term of such
loan, and accident and health insurance in an amount
sufficient to make the monthly payments due on said loan
in the event of the disability of the borrower and for
a period not exceeding the life of said loan, may also be
required by the lender of the borrower and the premium
therefor, if included in the loan, may bear interest, and
may be included in computing the charge or charges,
but shall not exceed the standard rate approved by the
insurance commissioner for such insurance. Proof of all
insurance in connection with secondary mortgage loans
subject to this article shall be furnished to the borrower
within ten days from and after the date of application
therefor by said borrower.

(d) No application fee may be allowed whether or
not the secondary mortgage loan is consummated; how-
ever, the borrower may be required to reimburse the
lender for actual expenses incurred by the lender after
acceptance and approval of a secondary mortgage loan
proposal made in accordance with the provisions of this
article which is not consummated because of:

(1) The borrower's wilful failure to close said loan;
or

(2) The borrower's false or fraudulent representa-
tion of a material fact which prevents closing of said loan
as proposed.

(e) No licensee shall make, offer to make, accept or
offer to accept, any secondary mortgage loan except
on the terms and conditions authorized in this article.

(f) No licensee shall induce or permit any husband
and wife, jointly and severally, to become obligated to
such licensee under this article, directly or contingently,
or both, under more than one secondary mortgage loan
at the same time for the purpose or with the result of
obtaining greater charges than would otherwise be per-
mitted under the provisions of this article.

(g) No instrument evidencing or securing a secondary
mortgage loan shall contain:
(1) Any acceleration clause under which any part or all of the unpaid balance of the obligation not yet matured may be declared due and payable because the holder deems himself to be insecure;

(2) Any power of attorney to confess judgment or any other power of attorney;

(3) Any provision whereby the borrower waives any rights accruing to him under the provisions of this article;

(4) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount; or

(5) Any assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, or any part thereof, earned or to be earned.

§31-17-9. Disclosure; closing statements; other records required.

(a) Any licensee or person making on his own behalf, or as agent, broker, or in other representative capacity on behalf of any other person, a secondary mortgage loan, whether lawfully or unlawfully, shall at the time of the closing furnish to the borrower a complete and itemized closing statement which shall show in detail:

(1) The amount and date of the note or secondary mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The interest and charges;

(4) The principal of the loan before adding the interest and charges;

(5) Disposition of the principal;

(6) A description of the payment schedule;

(7) The terms on which additional advances, if any, will be made;

(8) The charge to be imposed for past due installments;

(9) A description of insurance required by the
lender or purchased by the borrower in connection with the secondary mortgage loan;

(10) The name and address of the borrower and of the lender; and

(11) That the borrower may prepay the secondary mortgage loan in whole or in part on any installment date, and that the borrower will receive a rebate in full for any interest prepayment.

Such detailed closing statement shall be signed by the lender or his representative, and a completed and signed copy thereof shall be retained by the lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property, or the authorized agent of the borrower or the borrower's successor, until such time as the indebtedness shall be satisfied in full.

The commissioner may, from time to time, by rules and regulations prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a secondary mortgage loan instrument shall deliver to the borrower, within ten days from and after receipt of such written request, a statement of the borrower's account showing the date and amount of all payments made or credited to the account and the total unpaid balance. Not more than two such statements shall be requested in any twelve-month period.

(c) Upon satisfaction of a secondary mortgage loan obligation in full, the holder of the instrument evidencing or securing such obligation shall deliver to the borrower a recordable release and all writings signed by the borrower which were incident to applying for and obtaining such secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful for any person to cause to be placed before the public in this state, directly or indirectly, any false, misleading or deceptive advertising matter pertaining to secondary mortgage loans or the availability thereof: Provided, That this section shall not apply to the
§31-17-11. Records and reports; examination of records; analysis.

(a) Every licensee shall maintain at his place of business in this state, if any, or if he has no place of business in this state at his principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All such books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for such reasonable period of time as the commissioner may by rules and regulations require. The commissioner is hereby authorized to prescribe by rules and regulations the minimum information to be shown in such books, accounts and records.

(b) Each licensee shall file with the commissioner on or before the fifteenth of April of each year a report under oath or affirmation concerning his business and operations in this state for the preceding license year in the form prescribed by the commissioner, which shall show the annual volume and outstanding amounts of secondary mortgage loans, the classification of such secondary mortgage loans by size and by security, and the gross income from, and expenses properly chargeable to, such secondary mortgage loans.

(c) At least once each year the commissioner shall make or cause to be made an examination of the books, accounts and records of every licensee pertaining to secondary mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each licensee is complying with the provisions hereof and for the purpose of verifying each licensee’s annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.
(d) The commissioner shall publish annually an analysis of the information furnished in accordance with the provisions of subsection (b) of this section, but the individual reports shall not be public records and shall not be open to public inspection.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any license issued hereunder if he finds that the licensee and/or any owner, director, officer, member, partner, stockholder, employee or agent of such licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule and regulation of the commissioner lawfully made pursuant to the authority of this article; or

(2) Has knowingly made any material misstatement in the application for such license; or

(3) Does not have available the net assets required by the provisions of section four of this article; or

(4) Has failed or refused to keep the bond required by section four of this article in full force and effect; or

(5) In the case of a broker's license, does not continue to meet the residency qualifications set forth in section four of this article; or

(6) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(7) Has committed any fraud or engaged in any dishonest activities with respect to such secondary mortgage loan business in this state, or failed to disclose any of the material particulars of any secondary mortgage loan transaction in this state to anyone entitled to such information; or

(8) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purposes of this article.

The commissioner may also suspend or revoke the li-
cense of a licensee if he finds the existence of any ground upon which the license could have been refused, or any ground which would be cause for refusing a license to such licensee were he then applying for the same.

(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful secondary mortgage loan between such licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any such license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that such grounds are not likely to recur.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

(a) Whenever the commissioner shall refuse to issue a license, or shall suspend or revoke a license, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee, as the case may be.

(b) Whenever a license is suspended or revoked, the commissioner shall in the order of suspension or revocation direct the licensee to return to the commissioner his license. It shall be the duty of the licensee to comply with any such order following expiration of the period provided in section fourteen of this article in which such licensee may demand a hearing before the commissioner without such demand having been timely made, and immediately if the license were suspended for failure to keep the bond required by the provisions of section four of this article in full force and effect.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of sec-
tion thirteen of this article may in writing demand a hearing before the commissioner. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of such order. The timely filing of a written demand for hearing shall stay or suspend execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to keep the bond required by the provisions of section four of this article in full force and effect. If a written demand is timely filed as aforesaid, the aggrieved party shall be entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) For the purpose of conducting any such hearing hereunder, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served in the manner, within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written demand therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or for good cause shown upon the application of the aggrieved party. At any such hearing, the aggrieved party may represent himself or be represented by any attorney at law admitted to practice before any circuit court of this state.
(e) After such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his earlier order, or shall make and enter such order as is deemed appropriate, meet and proper. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the aggrieved party and his attorney of record, if any, in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner shall be final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.


(a) Any person adversely affected by a final order made and entered by the commissioner after hearing held in accordance with the provisions of section fourteen of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any rules and regulations of the
commissioner or any final order of the commissioner, to the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eighteen of this article.

(b) Upon application by the commissioner as aforesaid, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, any rules and regulations of the commissioner and all final orders of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

(d) The commissioner shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation.

§31-17-17. Loans made in violation of this article void; agreements to waive article void.

(a) If any secondary mortgage loan is made in violation of the provisions of this article, except as a result of a bona fide error, such loan shall be void and neither the lender nor any holder of the obligation secured by such secondary mortgage shall have the right to collect
or receive any principal, interest or charges whatsoever, and the lender shall refund all payments on or with respect to such loan which have been made by the borrower. 

(b) Any agreement whereby the borrower waives the benefits of this article shall be deemed to be against public policy and void.

§31-17-18. Violations and penalties.

Any person, or any member, officer, director, agent, or employee of such person, who violates or participates in the violation of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court.

§31-17-19. Severability.

If any provision of this article or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are hereby declared to be severable.

CHAPTER 32

(House Bill No. 809—By Mr. Anderson)

[Passed February 25, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment and the appointment of deputies and local conservators of the peace and the compensation of sheriffs and deputies.

Editor's Note: This act, passed February 25, 1967, was reenacted and superseded by reenactment in S. B. No. 270, Chapter 105 of this volume. See §6-3-1 of Chapter 105.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

Section 6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; removal of conservators.

(a) (1) The clerk of the supreme court of appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record, appoint any person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and
receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be, but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may receive, directly or indirectly, any gift or donation from any person, firm or corporation.

(6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the supreme court of appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the attorney general, or any three or more citizens of the county, to require any
sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the attorney general either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his principal, and he shall not perform any services or duties, either private or public, except the duties required by law of conservators of the peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by law for the sheriff when such duties and services are rendered by such local conservator, shall be paid to the sheriff as regular collections of the sheriff’s office. The local conservator shall be paid for the public services performed by him a salary of not less than seventy-five dollars per month out of the county treasury from a fund to be paid into such treasury by a resident or the residents of the community for which he is ap-
pointed, for the sole purpose of compensating such local conservator or conservators, and no such local conservator shall receive any other compensation, directly or indirectly, from any person, firm, or corporation, for any private or public service, except the salary payable to him for his public services and duties and from such fund, except that he shall be entitled to witness and mileage fees when a witness in a court of record. Each local conservator so appointed shall take the same oath of office required of his principal and any default or misfeasance in the office of such local conservator shall constitute a breach of the conditions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the appointment of a local conservator and has determined that the appointment is proper, he shall select the person whom he proposes to have appointed such conservator and shall notify the county court of the community for which such conservator is to be appointed and the name of the person proposed for such appointment. The county court shall thereupon cause notice that the sheriff has recommended the appointment of the person named as conservator for the community named to be published one time each week for two successive weeks in a newspaper of general circulation published in the county, and if there be no newspaper published in the county, then in any other newspaper published in the state having a general circulation in the county, and designating a day not less than five days after the last publication when the county court will act upon the petition and recommendation. Neither the county court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator
is to be appointed, or other good reason, the sheriff and
his regular deputies and the constables of the county
are not sufficient to afford proper local policing of such
community and that the person or persons moving for
the appointment of such local conservator have made
satisfactory arrangements to compensate him for his
services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all
the powers and duties of a regularly appointed deputy
sheriff except that he shall not execute any civil proc-
ess except such process as may be necessary to bring
parties before the court in any action at law or suit in
equity and subpoenas for witnesses within the unincor-
porated community for which he is appointed and within
a distance of one mile outside the boundaries thereof,
except as hereinafter expressly provided, but he shall
not participate in any strike, unemployment boycott, or
other industrial or labor dispute, nor serve any court
process of any character relating thereto. He shall act
as such local conservator only in the unincorporated
community for which he is appointed, and within a dis-
tance of one mile from the boundaries thereof as fixed
by the county court: Provided, however, That the au-
thority of one local conservator shall not extend into
any other unincorporated community for which another
local conservator is appointed and acting, except as
otherwise expressly provided by subdivision (6) of this
subsection, except that in fresh pursuit he may effect
arrests anywhere in the county. He may also exercise
the powers of a regularly appointed deputy anywhere
in the county when required to guard or assist in guard-
ing a payroll, or any other property of value in transit
to or from the unincorporated community for which he
is appointed. Any person arrested by such local con-
servator shall, with all convenient speed, be turned over
to the sheriff, or one of his regular deputies, or to a
regular constable of the county to be dealt with accord-
ing to law, and his authority for that purpose shall be
coeextensive with the county.

(4) Any local conservator appointed to perform the
duties of conservator of the peace shall be a public
officer and the payment, or contribution to the payment
of compensation of such local conservator shall not
depend the person, firm or corporation making such
payment or contribution the employer of such local
conservator and no person, firm or corporation paying, or
contributing to the payment of compensation to such
local conservator shall be answerable in law or in equity
for any damages to person or property resulting from
any official act of such local conservator.

(5) No person appointed such local conservator shall
thereby be entitled to carry weapons, but such local con-
servator may carry weapons when he shall be duly li-
censed and shall have given bond as provided by section
two, article seven, chapter sixty-one of the code of West
Virginia, one thousand nine hundred thirty-one.

(6) Not more than one local conservator of the peace
shall be appointed, to perform the duties of conservator
of the peace, for each two thousand five hundred in-
habitants of the county as ascertained by the last regular
decennial census after deducting the number of inhabit-
ants of the county residing in the incorporated cities,
towns and villages in such county. Not more than one
local conservator shall be appointed for any unincor-
porated community unless the population thereof exceed
fifteen hundred people and in such case not more than
two conservators shall be appointed for such community.

(7) The phrase "unincorporated community" within
the meaning of this section shall mean any center of
population wherein three hundred or more persons reside
within an area of not more than one square mile.

(8) The county court and the judge of the circuit court
in approving the appointment of a local conservator shall
enter of record an order making such appointment and
shall show therein the necessity for the appointment, the
person or persons on whose motion the appointment is
made, the arrangement for the payment of compen-
sation to such local conservator, the unincorporated com-
-
(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the supreme court of appeals at the instance of the prosecuting attorney, the attorney general, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.
AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-m, relating to the employment of personnel by county courts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

Section 3m. Authority to employ, fix compensation for and discharge personnel.

§7-1-3m. Authority to employ, fix compensation for and discharge personnel.

1 In addition to all other powers and duties now conferred by law upon county courts or tribunals in lieu thereof, hereinafter referred to as county courts or courts, such courts are hereby empowered to employ, fix compensation for and discharge such clerical, stenographic, technical, professional and other personnel, including specialists and consultants, as may from time to time be necessary to aid such courts in exercising their powers or discharging their duties as provided by law: Provided, That such courts shall not have the power to employ any such personnel to perform powers and duties that are performed by such courts through their clerks pursuant to law.

14 The county courts shall, not later than March twenty-eight of each year, take up and consider the probable amount necessary to be expended for such personnel in the following fiscal year; shall determine and fix an aggre-
gate sum to be expended during the following fiscal year
for the compensation of such personnel, which shall be
reasonable and proper, taking into account the amount
of labor and services necessary to be performed by those
who are to receive the compensation; and shall make and
enter an order stating any action taken in this regard.

The county courts shall file with their clerks a state-
ment in writing showing such action and setting forth
the name of each person employed pursuant to the pro-
visions of this section, the time for which employed and
the monthly compensation. Such courts shall have au-

the affidavit of a majority of the members of the county
court making them, and among other things contained in
the affidavit shall be the statement that the amounts
shown therein were the amounts actually paid or
intended to be paid to each person employed without
rebates, or any agreement, understanding and expectation
that any part thereof shall be repaid to any of such mem-
ers making said affidavit, and that nothing has hereto-
fore been paid or promised any of such members making
said affidavit on that account, and that if any of such mem-
ers making said affidavit shall thereafter receive any
money, or thing of value, on account thereof, the same
will be accounted for and paid to the county. Until the
statements required by this section shall have been filed,
no allowance or payments shall be made by the county
courts for personnel.

CHAPTER 34
(House Bill No. 1109—By Miss Tsapia)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]
tions one-(one) through one-(fifty-five); section two, sections two-(one) through two-(fifty-two); section three, sections three-(one) through three-(fifty-two); section four; section five, sections five-(one) through five-(fifty-five); sections six-(one) through six-(fifty-five), all of article seven, chapter seven; and to amend and reenact section five, sections five-(one) through five-(fifty-five), article two, chapter eleven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain county officers and assistants.

Be it enacted by the Legislature of West Virginia:

That section five, sections five-(one) through five-(fifty-four), article one; section one, sections one-(one) through one-(fifty-five); section two, sections two-(one) through two-(fifty-two); section three, sections three-(one) through three-(fifty-two); section four; section five, sections five-(one) through five-(fifty-five); sections six-(one) through six-(fifty-five), all of article seven, chapter seven; and that section five, sections five-(one) through five-(fifty-five), article two, chapter eleven, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Chapter
7. County Courts and Officers.
11. Taxation.

Article
1. County Courts Generally.
7. Salaries; Deputies and Assistants and Their Salaries.

CHAPTER 7. COUNTY COURTS AND OFFICERS.

ARTICLE 1. COUNTY COURTS GENERALLY.

Section
5. Duties of county commissioners; payment for services other than services in court.
5-(1)—5-(54). Compensation of county commissioners of the various counties of the state.

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

1. It shall be the duty of the county commissioners of each county to visit each quarter and inspect institu-
tions within their county for housing and caring for
the poor, to inspect the jails, and to arrange for the
feeding and care of the prisoners therein, and to in-
vestigate the conditions of the poor within their county,
not housed within such institutions; to visit detention
homes for children within their counties, if any, and to
visit and inspect bridges and bridge approaches under
their control; to provide for and have general super-
vision over the repair and maintenance of the county
courthouse, jails, houses for the poor and other county
property, so as to prevent the undue deterioration there-
of; to supervise and control the maintenance and opera-
tion of airport or airports owned and/or operated by
the county court; and to supervise and control the pur-
chase, erection and maintenance of airport facilities;
to supervise and control the purchase of furniture, fix-
tures and equipment, and janitors’ and other supplies,
for their county; to attend the annual meeting of county
assessors, and such district meetings as may be called
by the state tax commissioner, on matters pertaining to
the work of the county assessors and the county courts
as boards of review and equalization; to review and
equalize the assessments made by the assessors; to in-
spect and review the lists of property, both real and
personal, made up by the assessor and his deputies for
taxable purposes, and to point out to the assessor any
property, real and personal, which the said assessors
of their respective counties may have overlooked or
omitted to place on said tax lists; to call to the atten-
tion of the assessor all real estate or personal property
belonging to churches, lodges, schools or other chari-
table institutions which may have been overlooked or
omitted by the assessor or his deputies in making up his
lists of property for entry on the land and personal prop-
erty books; to cooperate with the county public assistance
council and supervise the general management of the
fiscal affairs and business of each county; and as a fur-
ther part of their duties they shall be empowered to
purchase, lease, rent, control, supervise, inspect, main-
tain and erect public parks, playgrounds and recrea-
tional facilities, to purchase, lease or rent equipment
therefor, and to employ qualified recreational directors
and personnel; to construct new Four-H camps on county
property; to operate stone quarries and sand deposits
on county-owned or leased property; to construct build-
ings for or aid in constructing and/or equipping civil-
ian defense buildings on sites approved by state office
of civilian defense; and to operate dog pounds for county-
municipalities; and to purchase, lease, rent, control,
supervise, inspect, maintain, and erect public markets
and to purchase, rent or lease equipment therefor, and
to employ qualified personnel to operate such public
markets; and as a further part of their duties they shall
be empowered to purchase, lease, rent, control, super-
vise, inspect, maintain and erect county mental health
clinics and engage in any program designed for the bet-
terment of the mental and physical well-being of the resi-
dents of their county, and to cooperate with any public
or private agency for these purposes; to establish and/or
participate in regional councils.

Compensation shall be allowed and paid out of the
county treasury, in the same manner as salaries are
paid, to each county commissioner of each county (except
as otherwise provided by law for the county of Ohio),
for services performed for such county concerning the
visiting of the poor, inspection of jails, bridges and bridge
approaches, and for visiting detention homes for chil-
dren; and for providing for and supervising the repair
and maintenance of the county courthouse, jails, houses
for the poor and other county property; for supervis-
ing and controlling the maintenance and operation of
airport or airports owned and/or operated by the county
court, and supervising and controlling the purchase,
errection and maintenance of airport facilities; and for
supervising and controlling the purchase of furniture,
fixtures and equipment and janitors' and other supplies
of their county; and for attending the annual meeting of
assessors and such district meetings as may be called
by the state tax commissioner, on matters pertaining
to the work of assessors and county courts as boards
of review and equalization; for reviewing and equaliz-
COUNTY COURTS AND COUNTY OFFICERS

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...ing the assessments made by the assessors; for inspect-
ing and reviewing the lists of property, both real and
personal, made up by the assessor and his deputies for
taxable purposes, and for pointing out to the assessor
any property, real and personal, which the said asses-
sors of their respective counties may have overlooked
or omitted to place on said tax lists; for calling to the
attention of the assessor all real estate or personal
property belonging to churches, lodges, schools or other
charitable institutions which may have been over-
looked or omitted by the assessor or his deputies in
making up his lists of property for entry on the land
and personal property books; and for duties of the county
commissioners in cooperating with the county public
assistance council; for purchasing, leasing, renting, con-
trolling, supervising, inspecting, maintaining and erect-
ing public parks, playgrounds and recreational facilities,
and the purchasing, leasing or renting the equipment
therefor, and employing qualified recreational directors
and personnel therefor; for constructing new Four-H
camps on county property; operating stone quarries and
sand deposits on county-owned or leased property; con-
structing buildings for or aiding in construction and/or
equipping civilian defense buildings on sites approved
by state office of civilian defense; operating dog pounds
for county-municipalities; and to purchase, lease, rent,
control, supervise, inspect, maintain and erect public mar-
kets, and to purchase, rent or lease equipment therefor,
and to employ qualified personnel to operate such public
markets; for constructing fallout shelters and aiding
individuals to construct fallout shelters through furnish-
ing available information; for purchasing, leasing, rent-
ing, controlling, supervising, inspecting, maintaining
and/or erecting county mental health clinics and/or
engaging in programs for the betterment of the men-
tal and/or physical well-being of the residents of their
county; for conducting a survey of all abandoned and
dilapidated buildings or structures within the county
and to prepare an inventory thereof which inventory
shall be made available to any agency of state or fed-
eral government or to local governmental agencies upon
request; to establish and/or participate in regional coun-
cils, and for supervising the general management of
the fiscal affairs and business of each county, within
their counties, and other business by such commissioners,
in addition to compensation for services in court, the
sums of money hereinafter provided in the following
sections five-(one) to five-(fifty-four), inclusive.

§7-1-5(1). Compensation of county commissioners—Barbour
county.
1 For the county of Barbour, one hundred twenty-five
dollars per month.

§7-1-5(2). Same—Berkeley county.
1 For the county of Berkeley, the president of the court
three hundred seventy-five dollars and other members
of the court three hundred fifty dollars per month.

§7-1-5(3). Same—Boone county.
1 For the county of Boone, two hundred dollars per
month.

§7-1-5(4). Same—Braxton county.
1 For the county of Braxton, the president of the court
eighty-five dollars and the other members of the court
seventy-five dollars per month.

§7-1-5(5). Same—Brooke county.
1 For the county of Brooke, one hundred fifty dollars
per month.

§7-1-5(6). Same—Cabell county.
1 For the county of Cabell, five hundred dollars per
month.

§7-1-5(7). Same—Calhoun county.
1 For the county of Calhoun, one hundred twenty-five
dollars per month.

§7-1-5(8). Same—Clay county.
1 For the county of Clay, seventy-five dollars per month.
§7-1-5(9). Same—Doddridge county.
1 For the county of Doddridge, one hundred dollars per month.

§7-1-5(10). Same—Fayette county.
1 For the county of Fayette, the president of the court three hundred fifty dollars and the other members of the court three hundred dollars per month.

§7-1-5(11). Same—Gilmer county.
1 For the county of Gilmer, one hundred dollars per month.

§7-1-5(12). Same—Grant county.
1 For the county of Grant, one hundred twenty-five dollars per month.

§7-1-5(13). Same—Greenbrier county.
1 For the county of Greenbrier, one hundred fifty dollars per month.

§7-1-5(14). Same—Hampshire county.
1 For the county of Hampshire, the president of the court one hundred twenty-five dollars and the other members of the court one hundred dollars per month.

§7-1-5(15). Same—Hancock county.
1 For the county of Hancock, the president of the court three hundred dollars and the other members of the court two hundred fifty dollars per month.

§7-1-5(16). Same—Hardy county.
1 For the county of Hardy, one hundred twenty-five dollars per month.

§7-1-5(17). Same—Harrison county.
1 For the county of Harrison, five hundred twenty-five dollars per month.

§7-1-5(18). Same—Jackson county.
1 For the county of Jackson, two hundred fifty dollars per month.
§7-1-5(19). Same—Jefferson county.
1 For the county of Jefferson, the president of the court two hundred dollars and the other members of the court one hundred seventy-five dollars per month.

§7-1-5(20). Same—Kanawha county.
1 For the county of Kanawha, eight hundred dollars per month.

§7-1-5(21). Same—Lewis county.
1 For the county of Lewis, one hundred ninety dollars per month.

§7-1-5(22). Same—Lincoln county.
1 For the county of Lincoln, the president of the court one hundred seventy-five dollars and the other members of the court one hundred fifty dollars per month.

§7-1-5(23). Same—Logan county.
1 For the county of Logan, the president of the court three hundred fifty dollars and the other members of the court two hundred seventy-five dollars per month.

§7-1-5(24). Same—Marion county.
1 For the county of Marion, four hundred seventy dollars per month.

1 For the county of Marshall, three hundred dollars per month.

§7-1-5(26). Same—Mason county.
1 For the county of Mason, two hundred fifty dollars per month.

§7-1-5(27). Same—McDowell county.
1 For the county of McDowell, three hundred twenty-five dollars per month.
§7-1-5(28). Same—Mercer county.
1 For the county of Mercer, the president of the court
2 three hundred fifty dollars and the other members of
3 the court three hundred dollars per month.

§7-1-5(29). Same—Mineral county.
1 For the county of Mineral, the president of the court
2 one hundred fifty dollars and the other members of the
3 court one hundred twenty-five dollars per month.

§7-1-5(30). Same—Mingo county.
1 For the county of Mingo, not less than two hundred
2 twenty-five dollars nor more than three hundred dollars
3 per month.

§7-1-5(31). Same—Morgan county.
1 For the county of Morgan, one hundred twenty-five
2 dollars per month.

§7-1-5(32). Same—Monroe county.
1 For the county of Monroe, seventy-five dollars per
2 month.

§7-1-5(33). Same—Monongalia county.
1 For the county of Monongalia, three hundred dollars
2 per month.

§7-1-5(34). Same—Nicholas county.
1 For the county of Nicholas, the president of the court
2 one hundred fifty dollars and the other members of the
3 court one hundred twenty-five dollars per month.

§7-1-5(35). Same—Pendleton county.
1 For the county of Pendleton, the president of the court
2 eighty-five dollars and the other members of the court
3 sixty-five dollars per month.

§7-1-5(36). Same—Pleasants county.
1 For the county of Pleasants, one hundred twenty-five
2 dollars per month.

§7-1-5(37). Same—Pocahontas county.
1 For the county of Pocahontas, fifty dollars per month.
§7-1-5(38). Same—Preston county.
1 For the county of Preston, the president of the court
2 ninety dollars and other members of the court seventy-
3 five dollars per month.

§7-1-5(39). Same—Putnam county.
1 For the county of Putnam, two hundred fifty dollars
2 per month.

§7-1-5(40). Same—Raleigh county.
1 For the county of Raleigh, the president of the court
2 three hundred fifty dollars and other members of the
3 court three hundred dollars per month.

§7-1-5(41). Same—Randolph county.
1 For the county of Randolph, one hundred fifty dollars
2 per month.

§7-1-5(42). Same—Ritchie county.
1 For the county of Ritchie, one hundred twenty-five
2 dollars per month.

§7-1-5(43). Same—Roane county.
1 For the county of Roane, one hundred twenty-five
2 dollars per month.

§7-1-5(44). Same—Summers county.
1 For the county of Summers, one hundred dollars per
2 month.

§7-1-5(45). Same—Taylor county.
1 For the county of Taylor, one hundred twenty-five
2 dollars per month.

§7-1-5(46). Same—Tucker county.
1 For the county of Tucker, one hundred dollars per
2 month.

§7-1-5(47). Same—Tyler county.
1 For the county of Tyler, the president of the court
2 ninety-five dollars and other members of the court eighty-
3 five dollars per month.
§7-1-5(48). Same—Upshur county.
1 For the county of Upshur, one hundred fifty dollars per month.

§7-1-5(49). Same—Wayne county.
1 For the county of Wayne, three hundred dollars per month.

§7-1-5(50). Same—Webster county.
1 For the county of Webster, one hundred fifty dollars per month.

§7-1-5(51). Same—Wetzel county.
1 For the county of Wetzel, two hundred twenty-five dollars per month.

§7-1-5(52). Same—Wirt county.
1 For the county of Wirt, fifty dollars per month.

§7-1-5(53). Same—Wood county.
1 For the county of Wood, three hundred seventy-five dollars per month.

§7-1-5(54). Same—Wyoming county.
1 For the county of Wyoming, the president of the court two hundred fifty dollars and the other members of the court two hundred twenty-five dollars per month.

ARTICLE 7. SALARIES; DEPUTIES AND ASSISTANTS AND THEIR SALARIES.

Section
1. Salaries of sheriffs.
   1-(1)—1-(55). Salaries of sheriffs of the various counties of the state.

2. Salaries of county clerks.
   2-(1)—2-(52). Salaries of county clerks of the various counties of the state.

   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.

5. Salaries of prosecuting attorneys.
   5-(1)—5-(55). Salaries of prosecuting attorneys of the various counties of the state.
§7-7-1. Salaries of sheriffs.
1 The annual compensation of the sheriff of each county shall, on and after January first, one thousand nine hundred sixty-nine, be in the amount set forth in sections one-(one) to one-(fifty-five), inclusive, of this article.

§7-7-1(1). Same—Barbour county.
1 For the county of Barbour, four thousand five hundred dollars.

§7-7-1(2). Same—Berkeley county.
1 For the county of Berkeley, nine thousand dollars.

§7-7-1(3). Same—Boone county.
1 For the county of Boone, six thousand five hundred dollars.

§7-7-1(4). Same—Braxton county.
1 For the county of Braxton, not less than five thousand nor more than five thousand six hundred dollars.

§7-7-1(5). Same—Brooke county.
1 For the county of Brooke, six thousand dollars.

§7-7-1(6). Same—Cabell county.
1 For the county of Cabell, seven thousand five hundred dollars.

§7-7-1(7). Same—Calhoun county.
1 For the county of Calhoun, four thousand three hundred dollars.

§7-7-1(8). Same—Clay county.
1 For the county of Clay, four thousand dollars.

§7-7-1(9). Same—Doddridge county.
1 For the county of Doddridge, four thousand four hundred dollars.
§7-7-1(10). Same—Fayette county.
1 For the county of Fayette, nine thousand dollars.

§7-7-1(11). Same—Gilmer county.
1 For the county of Gilmer, five thousand four hundred dollars.

§7-7-1(12). Same—Grant county.
1 For the county of Grant, four thousand five hundred dollars.

§7-7-1(13). Same—Greenbrier county.
1 For the county of Greenbrier, seven thousand two hundred dollars.

§7-7-1(14). Same—Hampshire county.
1 For the county of Hampshire, four thousand five hundred dollars.

§7-7-1(15). Same—Hancock county.
1 For the county of Hancock, four thousand eight hundred dollars.

§7-7-1(16). Same—Hardy county.
1 For the county of Hardy, four thousand five hundred dollars.

§7-7-1(17). Same—Harrison county.
1 For the county of Harrison, eight thousand dollars.

§7-7-1(18). Same—Jackson county.
1 For the county of Jackson, seven thousand dollars.

§7-7-1(19). Same—Jefferson county.
1 For the county of Jefferson, six thousand dollars.

§7-7-1(20). Same—Kanawha county.
1 For the county of Kanawha, nine thousand dollars.

§7-7-1(21). Same—Lewis county.
1 For the county of Lewis, five thousand five hundred dollars.
§7-7-1(22). Same—Logan county.

1 For the county of Logan, eight thousand four hundred dollars.

§7-7-1(23). Same—Lincoln county.

1 For the county of Lincoln, not less than six thousand four hundred dollars nor more than seven thousand six hundred dollars.

§7-7-1(24). Same—Marion county.

1 For the county of Marion, eight thousand eight hundred dollars.

§7-7-1(25). Same—Marshall county.

1 For the county of Marshall, seven thousand two hundred dollars.

§7-7-1(26). Same—Mason county.

1 For the county of Mason, six thousand dollars.

§7-7-1(27). Same—Mercer county.

1 For the county of Mercer, eight thousand dollars.

§7-7-1(28). Same—Mineral county.

1 For the county of Mineral, six thousand dollars.

§7-7-1(29). Same—Mingo county.

1 For the county of Mingo, seven thousand two hundred dollars.

§7-7-1(30). Same—Monongalia county.

1 For the county of Monongalia, seven thousand two hundred dollars.

§7-7-1(31). Same—Monroe county.

1 For the county of Monroe, four thousand five hundred dollars.

§7-7-1(32). Same—McDowell county.

1 For the county of McDowell, eight thousand dollars.
§7-7-1(33). Same—Morgan county.
1 For the county of Morgan, four thousand eight hundred dollars.

§7-7-1(34). Same—Nicholas county.
1 For the county of Nicholas, six thousand two hundred dollars.

§7-7-1(35). Same—Ohio county.
1 For the county of Ohio, eight thousand dollars.

§7-7-1(36). Same—Pendleton county.
1 For the county of Pendleton, four thousand five hundred dollars.

§7-7-1(37). Same—Pleasants county.
1 For the county of Pleasants, four thousand eight hundred dollars.

§7-7-1(38). Same—Pocahontas county.
1 For the county of Pocahontas, four thousand dollars.

§7-7-1(39). Same—Preston county.
1 For the county of Preston, six thousand five hundred dollars.

§7-7-1(40). Same—Putnam county.
1 For the county of Putnam, six thousand dollars.

§7-7-1(41). Same—Raleigh county.
1 For the county of Raleigh, eight thousand dollars.

§7-7-1(42). Same—Randolph county.
1 For the county of Randolph, seven thousand five hundred dollars.

§7-7-1(43). Same—Ritchie county.
1 For the county of Ritchie, four thousand eight hundred dollars.

§7-7-1(44). Same—Roane county.
1 For the county of Roane, five thousand dollars.
§7-7-1(45). Same—Summers County.
1 For the county of Summers, five thousand four hundred dollars.

§7-7-1(46). Same—Taylor county.
1 For the county of Taylor, five thousand dollars.

§7-7-1(47). Same—Tucker county.
1 For the county of Tucker, four thousand dollars.

§7-7-1(48). Same—Tyler county.
1 For the county of Tyler, four thousand seven hundred dollars.

§7-7-1(49). Same—Upshur county.
1 For the county of Upshur, four thousand eight hundred dollars.

§7-7-1(50). Same—Wayne county.
1 For the county of Wayne, six thousand three hundred dollars.

§7-7-1(51). Same—Webster county.
1 For the county of Webster, five thousand dollars.

§7-7-1(52). Same—Wetzel county.
1 For the county of Wetzel, six thousand dollars.

§7-7-1(53). Same—Wirt county.
1 For the county of Wirt, three thousand six hundred dollars.

§7-7-1(54). Same—Wood county.
1 For the county of Wood, six thousand dollars.

§7-7-1(55). Same—Wyoming county.
1 For the county of Wyoming, seven thousand dollars.

§7-7-2. Salaries of county clerks.
1 The annual compensation of the clerk of the county court of each county shall, on and after January one, one thousand nine hundred sixty-nine, be in the amount.
§7-7-2(1). Same—Barbour county.
1 For the county of Barbour, four thousand five hundred dollars.

§7-7-2(2). Same—Berkeley county.
1 For the county of Berkeley, eight thousand five hundred dollars.

§7-7-2(3). Same—Boone county.
1 For the county of Boone, six thousand five hundred dollars.

§7-7-2(4). Same—Braxton county.
1 For the county of Braxton, not less than four thousand eight hundred nor more than five thousand four hundred dollars.

§7-7-2(5). Same—Brooke county.
1 For the county of Brooke, six thousand dollars.

§7-7-2(6). Same—Cabell county.
1 For the county of Cabell, eleven thousand dollars.

§7-7-2(7). Same—Calhoun county.
1 For the county of Calhoun, four thousand dollars.

§7-7-2(8). Same—Clay county.
1 For the county of Clay, four thousand dollars.

§7-7-2(9). Same—Doddridge county.
1 For the county of Doddridge, three thousand nine hundred dollars.

§7-7-2(10). Same—Fayette county.
1 For the county of Fayette, seven thousand five hundred dollars.

§7-7-2(11). Same—Gilmer county.
1 For the county of Gilmer, four thousand eight hundred dollars.
§7-7-2(12). Same—Greenbrier county.
1 For the county of Greenbrier, six thousand six hundred
2 dollars.

§7-7-2(13). Same—Hampshire county.
1 For the county of Hampshire, four thousand five hun-
2 dred dollars.

§7-7-2(14). Same—Hancock county.
1 For the county of Hancock, six thousand five hundred
2 four dollars.

§7-7-2(15). Same—Harrison county.
1 For the county of Harrison, eight thousand dollars.

§7-7-2(16). Same—Jackson county.
1 For the county of Jackson, six thousand dollars.

§7-7-2(17). Same—Jefferson county.
1 For the county of Jefferson, five thousand dollars.

§7-7-2(18). Same—Kanawha county.
1 For the county of Kanawha, twelve thousand dollars.

§7-7-2(19). Same—Lewis county.
1 For the county of Lewis, five thousand dollars.

§7-7-2(20). Same—Lincoln county.
1 For the county of Lincoln, not less than six thousand
2 dollars nor more than seven thousand two hundred
3 dollars.

§7-7-2(21). Same—Logan county.
1 For the county of Logan, seven thousand two hundred
2 dollars.

§7-7-2(22). Same—Marion county.
1 For the county of Marion, eight thousand dollars.

§7-7-2(23). Same—Marshall county.
1 For the county of Marshall, seven thousand two hun-
2 dred dollars.
§7-7-2(24). Same—Mason county.
1 For the county of Mason, six thousand seven hundred 
dollars.

§7-7-2(25). Same—McDowell county.
1 For the county of McDowell, eight thousand dollars.

§7-7-2(26). Same—Mercer county.
1 For the county of Mercer, eight thousand dollars.

§7-7-2(27). Same—Mineral county.
1 For the county of Mineral, six thousand dollars.

§7-7-2(28). Same—Mingo county.
1 For the county of Mingo, seven thousand two hundred 
dollars.

§7-7-2(29). Same—Monongalia county.
1 For the county of Monongalia, eight thousand five 
hundred dollars.

§7-7-2(30). Same—Monroe county.
1 For the county of Monroe, four thousand dollars.

§7-7-2(31). Same—Morgan county.
1 For the county of Morgan, four thousand eight hun-
dred dollars.

§7-7-2(32). Same—Nicholas county.
1 For the county of Nicholas, five thousand eight hun-
dred dollars.

§7-7-2(33). Same—Ohio county.
1 For the county of Ohio, eight thousand four hundred 
dollars.

§7-7-2(34). Same—Pleasants county.
1 For the county of Pleasants, four thousand eight hun-
dred dollars.

§7-7-2(35). Same—Pocahontas county.
1 For the county of Pocahontas, four thousand two hun-
dred dollars.
§7-7-2(36). Same—Preston county.
   1 For the county of Preston, six thousand dollars.

§7-7-2(37). Same—Putnam county.
   1 For the county of Putnam, six thousand dollars.

§7-7-2(38). Same—Raleigh county.
   1 For the county of Raleigh, eight thousand dollars.

§7-7-2(39). Same—Randolph county.
   1 For the county of Randolph, seven thousand five hundred dollars.

§7-7-2(40). Same—Ritchie county.
   1 For the county of Ritchie, four thousand eight hundred dollars.

§7-7-2(41). Same—Roane county.
   1 For the county of Roane, five thousand dollars.

§7-7-2(42). Same—Summers county.
   1 For the county of Summers, four thousand eight hundred dollars.

§7-7-2(43). Same—Taylor county.
   1 For the county of Taylor, four thousand two hundred dollars.

§7-7-2(44). Same—Tucker county.
   1 For the county of Tucker, four thousand dollars.

§7-7-2(45). Same—Tyler county.
   1 For the county of Tyler, four thousand one hundred dollars.

§7-7-2(46). Same—Upshur county.
   1 For the county of Upshur, four thousand eight hundred dollars.

§7-7-2(47). Same—Wayne county.
   1 For the county of Wayne, five thousand nine hundred dollars.
§7-7-2(48). Same—Webster county.
1 For the county of Webster, four thousand eight hundred two dollars.

§7-7-2(49). Same—Wetzel county.
1 For the county of Wetzel, six thousand six hundred two dollars.

§7-7-2(50). Same—Wirt county.
1 For the county of Wirt, two thousand four hundred two dollars.

§7-7-2(51). Same—Wood county.
1 For the county of Wood, seven thousand dollars.

§7-7-2(52). Same—Wyoming county.
1 For the county of Wyoming, seven thousand two hundred dollars.

§7-7-3. Salaries of circuit clerks.
1 The annual compensation of the clerk of the circuit court (or clerk of the circuit and criminal or intermediate or other court of limited jurisdiction) in each county shall, on and after January one, one thousand nine hundred sixty-nine, be in the amount set forth in sections three-(one) to three-(fifty-two), inclusive, of this article.

§7-7-3(1). Same—Barbour county.
1 For the county of Barbour, three thousand eight hundred two dollars.

§7-7-3(2). Same—Berkeley county.
1 For the county of Berkeley, eight thousand dollars.

§7-7-3(3). Same—Boone county.
1 For the county of Boone, six thousand five hundred two dollars.

§7-7-3(4). Same—Braxton county.
1 For the county of Braxton, four thousand eight hundred two dollars.
§7-7-3(5). Same—Brooke county.
1 For the county of Brooke, six thousand dollars.

§7-7-3(6). Same—Cabell county.
1 For the county of Cabell, eleven thousand dollars.

§7-7-3(7). Same—Calhoun county.
1 For the county of Calhoun, three thousand four hundred dollars.

§7-7-3(8). Same—Clay county.
1 For the county of Clay, three thousand five hundred dollars.

§7-7-3(9). Same—Doddridge county.
1 For the county of Doddridge, three thousand eight hundred dollars.

§7-7-3(10). Same—Fayette county.
1 For the county of Fayette, seven thousand five hundred dollars.

§7-7-3(11). Same—Gilmer county.
1 For the county of Gilmer, four thousand two hundred dollars.

§7-7-3(12). Same—Greenbrier county.
1 For the county of Greenbrier, five thousand nine hundred dollars.

§7-7-3(13). Same—Hampshire county.
1 For the county of Hampshire, three thousand three hundred dollars.

§7-7-3(14). Same—Hancock county.
1 For the county of Hancock, six thousand five hundred dollars.

§7-7-3(15). Same—Harrison county.
1 For the county of Harrison, eight thousand dollars.

§7-7-3(16). Same—Jackson county.
1 For the county of Jackson, six thousand dollars.
§7-7-3(17). Same—Jefferson county.
1 For the county of Jefferson, four thousand eight hundred dollars.

§7-7-3(18). Same—Kanawha county.
1 For the county of Kanawha, twelve thousand dollars.

§7-7-3(19). Same—Lewis county.
1 For the county of Lewis, five thousand dollars.

§7-7-3(20). Same—Lincoln county.
1 For the county of Lincoln, not less than six thousand nor more than seven thousand two hundred dollars.

§7-7-3(21). Same—Logan county.
1 For the county of Logan, seven thousand two hundred dollars.

§7-7-3(22). Same—Marion county.
1 For the county of Marion, eight thousand dollars.

§7-7-3(23). Same—Marshall county.
1 For the county of Marshall, six thousand six hundred dollars.

§7-7-3(24). Same—Mason county.
1 For the county of Mason, six thousand dollars.

§7-7-3(25). Same—McDowell county.
1 For the county of McDowell, eight thousand dollars.

§7-7-3(26). Same—Mercer county.
1 For the county of Mercer, eight thousand dollars.

§7-7-3(27). Same—Mineral county.
1 For the county of Mineral, six thousand two hundred fifty dollars.

§7-7-3(28). Same—Mingo county.
1 For the county of Mingo, seven thousand two hundred dollars.
§7-7-3(29). Same—Monongalia county.
  1 For the county of Monongalia, six thousand dollars.

§7-7-3(30). Same—Monroe county.
  1 For the county of Monroe, three thousand dollars.

§7-7-3(31). Same—Morgan county.
  1 For the county of Morgan, three thousand six hundred dollars.

§7-7-3(32). Same—Nicholas county.
  1 For the county of Nicholas, five thousand eight hundred dollars.

§7-7-3(33). Same—Ohio county.
  1 For the county of Ohio, eight thousand forty dollars.

§7-7-3(34). Same—Pleasants county.
  1 For the county of Pleasants, four thousand two hundred dollars.

§7-7-3(35). Same—Pocahontas county.
  1 For the county of Pocahontas, three thousand eight hundred dollars.

§7-7-3(36). Same—Preston county.
  1 For the county of Preston, six thousand dollars.

§7-7-3(37). Same—Putnam county.
  1 For the county of Putnam, six thousand dollars.

§7-7-3(38). Same—Raleigh county.
  1 For the county of Raleigh, eight thousand dollars.

§7-7-3(39). Same—Randolph county.
  1 For the county of Randolph, seven thousand five hundred dollars.

§7-7-3(40). Same—Ritchie county.
  1 For the county of Ritchie, four thousand two hundred dollars.
§7-7-3(41). Same—Roane county.
1 For the county of Roane, four thousand seven hundred 2 dollars.

§7-7-3(42). Same—Summers county.
1 For the county of Summers, four thousand eight hun-
2 dred dollars.

§7-7-3(43). Same—Taylor county.
1 For the county of Taylor, three thousand eight hun-
2 dred dollars.

§7-7-3(44). Same—Tucker county.
1 For the county of Tucker, four thousand dollars.

§7-7-3(45). Same—Tyler county.
1 For the county of Tyler, four thousand one hundred 2 dollars.

§7-7-3(46). Same—Upshur county.
1 For the county of Upshur, four thousand eight hun-
2 dred dollars.

§7-7-3(47). Same—Wayne county.
1 For the county of Wayne, five thousand seven hundred 2 dollars.

§7-7-3(48). Same—Webster county.
1 For the county of Webster, four thousand eight hun-
2 dred dollars.

§7-7-3(49). Same—Wetzel county.
1 For the county of Wetzel, six thousand six hundred 2 dollars.

§7-7-3(50). Same—Wirt county.
1 For the county of Wirt, one thousand eight hundred 2 dollars.

§7-7-3(51). Same—Wood county.
1 For the county of Wood, seven thousand dollars.
§7-7-3(52). Same—Wyoming county.

1 For the county of Wyoming, seven thousand two hundred dollars.

§7-7-4. Salaries of joint clerks of county and circuit courts.

1 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, six thousand dollars; Grant county, six thousand dollars; Pendleton county, six thousand five hundred dollars.

§7-7-5. Salaries of prosecuting attorneys.

1 The annual compensation of the prosecuting attorney in each county, including the compensation provided by law for his services as attorney for boards of education and other administrative boards and officers in the county, shall, on and after January one, one thousand nine hundred sixty-nine, be in the amount set forth in sections five-(one) to five-(fifty-five), inclusive, of this article.

§7-7-5(1). Same—Barbour county.

1 For the county of Barbour, three thousand eight hundred dollars.

§7-7-5(2). Same—Berkeley county.

1 For the county of Berkeley, nine thousand dollars.

§7-7-5(3). Same—Boone county.

1 For the county of Boone, six thousand five hundred dollars.

§7-7-5(4). Same—Braxton county.

1 For the county of Braxton, four thousand dollars.

§7-7-5(5). Same—Brooke county.

1 For the county of Brooke, five thousand dollars.

§7-7-5(6). Same—Cabell county.

1 For the county of Cabell, ten thousand dollars.
§7-7-5(7). Same—Calhoun county.
   1 For the county of Calhoun, three thousand six hundred
   2 dollars.

§7-7-5(8). Same—Clay county.
   1 For the county of Clay, three thousand dollars.

§7-7-5(9). Same—Doddridge county.
   1 For the county of Doddridge, three thousand six hun-
   2 dred dollars.

§7-7-5(10). Same—Fayette county.
   1 For the county of Fayette, eight thousand dollars.

§7-7-5(11). Same—Gilmer county.
   1 For the county of Gilmer, four thousand two hundred
   2 dollars.

§7-7-5(12). Same—Grant county.
   1 For the county of Grant, three thousand dollars.

§7-7-5(13). Same—Greenbrier county.
   1 For the county of Greenbrier, six thousand six hun-
   2 dred dollars.

§7-7-5(14). Same—Hampshire county.
   1 For the county of Hampshire, three thousand dollars.

§7-7-5(15). Same—Hancock county.
   1 For the county of Hancock, six thousand dollars.

§7-7-5(16). Same—Hardy county.
   1 For the county of Hardy, two thousand four hundred
   2 dollars.

§7-7-5(17). Same—Harrison county.
   1 For the county of Harrison, eleven thousand dollars.

§7-7-5(18). Same—Jackson county.
   1 For the county of Jackson, six thousand dollars.
§7-7-5(19). Same—Jefferson county.
1 For the county of Jefferson, six thousand dollars.

§7-7-5(20). Same—Kanawha county.
1 For the county of Kanawha, seventeen thousand dollars: Provided, That the prosecuting attorney shall devote full time to his public duties as prosecuting attorney to the exclusion of any private law practice.

§7-7-5(21). Same—Lewis county.
1 For the county of Lewis, five thousand dollars.

§7-7-5(22). Same—Lincoln county.
1 For the county of Lincoln, not less than six thousand nor more than seven thousand two hundred dollars.

§7-7-5(23). Same—Logan county.
1 For the county of Logan, seven thousand two hundred dollars.

§7-7-5(24). Same—Marion county.
1 For the county of Marion, eight thousand eight hundred dollars.

1 For the county of Marshall, seven thousand five hundred dollars.

§7-7-5(26). Same—Mason county.
1 For the county of Mason, six thousand dollars.

§7-7-5(27). Same—McDowell county.
1 For the county of McDowell, eight thousand four hundred dollars.

§7-7-5(28). Same—Mercer county.
1 For the county of Mercer, eight thousand dollars.

§7-7-5(29). Same—Mineral county.
1 For the county of Mineral, six thousand dollars.
§7-7-5(30). Same—Mingo county.
1 For the county of Mingo, seven thousand two hundred dollars.

§7-7-5(31). Same—Monongalia county.
1 For the county of Monongalia, seven thousand five hundred dollars.

§7-7-5(32). Same—Monroe county.
1 For the county of Monroe, two thousand four hundred dollars.

§7-7-5(33). Same—Morgan county.
1 For the county of Morgan, three thousand six hundred dollars.

§7-7-5(34). Same—Nicholas county.
1 For the county of Nicholas, five thousand eight hundred dollars.

§7-7-5(35). Same—Ohio county.
1 For the county of Ohio, nine thousand five hundred dollars.

§7-7-5(36). Same—Pendleton county.
1 For the county of Pendleton, two thousand four hundred dollars.

§7-7-5(37). Same—Pleasants county.
1 For the county of Pleasants, three thousand six hundred dollars.

§7-7-5(38). Same—Pocahontas county.
1 For the county of Pocahontas, three thousand dollars.

§7-7-5(39). Same—Preston county.
1 For the county of Preston, six thousand five hundred dollars.

§7-7-5(40). Same—Putnam county.
1 For the county of Putnam, six thousand dollars.
§7-7-5(41). Same—Raleigh county.

1 For the county of Raleigh, eight thousand nine hundred 2 dollars.

§7-7-5(42). Same—Randolph county.

1 For the county of Randolph, seven thousand five hundred 2 dollars.

§7-7-5(43). Same—Ritchie county.

1 For the county of Ritchie, three thousand six hundred 2 dollars.

§7-7-5(44). Same—Roane county.

1 For the county of Roane, four thousand five hundred 2 dollars.

§7-7-5(45). Same—Summers county.

1 For the county of Summers, four thousand eight hundred 2 dollars.

§7-7-5(46). Same—Taylor county.

1 For the county of Taylor, four thousand five hundred 2 dollars.

§7-7-5(47). Same—Tucker county.

1 For the county of Tucker, four thousand dollars.

§7-7-5(48). Same—Tyler county.

1 For the county of Tyler, three thousand three hundred 2 dollars.

§7-7-5(49). Same—Upshur county.

1 For the county of Upshur, four thousand two hundred 2 dollars.

§7-7-5(50). Same—Wayne county.

1 For the county of Wayne, seven thousand two hundred 2 dollars.
§7-7-5(51). Same—Webster county.

1 For the county of Webster, four thousand eight hundred dollars.

§7-7-5(52). Same—Wetzel county.

1 For the county of Wetzel, six thousand three hundred dollars.

§7-7-5(53). Same—Wirt county.

1 For the county of Wirt, one thousand eight hundred dollars.

§7-7-5(54). Same—Wood county.

1 For the county of Wood, eight thousand dollars.

§7-7-5(55). Same—Wyoming county.

1 For the county of Wyoming, seven thousand five hundred dollars.

§7-7-6(1). Assistants, stenographers and clerks to prosecuting attorneys: Salaries—Barbour county.

1 For the county of Barbour, one assistant attorney, one thousand dollars; one stenographer, two thousand four hundred dollars.

§7-7-6(2). Same—Berkeley county.

1 For the county of Berkeley, one assistant attorney, not less than three thousand four hundred dollars nor more than four thousand dollars; one stenographer, not less than three thousand four hundred dollars nor more than four thousand dollars.

§7-7-6(3). Same—Boone county.

1 For the county of Boone, one assistant attorney, four thousand five hundred dollars; one stenographer at three thousand one hundred dollars.

§7-7-6(4). Same—Braxton county.

1 For the county of Braxton, one assistant attorney; one stenographer, not more than two thousand four hundred dollars.
§7-7-6(5). Same—Brooke county.
1 For the county of Brooke, one assistant attorney, three
2 thousand eight hundred dollars; one stenographer, two
3 thousand seven hundred dollars.

§7-7-6(6). Same—Cabell county.
1 For the county of Cabell, three assistant attorneys, not
2 more than seven thousand two hundred dollars each;
3 two stenographers not more than four thousand dollars
4 each.

§7-7-6(7). Same—Calhoun county.
1 For the county of Calhoun, one assistant attorney, three
2 hundred dollars; one stenographer, at not more than one
3 thousand seven hundred dollars.

§7-7-6(8). Same—Clay county.
1 For the county of Clay, one assistant attorney; one
2 clerk or stenographer or in lieu thereof one practicing
3 attorney, not less than two thousand two hundred nor
4 more than two thousand eight hundred eighty dollars.

§7-7-6(9). Same—Doddridge county.
1 For the county of Doddridge, one assistant attorney;
2 one stenographer, not more than three thousand dollars.

§7-7-6(10). Same—Fayette county.
1 For the county of Fayette, one assistant attorney, seven
2 thousand five hundred dollars; one stenographer at a
3 salary to be fixed by the county court.

§7-7-6(11). Same—Gilmer county.
1 For the county of Gilmer, one assistant attorney; one
2 stenographer, not more than one thousand eight hundred
3 dollars.

§7-7-6(12). Same—Grant county.
1 For the county of Grant, one assistant attorney; one
2 stenographer or clerk, not more than one thousand eight
3 hundred dollars.
§7-7-6(13). Same—Greenbrier county.
1 For the county of Greenbrier, one assistant attorney;
2 one stenographer, at a salary to be fixed by the county
3 court.

§7-7-6(14). Same—Hampshire county.
1 For the county of Hampshire, one assistant attorney;
2 one stenographer, two thousand four hundred dollars.

§7-7-6(15). Same—Hancock county.
1 For the county of Hancock, one assistant attorney, not
2 less than three thousand nor more than five thousand four
3 hundred dollars; one stenographer, not less than three
4 thousand six hundred dollars nor more than four thou-
5 sand two hundred dollars.

§7-7-6(16). Same—Hardy county.
1 For the county of Hardy, one assistant attorney, two
2 thousand dollars; one stenographer or one clerk at a
3 salary fixed by the prosecuting attorney, not to exceed
4 one thousand eight hundred dollars.

§7-7-6(17). Same—Harrison county.
1 For the county of Harrison, first assistant attorney,
2 nine thousand dollars; second assistant attorney, seven
3 thousand two hundred dollars; two stenographers, not
4 less than nine hundred dollars nor more than three thou-
5 sand six hundred dollars for each.

§7-7-6(18). Same—Jackson county.
1 For the county of Jackson, one assistant attorney, one
2 thousand eight hundred dollars; one stenographer, not less
3 than one thousand six hundred dollars nor more than
4 two thousand two hundred dollars.

§7-7-6(19). Same—Jefferson county.
1 For the county of Jefferson, the prosecuting attorney
2 may employ a stenographer for his office at a salary of
3 not less than one thousand eight hundred dollars nor
4 more than three thousand dollars per annum, payable
5 out of the county treasury to be fixed by the said prose-
6 cuting attorney of said county of Jefferson.
§7-7-6(20). Same—Kanawha county.

1. For the county of Kanawha, first assistant attorney, not less than six thousand nor more than thirteen thousand dollars; three assistant attorneys, not less than six thousand nor more than thirteen thousand dollars each; and stenographers and clerks at a salary to be fixed by the county court payable out of the county treasury of said county of Kanawha.

§7-7-6(21). Same—Lewis county.

1. For the county of Lewis, one assistant attorney, not more than one thousand eight hundred dollars; one stenographer, not less than six hundred nor more than one thousand eight hundred dollars.

§7-7-6(22). Same—Lincoln county.

1. For the county of Lincoln, one assistant attorney, four thousand dollars; one stenographer or clerk, not more than four thousand two hundred dollars.

§7-7-6(23). Same—Logan county.

1. For the county of Logan, one assistant attorney, at six thousand five hundred dollars; one stenographer, not more than three thousand nine hundred dollars; second stenographer, not more than three thousand three hundred dollars.

§7-7-6(24). Same—Marion county.

1. For the county of Marion, first assistant attorney, six thousand dollars; second assistant attorney, five thousand four hundred dollars; one stenographer whose salary shall be set by the county court.

§7-7-6(25). Same—Marshall county.

1. For the county of Marshall, one assistant attorney, at two thousand four hundred dollars; one stenographer or clerk, not less than two thousand eight hundred nor more than three thousand six hundred dollars.
§7-7-6(26). Same—Mason county.

1. For the county of Mason, one assistant attorney, not less than one thousand five hundred nor more than two thousand dollars; one stenographer, two thousand dollars.

§7-7-6(27). Same—McDowell county.

1. For the county of McDowell, first assistant attorney, not less than three thousand nor more than six thousand six hundred dollars; second assistant attorney, not less than three thousand nor more than five thousand dollars; one stenographer, at a salary to be fixed by the county court.

§7-7-6(28). Same—Mercer county.

1. For the county of Mercer, one assistant attorney, at six thousand five hundred dollars; one stenographer or clerk, not more than three thousand nine hundred dollars.

§7-7-6(29). Same—Mineral county.

1. For the county of Mineral, one assistant attorney, not more than one thousand six hundred dollars; one stenographer, not more than three thousand six hundred dollars.

§7-7-6(30). Same—Mingo county.

1. For the county of Mingo, one assistant attorney, not more than six thousand dollars; one stenographer, not more than four thousand two hundred dollars.

§7-7-6(31). Same—Monongalia county.

1. For the county of Monongalia, one assistant attorney, six thousand dollars; one stenographer, not less than two thousand four hundred nor more than three thousand six hundred dollars.

§7-7-6(32). Same—Monroe county.

1. For the county of Monroe, one assistant attorney; one stenographer, not more than nine hundred dollars.

§7-7-6(33). Same—Morgan county.

1. For the county of Morgan, one assistant attorney.
§7-7-6(34). Same—Nicholas county.

1 For the county of Nicholas, one assistant attorney, not more than one thousand two hundred dollars; one stenographer or clerk, at a salary to be fixed by the county court.

§7-7-6(35). Same—Ohio county.

1 For the county of Ohio, first assistant attorney, at seven thousand five hundred dollars; second assistant attorney, at six thousand five hundred dollars; third assistant attorney, at six thousand five hundred dollars; one stenographer, not more than three thousand three hundred dollars; second stenographer, not more than one thousand two hundred dollars.

§7-7-6(36). Same—Pendleton county.

1 For the county of Pendleton, one assistant attorney, two thousand dollars; one stenographer or clerk, not more than one thousand five hundred dollars.

§7-7-6(37). Same—Pleasants county.

1 For the county of Pleasants, one stenographer, not more than two thousand four hundred dollars.

§7-7-6(38). Same—Pocahontas county.

1 For the county of Pocahontas, one assistant attorney; one stenographer, not more than two thousand one hundred dollars.

§7-7-6(39). Same—Preston county.

1 For the county of Preston, one assistant attorney at a salary not exceeding three thousand six hundred dollars; one stenographer, not more than four thousand two hundred dollars.

§7-7-6(40). Same—Putnam county.

1 For the county of Putnam, one assistant attorney, not more than three thousand dollars; one stenographer, not more than three thousand six hundred dollars.
§7-7-6(41). Same—Raleigh county.

1 For the county of Raleigh, one assistant attorney, six thousand six hundred dollars; two stenographers, not less than one thousand eight hundred dollars nor more than four thousand eight hundred dollars each.

§7-7-6(42). Same—Randolph county.

1 For the county of Randolph, one assistant attorney, not more than five thousand one hundred dollars; one stenographer, not less than two thousand seven hundred nor more than three thousand six hundred dollars.

§7-7-6(43). Same—Ritchie county.

1 For the county of Ritchie, one assistant attorney; one stenographer, not less than one thousand six hundred dollars nor more than two thousand four hundred dollars.

§7-7-6(44). Same—Roane county.

1 For the county of Roane, one assistant attorney; one stenographer, not less than two thousand four hundred dollars nor more than three thousand dollars.

§7-7-6(45). Same—Summers county.

1 For the county of Summers, one assistant attorney, not less than one thousand nor more than two thousand dollars; one stenographer, not less than one thousand five hundred nor more than three thousand dollars.

§7-7-6(46). Same—Taylor county.

1 For the county of Taylor, one assistant attorney; one stenographer, not less than one thousand two hundred dollars nor more than three thousand dollars.

§7-7-6(47). Same—Tucker county.

1 For the county of Tucker, one assistant attorney.

§7-7-6(48). Same—Tyler county.

1 For the county of Tyler, one assistant attorney; one stenographer, not more than one thousand eight hundred dollars.
§7-7-6(49). Same—Upshur county.

1 For the county of Upshur, one assistant attorney, not more than one thousand two hundred dollars; one stenographer, not more than one thousand two hundred dollars.

§7-7-6(50). Same—Wayne county.

1 For the county of Wayne, one assistant attorney, five thousand dollars; one stenographer, three thousand six hundred dollars.

§7-7-6(51). Same—Webster county.

1 For the county of Webster, one stenographer, three thousand five hundred dollars.

§7-7-6(52). Same—Wetzel county.

1 For the county of Wetzel, one assistant attorney, not less than nine hundred dollars nor more than one thousand two hundred dollars; one stenographer, not more than four thousand five hundred dollars.

§7-7-6(53). Same—Wirt county.

1 For the county of Wirt, one stenographer or clerk at not more than nine hundred dollars.

§7-7-6(54). Same—Wood county.

1 For the county of Wood, one assistant attorney, who shall maintain offices in the courthouse, at not more than six thousand six hundred dollars; and in addition thereto, the prosecuting attorney may, with the consent of the county court, appoint one additional assistant attorney at a salary to be fixed by the county court; and stenographers at salaries to be fixed by the county court.

§7-7-6(55). Same—Wyoming county.

1 For the county of Wyoming, one assistant attorney, at seven thousand dollars; one stenographer at salary fixed by the county court.
CHAPTER 11. TAXATION.

ARTICLE 2. ASSESSORS.

Section
5. Annual salary of assessors.
5-(1)—5-(55). Salaries of assessors of the various counties of the state.

§11-2-5. Annual salary of assessors.
1 The annual salary of the assessor in each county shall, on and after January one, one thousand nine hundred sixty-nine, be in the amounts set forth in sections five-(one) to five-(fifty-five), inclusive, of this article.

§11-2-5(1). Same—Barbour county.
1 For the county of Barbour, four thousand two hundred dollars.

§11-2-5(2). Same—Berkeley county.
1 For the county of Berkeley, eight thousand dollars.

§11-2-5(3). Same—Boone county.
1 For the county of Boone, six thousand five hundred dollars.

§11-2-5(4). Same—Braxton county.
1 For the county of Braxton, four thousand eight hundred dollars.

§11-2-5(5). Same—Brooke county.
1 For the county of Brooke, six thousand dollars.

§11-2-5(6). Same—Cabell county.
1 For the county of Cabell, seven thousand two hundred dollars.

§11-2-5(7). Same—Calhoun county.
1 For the county of Calhoun, three thousand six hundred dollars.

1 For the county of Clay, four thousand dollars.

§11-2-5(9). Same—Doddridge county.
1 For the county of Doddridge, three thousand eight hundred dollars.
§11-2-5(10). Same—Fayette county.
   1 For the county of Fayette, seven thousand five hundred
   2 dollars.

   1 For the county of Gilmer, four thousand two hundred
   2 dollars.

§11-2-5(12). Same—Grant county.
   1 For the county of Grant, four thousand five hundred
   2 dollars.

§11-2-5(13). Same—Greenbrier county.
   1 For the county of Greenbrier, six thousand six hundred
   2 dollars.

   1 For the county of Hampshire, three thousand six hundred
   2 dollars.

§11-2-5(15). Same—Hancock county.
   1 For the county of Hancock, six thousand dollars.

§11-2-5(16). Same—Hardy county.
   1 For the county of Hardy, four thousand dollars.

§11-2-5(17). Same—Harrison county.
   1 For the county of Harrison, eight thousand dollars.

   1 For the county of Jackson, six thousand dollars.

   1 For the county of Jefferson, five thousand six hundred
   2 dollars.

   1 For the county of Kanawha, nine thousand dollars.

§11-2-5(21). Same—Lewis county.
   1 For the county of Lewis, five thousand dollars.
§11-2-5(22). Same—Lincoln county.

1 For the county of Lincoln, not less than six thousand dollars nor more than seven thousand two hundred dollars.

§11-2-5(23). Same—Logan county.

1 For the county of Logan, eight thousand one hundred dollars.

§11-2-5(24). Same—Marion county.

1 For the county of Marion, eight thousand dollars.


1 For the county of Marshall, six thousand six hundred dollars.

§11-2-5(26). Same—Mason county.

1 For the county of Mason, six thousand dollars.

§11-2-5(27). Same—McDowell county.

1 For the county of McDowell, eight thousand dollars.


1 For the county of Mercer, seven thousand two hundred fifty dollars.


1 For the county of Mineral, six thousand dollars.

§11-2-5(30). Same—Mingo county.

1 For the county of Mingo, seven thousand two hundred dollars.


1 For the county of Monongalia, five thousand five hundred dollars.


1 For the county of Monroe, three thousand six hundred dollars.
§11-2-5(33). Same—Morgan county.
  1 For the county of Morgan, four thousand two hundred 
     2 dollars.

§11-2-5(34). Same—Nicholas county.
  1 For the county of Nicholas, five thousand eight hun-
     2 dred dollars.

§11-2-5(35). Same—Ohio county.
  1 For the county of Ohio, seven thousand nine hundred 
     2 dollars.

  1 For the county of Pendleton, four thousand dollars.

§11-2-5(37). Same—Pleasants county.
  1 For the county of Pleasants, four thousand two hun-
     2 dred dollars.

§11-2-5(38). Same—Pocahontas county.
  1 For the county of Pocahontas, three thousand four 
     2 hundred dollars.

  1 For the county of Preston, six thousand dollars.

§11-2-5(40). Same—Putnam county.
  1 For the county of Putnam, six thousand dollars.

  1 For the county of Raleigh, eight thousand dollars.

§11-2-5(42). Same—Randolph county.
  1 For the county of Randolph, seven thousand three hun-
     2 dred dollars.

§11-2-5(43). Same—Ritchie county.
  1 For the county of Ritchie, four thousand six hundred 
     2 dollars.
§11-2-5(44). Same—Roane county.
1 For the county of Roane, four thousand eight hundred
2 dollars.

§11-2-5(45). Same—Summers county.
1 For the county of Summers, four thousand eight hun-
2 dred dollars.

1 For the county of Taylor, four thousand two hundred
2 dollars.

1 For the county of Tucker, four thousand dollars.

§11-2-5(48). Same—Tyler county.
1 For the county of Tyler, four thousand one hundred
2 dollars.

§11-2-5(49). Same—Upshur county.
1 For the county of Upshur, four thousand two hundred
2 dollars.

1 For the county of Wayne, five thousand seven hundred
2 dollars.

§11-2-5(51). Same—Webster county.
1 For the county of Webster, four thousand eight hundred
2 dollars.

§11-2-5(52). Same—Wetzel county.
1 For the county of Wetzel, six thousand dollars.

§11-2-5(53). Same—Wirt county.
1 For the county of Wirt, three thousand dollars.

§11-2-5(54). Same—Wood county.
1 For the county of Wood, five thousand dollars.

1 For the county of Wyoming, seven thousand dollars.
CHAPTER 35
(Senate Bill No. 413—By Mr. Carson, Mr. President)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the authority of county courts to establish special funds for proper public purposes; and the dissolution of and transfer of funds out of any such special funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

Section 9. Creation of special funds.

§7-1-9. Creation of special funds.

In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby authorized and empowered to create and establish, by proper order, special funds to be used for any purpose which such courts now or hereafter may by the provisions of chapter seven or article eleven, chapter eight of this code be authorized to accomplish.

Such courts are hereby authorized to allocate to and transfer into any special fund created pursuant to the provisions of this section, such sums raised by tax levies pursuant to the provisions of article eight, chapter eleven of this code, and such amounts of unexpended or surplus moneys in the county general fund or in any other special fund as they shall deem proper.

Expenditures from any special fund created pursuant to the provisions of this section shall be made only for the
17 purpose for which the special fund was created and es-
18 tablished: Provided, That in the event of a necessity or 
19 emergency the county court, by unanimous vote thereof 
20 and upon approval of the state tax commissioner, shall 
21 be empowered to transfer funds from any such special 
22 fund to the county general fund. 
23 When the particular purpose for which any special fund 
24 created pursuant to the provisions of this section has been 
25 accomplished or completed, the county court may transfer 
26 any balance remaining therein to the general county fund.

CHAPTER 36
(Senate Bill No. 338—By Mr. Brotherton)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, 
chapter seven of the code of West Virginia, one thousand 
ine hundred thirty-one, as amended, relating to allow­
ance for expenses of sheriffs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. SALARIES; DEPUTIES AND ASSISTANTS AND THEIR 
SALARIES.

Section

§7-7-12. Allowance for expenses of sheriff.

The county court, or tribunal in lieu thereof, of every 
county having thirty thousand or less population which, 
as provided in section two-a, article eight of this chapter, 
has directed the sheriff as jailer to feed prisoners shall, 
in addition to the salary herein provided, allow to the 
sheriff for keeping and feeding each prisoner, other than 
federal prisoners or prisoners held under civil process as 
provided by law, an amount to be computed in accord-
ance with the following schedule, based on the population figures appearing in the latest official census, in counties having a population of thirty thousand or less, one dollar and twenty-five cents per day.

The limitation per day shall not include cost of personal service, bed or bedding, soaps and disinfectants and items of like kind, the cost of all of which shall be paid out of the allowance fixed by the county court under the provisions of present law.

All supplies of whatever kind for keeping and feeding prisoners shall be purchased upon the requisition of the sheriff under such rules and regulations as may be prescribed by the county court. At the end of each month the sheriff shall file with the county court a detailed statement showing the name of each prisoner, date of commitment and date of discharge, and number of days in jail, and shall also file an itemized statement showing each purchase and the cost thereof for keeping and feeding prisoners.

The county court of every county shall allow the actual and necessary expenses incurred or expended by the sheriff in arresting, pursuing, or transporting persons accused or convicted of crimes and offenses, including the cost of law enforcement and safety equipment, and in conveying or transferring any person to or from any state institution to where he may be committed from his county, where by law the sheriff is authorized to convey or transfer such person, and shall allow the actual and necessary expenses incurred or expended in serving summonses, notices, or other official papers in connection with the sheriff's office, including an allowance of ten cents per mile for each mile a sheriff or deputy sheriff is required to drive his personally owned car in the performance of his duties hereunder. Every sheriff shall file monthly, under oath, a full and accurate account of all his actual and necessary expenses mentioned in this section, supported by verified accounts for his deputies for amounts expended or incurred by each, before payment thereof shall be allowed by the county court.
AN ACT to amend and reenact section fourteen, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees to be charged by sheriffs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

A sheriff shall charge and collect the following fees:

2 For serving on any person a declaration in ejectment, or an order, notice, summons or other process, where the body is not taken, except a subpoena served on a witness, and making return thereof $1.50

6 For summoning a witness 1.50

8 For serving on any person an attachment or other process under which the body is taken 1.50

9 For levying an attachment on real estate and making the return 3.00

11 For making any other levy 1.50

12 For conveying a prisoner to or from jail, for each mile of necessary travel either in going or returning 0.05

15 For taking any bond 0.60

16 When a jury is sworn in court, for summoning and impaneling such jury 1.00

18 For serving a writ of possession 1.50
19 For issuing receipt to purchaser at delinquent tax
20 sale ................................................................. .25

21 The county court, giving due regard to the cost thereof,
22 may from time to time prescribe the amount which the
23 sheriff may charge for keeping any property or in re-
24 moving any property. When, after distraining or levying,
25 he neither sells nor receives payment, and either takes
26 no bond or takes one which is not forfeited, he shall, if
27 guilty of no default, have (in addition to the sixty cents
28 for a bond, if one was taken) a fee of three dollars, unless
29 this be more than half of what his commission would have
30 amounted to if he had received payment; in which case
31 he shall (whether a bond was taken or not) have a fee
32 of sixty cents at the least, and so much more as is neces-
33 sary to make the said half of his commissions. The com-
34 mission to be included in a forthcoming bond (when one
35 is taken) shall be five per cent on the first three hundred
36 dollars of the money for which the distress or levy is
37 made, and two per cent on the residue of such money;
38 but such commission shall not be received, in whole or
39 in part, except as hereinbefore provided, unless the bond
40 be forfeited, or the amount (including the commission)
41 be paid to the plaintiff. An officer receiving payment in
42 money, or selling property, shall have the like commission
43 of five per cent on the first three hundred dollars of the
44 money paid or proceeds from such sale, and two per cent
45 on the residue, except that when such payment or sale
46 is on an execution on a forthcoming bond, his commission
47 shall be only half what it would be if the execution were
48 not on such bond.

CHAPTER 38

(Senate Bill No. 91—By Mr. Lambert and Mr. Wolfe)

[Passed February 22, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chap-
ter six of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, relating to the allowances to circuit judges for stationery, postage and stenographic help, and to payments therefor.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 7. COMPENSATION AND ALLOWANCES.**

Section 6. Allowances to circuit judges for stationery, postage and stenographic help; additional stenographic compensation from counties; payments therefor.

§6-7-6. Allowances to circuit judges for stationery, postage and stenographic help; additional stenographic compensation from counties; payments therefor.

Each judge of the circuit court shall be allowed an amount not to exceed three hundred dollars per month for the payment of stenographic help necessary in the discharge of the duties of his office, and each judge shall be allowed an amount not to exceed twenty-five dollars per month for the procurement of necessary stationery, payment of postage, and necessary supplies for his office. The judge shall be reimbursed for the actual amounts expended by him for stationery, supplies and postage. Payment for stenographic help shall be made directly to the person performing the stenographic work. Such amounts shall be paid monthly out of the state treasury, but not until the judge submits an itemized statement covering the same.

Any county court or the board of county commissioners of Ohio county may pay such additional compensation for stenographic help for the judge of any circuit which may be necessary in the discharge of the duties of the office of the judge of such circuit, or any combination of counties in any circuit may contribute to such additional stenographic help. Such additional compensation shall be paid from county funds directly to the person or persons performing such work.
AN ACT to amend article one, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-c, relating to the use of microfilm or microcards by clerks of courts of record to reproduce and preserve records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE I. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

Section 7c. Use of microfilm or microcards to reproduce and preserve records; destruction or transfer of originals to archivist.

§57-1-7c. Use of microfilm or microcards to reproduce and preserve records; destruction or transfer of originals to archivist.

The clerk of any court of record of the state may, with the approval of the court for which he or she is clerk, cause any or all records, papers, plats, or other documents kept by him or her to be reproduced on photographic microfilm or microcards and may, with the approval of the court for which he or she is clerk, record, keep and preserve any and all records, papers, plats, or other documents required by the laws of this state to be recorded or kept by said clerk or court exclusively upon photographic microfilm or microcards instead of in well-bound books or instead of by any other method heretofore prescribed by law.

Such photographic microfilm and microcards shall be of durable material and possess good, archival qualities.

The device used to reproduce such records on such film
and cards shall be one which accurately reproduces the
original thereof in all details.

Such photographic microfilm and microcards shall be
deemed to be an original record for all purposes, includ-
ing introduction into evidence in all courts or adminis-
trative agencies. A transcript, exemplification, or photo-
graphic reproduction thereof shall, when properly au-
thenticated by the clerk of such court, be deemed for all
purposes to be a transcript, exemplification, or certified
copy of the original.

Such photographic microfilm and microcards shall be put
in convenient, accessible fireproof files and adequate pro-
vision shall be made for preserving, examining and using
the same.

Any such records, papers, plats, or other documents not
held for others by said clerk or court or required by law
to be delivered to some other person, court, corporation
or agency, may with the approval of the court keeping
such records, papers, plats, or other documents be de-
stroyed; but before any such records, papers, plats or
other documents are authorized to be destroyed the
court keeping them or the clerk thereof shall obtain the
advice and counsel of the state historian or archivist, or
his designated representatives, as to the desirability of
placing the said records, papers, plats, or other docu-
ments in the department of archives and history and
upon the request of the state historian or archivist said
court or the clerk thereof shall cause such records, papers,
plats, or other documents to be so placed at the expense
of said department.

CHAPTER 40

(Senate Bill No. 144—By Mr. McKown and Mr. Floyd)

[Passed February 18, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and one-x, article
two, chapter fifty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend said article two by adding thereto two new sections, designated sections one-dd and one-ee, respectively, relating to the judicial circuits, the election of the judges thereof, the creation of separate judicial circuits for the counties of Wayne and Mingo, and the terms of court for the circuit courts of the counties of Wayne and Mingo, constituting the counties of Berkeley, Jefferson and Morgan as the thirty-first judicial circuit in addition to being the twenty-third judicial circuit, establishing terms of court for the thirty-first judicial circuit, and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections one and one-x, article two, 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 two be further amended by adding thereto two new sections, designated sections one-dd and one-ee, all to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

§51-2-1. Judicial circuits; election and terms of judges; terms of court.

The state shall be divided into judicial circuits as follows: The counties of Brooke, Hancock and Ohio shall constitute the first circuit; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit; the counties of Wood and Wirt shall constitute the fourth circuit; the counties of Calhoun, Jackson and Roane shall constitute the fifth circuit; the county of Cabell shall constitute the sixth circuit; the county of Logan shall constitute the seventh circuit; the county of McDowell shall constitute the eighth circuit; the county of Mercer shall constitute the ninth circuit; the county of Raleigh shall constitute the tenth circuit; the counties of Greenbrier, Monroe, Pocahontas and Summers shall constitute the eleventh circuit; the county of
Fayette shall constitute the twelfth circuit; the county of Kanawha shall constitute the thirteenth circuit; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit; the county of Harrison shall constitute the fifteenth circuit; the county of Marion shall constitute the sixteenth circuit; the county of Monongalia shall constitute the seventeenth circuit; the county of Preston shall constitute the eighteenth circuit; the counties of Barbour and Taylor shall constitute the nineteenth circuit; the county of Randolph shall constitute the twentieth circuit; the counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit; the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit; the county of Wayne shall constitute the twenty-fourth circuit; the counties of Lincoln and Boone shall constitute the twenty-fifth circuit; the counties of Lewis and Upshur shall constitute the twenty-sixth circuit; the county of Wyoming shall constitute the twenty-seventh circuit; the county of Nicholas shall constitute the twenty-eighth circuit; the counties of Mason and Putnam shall constitute the twenty-ninth circuit; the county of Mingo shall constitute the thirtieth circuit; and the counties of Berkeley, Jefferson and Morgan shall constitute the thirty-first circuit.

There shall be elected on the Tuesday next after the first Monday in November, one thousand nine hundred sixty-eight, and every eighth year thereafter, one judge in each of the circuits herein constituted, except for the first circuit there shall be two judges elected.

The terms of the several circuit judges of the counties aforesaid shall commence and be held each year as hereinafter provided.

§51-2-1x. Twenty-fourth circuit.

For the county of Wayne, on the first Monday in March, July and November.

§51-2-1dd. Thirtieth circuit.

For the county of Mingo, on the first Monday in January, May and September.
§51-2-lee. Thirty-first circuit.

For the county of Morgan, on the first Tuesday in February, May and October.

For the county of Jefferson, on the third Tuesday in February, May and October.

For the county of Berkeley, on the first Tuesday in January, April and September.

*This act, insofar as it relates to the rearrangement of judicial circuits and terms of court therein, shall become effective on January one, one thousand nine hundred sixty-nine, but the provisions of this act relating to the election of judges of the judicial circuits, as rearranged herein, shall become effective as of the date of passage of this act.

If any provision of this act is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions of the act, and to this end each and every provision of this act is declared to be severable.

The Legislature hereby declares that it would have enacted the remaining provisions of this act even if it had known that any provisions thereof would be declared to be unconstitutional or invalid.

*These provisions apply to provisions of the act enumerated therein, and are not a part of §51-2-lee.

CHAPTER 41

(Senate Bill No. 89—By Mr. Hatcher)

[Passed February 3, 1967; In effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-c and one-h, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of the circuit court of the third judicial circuit and the circuit court of the eighth judicial circuit.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

Section
1c. Third circuit.
1h. Eighth circuit.

§51-2-1c. Third circuit.

For the county of Doddridge, on the fourth Monday in January, May and September.

For the county of Pleasants, on the second Monday in January, May and September.

For the county of Ritchie, on the third Monday in January, May and September.

§51-2-1h. Eighth circuit.

For the county of McDowell, on the third Monday in February, May, August and November.

CHAPTER 42

(Com. Sub. for House Bill No. 776—By Mr. Myles)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to order books, the signing thereof by judges, and providing an exception.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COURTS IN GENERAL.

Section
4. Records.
§51-3-4. Records.

1 The proceedings of every court shall be entered in a book and in the discretion of the court may be caused to be read, and after being corrected, where it is necessary, shall be signed by the judge or presiding officer on the following day, except those of the last day of the term and of the day on which the court may adjourn to a future day as prescribed in article two of this chapter, which shall be drawn up and corrected, where it is necessary, and signed by the judge or officer on the same day: Provided, That where microfilm, photocopies or some other similar reproduction process is used to copy the original orders of such proceedings for entry in the book, and such original orders have been signed by the judge or presiding officer, it shall not be necessary for the judge or presiding officer to personally sign such copies entered in the book.

CHAPTER 43

(House Bill No. 698—By Mr. Watson)

[Passed February 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the distribution of reports of the West Virginia supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

That section five, 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:

ARTICLE 8. STATE LAW LIBRARIES.

Section 5. Distribution of West Virginia reports.

§51-8-5. Distribution of West Virginia reports.

1 The state law librarian shall have charge of and make distribution of the reports of the cases decided by the su-
preme court of appeals, after the same are printed and
bound, and are approved by the reporter and the court.
After any new volumes of such reports have been de-
ivered to the librarian, not including reprints of former
volumes, he shall distribute the volumes as follows: Five
volumes to the governor; one volume to the president of
the senate; one volume to the speaker of the house of dele-
gates; twenty-five volumes to the attorney general; two
volumes to each judge of the supreme court of appeals;
one volume to each clerk to the judges of the supreme
court of appeals; one volume to the clerk of the supreme
court of appeals; one volume to the judge of each judi-
cial circuit for each county in such judicial circuit;
one volume to each of the judges of courts of limited
jurisdiction; one volume to each judge of the United
States district courts in West Virginia; one volume to
each prosecuting attorney in this state; three volumes
to the public service commission; five volumes to the
state road commissioner; three volumes to the state tax
commissioner; five volumes to the library of Congress,
Washington, District of Columbia; one volume to the
director of legislative services; twenty volumes to the
college of law of West Virginia University; one volume
to the law library at Charles Town; one volume to the
Ohio county law library at Wheeling; two volumes to
the department of archives and history; one volume each
to the auditor, commissioner of agriculture, state treas-
urer, secretary of state and state superintendent of free
schools; and one volume to the head of subordinate ex-
cecutive departments, boards, commissions and agencies at
the state capitol.

The state law librarian shall arrange, as far as pos-
sible, to exchange one volume of the West Virginia re-
ports for a volume of the current reports of the court
of last resort of each state, the District of Columbia and
the territorial possessions of the United States. He may
further arrange for the exchange of such volumes with
law schools for law reviews, law bulletins, reports
and other legal publications. All such law reviews,
law bulletins, reports and other legal publications so
received shall become the property of the state of West
Virginia unless otherwise so designated, and shall be placed by the librarian and safely kept in the law library at the state capitol.

The supreme court of appeals, or a judge thereof in vacation of the court, may order the librarian to distribute volumes of the West Virginia reports to any university or college on written request therefor; and may order him to distribute additional volumes to any officer, judge, court, tribunal, prosecuting attorney, institution, library, board, commission or agency now entitled to one volume of such report, or any such agency hereafter created, upon written request therefor made to the court. Such volumes shall remain the property of the state of West Virginia and volumes so received by them shall be turned over to their successors in office.

The supreme court of appeals, or a judge thereof in vacation of the court, on written request therefor and as such court or judge deems best, may order the librarian to distribute reprints of old volumes of the reports as replacements when requested.

The librarian is charged with and it shall be his duty to retain and keep safely five volumes of the reports in the state law library, at Charleston.

All volumes of the reports distributed as herein provided shall be sent by the librarian by mail, express, freight or otherwise as he may deem best: Provided, That such reports so distributed shall contain a receipt which, on return to the librarian, shall be kept on file.

CHAPTER 44

(House Bill No. 871—By Mr. Watson and Mr. Seibert)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-b, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligi-
bility 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 or who, at death, have served at least sixteen full years as a judge of any of the courts of record of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

Section

6b. Annuities for widows of judges eligible for retirement benefits or who have served sixteen full years as judge of any court of record; amount and payment.

§51-9-6b. Annuities for widows of judges eligible for retirement benefits or who have served sixteen full years as judge of any court of record; amount and payment.

1 There shall be paid, from the fund created by section two of this article, an annuity to the widow of a judge, who, at death, is eligible for the retirement benefits provided by sections six, six-a or eight of this article, or who, at death, has served at least sixteen full years as a judge of any court of record of this state, and who dies, either while in office or after resignation or retirement from office pursuant to the provisions of this article: Provided, however, That any annuity accruing under this section shall be paid from, and only from, the fund, and the interest thereon, accumulated through the contributions of judges from whose salary deductions have been made, as herein provided, and no annuity accruing hereunder shall be paid from any public moneys contributed to the judges' retirement fund by the state of West Virginia.

Said annuity shall amount to forty per cent of the annual salary of the office which said judge held at his death or from which he resigned or retired. In the event said salary is increased or decreased while an annuitant is receiving the benefits hereunder, her annuity shall amount to forty per cent of the new salary. The annuity
AN ACT to amend and reenact sections one, two and four, article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to shoplifting; providing definitions; imposing penalties; providing process; declaring the act of shoplifting to constitute a breach of the peace, and permitting detention upon reasonable grounds therefor.

Be it enacted by the Legislature of West Virginia:

That sections one, two and four, article three-a, 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:

ARTICLE 3A. SHOPLIFTING.

Section

1. Definitions.
2. Penalties; process; compensation of officers and witnesses.
3. Shoplifting to constitute breach of peace; detention.


1 When used in this article, the following terms shall have the following meanings:
2 (1) “Shoplifting” shall consist of any one or more of the following acts:
(a) For any person wilfully to take possession of any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

(b) For any person wilfully to conceal upon his person or otherwise any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

(c) For any person wilfully to alter any label, price tag or marking upon any merchandise offered for sale by any store with the intention of depriving the owner of all or some part of the value thereof.

(d) For any person wilfully to transfer any merchandise offered for sale by any store from the container in or on which the same shall be displayed to any other container with intent to deprive the owner of all or some part of the value thereof.

(2) "Store" shall mean any store or mercantile establishment in which merchandise is displayed for sale in such manner as to be readily accessible to persons shopping therein.

(3) "Merchandise" shall include goods and wares.

(4) "Owner of merchandise" shall include the owner and any other person, firm or corporation having the right to offer the same for sale as agent, consignee or in other capacity under any agreement with the owner of such merchandise.

(5) "Value of merchandise" shall mean the sale price of any merchandise which a person shall convert to his own use in committing an act of shoplifting defined in paragraphs (a) and (b) of subdivision (1), or in the event a person shall commit an act of shoplifting defined in either paragraph (c) or (d) of subdivision (1), then the "value of merchandise" shall mean the sale price of that part of the merchandise of which the owner has been deprived in consequence of the commission of such act of shoplifting.
§61-3A-2. Penalties; process; compensation of officers and witnesses.

1 If any person shall commit an act of shoplifting as defined in this article, for the first offense, he shall be guilty of a misdemeanor if the value of merchandise is less than fifty dollars, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than ninety days or by fine of not more than three hundred dollars, or by both such fine and imprisonment.

2 If any person shall commit an act of shoplifting as defined in this article, for the second offense, he shall be guilty of a misdemeanor if the value of merchandise is less than fifty dollars, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of not less than thirty days nor more than one hundred and eighty days, or by fine of not more than five hundred dollars, or by both such fine and imprisonment.

3 If any person shall commit an act of shoplifting as defined in this article, for the third or subsequent offense, he shall be guilty of a felony regardless of the value of merchandise involved in the first two convictions under the provisions of this article, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years.

4 If any person shall commit an act of shoplifting as defined in this article, he shall be guilty of a felony if the value of merchandise is fifty dollars, or more, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years.

5 In all prosecutions under this article, process shall be issued and served in the county or out of the county where prosecution is pending and shall have the same binding force and effect as though the offense being prosecuted were a felony; and all officers issued and serving such process in or out of the county wherein the prosecution is pending, and all witnesses from within or without the county wherein the prosecution is pending shall be compensated in like manner as though the offense were a felony in grade.
§61-3A-4. Shoplifting to constitute breach of peace; detention.

1 An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law-enforcement officer, except a constable, who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

CHAPTER 46

(Com. Sub. for House Bill No. 540—By Mr. Myles and Mr. Seibert)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the penalty for profanity, obscene, indecent or vulgar language, annoying, abusive, tormenting, harassing or embarrassing call or calls or threats over the telephone.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article eight, 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:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

Section

16. Profanity, obscene, indecent or vulgar language, or annoying, abusive, tormenting, harassing, or embarrassing call or calls, or threats over telephone; penalty.
§61-8-16. Profanity, obscene, indecent or vulgar language, or annoying, abusive, tormenting, harassing, or embarrassing call or calls, or threats over telephone; penalty.

If any person shall make use of any telephone facility or equipment for, (1) placing any anonymous call or calls in a manner which could reasonably be expected to annoy, abuse, torment, harass or embarrass any person, (2) profanely cursing, swearing at or abusing another, or using profane, obscene, indecent or vulgar language, or (3) threatening to commit a crime against any person, he shall be guilty of a misdemeanor.

Any offense committed under this section may be deemed to have taken place at the place at which the telephone call was made or placed, or the place at which the telephone call was received.

Any person convicted of an offense hereunder, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

CHAPTER 47
(House Bill No. 683—By Miss Tsapis)

(Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article eight, 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-seven-a, prohibiting the exhibiting or displaying of a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or the exhibiting or displaying of any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment from which he or she would
otherwise be barred by reason of age; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article eight, 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-seven-a, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

Section 27a. Use of false identification, etc., by person under age; penalty.

§61-8-27a. Use of false identification, etc., by person under age; penalty.

Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and, in the discretion of the court, may be imprisoned in the county jail not exceeding thirty days.

CHAPTER 48

(Com. Sub. for Senate Bill No. 68—By Mr. Moreland and Mr. Carrigan)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purchasing division of the department of finance and adminis-
tration; requiring prequalification disclosure by vendors; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

Section 14a. Prequalification disclosure by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.

§5A-3-14a. Prequalification disclosure by vendors required; form and contents; register of vendors; false affidavits, etc.; penalties.

The director shall reject any bid received from any vendor unless the vendor has filed with the director an affidavit of the vendor or the affidavit of a member of the vendor's firm, or, if the vendor be a corporation, the affidavit of an officer, director, or managing agent, of such corporation, disclosing the following information:

1. If the vendor be an individual, his name and residence address, and, if he has associates or partners sharing in his business, their names and residence addresses; (2) if the vendor be a firm, the name and residence address of each member, partner or associate of the firm; (3) if the vendor be a corporation created under the laws of this state, the name and business address of the corporation; the names and residence addresses of the president, vice president, secretary, treasurer, and general manager, if any, of the corporation; and the names and residence addresses of each stockholder of the corporation owning or holding more than ten per cent of the capital stock thereof; (4) if the vendor be a foreign corporation, the name and business address of the corporation; the names and residence addresses of the president, vice president, secretary, treasurer, and general manager, if any, of the corporation; and the names and residence addresses of each stockholder of the corporation owning or holding more than ten per cent of the capital stock thereof. Whenever a change occurs in the information heretofore submitted as required, such change shall be reported im-
mediately in the same manner as required in the original disclosure affidavit.

The affidavit and information so received by the director shall be kept in a register of vendors which shall be a public record and open to public inspection during regular business hours in the director's office and made readily available to the public at such time.

The director may waive the above requirements in the case of corporations listed on any nationally-recognized stock exchange.

Any person who makes such affidavit falsely or who shall knowingly file or cause to be filed with the director, an affidavit containing a false statement of a material fact or omitting any material fact, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and in the discretion of the court, confined in jail not more than one year. In any such case, the person convicted shall be adjudged forever incapable of holding any office of honor, trust or profit in this state, or of serving as a juror.

CHAPTER 49

(Com. Sub. for House Bill No. 542—By Mr. Speaker, Mr. White)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated twenty-two-a, relating to registration of divorces and annulments in West Virginia.

Be it enacted by the Legislature of West Virginia:

That article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated twenty-two-a, to read as follows:
ARTICLE 5. VITAL STATISTICS.

Section 22a. Registration of divorce and annulment; reports by clerk of courts of record; verified copy of records; failure of clerk to comply not to affect validity of final judgment.

§16-5-22a. Registration of divorce and annulment; reports by clerk of courts of record; verified copy of records; failure of clerk to comply not to affect validity of final judgment.

1 To the end that there shall be an efficient and uniform system of the registration of divorce and annulment of marriage in this state, each divorce and annulment of marriage which shall occur in this state shall be registered with the state division of vital statistics in accordance with the following procedures:

(a) The state board of health shall have the authority and duty to:

(1) Install a centralized system of registering, indexing and preserving records of divorce and annulment of marriage; (2) promulgate such rules and regulations, in accordance with chapter twenty-nine-a of this code as are necessary to implement the provisions of this section, and prescribe and furnish forms for collecting, transcribing, compiling and preserving records and statistics of divorce and annulment of marriage as required in subdivision (b) below; (3) make and publish a statistical report of divorce and annulment of marriage; and (4) enforce the regulations made pursuant thereto.

(b) The clerk of every court of record having jurisdiction of divorce or annulment of marriage shall monthly make and deliver to the state registrar of vital statistics a report on a form prescribed by the state registrar of vital statistics, listing all of the divorces or annulments of marriages granted by such court during the preceding calendar month, showing insofar as such information appears in the complaint or final decree: (1) The names and ages of the parties to the action, (2) the date and place of the marriage thereby terminated, (3) the names of said parties' children under the age of eighteen years, (4) the date of the final decree: Provided, That in counties where the court is not in continuous session these
reports shall be forwarded within ten days following the close of the term of the court.

(c) The state registrar shall search his files of reports of divorce and annulment of marriage upon receipt of written request and a fee of one dollar. If the record is found, he shall verify the facts of the divorce or annulment of marriage in writing to the applicant and shall notify the applicant of the place where the original record is found.

(d) Failure of the clerk of the court to comply with the provisions of subdivision (b) hereof shall in no way affect the validity of any final judgment order of divorce or annulment of marriage.

CHAPTER 50

(House Bill No. 775—By Mr. Myles)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven-a, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to infant, incompetent and insane parties and guardians ad litem in divorce and annulment actions.

Be it enacted by the Legislature of West Virginia:

That section eleven-a, article two, 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:

ARTICLE 2. DIVORCE.

Section

11a. Infant, incompetent and insane parties.

§48-2-11a. Infant, incompetent and insane parties.

1 In any action for divorce or annulment, an infant party shall sue, answer and plead by a next friend, and an incompetent or insane party shall sue, answer and plead by his committee, and no guardian ad litem shall be
5 required unless specifically ordered by the court or judge
6 hearing said action.

CHAPTER 51
(House Bill No. 663—By Mr. Sayre)

(Passed March 10, 1967; in effect ninety days from passage. Approved
by the Governor.)

AN ACT to amend and reenact section four, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recordation of decree; fees; disposition of records; names of adopting parents not to be disclosed; certificate for state registrar of vital statistics; birth certificate; and requiring said records of adoption to be kept in locked or sealed cabinet.

Be it enacted by the Legislature of West Virginia:

That section four, 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:

ARTICLE 4. ADOPTION.

§48-4-4. Recordation of decree; fees; disposition of records; names of adopting parents not to be disclosed; certificate for state registrar of vital statistics; birth certificate.

1 The decree shall be recorded in a book kept for that
2 purpose, and the clerk shall receive the same fees as in
3 other cases in the circuit court or juvenile court, as the
4 case may be. All records of proceedings in adoption
5 cases and all papers and records relating to such pro-
6 ceedings shall be kept in a sealed file, which file shall be
7 kept in a locked or sealed cabinet, vault or other con-
8 tainer and shall not be open to inspection or copy by
anyone, except upon court order for good cause shown.
No person in charge of adoption records shall disclose the
names of the adopting parent or parents or adopted child
except by court order. The clerk of the court keeping
and maintaining the records in adoption cases shall keep
and maintain an index of such cases separate and distinct
from all other indices kept or maintained by him, and the
index of adoption cases shall be kept in a locked or sealed
cabinet, vault or other container and shall not be open
to inspection or copy by anyone, except upon court order
for good cause shown. Immediately upon the entry of
such a decree of adoption, the court shall direct the clerk
thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said
court, showing:
(1) The date and place of birth of the adoptee, if
known;
(2) The names of the natural parents of the adoptee,
if known;
(3) The name by which said child has previously been
known;
(4) The names and addresses of the adopting parents;
(5) The name by which the child is to be thereafter
known; and
(6) Such other information from the record of said
adoption proceedings as may be required by the law of
this state relating to vital statistics and as may enable
the state registrar of vital statistics to carry out the duty
imposed upon him by this section.
Upon receipt of said certificate, the said registrar of
vital statistics shall forthwith issue and deliver by mail
to the adopting parents at their last-known address and
to the clerk of the county court of the county wherein
such decree of adoption was entered a birth certificate
in the form required by law, except that the name of
the adoptee shown in said certificate shall be the name
given him by the decree of adoption. Such county court
clerk shall record such birth in the manner provided by
chapter sixteen, article five, section nineteen of this code.
AN ACT to amend and reenact section five, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of an adoption decree as to the relations of parents and child, the rights of inheritance and the intestacy of an adopted child; and providing that an adopted child shall to all intents and for all purposes be considered to be the legitimate issue of the person or persons so adopting such child.

Be it enacted by the Legislature of West Virginia:

That section five, 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:

ARTICLE 4. ADOPTION.

Section 5. Effect of decree as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.

§48-4-5. Effect of decree as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.

Upon the entry of such decree of adoption, the natural parent or parents, any parent or parents by any previous legal adoption, and the lineal or collateral kindred of any such parent or parents, except any such parent who is the husband or wife of the petitioner for adoption, shall be divested of all legal rights, including the right of inheritance from or through the adopted child under the statutes of descent and distribution of this state, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such parent or parents. From
and after the entry of such decree of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.

For the purpose of descent and distribution, from and after the entry of such decree of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, but such child shall not inherit from his or her natural parent or parents nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of the natural parent shall inherit from the natural parent of such child as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this state, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

CHAPTER 53

(Senate Bill No. 372—By Mr. Jackson)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article nine, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to orders of support in cases under the reciprocal dependency law.
Be it enacted by the Legislature of West Virginia:

That section thirteen, article nine, 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:

ARTICLE 9. RECIPROCAL DEPENDENCY LAW.


If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

CHAPTER 54

(Senate Bill No. 229—By Mr. Carson, Mr. President, and Mr. Smith)

[Passed March 10, 1967: in effect from passage. Approved by the Governor.]

AN ACT to repeal article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article five of said chapter, relating to the establishment of an authority to develop, promote and extend instruction at all levels of education through radio, television and related media; permitting the authority to establish noncommercial educational broadcasting, closed circuit or related facilities at a suitable site or sites within this state; authorizing and empowering the authority to apply for, accept and spend appropriations, gifts, bequests and grants for such purposes and authorizing and empowering certain state agencies and political subdivisions to make appropriations and grants to the authority.

Be it enacted by the Legislature of West Virginia:

That article five, chapter ten of the code West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and
that a new article five of said chapter be enacted to read as follows:

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

Section
1. Legislative findings.
2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.
4. Funds; right of state agencies, etc., to contribute to authority.
5. Advisory councils.

§10-5-1. Legislative findings.

The Legislature hereby finds and declares that it is the duty of this state to provide the best educational training possible for all its citizens and that the encouragement and use of noncommercial educational radio, television and related media operating and originating from educational broadcasting, closed circuit or related facilities located at a site or sites within this state serving all the citizens of this state on a regional basis or as part of a coordinated state-wide plan is a proper, necessary and beneficial means of providing and extending enriched educational instruction to all the citizens of this state at the preschool, elementary, secondary and higher education and adult levels.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

The West Virginia educational broadcasting authority, heretofore created, is hereby continued as a public benefit corporation. It shall consist of nine members, who shall be citizens and residents of the state, of whom one shall be the state superintendent of schools, one shall be a member of the West Virginia board of education to be selected by it annually, and one shall be a member of the West Virginia University board of governors to be selected by it annually. The other six members shall be appointed by the governor, by and with the advice and consent of the senate, for overlapping terms of six years. The present members of the authority shall continue to serve out the terms to which they were appointed. Any vacancy among the appointive members shall be filled by the governor by appointment for the unexpired term.
The chairman and vice chairman of the authority as of the effective date of this article shall continue in their respective offices until their successors are elected. Thereafter, at its first regular meeting in each year the authority shall elect one of its members as chairman and one as vice chairman. The authority is authorized to select an executive secretary and such other personnel as may be necessary to perform its duties and to fix the compensation of such personnel to be paid out of moneys appropriated for this purpose. The executive secretary shall keep a record of the proceedings of the authority and shall perform such other duties as it may prescribe. The authority is authorized to establish such office or offices as may be necessary for the proper performance of its duties.

The authority shall hold one meeting in July of each year and at least two additional meetings at such times and places as it may prescribe. It may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the call of the chairman of the authority. The members shall serve without compensation, but every member may be reimbursed for actual expenses incident to the performance of his duties upon presentation to the chairman of an itemized sworn statement thereof.


The authority shall have the power:

1. To act as advisor and consultant to television and radio stations concerning noncommercial educational programs supported by federal, state, county, city and/or private funds.

2. To cooperate with and assist all local and state educational institutions in planning and development of the use of educational radio, television and related media.

3. To promote and coordinate the use of these media for noncommercial educational purposes.

4. To construct, maintain and operate educational broadcasting, closed circuit or related facilities located at a suitable site or sites within this state including, without limitation thereby, production centers, broadcasting
stations and a broadcasting network connecting such communities or stations as may be designated by the authority.

(5) To acquire in the name of the state for the use and benefit of the authority by purchase, lease or agreement, any property, both real and personal, and any interest in such property necessary to carry out the provisions of this article.

(6) To apply for and receive any license from the appropriate federal agency necessary to operate any educational broadcasting, closed circuit or related facility.

(7) To supervise and approve the origination and transmission of all noncommercial educational radio, television and related media programs in this state which would be carried through the facilities of a state network.

(8) To employ such personnel as may be necessary to operate and maintain any facility created under the provisions of this article.

(9) To lease from communications common carriers and use such transmission channels as may be necessary or, if it determines it could more economically construct and maintain such transmission channels, it may design, construct, maintain and operate the same, including a television microwave network.

(10) To sue and be sued, plead and be impleaded.

(11) To contract and be contracted with, including the power to enter into contracts with any person, firm or corporation, including any like authority of neighboring states.

(12) To have and use a corporate seal.

(13) To promulgate reasonable rules and regulations to carry out the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of the code.

(14) To perform such other services in behalf of non-commercial educational radio, television and related media as it may consider to be in the best interest of the state.
§10-5-4. Funds; right of state agencies, etc., to contribute to authority.

The authority is further authorized and empowered to apply for and receive appropriations, gifts, bequests or grants from any agency of the United States government, any agency of the state of West Virginia, any municipality or county within this state, any school board or college or university supported in whole or in part by this state or any other person, firm, partnership, association or corporation, within or without this state, and any agency of the state of West Virginia, any municipality or county within this state, or any school board or college or university supported in whole or in part by this state is hereby authorized and empowered to make appropriations or grants to the authority, to assist in achieving the public purpose of the authority. All such funds shall be deposited with the state treasurer of West Virginia and dispersed by the authority to be used exclusively for carrying out the provisions of this article: Provided, That any appropriations, gifts, bequests or grants received by the authority with any restriction or restrictions on the use thereof shall be expended by the authority in accordance with such restriction or restrictions.

§10-5-5. Advisory councils.

The authority may also create one or more advisory councils. Each council so created shall consist of not more than nine members to be appointed by and serve at the will and pleasure of the authority. Each council shall annually elect a chairman, vice chairman and secretary. Members so appointed shall serve without compensation, but may be reimbursed for actual expenses incident to the performance of their duties as provided in this article for members of the authority. Any such council shall serve in an advisory manner to one or more facilities established under the provisions of this article as directed by the authority and shall meet at least twice a year.
AN ACT to amend and reenact section one, article one; section fifteen, article five; section four, article seven; section two, article nine-a; and sections two, seven and eight, article nine-b, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the implementation of the ten-month employment term for teachers and other school personnel.

Be it enacted by the Legislature of West Virginia:

That section one, article one; section fifteen, article five; section four, article seven; section two, article nine-a; and sections two, seven and eight, article nine-b, all of 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 1. DEFINITIONS; LIMITATIONS OF CHAPTER.

Section

1. Definitions.

§18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) “School” shall mean the pupils and teachers assembled in one or more buildings, organized as a unit;

(b) “District” shall mean county school district;

(c) “State board” shall mean the West Virginia board of education;

(d) “Board” shall mean the county board of education;
(e) "State superintendent" shall mean the state superintendent of free schools;

(f) "Superintendent" shall mean the county superintendent of schools;

(g) "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" shall mean all nonteaching school employees not included in the above definition of "teacher";

(i) "Regular full-time employee" shall mean any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay.

ARTICLE 5. DISTRICT BOARD OF EDUCATION.

§18-5-15. School term; employment term; extension of terms; levies; ages of youths to which schools open.

The board shall provide a school term for its schools which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils.

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days. Instructional and noninstructional activities may be scheduled during the same employment day. The instructional term shall start not later than the fifth day of the employment term.
Noninstructional days in the employment term may be used for curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities.

Where the employment term overlaps a teacher's participation in a summer institute or institution of higher learning for the purpose of professional growth, the teacher may substitute, with the approval of the county superintendent, such participation for not more than four of the noninstructional days of the employment term.

The board may extend the instructional term beyond one hundred eighty-five instructional days provided the employment term is extended an equal number of days.

If the state revenues and regular levies, as provided by law, are insufficient to enable the board of education to provide for the school term, the board may at any general or special election, if petitioned by at least five percent of the qualified voters in the district, submit the question of additional levies to the voters. If at the election sixty percent of the qualified voters cast their ballots in favor of the additional levy, the board shall fix the term and lay a levy necessary to pay the cost of the additional term. The additional levy fixed by the election shall not continue longer than five years without submission to the voters. The additional rate shall not exceed by more than one hundred percent the maximum school rate prescribed by article eight, chapter eleven of the code, as amended.

The schools shall be open to youths between the ages of six and twenty-one for the full instructional term.

ARTICLE 7. TEACHERS.

Section 4. When schools to be closed; holidays; special Saturday classes; time lost through closing of schools; extension of school term.

§18-7-4. When schools to be closed; holidays; special Saturday classes; time lost through closing of schools; extension of school term.

Schools shall not be kept open for pupils or teachers on any Saturday nor on the following days which are desig-
nated as legal school holidays, namely: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Memorial Day, and any day on which a primary election, general election, or special election is held throughout the state or school district and any day appointed and set apart by the president or the governor as a holiday of special observance by the people of the state. When any such holiday falls within the employment term of the teacher it shall be considered as a day of the employment term and the teacher shall receive his pay for same. When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday; when any such falls on Sunday, the schools shall be closed on the following Monday.

Special classes may be conducted on Saturdays, provided they are conducted on a voluntary basis, for pupils, teachers and service personnel, and that such teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control. Under any or all of the above provisions, the time lost by the closing of schools shall be counted as taught and as meeting a part of the requirements of the minimum term of one hundred and eighty days of instruction. The teacher shall receive pay the same as if school were in session. Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

In addition to any other provisions of this chapter, the board is further authorized to provide in its annual budget for teachers' meetings, workshops, vacation time and/or other holidays through extended employment of teachers at the same rate of pay.

ARTICLE 9A. ALLOCATION OF STATE AID FOR SCHOOLS.

Section 2. Definitions.

For the purpose of this article:
2 "State board" or "board" means the state board of school finance.
3 "County board" means a county board of education.
4 "Teacher" means any person, except the county superintendent and assistant superintendents, who is required to hold an authorized teaching certificate for employment in any county of the state, and who devotes the majority of his school time to the instruction of school-age children.
5 "Employment term" means ten months of employment as defined in section fifteen, article five of this chapter.
6 "Instructional term" shall be that as defined in section fifteen, article five of this chapter.
7 "Average annual foundation salary for teachers," based on the standard term, means the sum of the basic foundation salary, which for this purpose shall be determined on the same certification classification as provided in item (A), section two, article seven of this chapter, and in accordance with the numerical subdivisions of said section at the following rate of each class under said numerical subdivisions: (1) $165, (2) $175, (3) $200, (4) $210, (5) $260, (6) $285, (7) $290; plus the advanced-salary experience increment of six dollars per month times the years of allowable experience under each classification in section two of said article seven, for all full-time teachers employed in a county at the end of the third month of the current year divided by the total number of such teachers.
8 "Net enrollment" means the number of pupils enrolled in grades one to twelve, inclusive, of the public schools of the county at the close of the third month of the current school year, but no pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.
9 "High school" means a school consisting only of grades above the sixth, organized for instruction by departments, or the seventh and eighth grades of a school in which these grades are organized for instruction by departments and which has at least four teachers in these grades.
“Levies for general current expense purposes” means on each hundred dollars of valuation, nineteen and six-tenths cents on class one property, thirty-nine and two-tenths cents on class two property, and seventy-eight and four-tenths cents on classes three and four property.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

Section 2. Definitions.

7. Determination by the board of finance before final approval of budget; length of term.

8. Reduction of school term; order of revision in budget.

§18-9B-2. Definitions.

For the purposes of this article:

“Board of finance” means the state board of school finance.

“Budget” means the annual budget of school revenues and expenditures prepared and adopted by a county board of education in accordance with this article.

“Levy estimate” means the summary statement of the total budgeted school requirements prepared and adopted by a county board of education in accordance with law, in justification of the amount levied upon taxable property within the county for the support of the local schools.

“Appropriation” means an item, or the amount of an item, budgeted by a county board of education for expenditure during the fiscal year.

“Expenditure schedule” means a schedule for the expenditure of amounts budgeted throughout the fiscal year and adopted in conjunction with the annual budget.

“County board” means a county board of education.

“Employment term” means ten months of employment as defined in section fifteen, article five of this chapter.

“Instructional term” shall be that as defined in section fifteen, article five of this chapter.

§18-9B-7. Determination by the board of finance before final approval of budget; length of term.

The board of finance, before giving its final approval to a proposed budget, shall require that:
(1) Estimates of revenue and receipts are reasonable and accurate;

(2) Amounts are budgeted so as to cover actual requirements of school operation;

(3) Amounts are budgeted so as to maintain the schools of the county for the employment term; or, if the employment term cannot be maintained, amounts are budgeted so as to assure the maximum length of such term possible, but not for less than the instructional term as defined in section fifteen, article five of this chapter.

The board of finance may authorize budgeting for less than the employment term only if it finds, upon petition of the county board setting forth the circumstances in full, that the best interests of the county schools will be promoted by the use of available funds for purposes other than the maintenance of the maximum employment term in view of funds available for expenditure.

§18-9B-8. Reduction of school term; order of revision in budget.

If the board of finance finds that the proposed budget for a county will not maintain the schools for the employment term, it may require that the budget be revised so as to provide as much of the employment term as possible; but in no case shall permit the reduction of the instructional term. Any required revision in the budget for this purpose may be made in the following order:

(1) Postpone expenditures for permanent improvements and capital outlays except from the permanent improvement fund;

(2) Reduce the amount budgeted for maintenance exclusive of service personnel so as to guarantee the payment of salaries for the employment term;

(3) Reduce the number of noninstructional days;

(4) Reduce the amount of salary paid in excess of that fixed by section two, article seven of this chapter;

(5) Adjust amounts budgeted in any other way so as to assure the required instructional term of one hundred eighty days under the applicable provisions of law.
AN ACT to repeal section six-a, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter eighteen of said code, by adding thereto a new section, designated section fifteen-a, relating to the establishment and operation of branch colleges by the state board of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-15a. Establishment and operation of branch colleges.

The state board of education is hereby authorized and empowered to continue the operation and maintenance of any branch colleges it has established under the authority of section six-a, article one-a, chapter twenty-five of this code, and to establish, maintain and operate such other branches of state-supported institutions of higher education under its control as it may deem advisable: Provided, That programs of education offered in such branch colleges, whether established or continued hereunder, shall not exceed two-year liberal arts programs and/or terminal occupational education and adult education programs.

No funds shall be expended by the state board for the operation or maintenance of, or capital improvements for, any such branch college, whether established or continued hereunder, except funds provided by student fees, federal grants, county boards of education, other
local governmental bodies, corporations, or persons, or
funds appropriated by the Legislature expressly for such
purpose or purposes. Except for the use of funds provided
by student fees, federal grants or those appropriated by
the Legislature expressly for such purposes the burden
of providing satisfactory and acceptable capital improve-
ments for such colleges shall be upon such governmental
bodies, corporations, or persons, and the state board may
enter into memoranda of agreements with such govern-
mental bodies, corporations, or persons for the use of local
plant facilities and/or grants or contributions toward the
cost of the acquisition or construction of such facilities.
Such local governmental bodies may convey capital im-
provements, or lease the same without monetary consider-
ation, to the state board for use as a branch college, and
the state board may accept such facilities, or the use or
lease thereof, or such grants or contributions, for such pur-
pose from such governmental bodies, the federal govern-
ment or any corporation or person.
The state board may fix enrollment, tuition and other
fees to be charged students enrolling in such branch col-
leges, retaining the same in a revolving fund for the
partial or full support of the branch at which they were
collected, including the making of capital improvements.
The state board may also charge any one or more of the
following fees at such branches: (1) Health service fees;
(2) infirmary fees; and (3) student activities, recreational,
athletic and extracurricular fees. All fees collected under
(1), (2) and (3) shall be paid into special funds and shall
be used only for the purposes for which they were
collected.

CHAPTER 57
(Senate Bill No. 238—By Mr. McKown)

[Passed March 10, 1967; in effect July 1, 1967. 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 two new sections, designated sections nineteen-a and nineteen-b, relating to commercial driver education and training schools; fees; certificates of approval; posting of licenses; records; and tuition fees.

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 two new sections, designated sections nineteen-a and nineteen-b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-19a. Commercial driver education and training schools—Course of instruction; issuance and renewal of license; fee; application for license; inspections; suspension or revocation of license; lists of schools offering approved courses, etc.

The state board of education shall prescribe a course of instruction for commercial driver education and training schools in West Virginia which shall consist of not less than thirty hours of classroom instruction and six hours of behind-the-wheel training. The state superintendent of schools shall issue licenses to commercial driver education and training schools which offer courses of instruction in driver education and training which comply with the course of study approved by the state board of education.

A fee of fifty dollars shall be charged by the state superintendent of schools for the issuance of such licenses which shall be renewed annually for a fee of fifty dollars. Sums so received shall be deposited into the state treasury and credited to an account of the department of education for the administration of the provisions of this article.

An application for a license to operate a licensed commercial driver education and training school shall be
made upon an official form prescribed by the superintendent of schools, and licenses shall be granted only when the state superintendent is satisfied that the school offers a course of driver education and training which complies with the requirements approved by the state board of education.

The state superintendent of schools shall periodically cause an inspection to be made of such licensed schools and shall revoke and require the surrender of the license issued to a school when he finds that such school is not conducting a driver education and training course that is in conformity with the requirements approved by the state board of education.

The state superintendent of schools shall maintain and post at his office and at such other places as he may select lists of all public and nonpublic schools offering approved courses of driver education and training and all commercial schools holding licenses and those whose licenses have been revoked. The state superintendent of schools shall furnish a copy of such list to the commissioner of motor vehicles and shall keep such list current.

§18-2-19b. Same—Posting of licenses; assignment or transfer; certificates to persons completing course; maximum tuition fee.

No license for a commercial driver education and training school shall be assigned or transferred or used at any location other than that therein designated, and every license shall be posted in a conspicuous place at the school location designated.

Persons operating any such licensed school shall issue a certificate upon an official form prescribed by the state superintendent of schools to persons completing a driver education and training course. A record shall be kept of every certificate so issued.

A tuition fee of not more than one hundred dollars may be charged for enrollment in a licensed commercial driver education and training school and for the issuance of such certificate.
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 twenty-four, relating to security officers for all colleges and universities.

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 twenty-four, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

Section 24. Appointment, etc., of security officers at colleges and universities; qualification and bond; powers and duties generally; revocation of authority.

§18-2-24. Appointment, etc., of security officers at colleges and universities; qualification and bond; powers and duties generally; revocation of authority.

1 The state board of education is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased at any college or university under its jurisdiction, subject to the conditions and restrictions hereinafter imposed. Before entering upon the performance of his duties as such security officer in any county, each person so appointed shall qualify therefor in the same manner as is required of constables by the taking and filing of an oath of office as required by article one, chapter six of this code and by the posting of an official bond as required by article two, chapter six of this code. No such person shall have
authority to carry a gun or any other dangerous weapon
until he shall have obtained a license therefor in the
manner prescribed by section two, article seven, chapter
sixty-one of this code: Provided, however, That no en-
rolled student at any such college or university shall be
appointed as a security officer.

It shall be the duty of any person so appointed and
qualified to preserve law and order on any premises
under the jurisdiction of the board to which he may be
assigned by the president of the university or college.
For this purpose he shall as to offenses committed on such
premises have and may exercise all the powers and
authority and shall be subject to all the responsibilities
of regularly elected constables of the county. The assign-
ment of security officers to any premises under the juris-
diction of the board shall not be deemed to supersede in
any way the authority or duty of other peace officers
to preserve law and order on such premises.

The salary of all such security officers shall be paid
by the board. The board shall also furnish such security
officers with an official uniform and other equipment
and shall furnish and require each such officer while
on duty to wear a metallic shield with an appropriate in-
scription and to carry credentials certifying to his identity
and to his authority as a security officer. If an automo-
bile is not provided for his use by the board, such security
officer shall be reimbursed at the rate of ten cents per
mile for the use of a private automobile used in pursuance
of his necessary duties hereunder.

The state board of education may at its pleasure re-
voke the authority of any such officer by filing a notice
to that effect in the office of the clerk of each county in
which his oath of office was filed, and in the case of
officers licensed to carry a gun or other dangerous wea-
pon by notifying the clerk of the circuit court of the
county in which the license therefor was granted.
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 twenty-five, relating to the control, supervision and regulation of all interscholastic athletic events, and such other extracurricular activities of students in public secondary schools by county boards of education; providing for the establishment of the West Virginia secondary school activities commission; providing for a delegation of such authority to said commission; providing for the composition of said commission; providing for the promulgation of rules and regulations by said commission, subject to the prior approval of the state board of education; providing for the incorporation of said commission as a nonprofit, nonstock corporation; authorizing county boards of education to expend moneys for said commission; providing that all such moneys, as well as all moneys derived from events sponsored by said commission shall be quasi-public funds and subject to an annual audit by the state tax commissioner, and providing for control, supervision and regulation of events and activities of private and parochial secondary schools.

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 twenty-five, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

Section
5. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia secondary school activities commission; authority of commission; approval of rules and regulations by state board; incorporation; funds; participation by private and parochial schools.
§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia secondary school activities commission; authority of commission; approval of rules and regulations by state board; incorporation; funds; participation by private and parochial schools.

1. The county boards of education are hereby granted and shall exercise the control, supervision and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of said schools of their respective counties. The county board of education may delegate such control, supervision and regulation of interscholastic athletic events and band activities to the "West Virginia Secondary School Activities Commission," which is hereby established.

2. The West Virginia secondary school activities commission shall be composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to said commission. The West Virginia secondary school activities commission is hereby empowered to exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules and regulations of the West Virginia secondary school activities commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter twenty-nine-a of this code, but shall, in all instances be subject to the prior approval of the state board. The West Virginia secondary school activities commission, may, with the consent of the state board of education, incorporate under the name of "West Virginia Secondary School Activities Commission, Inc.," as a nonprofit, nonstock corporation un-
der the provisions of chapter thirty-one of this code.

County boards of education are hereby authorized to expend moneys for and pay dues to the West Virginia secondary school activities commission, and all moneys paid to such commission, as well as moneys derived from any contest or other event sponsored by said commission, shall be quasi-public funds as the same are defined in article five, chapter eighteen, and such funds of the commission shall be subject to an annual audit by the state tax commissioner.

The West Virginia secondary school activities commission shall promulgate reasonable rules and regulations providing for the control, supervision and regulation of the interscholastic athletic events and other extracurricular activities of such private and parochial secondary schools as elect to delegate to such commission such control, supervision and regulation, upon the same terms and conditions, subject to the same regulations and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school.

CHAPTER 60

(Senate Bill No. 105—By Mr. McKown and Mr. Carrigan)

[Passed March 11, 1967; in effect July 1, 1967. 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 repealing sections fourteen and seventeen of article five thereof; by repealing article six thereof; by amending and reenacting section nine of article three thereof, sections two and ten of article four thereof; and sections one-a, four, thirteen, nineteen and thirty-one of article five thereof; and by adding to article three thereof a new section,
designated section eleven, all relating to the administration and control of schools.

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 repealing sections fourteen and seventeen of article five thereof; by repealing article six thereof; by amending and reenacting section nine of article three thereof, sections two and ten of article four thereof, and sections one-a, four, thirteen, nineteen and thirty-one of article five thereof; and by adding to article three thereof a new section, designated section eleven, all to read as follows:

Article
4. County Superintendent of Schools.
5. District Board of Education.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

Section
11. Classification of schools.


For carrying into effect the provisions of this chapter, the state superintendent of schools shall maintain a department of education at his office at the state capitol, and he shall have authority to employ assistants and such other employees as may be necessary.

§18-3-11. Classification of schools.

The state superintendent shall classify all elementary and secondary schools on the basis of standards, rules and regulations established by the state board after publishing such standards, rules and regulations, and forwarding them to the district boards of education, county superintendents, and other school officers.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

Section
2. Qualifications; health certificate; disability; acting superintendent.
10. Duties.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

The superintendent at the time of his election shall hold a certificate valid in West Virginia and an approved bachelor's degree including at least twelve semester hours in
school administration and supervision, and at least five years' experience in public school teaching and/or supervision: Provided, A superintendent who held office during the school year of one thousand nine hundred forty—one thousand nine hundred forty-one may be elected to succeed himself in office.

Before entering upon the discharge of his duties the superintendent shall file with the president of the board a health certificate from a reputable physician, on a form prescribed by the state department of schools, certifying that he is physically fit for the duties of his office and that he has no infectious or contagious disease; and if the superintendent, due to accident or illness, should become incapacitated to an extent that could lead to a prolonged absence, the board, upon unanimous vote, shall have authority to enter an order declaring such incapacity and it shall appoint an acting superintendent until such time as a majority of the members of the board shall determine that the incapacity no longer exists. However, an acting superintendent shall not serve as such for more than one year, or later than the expiration date of the superintendent's term, whichever is less, without being reappointed by the board of education.

§18-4-10. Duties.

The county superintendent shall:

(1) Act as the chief executive officer of the board, and execute under the direction of the state board all its educational policies;

(2) Nominate all personnel to be employed; in case the board of education refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board of education at such time as the board may direct, but no such person or persons shall be employed except on the nomination of the county superintendent;

(3) Assign, transfer, suspend or promote teachers and all other school employees of the district, subject only to the approval of the board, and to recommend to the board their dismissal pursuant to the provisions of this chapter;
17  (4) Organize and attend district institutes; organize
18 and direct reading circles and boys' and girls' clubs;
19  (5) Close temporarily a school when conditions are
detrimental to the health, safety or welfare of the pupils;
20  (6) Certify all expenditures and monthly payrolls of
teachers and employees;
21  (7) Be the secretary of the board and attend all meet-
ings of the board or its committees, except when his ten-
ure, salary or administration is under consideration;
22  (8) Administer oaths and examine under oath wit-
nesses in any proceedings pertaining to the schools of
the district, and have the testimony reduced to writing;
23  (9) Exercise all other authority granted by this chap-
ter or required by the board or state board;
24  (10) Act in case of emergency as the best interests of
the school demand.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

Section

1a. Eligibility of members.
4. Meetings; quorum; employment and assignment of teachers; compen-
sation of members; affiliation with state and national asso-
ciations; dues and traveling expenses.
13. Authority of boards generally.
19. Night schools and other school extension activities; use of school
property for public meetings, etc.
31. Employment of service personnel; failure to reemploy; hearing.

§18-5-1a. Eligibility of members.

No person shall be eligible for membership on any
county board of education who is not a citizen, resident
in such county, or who accepts a position as teacher or
service personnel in any school district, or who is an
elected or an appointed member of any political party
executive committee, or who becomes a candidate for any
other office than to succeed himself.

No member or member-elect of any board of education
shall be eligible for nomination, election or appointment
to any public office, other than to succeed himself, or
for election or appointment as a member of any political
party executive committee, unless and until after his
membership on the board, or his status as member-elect
to the board, has been terminated at or before the time
§ 18-5-4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations; dues and traveling expenses.

The board shall meet on the first Monday in January, and upon the dates provided by law for the laying of levies, 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. At a meeting of the board, on or before the first Monday in May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers' last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.

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 itemized sworn statement, for all necessary traveling ex-
penses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board of education deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards of education out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and/or programs for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the
first Monday in May, in the same manner as provided in
section four of this article, except in an emergency, sub-
ject to the approval of the state superintendent, or under
subdivision (5);
(4) To consolidate schools;
(5) To close any elementary school whose average
daily attendance falls below twenty pupils for two months
in succession, and send the pupils to other schools in the
district or to schools in adjoining districts. If the teachers
in the schools so closed are not transferred or reassigned
to other schools, they shall receive one month's salary;
(6) To provide at public expense adequate means of
transportation for all children of school age who live
more than two miles distant from school by the nearest
available road and to provide at public expense and
according to such regulations as the board may estab-
lish, adequate means of transportation for school children
participating in board-approved curricular and extra-
curricular activities; and provide in addition thereto, by
rules and regulations and within the available revenues,
transportation for those within two miles distance: Pro-
vided, That in all cases the buses or other transportation
facilities owned by the board of education shall be driven
or operated only by drivers regularly employed by the
board of education: Provided, however, That buses shall
be used for extracurricular activities as herein provided
only when the insurance provided for by this section shall
have been effected;
(7) To provide at public expense for insurance against
the negligence of the drivers of school buses, trucks, or
other vehicles operated by the board; and if the transpor-
tation of pupils be let out to contract, then the contract
defherefor shall provide that the contractor shall carry in-
surance against negligence in such an amount as the board
shall specify;
(8) To employ and to provide in-service training for
teacher aides, the training to be in accordance with rules
and regulations of the state board;
(9) To establish and conduct a self-supporting dormi-
tory for the accommodation of the pupils attending a high
school or participating in a post high school program and
of persons employed to teach therein;
(10) The board shall be authorized to provide at public
expense, adequate public liability insurance;
(11) No policy or contract of public liability insurance
providing coverage for public liability shall be purchased
as provided herein, unless it shall contain a provision or
endorsement whereby the company issuing such policy
waives, or agrees not to assert as a defense to any claim
covered by the terms of such policy, the defense of gov-
ernmental immunity. In any action against the board,
its officers, agents or employees, in which there is in
effect liability insurance coverage in an amount equal to
or greater than the amount sued for, the attorney for
such board, the attorney for such insurance carrier, or
any other attorney who may appear on behalf of the
board, its agents, officers or employees shall not set up
the defense of governmental immunity in any such action.
“Quasi-public funds” as used herein are defined as any
money received by any principal, teacher, student or other
person for the benefit of the school system as a result of
curricular or noncurricular activities.
The board of any district shall expend under such regu-
lations as it establishes for each child an amount not to
exceed the proportion of all school funds of the district
that each child would be entitled to receive if all the funds
were distributed equally among all the children of school
age in the district upon a per capita basis. No changes in
textbooks except those provided by general law shall be
made as a result of the passage of this section: Provided,
That at least one year of instruction in the history of the
state of West Virginia shall be given prior to the eighth
grade.
§18-5-19. Night schools and other school extension activities;
use of school property for public meetings, etc.
The board of education of any district or independent
district shall have authority to establish and maintain
evening classes or night schools, continuation or part-
time day schools, and vocational schools, wherever prac-
ticable to do so, and shall admit thereto adult persons and
all other persons, including persons of foreign birth, but
excepting children and youths who are required by law
to attend day schools. Boards of education shall have
authority to use school funds for the financial support
of such schools and to use the schoolhouses and their
equipment for such purposes. Any such classes of schools
shall be conducted in accordance with the rules and regu-
lations of the state board of education.

The board of education of any district or independent
district shall have authority also to provide for the free,
comfortable and convenient use of any school property
to promote and facilitate frequent meetings and assoc-
ations of the people for discussion, study, recreation and
other community activities, and may secure, assemble
and house material for use in the study of farm, home
and community problems, and may provide facilities
for the dissemination of information useful on the farm,
in the home, or in the community.

§18-5-31. Employment of service personnel; failure to re-
employ; hearing.

The county board, upon nomination by the superin-
tendent, may employ such service personnel as is deemed
necessary for meeting the needs of the county school
system. After four consecutive years of acceptable serv-
ice within the district, any employee shall be notified
in writing on or before June thirtieth if he is not to be
reemployed for the ensuing year and shall have the
right of a hearing before the board, if requested.

CHAPTER 61

(Senate Bill No. 190—By Mr. McKown and Mr. Hatcher)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article five,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
establishment of summer school programs and the credit-
ing and expending of tuitions accruing therefrom within
the general current expense fund of county boards of edu-
cation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

Section

39. Establishment of summer school programs; tuition.

§18-5-39. Establishment of summer school programs; tuition.

Inasmuch as the present county school facilities for the
most part lie dormant and unused during the summer
months, and inasmuch as there are many students who are
in need of remedial instruction and others who desire
accelerated instruction, it is the purpose of this section
to provide for the establishment of a summer school pro-
gram, which program is to be separate and apart from
the full school term as established by each county.

The board of education of any county shall have au-

dority to establish a summer school program utilizing the
public school facilities and to charge tuition for students
who attend such summer school, such tuitions not to ex-
ceed in any case the actual cost of operation of such sum-
ner school program: Provided, That any deserving pupil
whose parents, in the judgment of the board, are unable
to pay such tuition, may attend without charge. The
county board of education shall have the authority to
determine the term and curriculum of such summer
schools based upon the particular needs of the individual
county. The curriculum may include, but is not limited to,
remedial instruction, accelerated instruction, and the
teaching of manual arts. The term of such summer school
program may not be established in such a manner as to
interfere with the regular school term.

The county boards of education may employ as teachers
for this summer school program any certified teacher.
Certified teachers employed by the county board of edu-
CHAPTER 62

(Senate Bill No. 107—By Mr. McKown and Mr. Carrigan)

(Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections seven, fifteen and twenty-three, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to teacher certification and requirements for teacher certification.

Be it enacted by the Legislature of West Virginia:

That sections seven, fifteen and twenty-three, 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:

ARTICLE 7. TEACHERS.

Section

7. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils.

15. Teacher certification; general qualifications and requirements; expiration of certificate; provisional permits for exchange teachers and aliens.

23. Authority of state superintendent to issue certificates; kinds of certificates.

§18-7-7. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils.

The teacher shall stand in the place of the parent or guardian in exercising authority over the school, and shall
have control of all pupils enrolled in the school from the
time they reach the school until they have returned to
their respective homes, except that where transportation
of pupils is provided, the driver in charge of the school
bus or other mode of transportation shall exercise such
authority and control over the children while they are in
transit to and from the school. Subject to the rules of the
state board of education, the teacher shall exclude from
the school any pupil or pupils known to have or suspected
of having any infectious disease, or any pupil or pupils
who have been exposed to such disease, and shall immedi-
ately notify the proper health officer, or medical inspector,
of such exclusion. Any pupil so excluded shall not be
readmitted to the school until such pupil has complied
with all the requirements of the rules governing such
cases, or has presented a certificate of health signed by
the medical inspector or other proper health officer. The
teacher shall have authority to suspend any pupil guilty
of disorderly, refractory, indecent or immoral conduct,
and the district board of education may expel or exclude
any such pupil if, on investigation, the conduct of such
pupil is found to be detrimental to the progress and the
general conduct of the school.

For the purpose of this section: (1) “Pupil” shall in-
clude any child, youth, or adult who is enrolled in any
instructional program or activity conducted under board
authorization and within the facilities of or in connection
with any program under public school direction:
Provided, That in the case of adults the pupil-teacher re-
relationship shall terminate when the pupil leaves the school
or other place of instruction or activity; (2) “teacher”
shall include principals, regular teachers, substitute
teachers, teacher aides and other school employees or per-
sons assigned responsibility for directing or supervising
instructional programs or board-approved activities.

§18-7-15. Teacher certification; general qualifications and re-
quirements; expiration of certificate; provisional per-
mits for exchange teachers and aliens.

No person employed as a teacher in the free schools of
this state shall receive for such services any part of any
free school funds who does not hold a valid teaching certificate licensing him to teach in the public schools for the period of his employment and showing the grade levels and subject areas in which he is qualified to teach:

Provided, That if a teacher is employed in good faith on the anticipation that he is eligible for a certificate and it is later determined that he was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months. All certificates shall expire on June thirtieth of the last year of their validity irrespective of the date of issuance. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except, that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach and who has applied for a permanent residence certificate to become a naturalized citizen, may be granted a provisional permit to teach within the public schools of the state.

The term “teacher” as used in this section is intended to include the classroom teacher, school librarian, school principal, school superintendent, assistant superintendent, supervisor of instruction and other persons employed in similar positions.

§18-7-23. Authority of state superintendent to issue certificates; kinds of certificates.

The state superintendent of free schools shall have authority to issue certificates valid in the public schools of the state in accordance with standards and requirements approved by the state board of education. Certificates authorized to be issued include:

A professional certificate for teaching in the public schools may be issued for a five-year period to a person who has completed the requirements for a bachelor's degree from an approved institution of higher education, in which case, the certificate shall be endorsed for teaching
in the elementary or secondary schools or both in accordance with an approved program completed by the applicant. A professional certificate for teaching in the public schools may be issued provisionally, in which case, it shall be valid for a three-year period.

Professional certificates, as provided by this section, shall be valid for teaching in grades one through nine, or seven through twelve, or one through twelve, or in any other combination of grades approved by the state board of education in accordance with the program of collegiate training completed.

A professional administrative certificate may be issued for a five-year period to an applicant who has completed the requirements for a master's degree in an institution of higher education approved to give graduate training, in which case, the certificate shall be endorsed in accordance with an approved program completed by the applicant.

Other teaching certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional certificate. Such certificates or permits shall not be given permanent status and persons holding such shall meet renewal requirements provided by law and/or state board regulation.

CHAPTER 63

(Senate Bill No. 37—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the amount of contribution to be made by members of the state teachers' retirement system, and increasing the amount of highest annual salary used in calculating retirement benefits for state teachers' retirement recipients.
Be it enacted by the Legislature of West Virginia:

That sections fourteen and twenty-six, 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 7A. STATE TEACHERS' RETIREMENT SYSTEM.

Section
14. Contributions by members.

§18-7A-14. Contributions by members.

At the end of each month every member of the retirement system shall contribute four and one-half per cent of his monthly earnable compensation to the retirement board: Provided, That in no case shall the contribution of any member exceed five hundred forty dollars in any fiscal year: Provided, however, That in no case shall the contribution of any member employed by the board of governors of West Virginia University, or by the West Virginia board of education at an institution of higher education under its control, exceed two hundred sixteen dollars in any fiscal year.

Such contributions shall be deemed to include the annual supplementary fee of the contributor, determined as hereinafter provided, which fee shall be used to help finance the additional retirement benefit provided for in subdivision (e) of Plan A of section twenty-six of this article. Annually, the contributions of each member, minus his supplementary fee, shall be credited to his account in the teachers' accumulation fund. The contributions shall be deducted from the salaries of the members as herein prescribed, and every member shall be deemed to have given his consent to such deductions. No deductions, however, shall be made from the earnable compensation of any teacher who retired because of age or service, and then resumed service as a teacher.

The retirement board shall each year determine to the nearest dollar the amount of the supplementary fee to be paid by each member, so that the sum of such fees paid by all members shall be sufficient to defray one half of the cost of the retirement benefit provided for in sub-
division (e) of Plan A of section twenty-six of this article. The amount so fixed shall not exceed twenty dollars, nor shall it in any case exceed one sixth of the annual contribution of the member. All supplementary fees shall be deposited in the benefit fund.

The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the earnable compensation of members required by this section. All employer contributions shall be credited to the employers’ accumulation fund, from which fund an amount equalling annually the supplementary fees of members shall be transferred to the benefit fund.

Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee’s deductions shall be deemed to be a full discharge of the employer’s contractual obligation as to earnable compensation.

Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing his date of birth and other data needed by the retirement board. Upon notice from the retirement board to the employer that a contributor has failed to file such forms as prescribed, the employer shall withhold the salary of the contributor until the needed form is filed with the retirement board.


Annuitants whose annuities were approved by the retirement board prior to the effective date of this act shall be paid the annuities which were approved by the retirement board. Annuities approved by the board after the effective date of this act shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of either Plan A or Plan B, whichever provides the larger annuity.

Plan A shall be computed as follows:

(a) The actuarial equivalent of the contributions and
deposits of the member in his individual account up to the time of his retirement, with regular interest.

(b) The actuarial equivalent of the contributions of the employer up to the time of the member's retirement, which shall equal the sum in subdivision (a) of Plan A of this section minus deposits with regular interest on such deposits.

(c) Where prior service credit has been granted, an allowance of one and one-half per cent of the member's average final salary multiplied by the number of years of prior service credited to him.

(d) The actuarial equivalent of the amounts that would have accumulated under subdivisions (a) and (b) of Plan A, if the member had contributed to his individual account until he was fifty years old, at the annual rate of his past actual contributions, but this subdivision shall apply only as additional income to members who qualify for disability retirement before they are fifty years old.

(e) Twelve dollars multiplied by his total service credit as a teacher.

(f) The member shall receive in addition to the allowances under subdivisions (c) and (d) an amount equal to six dollars multiplied by his total service credit: Provided, That the maximum allowance under this subdivision shall be one hundred and ninety-two dollars: Provided, however, That this subdivision shall be effective on and after July first, one thousand nine hundred fifty-seven.

(g) Twelve dollars multiplied by the member's total service credit as a teacher.

For the purpose of subdivision (c) in Plan A:

(1) An allowance for prior service shall in no case exceed three fifths of the member's average final salary.

(2) Average final salary for this purpose shall in no case exceed two thousand five hundred dollars, nor shall it be less than twelve hundred dollars.

Plan B shall be computed as follows:

(a) One per cent of the member's average salary multiplied by his total service credit as a teacher. In this paragraph "average salary" shall mean the average of the
highest annual salaries received by the member during any five years contained within his last fifteen years of total service credit: Provided further, That the highest annual salary used in this calculation shall be twelve thousand dollars: And provided further, That the highest annual salary used in this calculation for members employed by the board of governors of West Virginia University, or by the West Virginia board of education at institutions of higher education under its control, shall be four thousand eight hundred dollars.

(b) The actuarial equivalent of the deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments.

All annuities shall be paid in twelve monthly payments. In computing such monthly payments, fractions of a cent shall be deemed a cent. Such monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his application for annuity.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with such data, the change being effective with the payment for the month within which the board received the new data.

An annuity application shall be cancelled immediately if the applicant dies before the retirement board approves such application.
Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one, shall be eligible for prior service credit and for prior service pensions as prescribed in this section.

CHAPTER 64

(House Bill No. 1132—By Mr. Simpkins and Mr. Varney)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine-b, chapter eighteen 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 the creation of special building funds by county boards of education.

Be it enacted by the Legislature of West Virginia:

That article nine-b, 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 fourteen-a, to read as follows:

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

Section 14a. County boards authorized to create special building funds; transfers to and use of fund.

§18-9B-14a. County boards authorized to create special building funds; transfers to and use of fund.

The board of education of any county is hereby authorized and empowered to create a special building fund and to transfer to such special fund any part or all of the unexpended balance accumulated in the “permanent improvement fund,” heretofore established by section fourteen, article nine-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Such boards of education are further authorized and empowered to use and expend the special funds for the construction of school buildings.
funds, created under the authority of this section, to construct, erect, furnish and equip a building for educational purposes suitable for instruction in transfer, terminal, technical, and adult education courses.

CHAPTER 65

(House Bill No. 746—By Mr. Speaker, Mr. White, and Mr. Auvil)

[Passed February 15, 1967; in effect July 1, 1967. 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 ten-d, relating to interstate cooperation in education by adopting the compact for education.

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 ten-d, to read as follows:

ARTICLE 10D. COMPACT FOR EDUCATION.

Section
1. Enactment of compact.
2. Members of the education commission of the state; term; qualifications.
3. West Virginia education council; composition; meetings; duties.
4. Bylaws of commission filed with secretary of state.
5. Cooperation of state agencies, boards, departments, etc.
6. Appropriations.
7. Severability clause.

§18-10D-1. Enactment of compact.
1 The compact for education is hereby enacted into law and entered into by the state of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

COMPACT FOR EDUCATION

Article I. Purpose and Policy.

1 A. It is the purpose of this compact to:
1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

3. Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this compact, "State" means a state, terri-
Article III. The Commission.

A. The Education Commission of the states, hereinafter called “the commission,” is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the com-
mission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation,
and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officers in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the
advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation with Federal Government.

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission but not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall con-
sist of other members of the commission. A federal repre-
sentative on the commission may serve with the steering
committee, but without vote. The voting members of
the steering committee shall serve for terms of two years,
except that members elected to the first steering com-
mittee of the commission shall be elected as follows:
sixteen for one year and sixteen for two years. The chair-
man, vice chairman, and treasurer of the commission
shall be members of the steering committee and, any-
thing in this paragraph to the contrary notwithstanding,
shall serve during their continuance in these offices.
Vacancies in the steering committee shall not affect its
authority to act, but the commission at its next regularly
ensuing meeting following the occurrence of any vacancy
shall fill it for the unexpired term. No person shall serve
more than two terms as a member of the steering com-
mittee: Provided, That service for a partial term of one
year or less shall not be counted toward the two term
limitation.
B. The commission may establish advisory and tech-
nical committees composed of state, local, and federal
officials, and private persons to advise it with respect
to any one or more of its functions. Any advisory or
technical committee may, on request of the states con-
cerned be established to consider any matter of special
concern to two or more of the party states.
C. The commission may establish such additional com-
mittees as its bylaws may provide.

Article VII. Finance.
A. The commission shall advise the governor or desig-
nated officer or officers of each party State of its budget
and estimated expenditures for such period as may be
required by the laws of that party state. Each of the
commission's budgets of estimated expenditures shall
contain specific recommendations of the amount or
amounts to be appropriated by each of the party states.
B. The total amount of appropriation requests under
any budget shall be apportioned among the party states.
In making such apportionment, the commission shall
devise and employ a formula which takes equitable ac-
count of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III G of this compact: Provided, That the commission take specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties; Entry Into and Withdrawal.

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term “Governor,” as used in this compact, shall mean the closest equivalent official of such jurisdiction.
B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same, provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor: Provided, That in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967, in accordance with paragraph C of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state
12 participating therein, the compact shall remain in full
13 force and effect as to the state affected as to all severable
14 matters.

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§18-10D-2. Members of the education commission of the state;
term; qualifications.
1 In pursuance of Article III A of said compact, there
2 shall be seven members of the education commission of
3 the states from the state of West Virginia consisting of the
4 governor and six persons appointed by the governor, by
5 and with the advice and consent of the senate, who shall
6 serve at the pleasure of the governor. Members so ap-
7 pointed shall have the qualifications specified in said
8 Article III A of the compact.

§18-10D-3. West Virginia education council; composition;
meetings; duties.
1 There is hereby established the "West Virginia Educa-
2 tion Council" composed of the members of the education
3 commission of the states representing this state. The
4 chairman shall be designated by the governor from among
5 its members. The council shall meet on the call of its
6 chairman or at the request of a majority of its members,
7 but in any event the council shall meet not less than three
8 times each year. The council may consider any and all
9 matters relating to recommendations of the education
10 commission of the states and the activities of the mem-
11 bers in representing this state thereon.

§18-10D-4. Bylaws of commission filed with secretary of state.
1 Pursuant to Article III I of the compact, the commis-
2 sion shall file a copy of its bylaws and any amendments
3 thereto with the secretary of state of West Virginia.

§18-10D-5. Cooperation of state agencies, boards, departments,
etc.
1 The departments, boards, agencies, commissions, officers
2 and employees of the state and its subdivisions are au-
3 thorized to cooperate with the council in the furtherance
4 of any of its activities pursuant to this compact.
§18-10D-6. Appropriations.
1 The Legislature may appropriate such funds as it deems necessary to carry out the provisions of this chapter, article, and sections.

§18-10D-7. Severability clause.
1 If for any reason any section or provision of this article shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remainder of the article.

CHAPTER 66
(Senate Bill No. 73—By Mr. McCourt)

[Passed February 14, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to military training for male students at West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section six, 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:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.
Section
6. Military training; federal aid.

§18-11-6. Military training; federal aid.

The board of governors shall maintain and continue its United States Army reserve officers training corps and United States Air Force reserve officers training corps programs for male students of suitable age in the university. Students enrolling in either of these programs shall serve for the time and according to such regulations as the board shall prescribe, and shall be entitled to such special privileges and immunities as the board may determine.

The board of governors shall have authority to accept ap-
Ch. 67]

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal section six-a, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article eleven, chapter eighteen of said code, by adding thereto a new section, designated section nine-b, relating to the establishment and operation of branch colleges by the board of governors of West Virginia University.

Be it enacted by the Legislature of West Virginia:

That section six-a, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that article eleven, chapter eighteen of said code be amended by adding thereto a new section, designated section nine-b, to read as follows:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-9b. Establishment and operation of branch colleges.

The board of governors is hereby authorized and empowered to continue to operate and maintain any branch colleges it has established under the authority of section six-a, article one-a, chapter twenty-five of this code, and to establish, maintain and operate such other branch colleges as it may deem advisable: Provided, That programs of education offered in such branch colleges, whether
established or continued hereunder, shall not exceed two-
year liberal arts programs and/or terminal occupational
education and adult education programs.

No funds shall be expended by the board for the opera-
tion or maintenance of, or capital improvements for, any
such branch college, whether established or continued
hereunder, except funds provided by student fees, fed-
eral grants, county boards of education, other local gov-
ernmental bodies, corporations or persons, or funds ap-
propriated by the Legislature expressly for such purpose
or purposes. Except for the use of funds provided by
student fees, federal grants or those appropriated by the
Legislature expressly for such purposes, the burden of
providing satisfactory and acceptable capital improve-
ments for such colleges shall be upon such governmental
bodies, corporations or persons, and the board may enter
into memoranda of agreements with such governmental
bodies, corporations, or persons for the use of local plant
facilities and/or grants or contributions toward the cost
of the acquisition or construction of such facilities. Such
local governmental bodies may convey capital improve-
ments, or lease the same without monetary consideration,
to the board for use as a branch college, and the board
may accept such facilities, or the use or lease thereof, or
such grants or contributions, for such purpose from such
governmental bodies, the federal government or any cor-
poration or person.

The board may fix enrollment, tuition and other fees to
be charged students enrolling in such branch colleges,
retaining the same in a revolving fund for the partial or
full support of the branch at which they were collected,
including the making of capital improvements.

The board may also charge any one or more of the fol-
lowing fees at such branches: (1) Health service fees;
(2) infirmary fees; and (3) student activities, recreational,
athletic and extracurricular fees. All fees collected under
(1), (2) and (3) shall be paid into special funds and shall
be used only for the purposes for which they were col-
lected.
AN ACT to amend and reenact section ten, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the general extension work conducted by the board of governors of West Virginia University, and to the disposition of fees collected by the board for the graduate level extension and graduate level off-campus courses it offers for credit.

Be it enacted by the Legislature of West Virginia:

That section ten, 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:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

Section 10. Extension and off-campus work of university; disposition of fees charged for graduate level extension and off-campus courses.

§18-11-10. Extension and off-campus work of university; disposition of fees charged for graduate level extension and off-campus courses.

The board of governors is hereby authorized and empowered to organize and conduct, through the organization of the different colleges, schools and departments of the university, extension work and off-campus work in the form of schools, classes, lectures, and other forms of instruction, throughout the state.

Enrollment, tuition and other fees collected from students enrolled in graduate level extension, and graduate level off-campus, courses for credit taught off the campus of the university, excluding educational television courses, shall be paid into a special fund and be used for the purpose of partially or fully covering the costs related to the development and teaching of such graduate level courses: Provided, That no portion of such fees committed to the retirement of any revenue bonds heretofore issued pursuant to the provisions of articles eleven-a and
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.

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:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

Section 10a. Establishment and operation of graduate centers.

§18-11-10a. Establishment and operation of graduate centers.

The board of governors is hereby authorized and empowered to continue the operation and maintenance of any graduate centers it has heretofore established, either by itself or in cooperation with other universities or colleges, and to establish, maintain and operate such other graduate centers either by itself or in cooperation with other universities or colleges, at such place or places within the state as it may deem advisable.

No funds shall be expended by the board for the operation or maintenance of, or capital improvements for, any such graduate center, whether established or continued hereunder, except funds provided by student fees, federal grants, state agencies other than the board, county boards of education, other local governmental bodies, corporations or persons, and funds appropriated by the
Legislature expressly for such purpose or purposes. Ex-
cept for the use of funds provided by student fees, fed-
eral grants or those appropriated by the Legislature
expressly for such purposes, the burden of providing
satisfactory and acceptable capital improvements for
such centers shall be upon such state agencies, local gov-
ernmental bodies, corporations or persons, and the board
may enter into memoranda of agreements with such state
agencies, local governmental bodies, corporations or per-
sons for the use of plant facilities and/or grants or con-
tributions toward the cost of the acquisition or construc-
tion of such facilities. Such state agencies and local gov-
ernmental bodies may convey capital improvements, or
lease the same without monetary consideration, to the
board for use as a graduate center, and the board may
accept such facilities, the use or lease thereof, or such
grants or contributions, for such purpose from such gov-
ernmental bodies, the federal government or any corpora-
tion or person.

The board may fix enrollment, tuition and other fees
to be charged students enrolling in such graduate centers,
and retain the same in a special fund for the partial or
full support of the center at which they were collected,
including the making of capital improvements. The board
may also charge any one or more of the following fees
at such centers: (1) Health service fees; (2) infirmary
fees; and (3) student activities, recreational, athletic and
extracurricular fees. All fees collected under (1), (2)
and (3) shall be paid into special funds and shall be used
solely for the purpose for which collected.

CHAPTER 70
(Senate Bill No. 72—By Mr. Moreland)

[Passed February 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article
eleven, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to parking facilities at West Virginia University; authorizing the board of governors of West Virginia University to prescribe rules and regulations concerning the use of such facilities; authorizing the imposition of fines for parking in violation of such rules and regulations; and increasing the maximum interest rate on revenue bonds issued pursuant to said section twenty-five.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, 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:

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

Section 25. Acquisition, construction, financing and regulation of parking facilities; penalties.

§18-11-25. Acquisition, construction, financing and regulation of parking facilities; penalties.

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 rules and regulations as may be prescribed by the board, which rules and regulations shall have the force and effect of law. A summary of the rules and regulations pertaining to parking and the penalties which may be imposed for any violation thereof shall be posted conspicuously in each parking area.

No person shall park any vehicle in violation of such rules and regulations, and any person parking any vehicle contrary thereto shall be subject to a fine of not less than one dollar nor more than five dollars for each offense. Justices of the peace in Monongalia county and the police court and police court judge of Morgantown, West Virginia, shall have jurisdiction of all such offenses.

In addition, the board shall have the authority, whenever any vehicle is parked in a university parking facility in violation of the posted rules and regulations, 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. In such case, 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. 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.

The board shall have authority to charge fees for the
use of parking facilities under its control. All moneys col-
lected for such use shall be paid into a special fund which
is hereby created in the state treasury. 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 to finance the construction
of additional parking facilities or the acquisition by lease
or purchase of additional parking areas. The board may
use the moneys in such special fund to finance the costs
of the above purposes on a cash basis, or may from time
to time issue revenue bonds of the state as provided in
this section to finance such costs and pledge all or any part
of the moneys in such special funds for the payment of
the principal of and interest on such revenue bonds, and
for reserves therefor. Whenever parking facilities are
provided in any university building financed in whole or
in part by the issue of revenue bonds otherwise authorized
by law, the net revenue derived from the parking facilities
included in such building may be used or pledged to meet
the sinking fund requirements of the bonds issued for con-
struction of the building. The pledge of moneys in such
special fund for any revenue bonds shall be a prior and
superior charge on such special fund over the use of any
of the moneys in such fund to pay for the cost of any of
such purposes on a cash basis.

Such revenue bonds may be authorized and issued from
time to time by the board of governors to finance in whole
or in part the purposes provided in this section in an
aggregate principal amount not exceeding the amount
which the board shall determine can be paid as to both
principal and interest and reasonable margins for a re-
serve therefor from the moneys in such special fund.

The issuance of such bonds shall be authorized by a
resolution adopted by the board, and such revenue bonds
shall bear such date or dates, mature at such times not
exceeding forty years from their respective dates; bear
interest at such rate or rates not exceeding six per centum
per annum; be in such form either coupon or registered,
with such exchangeability and interchangeability privi-
leges; be payable in such medium of payment and at such
place or places, within or without the state; be subject to
such terms of prior redemption at such prices not exceed-
ing one hundred six per centum of the principal amount
thereof; and shall have such other terms and provisions
as the board shall determine. Such revenue bonds shall
be signed by the governor and by the president of the
board of governors, under the great seal of the state,
attested by the secretary of state, and the coupons at-
tached thereto shall bear the facsimile signature of the
president of the board. Such revenue bonds shall be sold
in such manner as the board may determine to be for the
best interests of the state, such sale to be made at a price
not lower than a price which will show a net return of
not more than six per centum per annum to the purchaser
upon the amount paid therefor computed to the stated
maturity dates of such revenue bonds without regard to
any right of prior redemption.

The board may enter into trust agreements with banks
or trust companies, within or without the state, and in
such trust agreements or the resolutions authorizing the
issuance of such bonds may enter into valid and legally
binding covenants with the holders of such revenue bonds
as to the custody, safeguarding and disposition of the pro-
ceeds of such revenue bonds, the moneys in such special
fund, sinking funds, reserve funds, or any other moneys
or funds; as to the rank and priority, if any, of different
issues of revenue bonds under the provisions of this sec-
tion; and as to any other matters or provisions which are
deemed necessary and advisable by the board in the best
interests of the state and to enhance the marketability of
such revenue bonds.
Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

AN ACT to amend and reenact section six, article seventeen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration of all deaf persons and blind persons and the submitting of reports by each county assessor.

Be it enacted by the Legislature of West Virginia:

That section six, article seventeen, 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 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

Section 6. Registration of deaf and blind by assessors.

§18-17-6. Registration of deaf and blind by assessors.

1 In addition to their other duties the county assessors of the state are hereby required to register the names of all deaf persons and blind persons under twenty-one years of age in their respective counties, with the degree and cause of deafness and blindness in each case, as far
as can be ascertained from the heads of the families or from other persons whom the county assessors may conveniently consult, their ages, the names of their parents or guardians, their postoffice addresses, and such other facts as may be useful in making the institution efficient in the education of the deaf and of the blind. They shall complete the registration on or before June one of each year and forward their report to the state superintendent of schools and to the superintendent of the West Virginia schools for the deaf and the blind on or before July one of each year. The superintendent shall immediately communicate with the parents or guardians of all the deaf persons and the blind persons mentioned in the assessor’s report, with a view of their admission as pupils into said schools.

CHAPTER 72

(House Bill No. 1026—By Mr. Auvil)

[Passed March 11, 1967; in effect ninety days 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 twenty-three, empowering county boards of education, the teachers’ retirement board, the West Virginia board of education and the board of governors of West Virginia University and their agencies, to enter into salary reduction agreements with their teachers and other employees, and to apply the amount of such reduction toward the purchases of tax sheltered annuities for such teachers or other employees, and prescribing the conditions under which such reductions will be made.

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 twenty-three, to read as follows:

ARTICLE 23. TAX SHELTERED ANNUITIES FOR TEACHERS AND EMPLOYEES.

Section
1. Authority to purchase tax sheltered annuities for teachers and employees.

§18-23-1. Authority to purchase tax sheltered annuities for teachers and employees.

A county board of education, the teachers' retirement board, the West Virginia board of education and the board of governors of West Virginia University and their agencies may provide by written agreement between any such board or agency and any teacher or other employee, to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction to an insurance company licensed to do business in this state as premiums on an annuity contract owned by such teacher or other employee, which annuity contract shall be in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code, or to pay an amount equal to the amount of such reduction as voluntary deposits to the teachers' retirement board as provided by section eighteen, article seven-a, chapter eighteen of this code. The amount of such reduction shall not exceed the amount excludible from income under Section 403 (b) of the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's or employee's salary for all purposes other than federal and state income tax.

The purchase of such tax sheltered annuity for a teacher or other employee by a board of education, the teachers' retirement board, the West Virginia board of education and the board of governors of West Virginia University and their agencies shall impose no liability nor responsibility whatsoever on said boards or members thereof except to show that the payments have been remitted for the purposes for which deducted.
AN ACT to amend and reenact section five, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment, maintenance and operation of book stores at state educational institutions; the disposition of revenues therefrom; and granting authority to the West Virginia board of education to expend from balances accumulated in the Marshall University book store fund a sum not to exceed two hundred thousand dollars for construction of quarters to house the Marshall University book store.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS.

Section 5. Book stores.


The governing board of each state educational institution shall have the authority to establish and operate a book store at the institution. The book store shall be operated for the use of the institution itself, including each of its schools and departments, in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but no sales shall be made to the general public. The prices to be charged the institution, the students and the faculty for such products shall be fixed by the governing board, shall not be less than the prices fixed by any fair trade agreements, and shall in all cases include in addition to the purchase price paid by the book store a sufficient handling charge to cover all expenses incurred for personal and other services, sup-
plies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the book store.

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. The governing board shall, subject to the approval of the governor, fix and from time to time change the amount of the revolving fund necessary for the proper and efficient operation of each book store. Whenever at the end of any fiscal year the unencumbered balance in the book store special revenue fund shall exceed the amount of the revolving fund so established, the excess shall be transferred by the state auditor to the general revenue fund and become a part of the general revenue of the state.

Moneys derived from the operation of the book store shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store. From any balance in the Marshall University book store fund not needed for operation and maintenance and replenishing the stock of goods, the West Virginia board of education shall have authority to expend a sum not to exceed two hundred thousand dollars for the construction of quarters to house the book store in the university center at Marshall University. Until such quarters for housing the book store are completed, the West Virginia board of education and the governor shall take this authorization into account in fixing the amount of the revolving fund for the Marshall University book store.

CHAPTER 74

(Senate Bill No. 198—By Mr. Hubbard and Mr. Brotherton)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article
one, chapter three of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, relating to the
appointment and notification of election officers, certain
powers and duties of election officers, and double boards
of election officers, and providing that for any special elec­
tion where there are only public questions to be voted upon
there shall be but one board of election officers in each
precinct.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

Section 28. Election commissioners and clerks-appointment and notification; vacancies; authority to administer oaths, etc.

§3-1-28. Election commissioners and clerks—Appointment and
notification; vacancies; authority to administer oaths, etc.

The county court of each county shall hold a regular
or special session at the courthouse of the county on the
first Tuesday of the month next preceding the date on
which any election is to be held and appoint three com­
missioners and two clerks to hold the election in each
precinct in the county. In primary and general elections
and in any special election in which political party can­
didates are to be nominated or elected, the election com­
missioners and clerks shall be selected from the two po­
litical parties which at the last preceding general election
cast the highest and the second highest number of votes
in this state. For every precinct in which there are three
hundred, but not more than four hundred, registered
voters, there may be two boards of election officers, and
for all precincts in which there are more than four hun­
dred registered voters, there shall be two boards of elec­
tion officers, and where two boards are used, each board
shall consist of three election commissioners and two poll
clerks, one of which boards shall be designated the “re­
ceiving board” and the other the “counting board” and
not more than two commissioners and one poll clerk of
each board shall be appointed from the same political
party: Provided, That for any special election for the pur-
pose of taking the sense of the voters on the question of
calling a constitutional convention, and for any special
election to elect members of a constitutional convention,
and for any special election to ratify or reject the pro-
posals, acts and ordinances of a constitutional convention,
and for any special election where there are only public
questions to be voted upon, there shall be but one board of
election officials in each precinct, consisting of three com-
missioners and two poll clerks. If, at any time before or
during the session of the county court, the county ex-
ecutive committee of either or both of the political parties,
from which commissioners and clerks of election are to
be selected, shall file with or present to the county court
a writing signed by them, or by the chairman or secre-
tary of such committee on their behalf, requesting the
appointment of a member and of one clerk of each board
of the political party for which such committee, chairman
or secretary is acting, and designating persons who are
qualified under this article for such appointment for each
election precinct in the county, the county court shall
appoint the persons so designated.

The county court shall by mail notify all commissioners
and poll clerks of their appointment, and include with
such notice an appropriate form for each person so ap-
pointed to return indicating whether or not he will serve
as such commissioner or poll clerk. It shall be the duty of
all persons so appointed to immediately return said form
to the county court. In the event any of the persons so
appointed refuse to serve as such commissioners or poll
clerks, the county court shall immediately notify the
chairman of the county executive committee of the po-
litical party from which such commissioners and poll
clerks are to be selected. The chairman of the political
committee so notified shall recommend the person or per-
sons to be appointed to replace those declining to serve
and it shall be the duty of the county court to appoint the
person or persons so recommended.

If any person appointed receiving commissioner or
clerk of election shall fail to appear at the voting place
at the hour for opening the polls, the remaining commis-
sioner or commissioners of election of the political party
to which the absentee belongs shall select another com-
missioner or clerk, as the case may be, of such political
party. But if the qualified voters of his party present at
the polls shall nominate a voter of his party qualified to
act under the provisions of this section, such nominee
shall be appointed. If none of the receiving commissioners
of the election or poll clerks shall appear at the voting
place at the hour appointed for opening the polls, the
qualified voters present, being at least ten in number, of
the political party which cast the highest number of votes
in the county at the last preceding election, shall select
two commissioners and one clerk and those of the po-
litical party which cast the next highest number of votes
in the county at such election shall select one commis-
sioner and one clerk of the receiving board of such pre-
cinct, and the persons so selected shall constitute the re-
ceiving board for the precinct. A vacancy or vacancies
on the counting board shall be filled in the manner herein
provided for filling a vacancy or vacancies on the re-
ceiving board, except that such vacancy or vacancies shall
be determined and filled as of the hour appointed in this
chapter for the counting board to attend at the polls. Any
commissioner of election acting at any election precinct
is hereby empowered and authorized to administer oaths
and to take and certify affidavits in relation to any mat-
ter or thing required or permitted to be done by any of
the provisions of this article in conducting and holding
the election.

CHAPTER 75
(Senate Bill No. 239—By Mr. Hubbard and Mr. Lambert)

[Passed March 7, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter three of the code of West
Virginia, one thousand nine hundred thirty-one, as amend-
ed, by adding thereto a new section, designated section
thirteen, relating to elections and requiring a title and summary of a proposed amendment to the constitution to appear on the ballots or voting machine labels.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

Section 13. Title and summary of proposed constitutional amendment to be on ballot or voting machine label.

§3-6-13. Title and summary of proposed constitutional amendment to be on ballot or voting machine label.

In any act providing for the submission to the voters of a proposed amendment to the West Virginia constitution, for ratification or rejection thereof by such voters, the Legislature shall, for convenience of reference thereto, assign a title to such proposed amendment and shall set forth in understandable language a summary of the purpose of such proposed amendment. If the Legislature shall fail in any such act to include a title and summary, or either, the secretary of state shall supply such omission or omissions, and certify the same to the ballot commissioners of each county. Whether set forth in such act or certified by the secretary of state, it shall be the duty of the ballot commissioners in each county to place upon the official ballot at every election at which such proposed amendment is to be voted upon, or upon the ballot label in counties where voting machines are used, the title and summary of such proposed constitutional amendment.
ter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the proceedings on the report of the commissioners in eminent domain proceedings, trial by jury, and admitting the value of leaseholds into evidence.

Be it enacted by the Legislature of West Virginia:

That section ten, 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:

ARTICLE 2. PROCEDURE.
Section 10. Proceedings on report; trial by jury.

§54-2-10. Proceedings on report; trial by jury.

Within ten days after the report required by the provisions of section nine of this article is returned and filed, either party may file exceptions thereto, and demand that the question of the compensation, and any damages to be paid, be ascertained by a jury, in which case a jury of twelve freeholders shall be selected and impaneled for the purpose, as juries are selected in civil actions. But no person shall sit on such jury who would not be eligible to serve as a condemnation commissioner in the proceeding. The cause shall be tried as other causes in such court, except that any person who served as a condemnation commissioner in the proceeding shall not be examined as a witness in regard to just compensation or any damages. The jury, ascertaining the damages or compensation to which the owner of the property, or interest or right therein, proposed to be taken is entitled, shall be governed by sections nine and nine-a of this article except that a view of the property proposed to be taken shall not be required: Provided, That in the event a demand therefor is made by a party in interest, the jury shall be taken to view the property, and in such case, the judge presiding at the trial shall go with the jury and shall control the proceedings: Provided, however, That the value of any leasehold on the property proposed to be taken, that must be paid by the owner thereof to his tenant or tenants, shall be admissible in
27 evidence in any hearing before the condemnation com-
28 missioners or in the trial by jury.
29 If no exceptions be filed to such report, and neither
30 party demand a trial by jury as aforesaid, the court, or
31 the judge thereof in vacation, unless good cause be shown
32 against it, or it be defective or erroneous on its face, shall
33 confirm such report, and order it to be recorded in the
34 proper order book of the court.

CHAPTER 77

(Senate Bill No. 35—By Mr. Carson, Mr. President, and
Mr. Carrigan)

[Passed January 25, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, 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 twelve, relating to the distribution of assets by
fiduciaries in satisfaction of pecuniary bequests or trans­
fers in trust of a pecuniary amount; authorizing fiduciaries
to enter into certain agreements generally relating thereto,
and validating such agreements entered into heretofore.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

Section
12. Distribution of assets in satisfaction of pecuniary bequests; au­
thority of fiduciaries to enter into certain agreements; validating
certain agreements.

§44-5-12. Distribution of assets in satisfaction of pecuniary
bequests; authority of fiduciaries to enter into certain
agreements; validating certain agreements.

(a) Where a will or trust agreement authorizes or
directs the fiduciary to satisfy wholly or partly in kind
a pecuniary bequest or transfer in trust of a pecuniary amount, unless the instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution.

(b) Whenever a fiduciary under the provisions of a will or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse and is authorized to satisfy such bequest or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of such pecuniary bequest or transfer. This section shall not apply to prevent a fiduciary from carrying into effect the provisions of the will or other governing instrument that the fiduciary, in order to implement such a bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse shall be authorized to enter into agreements with the commissioner of internal revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust and any such agreement heretofore entered into
after April one, one thousand nine hundred sixty-four, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the internal revenue laws of the United States of America, and to do and perform all acts incident to such purpose.

CHAPTER 78

(Senate Bill No. 36—By Mr. Carson, Mr. President, and Mr. Carrigan)

[Passed January 27, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fiduciary investments generally; specifying the securities in which fiduciaries may invest fiduciary funds; relating to the retention of fiduciary investments and court direction as to fiduciary investments; and relating to the establishment by certain banks and trust companies of common trust funds, the investment of such common trust funds and certain limitations and qualifications on fiduciary investments in such common trust funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

Section

2. In what securities fiduciaries may invest trust funds.
6. Establishment of common trust funds; investments.

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee, or other fiduciary whose duty it may be to
loan or invest money entrusted to him as such, may,
without any order of any court, invest the same or any
part thereof in any of the following securities, and with-
out liability for any loss resulting from investments there-
in: Provided, That such fiduciary shall exercise the judg-
ment and care under the circumstances then prevailing
which men of prudence, discretion and intelligence exer-
cise in the management of their own affairs, not in regard
to speculation, but in regard to the permanent disposition
of their funds, considering the probable income as well as
the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of
the United States, or those for which the faith of the
United States is distinctly pledged to provide for the pay-
ment of the principal and interest thereof, including, but
not by way of limitation, bonds or debentures issued
under the “Federal Farm Loan Act,” debentures issued
by “Banks for Cooperatives” under the “Farm Credit Act
of One Thousand Nine Hundred Thirty-three,” as amend-
ed, and debentures issued by the Federal National
Mortgage Association; and in bonds, interest-bearing notes
and obligations issued, guaranteed or assumed by the In-
ternational Bank for Reconstruction and Development or
by the Inter-American Development Bank;

(b) In bonds or interest-bearing notes or obligations
of this state;

(c) In bonds of any state of the United States which
has not within ten years previous to the making of such
investment defaulted in the payment of any part of either
principal or interest on any of its bonds issued by author-
ity of the legislature of such state;

(d) In the bonds or interest-bearing notes or obliga-
tions of any county, district, school district or independent
school district, municipality, or any other political division
of this state that have been issued pursuant to the au-
thority of any law of this state, since the ninth day of
May of the year one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first
mortgage or first trust deed upon improved real estate in
this state where the amount secured by such mortgage or
trust deed shall not at the time of making the same exceed eighty per cent of the assessed value, or sixty-six and two-thirds per cent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such mortgage or trust deed, and when such mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title, or title insurance policy, showing good title in the mortgagor when making such mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his interest may appear: Provided, that the rate of interest upon the above enumerated securities in this subdivision (e), in which such investments may be made, shall not be less than two per cent, nor more than seven per cent, per annum; (f) In savings accounts and time deposits of bank or trust companies to the extent that such deposits are insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such an instrumentality in existence and available for the purpose, or, by bonds of solvent surety companies: Provided, that the rate of interest upon such savings accounts or time deposits shall not be less than the rate paid other depositors in such bank or trust company; (g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that such shares are insured by the federal savings and loan insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided that there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, that the dividend rate upon such shares shall not be less than the rate paid to other shareholders in such associations; (h) In other securities of corporations organized and existing under the laws of the United States or of the District of Columbia or any state of the United States including, but not by way of limitation, bonds, debentures,
notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stocks of such corporations and securities of any open end or closed end management type investment company or investment trust registered under the “Federal Investment Company Act” of one thousand nine hundred forty, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, provided, and upon conditions, however, that:

1. No investment shall be made pursuant to the provisions of this subdivision (h) which, at the time such investment shall be made, will cause the aggregate market value thereof to exceed fifty per cent of the aggregate market value at that time of all of the property of the fund held by such fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision (h) may be reinvested in any securities of the type described in this subdivision (h).

2. No bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of such corporation shall be purchased under authority of this subdivision (h) unless such obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the “Interstate Commerce Act,” as amended, shall be obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the securities and exchange commission.

3. No common or preferred stocks, other than bank and insurance company stocks, shall be purchased under authority of this subdivision (h) unless currently fully listed and registered upon an exchange registered with the securities and exchange commission as a national securities exchange. No sale or other liquidation of any investment shall be required solely because of any change in the relative market value of those investments made eligible by this subdivision (h) and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under
the provisions of this subdivision, a fiduciary may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as in the fiduciary’s best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created shall direct that a change of investment be made, and any such fiduciary shall not be liable for any loss that may occur by depreciation of such securities.

This section shall not apply where the instrument creating the trust, or the last will and testament of any testator, or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every such court is hereby given power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with any such special direction shall be legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary shall be held for any loss resulting in any such case.

§44-6-6. Establishment of common trust funds; investments.

Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing, or making available, investments to itself as fiduciary, or to itself and others, as cofiduciaries, and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating its fiduciary status or relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment: Provided, That unless each fiduciary acquiring or holding any inter-
est in any common trust fund is specifically permitted by
the instrument, judgment, decree or order creating the
fiduciary status or relationship to invest in securities other
than those described in section two of this article, or any
amendments or reenactments thereof, such common trust
funds shall be invested only in those securities described
in said section two and subject to the limitations and con-
ditions of said section, and any amendments or reenact-
ments thereof, except that a common trust fund or funds
may be established for the purchase of securities of the
type described in said section two without regard to the
percentage limitation specified in subparagraph (1) of
subdivision (h) of said section two, in which event the
funds invested by a fiduciary in interests in such last-
mentioned common trust fund or funds shall not exceed
the percentage limitation specified in said subparagraph
(1) of subdivision (h) unless a larger investment is per-
mitted by the instrument, judgment, decree or order
creating the fiduciary status or relationship.

CHAPTER 79
(House Bill No. 768—By Mr. Watson)

[Passed February 18, 1967; in effect ninety days from passage. Approved
by the Governor.]

AN ACT to amend and reenact section one, article fourteen,
chapter forty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the appointment of substitute trustees by the circuit courts
or the judges thereof in vacation; and authorizing the
circuit courts, or the judges thereof in vacation, to appoint
ancillary trustees of trusts, other than security trusts,
created by will, deed or other writing, which include real
property situate in this state in the event that the trustee
of any such trust, or if there be more than one trustee, one
or more of the trustees of any such trust, appointed by or
under such will, deed or other writing and required under
the provisions thereof to act in respect of such real prop-
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SUBSTITUTION OF TRUSTEES; POWERS OF SURVIVING OR REMAINING TRUSTEES.

§44-14-1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances.

1. When the trustee, or, if there is more than one trustee, one or more of the trustees, in any will, deed or other writing, die or remove beyond the limits of this state, or decline to accept the trust, or having accepted, resign the same, or refuse to act as trustee, the circuit court of the county in which such will was admitted to probate, or such deed or other writing is or may be recorded, or the judge of such court in vacation, may, on motion of any party interested, and upon satisfactory evidence of such death, removal, declination, resignation, or refusal, appoint a trustee or trustees in the place of the trustee or trustees named in such instrument and so dying, removing, declining, resigning or refusing.

2. If any such trust, other than a security trust, include real property situate in this state, and the trustee, or, if there be more than one trustee, one or more of the trustees, appointed by or under the will, deed or other writing creating such trust and required under the provisions thereof to act in respect of such real property, be a corporation or association chartered under the laws of any other state or jurisdiction which is not qualified under the laws of this state to hold property or transact business in this state, and refuses or is unable to so qualify, such court, or the judge thereof in vacation,
may in like manner appoint an ancillary trustee of such trust to act with respect to such real property situate in this state pursuant to, and with all the powers and authorities granted to the trustee or trustees of such trust by, the provision of the will, deed or other writing creating such trust.

CHAPTER 80
(Senate Bill No. 126—By Mr. Brotherton)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the state fire marshal, deputy fire marshal or assistant fire marshal to enter and examine buildings or premises where any fire has occurred, or adjoining or nearby buildings or premises, or any vehicle or vehicles where any fire has occurred.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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:

ARTICLE 3. STATE FIRE MARSHAL; PROTECTION AGAINST FIRE.

Section
15. Right to enter and examine buildings or premises in or near which fire has occurred; right to enter and examine vehicles.

§29-3-15. Right to enter and examine buildings or premises in or near which fire has occurred; right to enter and examine vehicles.

The state fire marshal, deputy fire marshal or assistant fire marshal shall have authority, at any time, in the performance of the duties imposed by this article, to enter and examine any building or premises where any fire has
AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-a, relating to a false alarm of fire and providing penalties with respect thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE FIRE MARSHAL; PROTECTION AGAINST FIRE.

Section 22a. False alarm of fire; penalties.

§29-3-22a. False alarm of fire; penalties.

No person shall make, turn in or telephone, or by use of any means or methods of communication aid or abet in the making or turning in of, any alarm of fire which he knows to be false at the time of making such alarm.

Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not more than one hundred dollars or imprisonment for not more than thirty days or by both such fine and imprisonment, and for a second and each subsequent offense by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not less
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article one-£, relating to the Wheeling creek watershed protection and flood prevention district compact, adopting and ratifying such compact, providing for the appointment of the members of the Wheeling creek watershed protection and flood prevention commission, allowing contributions by certain political subdivisions to the district, and empowering the board of commissioners of the county of Ohio to transfer certain special levy funds to said commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1F. WHEELING CREEK WATERSHED PROTECTION AND FLOOD PREVENTION DISTRICT COMPACT.

Section

1. Wheeling creek watershed protection and flood prevention district compact approved.
2. Appointment of members of commission; vacancies.
3. Contributions by political subdivisions.
4. Ohio county board of commissioners authorized to transfer certain special levy receipts to the Wheeling creek watershed protection and flood prevention commission.

§29-1F-1. Wheeling creek watershed protection and flood prevention district compact approved.

1 The following Wheeling Creek watershed protection and 2 flood prevention district compact, which has been nego-
tiated by representatives of the commonwealth of Penn-
sylvania and the state of West Virginia, is hereby ap-
proved, ratified, adopted, enacted into law, and entered
into by the state of West Virginia as a party thereto and
signatory state, namely:

WHEELING CREEK WATERSHED PROTECTION AND FLOOD
PREVENTION DISTRICT COMPACT

Article I. Recitation of Reasons for Compact.

Whereas, Wheeling Creek, a tributary of the Ohio
River, arises in Pennsylvania, flows through Washington
and Greene Counties of that commonwealth, enters the
State of West Virginia, flows through Marshall and Ohio
Counties, West Virginia, and empties into the Ohio River
at Wheeling, West Virginia; and

Whereas, The inhabitants of Marshall and Ohio Coun-
ties, West Virginia, and, also, but to a much lesser de-
gree, the inhabitants of Washington and Greene Coun-
ties, Pennsylvania, living along Wheeling Creek have over
the years experienced loss of life and property from
flooding of that stream; and

Whereas, Surveys made by the Soil Conservation Serv-
ice of the United States Department of Agriculture indi-
cate that the inhabitants of the four counties named can
best be protected from the flooding of Wheeling Creek by
flood prevention dams constructed thereon with some of
the dams being located on the upper reaches of the stream
and its tributaries in the Commonwealth of Pennsylvania;
and

Whereas, The federal Watershed Protection and Flood
Prevention Act of 1954, as amended, authorizes, under
certain circumstances, federal assistance to local organi-
izations in preparing and carrying out undertakings for
flood prevention and the conservation, development,
utilization and disposal of water in watershed or sub-
watershed areas; and

Whereas, No local organization within the meaning
of the federal act aforesaid established by or organized
under the laws of West Virginia is competent under state
laws to acquire land for, construct, and operate with or
without federal assistance flood prevention facilities in
the Commonwealth of Pennsylvania, and it appears that
no such local organization established by or organized
under the laws of the Commonwealth of Pennsylvania
can justify the expenditure of locally raised funds to
construct and operate flood prevention facilities which
will benefit primarily the inhabitants of the neighboring
State of West Virginia; and

Whereas, Facilities erected on the upper reaches of
Wheeling Creek and its tributaries for flood control and
prevention can nevertheless have a recreational value
for the citizens of both West Virginia and Pennsylvania
and particularly the citizens of Ohio and Marshall Coun-
ties, West Virginia, and Washington and Greene Counties,
Pennsylvania; accordingly, for purposes of promoting
that potential, as well as providing a vehicle or means
whereby federal assistance may be enlisted for the pro-
tection of citizens of her neighboring State of West Vir-
ginia from the flooding of Wheeling Creek, the Common-
wealth of Pennsylvania joins with the State of West
Virginia in negotiating and ratifying this compact; now
therefore,

Article II. Wheeling Creek Watershed Protection and Flood
Prevention District Created.

The Commonwealth of Pennsylvania and the State of
West Virginia hereby create as an agency and instru-
mentality of the governments thereof a district to be
known as the “Wheeling Creek Watershed Protection and
Flood Prevention District,” hereinafter called the dis-
trict, which shall embrace all territory in the Common-
wealth of Pennsylvania and the State of West Virginia,
the water in which flows ultimately into Wheeling Creek
or its tributaries.

Article III. Wheeling Creek Watershed Protection and Flood
Prevention Commission Created.

The Commonwealth of Pennsylvania and the State of
West Virginia hereby create as the governing body of the
district the “Wheeling Creek Watershed Protection and
Flood Prevention Commission,” hereinafter called the
commission, which shall be a body corporate, with the
powers and duties set forth herein, and such additional
Article IV. Composition of Commission.

The commission shall consist of five commissioners from Pennsylvania and five commissioners from West Virginia, each of whom shall be a citizen of the commonwealth or state from which he is appointed. The commissioners from the commonwealth and from the state shall be chosen in the manner and for the terms provided by the laws of the commonwealth or state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the commonwealth or state from which he shall be appointed. Vacancies on the commission shall be filled in the manner provided by the laws of the commonwealth or state among whose representation on the commission the vacancy occurs.

The commissioners shall serve without compensation from the commission, but they shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

Article V. Organization of Commission.

The commission shall meet and organize within sixty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. The presence of three commissioners from the Commonwealth of Pennsylvania and three commissioners from the State of West Virginia shall constitute a quorum, and a majority vote of the
quorum shall be necessary to pass upon matters before the commission.

Article VI. Powers and Duties.

The commission is hereby authorized and empowered:

(a) To be and serve in the capacity of a local organization within the meaning of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and in that capacity the commission shall have the following authority and powers:

(1) To apply for and receive federal financial and other assistance in preparing and carrying out plans for works of improvement as that term is defined in said federal act, as from time to time amended, hereinafter referred to as works of improvement, and to apply for and receive federal financial and other assistance under the aforementioned or other federal acts in preparing and carrying out plans for public fish and wildlife or recreational development in connection with works of improvement, including the construction and operation of all facilities which may be necessary or incident to such works of improvement and public fish and wildlife or recreational development in connection therewith.

(2) To acquire, or with respect to interests in land to be acquired by condemnation, provide assurances satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States that the commission will acquire such land, easements, or right of ways as will be needed in connection with works of improvement, and public fish and wildlife or recreational development and facilities in connection with works of improvement, installed with federal assistance.

(3) To agree to operate and maintain any reservoir or other area included in a plan for works of improvement or public fish and wildlife or recreational development and facilities.

(4) To assume all or such proportionate share, as is determined by the secretary of agriculture of the United States or other agent or agency of the United States,
of the costs of installing any works of improvement, involving federal assistance, which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife or recreational development and facilities or to purposes other than flood prevention and features relating thereto.

(5) To make arrangements satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States for defraying costs of operating and maintaining works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement: Provided, That such arrangements shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(6) To acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to the law of the commonwealth or state applicable thereto, as may be needed in the installation and operation of the works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement.

(7) To cooperate with soil conservation districts in obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of land situated in the drainage area above each retention reservoir to be installed with or without federal assistance.

(8) To apply for and receive federal loans or advancements to finance the local share of costs of carrying out works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement, and to submit a plan of repayment satisfactory to the secretary of agriculture or other agent or agency of the United States for any loan or advancement: Provided, That such plan of repayment shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(9) To cooperate, and enter into agreements with,
the secretary of agriculture of the United States or other
agent or agency of the United States, and to do all other
things required, not inconsistent with the provisions of
this compact and the laws of the Commonwealth of
Pennsylvania and the State of West Virginia, to obtain
maximum federal financial assistance for works of im-
provement and public fish and wildlife or recreational
development and facilities in connection with such works
of improvement.

(b) To acquire within the district, land, easements,
right of ways and other property rights as may be
needed in connection with works of improvement and
public fish and wildlife or recreational development and
facilities in connection with such works of improvement
and to make studies respecting, and to plan, construct,
maintain and operate, works of improvement within the
district and public fish and wildlife or recreational de-
velopment and facilities in connection with such works
of improvement.

(c) To obtain options upon and to acquire, by pur-
chase, exchange, lease, gift, grant, bequest, devise, emi-
inent domain, or otherwise, any property, real or per-
sonal, or rights therein, for any of the purposes speci-
fied in this article of the compact: Provided, That eminent
domain proceedings shall be instituted and prosecuted
in the manner and forums provided by the laws of the
commonwealth or state in which the property or property
rights proceeded against are situate: Provided, however,
That no property now or hereafter vested in or held
by the Commonwealth of Pennsylvania or the State of
West Virginia, or by any county, city, town, village,
district, township, municipality or other political sub-
division thereof shall be taken by the district without
the consent of the commonwealth, state or political sub-
division which owns the same.

(d) To maintain, administer and improve any proper-
ties acquired, to charge fees for use of, and receive in-
come from, such properties and to expend such income
in carrying out the purposes and provisions of this com-
 pact, and to lease any of its property or interests therein
in accordance with the following provisions and require-
ments: The board of commissioners of the County of Ohio, West Virginia, the county court of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, shall each have the option of leasing from the commission for such period as the lessee may specify all or any part of the works of improvement and the public fish and wildlife and recreational development and facilities in connection with works of improvement located within their respective counties upon the following terms and conditions: (a) That in each such lease the lessee in consideration thereof pay to the lessor the sum of one dollar and agree to fully maintain at its (the lessee's) expense all works of improvement and all such development and facilities in connection therewith located within the county of the lessee in accordance with the requirements of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and all agreements and work plans made or formulated thereunder with respect to such works of improvement and such development and facilities in connection therewith located within the county of the lessee, and that for failure of the lessee to comply with such agreement, the lessor shall be given the right in the lease agreement to cancel the lease upon thirty days' written notice to the lessee; (b) that any such lease not be inconsistent with the provisions, or impair the purposes, of this compact; and (c) that any such lease be approved by the secretary of agriculture of the United States or other federal agent or agencies having authority to extend approval under the provisions of said act and agreements and work plans made or formulated thereunder. In the event the board of commissioners or county court of any one of the four counties named does not, within six months from the completion of the works of improvement and all such development and facilities in connection therewith located in such county, elect in writing transmitted to the commission to exercise the option given to it by the foregoing provisions, or in
the event such option is exercised and the lease to such
board of commissioners or county court is subsequently
cancelled because of violation of the provision of the
lease by the lessee, or in the event such option is exer-
cised and the board of commissioners or county court
subsequently chooses not to renew its lease, the com-
mmissioners may lease all or any part of the works of
improvement and all such development and facilities in
connection therewith located within such county to any
other lessee which the commission may choose, and upon
such terms as may be agreed upon, provided (a) that
any such lease be approved by the board of commis-
sioners or county court of the county in which any
part or all of the works of improvement and all such
development and facilities in connection therewith are
located; (b) that any such lease not be inconsistent with
the provisions, or impair the purposes, of this compact;
(c) that any such lease be approved by the secre-
tary of agriculture of the United States or other federal
agent or agencies having authority to extend approval
under the provisions of said act and agreements and work
plans made or formulated thereunder; and the option of
leasing in the board of commissioners of the County of
Ohio, West Virginia, the county court of Marshall County,
West Virginia, the board of commissioners of Greene
County, Pennsylvania, and the board of commissioners of
Washington County, Pennsylvania, shall include the right
to sublease on the same terms and conditions set out in
this paragraph designated (d) to any individual, corpo-
ration, municipal subdivision or municipal authority
without the approval of the Wheeling Creek Watershed
Protection and Flood Prevention Commission.
(e) To enter into contracts and other arrangements
with agencies of the United States, with persons, firms
or corporations, including both public and private cor-
porations, with the government of the state and the
government of the commonwealth, or any department or
agency of the United States, the state or the common-
wealth, with governmental divisions, with soil conser-
vation, drainage, flood control, soil erosion or other im-
provement districts in the state or the commonwealth,
for cooperation or assistance in constructing, improving, 
operating or maintaining works of improvement within 
the district, and public fish and wildlife or recreational 
development and facilities in connection with works of 
 improvement, or in preventing floods, damage from sedi-
ment deposited by floodwaters, or in clearance of stream 
beds, or in conserving, developing, utilizing and dis-
posing of water in the district, or for making surveys, 
investigations or reports thereof.

(f) To apply for, receive and use grants-in-aid, dona-
tions and contributions from any source or sources, and 
to accept and use, consistent with the purposes of this 
compact, bequests, devises, gifts and donations from any 
person, firm, corporation, state, commonwealth or agency 
or political subdivision thereof.

(g) To do any and all things necessary or convenient 
for the purpose of promoting, developing and advancing 
the purposes of said district herein set forth, and in pro-
moting, developing and advancing the recreational de-
velopment and facilities incidental to the works of im-
provement that shall be constructed to achieve said pur-
poses.

(h) To delegate any authority given to it by law to 
any of its agents or employees, and to expend its funds 
in the execution of the powers and authority herein given.

Article VII. Fiscal Affairs.

The commission shall submit at the appropriate or desig-
nated time to the board of commissioners of the County 
of Ohio, West Virginia, the county court of Marshall 
County, West Virginia, the board of commissioners of 
Greene County, Pennsylvania, and the board of commis-
sioners of Washington County, Pennsylvania, an annual 
budget of its estimated expenditures, which budget shall 
contain specific recommendations of the amount or 
amounts to be appropriated by each of the named gov-
erning bodies.

The commission shall not incur any obligation prior 
to the commitment or allotment of funds by the named 
governing bodies or by other sources adequate to meet 
the same.
15 The commission shall keep accurate accounts of all receipts and disbursements, which accounts shall be open for inspection at any reasonable time and shall be subject to audit by representatives of contributing political subdivisions and of the Commonwealth of Pennsylvania and State of West Virginia. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws: Provided, That all receipts and disbursements of the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be transmitted to each contributor of funds to the district or commission.

Article VIII. Exemption from Taxes and Fees.
1 The district and the property belonging to the district shall be exempt from the payment of all taxes or fees imposed by the Commonwealth of Pennsylvania or the State of West Virginia and by any agency and political subdivision thereof.

Article IX. Effective Date of Compact.
1 This compact shall become effective upon ratification by the General Assembly of the Commonwealth of Pennsylvania and the Legislature of the State of West Virginia and upon approval by the Congress of the United States.

§29-1F-2. Appointment of members of commission; vacancies.
1 In pursuance of article IV of the above compact, there shall be five members of the Wheeling Creek watershed protection and flood prevention commission from the state of West Virginia, one of whom shall be a member of the board of commissioners of the county of Ohio, West Virginia, appointed by that body to serve at its will and pleasure, one of whom shall be a citizen of the city of Wheeling, Ohio county, West Virginia, appointed by the board of commissioners of the county of Ohio, West Virginia, to serve at its will and pleasure, one of whom shall be a member of the county court of Marshall county, West Virginia, appointed by that body to serve at its will and pleasure, one of whom shall be a citizen of Marshall county, West Virginia, appointed by the county court...
thereof to serve at its will and pleasure, and one of whom
shall be a member of the board of supervisors of the
northern panhandle soil conservation district, appointed
by said board of supervisors to serve at its will and
pleasure: Provided, That (1) the citizen appointed by the
board of commissioners of the county of Ohio, West Vir-
ginia, shall not be a member of that body; (2) the citizen
appointed by the county court of Marshall county, West
Virginia, shall not be a member of that body; and (3)
the member appointed by the board of supervisors of
the northern panhandle soil conservation district shall
not be a resident of either Ohio or Marshall county, West
Virginia.

Vacancies shall be filled by the appointing authority
responsible for making the appointment to the position
vacated.

§29-1F-3. Contributions by political subdivisions.

The county court of Marshall county, West Virginia, and
the board of commissioners of the county of Ohio, West
Virginia, and any municipality therein, which may rea-
sonably be expected to receive a benefit from the con-
struction, improvement, operation or maintenance of any
works of improvement, are hereby authorized and em-
powered to contribute moneys to the district by appro-
priation from their respective general funds not other-
wise appropriated, and may set up in their respective
budgets funds to be spent for such purposes, and such
counties or municipalities may levy and collect taxes
for such purposes, in the manner provided by law: Pro-
vided, That in case sufficient funds cannot be raised by
ordinary levies, additional funds may be raised by the
counties of Marshall and Ohio, and any such munici-
ality, as provided by section sixteen, article eight, chap-
ter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended.

Such county court, board of commissioners, and mu-
unicipal corporations are hereby authorized and empow-
ered to transfer and convey to the district property of
any kind heretofore acquired by said county court, board
of commissioners, and municipalities, if acceptable to
the district as adaptable to use for the purposes of the
district, such transfers or conveyances to be without con-
sideration or for such price and upon such terms and
conditions as such county court, board of commissioners
or municipalities shall determine to be proper.

§29-1F-4. Ohio county board of commissioners authorized to
transfer certain special levy receipts to the Wheeling
creek watershed protection and flood prevention
commission.

The board of commissioners of the county of Ohio is
hereby authorized and empowered to transfer to the
Wheeling creek watershed protection and flood prevention
commission established by this article all tax revenue and
interest thereon received pursuant to and as the result
of the special levy election held in Ohio county on May
12, 1964, to raise funds for the Wheeling creek watershed
project, which election was authorized and called by the
board of commissioners of the county of Ohio by order en-
tered on March 31, 1964: Provided, That before making any
such transfer the board of commissioners of the county of
Ohio shall obtain from the Wheeling creek watershed pro-
tection and flood prevention commission written assur-
ances that all such revenue and interest thereon to be so
transferred shall be expended solely for the purposes for
which such special levies were authorized: Provided
further, That upon the receipt of such written assurances
the board of commissioners of the county of Ohio shall not
be liable for any misapplication by the Wheeling creek
watershed protection and flood prevention commission of
any such revenues and interest thereon so transferred.

CHAPTER 83

(Senate Bill No. 222—By Mr. Carson, Mr. President)

[Passed February 15, 1967: in effect ninety days from passage. Approved
by the Governor.]

AN ACT to amend and reenact section twenty, article one,
chapter five; and section twenty-eight, article three, chap-
ter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reports to the governor by state officers, departments, boards, commissions and institutions, and the reproduction or printing, distribution and sale thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Duties of the Governor, Secretary of State and Attorney General; Board of Public Works; State Building Commission; Social Security Agency; Public Records Management and Preservation Act; Department of Commerce; West Virginia Public Employees Retirement Act; Human Rights Commission; West Virginia Antiquities Commission; Public Employees' and Teachers' Reciprocal Service Credit Act; Compulsory Retirement Age Act.

5A. Department of Finance and Administration.

CHAPTER 5. GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; STATE BUILDING COMMISSION; SOCIAL SECURITY AGENCY; PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT; DEPARTMENT OF COMMERCE; WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT; HUMAN RIGHTS COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT; COMPULSORY RETIREMENT AGE ACT.

ARTICLE 1. THE GOVERNOR.

Section 20. Reports to the governor; form and contents; number of copies; transmission to the Legislature; special reports.

§5-1-20. Reports to the governor; form and contents; number of copies; transmission to the Legislature; special reports.
The subordinate officers of the executive department and the officers of all public institutions of the state shall make an annual report to the governor as soon as possible after the close of each fiscal year, notwithstanding any other provision of law to the contrary. All state officers, boards, commissions, departments and institutions required by law to make reports to the governor, the Legislature, or any administrative board or state official, shall cover fiscal year periods, and shall be submitted in typewritten form or any legible form produced by mechanical means.

The governor shall by executive order prescribe the form and general contents of the reports to be submitted to him. Such order shall prescribe the number of copies to be submitted and the number of copies to be made or reproduced by means other than printing, the type size, page size, and quality of paper. A sufficient number of copies shall be reproduced for office use of the department making the report and for necessary distribution and exchange.

The governor shall transmit copies of the report to the Legislature and lodge a copy of all such reports with the department of archives and history where the same shall be kept as permanent records.

The governor may at any time require information in writing under oath, from any officer, board, department or commission of the executive department or the principal officer or manager of any state institution, upon any subject relating to the condition, management and expense of their respective offices or institutions.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-28. Publication of departmental reports; form and contents generally; distribution and sale; report to the
Legislature as to sale of reports and acts of the Legislature; limiting number of publications.

The director shall have charge and supervision of the printing and binding of all reports transmitted to the governor as required by section twenty, article one, chapter five of this code. Said reports shall be printed annually as soon as possible after the close of the fiscal year. The director shall combine in each volume of printed reports such reports of various departments as he shall deem proper for the size volume he may prescribe. The director shall adopt a uniform size and binding for all reports, and insofar as possible keep the various volumes as near the same number of pages as possible. A uniform weight and grade of paper stock shall be selected by the director to be used in printing all reports, and glazed paper shall not be used unless necessary for the reproduction of half-tone illustrations.

No pictures or half-tone cuts of state officials shall be included in said reports, and no funds shall be expended for engravings or half-tone cuts, other than for illustrations, graphs or maps.

The director shall furnish each department sufficient copies of the volume containing its report for its office use.

The director may sell such copies of the reports as remain, after the distribution herein provided for has been made, at a price to be fixed by him with the approval of the governor. The proceeds of such sale shall immediately be paid into the treasury. At the beginning of each session, the director shall report to the Legislature as to the sale of such reports and also as to the sale of acts of the Legislature.

The director shall ask for competitive bids for the printing of any such reports.

Subject to the approval of the commissioner and the governor, the director shall have authority to limit the number of any other report, bulletin, and other publication ordered to be printed by each department.
AN ACT to amend chapter five-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, creating an advisory committee with respect to the maintenance and furnishing of the governor's mansion.

Be it enacted by the Legislature of West Virginia:

That chapter five-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:

ARTICLE 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

There is hereby created the governor’s mansion advisory committee. The commissioner of finance and administration, the director of archives and history and the wife of any governor during his term of office or the designated representative of such governor shall be ex officio members of the committee. In addition, the governor shall appoint three additional members of the committee, one to be a curator in the field of fine arts, one to be an interior decorator who is a member of the American institute of decorators, and one to be a building contractor. The appointive members of the committee shall serve for a term of four years: Provided, That the initial term of such members shall commence July first, one thousand nine hundred sixty-seven, and end June thirtieth, one thousand nine hundred
seventy. The members of the committee shall serve without compensation but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties. The wife of any governor during his term of office or the designated representative of such governor shall serve as chairman of the committee. The commissioner of finance and administration shall serve as secretary. The committee shall meet upon the call of the chairman annually and may meet at such other times as may be necessary for the performance of its functions.

The committee shall be charged with the following responsibilities:

1. To make recommendations for the maintaining, preserving and replenishing of all articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art used or displayed in the state rooms of the governor's mansion, which state rooms shall consist of the front hall, the reception room, the ballroom and its sitting room, the state dining room, the front upstairs hall and the music room;

2. To make recommendations as to the decor and arrangements best suited to enhance the historic and artistic values of the mansion in keeping with the architecture thereof and of such articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art; and

3. To invite interested persons to attend its meetings or otherwise to assist in carrying out its functions.

All departments, boards, agencies, commissions, officials and employees of the state are hereby authorized to cooperate with and assist the committee in the performance of its functions and duties whenever possible. As soon after the close of each fiscal year as possible, the committee shall make an annual report to the governor and the Legislature with respect to its activities and responsibilities.
AN ACT to amend chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, providing for full post-conviction review upon the granting of a writ of habeas corpus; recognizing the original jurisdiction of the supreme court of appeals and the circuit courts of this state in such matters; conferring jurisdiction in such matters on certain courts of record of limited jurisdiction in this state; relating to the petition for, and the granting or refusal of, and service and return of, such a writ; relating to hearings and judgment thereon; providing under certain circumstances for the appointment of an attorney; relating to the costs, expenses and fees incident to such post-conviction review; relating to the powers of judges or a judge in vacation with respect to such post-conviction review; relating to the right of appeal; relating to construction of the article and the repeal of certain provisions to the extent of their inconsistency; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-three 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:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

Section

1. Right to habeas corpus for post-conviction review; jurisdiction; when contention deemed finally adjudicated or waived; effect upon other remedies.
2. Petition; contents thereof; supreme court may prescribe form of petition, verification and writ; duties of clerk.
3. Refusal of writ; granting of writ; direction of writ; how writ made returnable; duties of clerk, attorney general and prosecuting attorney.
4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.

5. Service of writ.

6. Return; pleadings; amendments.

7. Denial of relief; hearings; evidence; record; judgment.

8. Power of judges or judge in vacation.


10. Construction; repeal.

11. Severability.

§53-4A-1. Right to habeas corpus for post-conviction review; jurisdiction; when contention deemed finally adjudicated or waived; effect upon other remedies.

(a) Any person convicted of a crime and incarcerated under sentence of imprisonment therefor who contends that there was such a denial or infringement of his rights as to render the conviction or sentence void under the constitution of the United States or the constitution of this state, or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under the common law or any statutory provision of this state, may, without paying a filing fee, file a petition for a writ of habeas corpus ad subjiciendum, and prosecute the same, seeking release from such illegal imprisonment, correction of the sentence, the setting aside of the plea, conviction and sentence, or other relief, if and only if such contention or contentions and the grounds in fact or law relied upon in support thereof have not been previously and finally adjudicated or waived in the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings which the petitioner has instituted to secure relief from such conviction or sentence. Any such petition shall be filed with the clerk of the supreme court of appeals, or the clerk of any circuit court, said supreme court of appeals and all circuit courts of this state having been granted original jurisdiction in habeas corpus cases by the constitution of this state, or with the clerk of any court of
record of limited jurisdiction having criminal jurisdiction
in this state. Jurisdiction is hereby conferred upon each
and every such court of record of limited jurisdiction
having criminal jurisdiction (hereinafter for convenience
of reference referred to simply as a "statutory court")
to refuse or grant writs of habeas corpus ad subjiciendum
in accordance with the provisions of this article and to
hear and determine any contention or contentions and
to pass upon all grounds in fact or law relied upon in
support thereof in any proceeding on any such writ made
returnable thereto in accordance with the provisions of
this article. All proceedings in accordance with this
article shall be civil in character and shall under no
circumstances be regarded as criminal proceedings or
a criminal case.

(b) For the purposes of this article, a contention or
contentions and the grounds in fact or law relied upon
in support thereof shall be deemed to have been pre-
viously and finally adjudicated only when at some point
in the proceedings which resulted in the conviction and
sentence, or in a proceeding or proceedings on a prior
petition or petitions filed under the provisions of this
article, or in any other proceeding or proceedings insti-
tuted by the petitioner to secure relief from his convic-
tion or sentence, there was a decision on the merits
thereof after a full and fair hearing thereon and the time
for the taking of an appeal with respect to such decision
has not expired or has expired, as the case may be, or
the right of appeal with respect to such decision has been
exhausted, unless said decision upon the merits is clearly
wrong.

(c) For the purposes of this article, a contention or
contentions and the grounds in fact or law relied upon
in support thereof shall be deemed to have been waived
when the petitioner could have advanced, but intelli-
gently and knowingly failed to advance, such contention
or contentions and grounds before trial, at trial, or on
direct appeal (whether or not said petitioner actually
took an appeal), or in a proceeding or proceedings on a
prior petition or petitions filed under the provisions of
this article, or in any other proceeding or proceedings
instituted by the petitioner to secure relief from his conviction or sentence, unless such contention or contentions and grounds are such that, under the constitution of the United States or the constitution of this state, they cannot be waived under the circumstances giving rise to the alleged waiver. When any such contention or contentions and grounds could have been advanced by the petitioner before trial, at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, but were not in fact so advanced, there shall be a rebuttable presumption that the petitioner intelligently and knowingly failed to advance such contention or contentions and grounds.

(d) For the purposes of this article, and notwithstanding any other provisions of this article, no such contention or contentions and grounds shall be deemed to have been previously and finally adjudicated or to have been waived where, subsequent to any decision upon the merits thereof or subsequent to any proceeding or proceedings in which said question otherwise may have been waived, any court whose decisions are binding upon the supreme court of appeals of this state or any court whose decisions are binding upon the lower courts of this state holds that the constitution of the United States or the constitution of West Virginia, or both, impose upon state criminal proceedings a procedural or substantive standard not theretofore recognized, if and only if such standard is intended to be applied retroactively and would thereby affect the validity of the petitioner's conviction or sentence.

(e) The writ of habeas corpus ad subjiciendum provided for in this article is not a substitute for nor does it affect any remedies which are incident to the criminal proceedings in the trial court or any remedy of direct review of the conviction or sentence, but such writ comprehends and takes the place of all other common law and statutory remedies, including, but not limited to, the
writ of habeas corpus ad subjiciendum provided for in article four of this chapter, which have heretofore been available for challenging the validity of a conviction or sentence and shall be used exclusively in lieu thereof:

Provided, That nothing contained in this article shall operate to bar any proceeding or proceedings in which a writ of habeas corpus ad subjiciendum is sought for any purpose other than to challenge the legality of a criminal conviction or sentence of imprisonment therefor.

A petition for a writ of habeas corpus ad subjiciendum in accordance with the provisions of this article may be filed at any time after the conviction and sentence in the criminal proceedings have been rendered and imposed and the time for the taking of an appeal with respect thereto has expired or the right of appeal with respect thereto has been exhausted.

§53-4A-2. Petition; contents thereof; supreme court may prescribe form of petition, verification and writ; duties of clerk.

A petition seeking a writ of habeas corpus ad subjiciendum in accordance with the provisions of this article shall identify the proceedings in which the petitioner was convicted and sentenced, give the date of the entry of the judgment and sentence complained of, specifically set forth the contention or contentions and grounds in fact or law in support thereof upon which the petition is based, and clearly state the relief desired. Affidavits, exhibits, records or other documentary evidence supporting the allegations of the petition shall be attached to the petition unless there is a recital therein as to why they are not attached. All facts within the personal knowledge of the petitioner shall be set forth separately from other allegations, and such facts and the authenticity of all affidavits, exhibits, records or other documentary evidence attached to the petition must be sworn to affirmatively as true and correct. The petition must also identify any previous proceeding or proceedings on a petition or petitions filed under the provisions of this article, or any other previous proceeding or proceedings which the petitioner instituted to secure relief from his conviction.
or sentence and must set forth the type or types of such previous proceeding or proceedings, the contention or contentions there advanced, the grounds in fact or law assigned therein for the relief there sought, the date thereof, the forum in which instituted and the result thereof. Argument, citations and discussion of authorities shall be omitted from the petition, but may be filed as a separate document or documents. The supreme court of appeals may by rule prescribe the form of the petition, verification and the writ itself. The clerk of the court in which the petition is filed shall docket the petition upon its receipt, and shall bring the petition and any affidavits, exhibits, records and other documentary evidence attached thereto to the attention of the court.

§53-4A-3. Refusal of writ; granting of writ; direction of writ; how writ made returnable; duties of clerk, attorney general and prosecuting attorney.

(a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence (if any such record or records are part of the official court files of the court with whose clerk the petition is filed and are thus available for examination and review by such court) show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall by order entered of record refuse to grant a writ, and such refusal shall constitute a final judgment. If it appears to such court from said petition, affidavits, exhibits, records and other documentary evidence, or any such available record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief, and that the contention or contentions and grounds (in fact or law) advanced have
not been previously and finally adjudicated or waived, the court shall forthwith grant a writ, directed to and returnable as provided in subsection (b) hereof. If any such record or records referred to above are not a part of the official court files of the court with whose clerk the petition is filed and are thus not available for examination and review by such court, the determination as to whether to refuse or grant the writ shall be made on the basis of the petition, affidavits, exhibits, records and other documentary evidence attached thereto.

(b) Any writ granted in accordance with the provisions of this article shall be directed to the person under whose supervision the petitioner is incarcerated. Whether the writ is granted by the supreme court of appeals, a circuit court, or any statutory court in this state, it shall, in the discretion of the court, be returnable before (i) the court granting it, (ii) the circuit court, or a statutory court, of the county wherein the petitioner is incarcerated, or (iii) the circuit court, or the statutory court, in which, as the case may be, the petitioner was convicted and sentenced.

(c) The clerk of the court to which a writ granted in accordance with the provisions of this article is made returnable shall promptly bring the petition and any affidavits, exhibits, records and other documentary evidence attached thereto and the writ to the attention of the court if the writ was granted by some other court, and in every case deliver a copy of such petition and any affidavits, exhibits, records and other documentary evidence attached thereto and the writ to the prosecuting attorney of the county, or the attorney general if the writ is returnable before the supreme court of appeals. The prosecuting attorney or the attorney general, as the case may be, shall represent the state in all cases arising under the provisions of this article.

§53-4A-4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.
(a) A petition filed under the provisions of this article may allege facts to show that the petitioner is unable to pay the costs of the proceeding or to employ counsel, may request permission to proceed in forma pauperis and may request the appointment of counsel. If the court to which the writ is returnable (hereinafter for convenience of reference referred to simply as "the court," unless the context in which used clearly indicates that some other court is intended) is satisfied that the facts alleged in this regard are true, and that the petition was filed in good faith, and has merit or is not frivolous, the court shall order that the petitioner proceed in forma pauperis, and the court shall appoint counsel for the petitioner. If it shall appear to the court that the record in the proceedings which resulted in the conviction and sentence, including, but not limited to, a transcript of the testimony therein, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, or all of such records, or any part or parts thereof, are necessary for a proper determination of the contention or contentions and grounds (in fact or law) advanced in the petition, the court shall, by order entered of record, direct the state to make arrangements for copies of any such record or records, or all of such records, or such part or parts thereof as may be sufficient, to be obtained for examination and review by the court, the state and the petitioner. The state may on its own initiative obtain copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for its use and for examination and review by the court and the petitioner. If, after judgment is entered under the provisions of this article, an appeal or writ of error is sought by the petitioner in accordance with the provisions of section nine of this article, and the court which rendered the judgment is of opinion that the review is being sought in good faith and the grounds assigned therefor have merit or are not frivolous, and such court finds that the petitioner is unable to pay the costs incident
thereto or to employ counsel, the court shall, upon the
petitioner's request, order that the petitioner proceed in
forma pauperis and shall appoint counsel for the peti-
tioner. If an appeal or writ of error is allowed, whether
upon application of the petitioner or the state, the re-
viewing court shall, upon the requisite showing and re-
quest as aforesaid, order that the petitioner proceed in
forma pauperis and shall appoint counsel for the peti-
tioner. If it is determined that the petitioner has the
financial means with which to pay the costs incident to
any proceedings hereunder and to employ counsel, or that
the petition was filed in bad faith or is without merit or
is frivolous, or that review is being sought or prosecuted
in bad faith or the grounds assigned therefor are without
merit or are frivolous, the request to proceed in forma
pauperis and for the appointment of counsel shall be
denied and the court making such determination shall
enter an order setting forth the findings pertaining thereto
and such order shall be final.

(b) Whenever it is determined that a petitioner shall
proceed in forma pauperis, all necessary costs and ex-
spenses incident to proceedings hereunder, originally, or
on appeal pursuant to section nine of this article, or both,
including, but not limited to, all court costs, the reason-
able expenses actually and necessarily incurred in the
representation of a petitioner by any attorney appointed
hereunder to represent him and the cost of furnishing
transcripts, shall, upon certification by the court to the
state auditor, be paid out of the treasury of the state from
the appropriation for criminal charges. Any attorney ap-
pointed in accordance with the provisions of this section
shall be paid the same fee as an attorney appointed in a
felony case receives, and any such fee shall be paid by
the state auditor as expenses in felony cases are paid, all
as prescribed in section one, article three, chapter sixty-
two of this code, as amended. All costs and expenses in-
curred incident to obtaining copies of any record or
records, or all of the records, or such part or parts thereof
as may be sufficient, as aforesaid, for examination and
review by the court, the state and the petitioner, shall,
where the petitioner is proceeding in forma pauperis, and
the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be paid out of the treasury of the state, upon certification by the court to the state auditor, from the appropriation for criminal charges. All such costs, expenses and fees shall be paid as provided in this subsection (b) notwithstanding the fact that all proceedings under the provisions of this article are civil and not criminal in character. In the event a petitioner who is proceeding in forma pauperis does not substantially prevail, all such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs.

(c) In the event a petitioner who is not proceeding in forma pauperis does not substantially prevail, all costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs. In any case where the petitioner does not proceed in forma pauperis, the court shall adjudge all costs and expenses to be paid as shall seem to the court to be right, consistent with the immediately preceding sentence of this subsection (c) and with the provisions of chapter fifty-nine of this code, as amended.


Any writ granted in accordance with the provisions of this article shall be served upon the person to whom it is directed, or, in his absence from the place where the petitioner is incarcerated, upon the person having the immediate custody of the petitioner.

§53-4A-6. Return; pleadings; amendments.

Within such time as may be specified in the writ or as the court may fix, the state shall make its return. No other or further pleadings shall be filed except as the
court may order. At any time prior to entry of judgment on the writ in accordance with the provisions of this article, the court may permit the petitioner to withdraw his petition. The court may make such orders as to amendment of the petition or return or other pleading, as to pleading over, or filing other or further pleadings, or extending the time for the making of the return or the filing of other pleadings, as shall seem to the court to be appropriate, meet and reasonable. In considering the petition, the return or other pleading, or any amendment thereof, substance and not form shall control.

§53-4A-7. Denial of relief; hearings; evidence; record; judgment.

(a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall enter an order denying the relief sought. If it appears to the court from said petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or any such record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or内容ions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced, and the court shall pass upon all issues of fact without a jury. The court may also provide for one or more hearings to be held and/or evidence to be taken in any other county or counties in the state.
28 (b) A record of all proceedings under this article and
29 all hearings and evidence shall be made and kept. The
30 evidentiary depositions of witnesses taken by either the
31 petitioner or the state, on reasonable notice to the other,
32 may be read as evidence. The court may receive proof
33 by proper oral testimony or other proper evidence. All
34 of the evidence shall be made a part of the record. When
35 a hearing is held and/or evidence is taken by a judge of a
36 circuit court or statutory court in vacation, a transcript
37 of the proceedings shall be signed by the judge and cer-
38 tified to the clerk of the court in which the judgment is
39 to be rendered, and be entered by him among the records
40 of that court. A record of all proceedings in the supreme
41 court of appeals shall be entered among the records of
42 such court.

43 (c) When the court determines to deny or grant relief,
44 as the case may be, the court shall enter an appropriate
45 order with respect to the conviction or sentence in the
46 former criminal proceedings and such supplementary mat-
47 ters as are deemed necessary and proper to the findings
48 in the case, including, but not limited to, remand, the
49 vacating or setting aside of the plea, conviction and
50 sentence, rearraignment, retrial, custody, bail, discharge,
51 correction of sentence and resentencing, or other matters
52 which may be necessary and proper. In any order entered
53 in accordance with the provisions of this section, the
54 court shall make specific findings of fact and conclusions
55 of law relating to each contention or contentions and
56 grounds (in fact or law) advanced, shall clearly state the
57 grounds upon which the matter was determined, and shall
58 state whether a federal and/or state right was presented
59 and decided. Any order entered in accordance with the
60 provisions of this section shall constitute a final judgment,
61 and, unless reversed, shall be conclusive.

§53-4A-8. Powers of judges or judge in vacation.

A writ may be granted or refused in accordance with
2 the provisions of this article by any three concurring
3 judges of the supreme court of appeals, or a judge of
4 any circuit court or any statutory court, in vacation as
5 well as by any such court in term, and any such writ may
be made returnable, consistent with the provisions of subsection (b) of section three of this article, to the supreme court of appeals in term, or to a judge of a circuit court or any statutory court in vacation as well as to such court in term. Although a writ granted in accordance with the provisions of this article is returnable to a circuit court in term or a statutory court in term, the contention or contentions and grounds (in fact or law) advanced, and any incidental matters related thereto, may be heard and/or determined or passed upon by a judge of the court in vacation. Any judge of the supreme court of appeals (where at least three judges of such court concur therein), or of a circuit court or a statutory court, in vacation shall have the same power to enforce obedience to the writ, to compel the attendance of witnesses, or to punish contempt of their or his authority, as a court has; and the judgment of a judge of a circuit court or a statutory court in vacation when entered of record shall be considered and be enforced as if it were a judgment of the court among whose records it is entered.


(a) A final judgment entered under the provisions of this article by a statutory court may be appealed by the petitioner or the state to the circuit court of the county upon application for an appeal or writ of error in the manner and within the time provided in article four, chapter fifty-eight of this code, as amended. A final judgment entered under the provisions of this article by a circuit court or a final judgment entered by the circuit court after an appeal or writ of error was granted by such circuit court with respect to the judgment of a statutory court entered under the provisions of this article, as well as an order by a circuit court rejecting an appeal from or writ of error to the judgment of a statutory court entered under the provisions of this article, may be appealed by the petitioner or the state to the supreme court of appeals upon application for an appeal or writ of error in the manner and within the time provided by law for civil appeals generally. When an application for
an appeal or writ of error is rejected by the circuit court
(and the order of rejection is not appealed to the supreme
court of appeals), or the supreme court of appeals, as
the case may be, or both, the order sought to be reviewed
shall thereby become final to the same extent and with
like effect as if said order had been affirmed on appeal.
(b) When the petitioner is remanded, execution of the
judgment entered under the provisions of this article shall
not be suspended by the granting of an appeal or writ
of error, or suspended while the petitioner is applying
for an appeal or writ of error. When the petitioner is
ordered to be discharged, and execution of the judgment
entered under the provisions of this article is ordered
suspended to permit the state to apply for an appeal or
writ of error, the court making such suspending order
may, in its discretion, admit the petitioner to bail until
expiration of the time allowed for making application
for an appeal or writ of error, or, in case the appeal or
writ of error is allowed, until the decision of the appellate
court thereon is duly certified.

§53-4A-10. Construction; repeal.

All other pertinent provisions of this code shall be con-
strued so as to conform to and be consistent with the pro-
visions of this article. In the event that there are perti-
nent provisions in this code so inconsistent with the pro-
visions of this article as to preclude such construction,
such other provisions shall be considered as having been
repealed to the extent of such inconsistency by the enact-
ment of this article. The provisions of this article shall be
liberally construed so as to effectuate its purposes.


If any provision of this article or the application thereof
to any person or circumstances is held invalid, such in-
validity shall not affect other provisions or applications
of the article which can be given effect without the in-
valid provision or application, and to this end the pro-
visions of this article are hereby declared to be severable.
The Legislature does hereby further declare that it would
have enacted this article even if it had known at the time
AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory immunization of school children and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, INFECTIOUS AND OTHER DISEASES.

Section 4. Compulsory immunization of school children; offenses; penalties.

§16-3-4. Compulsory immunization of school children; offenses; penalties.

1 All children entering school for the first time in this state shall have been successfully immunized against smallpox, diphtheria, polio, measles, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that a successful immunization for any or all smallpox, diphtheria, polio, measles, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for smallpox, diphtheria, polio, measles, tetanus and whooping cough prior to being admitted in any of the public schools of the state. No child or person shall be admitted or received in any of the public schools of the state until he or she has been successfully immunized as
hereinafter provided, or produces a certificate from a reputable physician showing that a successful immunization for smallpox, diphtheria, polio, measles, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done. Any teacher, having information concerning any person who attempts to enter school for the first time without having been immunized against smallpox, diphtheria, polio, measles, tetanus and whooping cough, shall report the names of all such persons to the county health officer. It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school.

In counties where there is no full-time health officer or district health officer, the county court or municipal council shall appoint competent physicians to do the immunizations and fix their compensation. The expense incurred in carrying into effect the provision of this section shall be deemed a part of the expense of the county, city, town or village as the case may be, and shall be charged and paid in the same manner as other expenses. County health departments shall furnish the biologicals for this immunization free of charge.

Health officers and physicians who shall do this immunization work shall give to all persons and children a certificate free of charge showing that they have been successfully immunized against smallpox, diphtheria, polio, measles, tetanus and whooping cough, or he may give the certificate to any person or child whom he knows to have been successfully immunized against smallpox, diphtheria, polio, measles, tetanus and whooping cough. If any physician shall give any person a false certificate of immunization against smallpox, diphtheria, polio, measles, tetanus or whooping cough, he shall be guilty of a misdemeanor, and, upon conviction, he shall be fined not less than twenty-five nor more than one hundred dollars.

Any parent or guardian who refuses to permit his or her child to be immunized against smallpox, diphtheria, polio, measles, tetanus or whooping cough, who cannot
give satisfactory proof that the child or person has been
immunized against smallpox, diphtheria, polio, measles,
tetanus and whooping cough previously or a certificate
from a reputable physician showing that a successful
immunization for any or all is impossible or improper
or sufficient reason why any or all immunizations should
not be done, shall be guilty of a misdemeanor, and, ex-
cept as herein otherwise provided, shall, upon convic-
tion, be punished by a fine of not less than ten nor more
than fifty dollars for each offense.

CHAPTER 87

(Com. Sub. for House Bill No. 912—By Mr. Speaker, Mr. White,
and Mr. Jones, of Mason)

[Passed March 10, 1967; in effect July 1, 1967. Became a law
without the approval of the Governor.]

AN ACT to amend and reenact sections one, two, four, six,
eleven and twelve, article five-b, chapter sixteen of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, and to further amend said chapter six-
ten by adding thereto a new article, designated article
five-c, relating to the licensing of hospitals, sanatoriums
or extended care facilities operated in connection with a
hospital; providing for suspension and revocation of such
licenses; and providing penalties; said new article five-c
providing for the licensing of nursing homes and similar
institutions; providing definitions; creating the West Vir-
ginia nursing home licensing board; providing for the ap-
pointment of the members of the board and their terms;
providing for filling vacancies on the board; providing
for meetings of the board; providing for officers of the
board and the salary and expenses of members of the
board; providing for license applications; requiring all
nursing homes to be licensed; providing for hearings on
the denial of licenses and for judicial review; providing
for license fees and their disposition; providing for inspec-
tions of nursing homes; providing for promulgation of
rules and regulations; providing for suspension or revoca-
tion of licenses and for hearings thereon and judicial
review thereof; stating certain acts to be unlawful and
providing for penalties and injunctions; providing for the
effective date of this article; and providing for repeal of
conflicting laws and for a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, eleven and twelve, articleive-b, chapter sixteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended and
reenacted, and that said chapter sixteen of the said code be
further amended by adding thereto a new article, designated
article five-c, to read as follows:

Article
5B. Hospitals and Similar Institutions.
5C. Nursing Homes and Similar Institutions.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.
Section
1. Hospitals and certain facilities operated in connection therewith
to obtain license; exemptions; meaning of hospital, etc.
2. Hospitals and institutions to obtain license; qualifications of
applicant.
4. License fees.
6. State department of health to issue licenses; suspension and revo-
cation.
11. Violations; penalties.
12. Injunction; severability of article.

§16-5B-1. Hospitals and certain facilities operated in connec-
tion therewith to obtain license; exemptions; mean-
ing of hospital, etc.

1 After July one, one thousand nine hundred sixty-seven,
2 no person, partnership, association, corporation, or any
3 local governmental unit or any division, department,
4 board or agency thereof shall establish, conduct, or main-
tain in the state of West Virginia any hospital, sanar-
torium or extended care facility operated in connection
with a hospital without first obtaining a license therefor
in the manner hereinafter provided: Provided, That only
one license shall be required for any person, partnership,
association, corporation, or any local governmental unit
or any division, department, board or agency thereof who
operates any combination of a hospital, sanatorium or
extended care facility operated in connection with a
14 hospital, or more than one thereof, at the same location.
15 Hospitals operated by the federal government or the state
government shall be exempt from the provisions of this
17 article.
18 A hospital, sanatorium or extended care facility oper-
19 ated in connection with a hospital within the meaning
20 of this article, shall mean any institution, place, building,
or agency in which an accommodation of five or more
22 beds is maintained, furnished, or offered for the hos-
23 pitalization of the sick or injured: Provided, That nothing
24 contained in this article shall apply to nursing homes, rest
25 homes, domiciliary care homes, homes for the aged, ex-
tended care facilities not operated in connection with a hos-
27 pital, boarding homes, homes for the infirm or chronically
28 ill, convalescent homes, hotels or other similar places that
29 furnish to their guests only board and room, or either of
30 them: Provided, however, That the hospitalization, care
31 or treatment in a household, whether for compensation
32 or not, of any person related by blood or marriage,
33 within the degree of consanguinity of second cousin to
34 the head of the household, or his or her spouse, shall
35 not be deemed to constitute the premises a hospital,
36 sanatorium or extended care facility operated in con-
37 nection with a hospital, within the meaning of this
38 article.
39 Nothing in this article shall authorize any person, part-
nership, association, corporation, or any local govern-
41 mental unit or any division, department, board or agency
42 thereof to engage in any manner in the practice of medi-
cine, as defined by law. This article shall not be con-
44 strued to restrict or modify any statute pertaining to the
45 placement or adoption of children.

§16-5B-2. Hospitals and institutions to obtain license; qualifica-
tions of applicant.

1 No person, partnership, association, corporation, or any
2 local governmental unit or any division, department,
3 board or agency thereof may continue to operate an
4 existing hospital, sanatorium or extended care facility
5 operated in connection with a hospital, or open a hospital,
6 sanatorium, or extended care facility operated in con-
7 connection with a hospital after July one, one thousand nine
8 hundred sixty-seven, unless such operation shall have
9 been approved and regularly licensed by the state as
10 hereinafter provided.

11 Before a license shall be issued under this article, the
12 person applying, if an individual, shall submit evidence
13 satisfactory to the state department of health that he is
14 not less than twenty-one years of age, of reputable and
15 responsible character, and otherwise qualified. In the
16 event the applicant is an association, corporation or gov-
17 ernmental unit, like evidence shall be submitted as to
18 the members thereof and the persons in charge. Every
19 applicant shall, in addition, submit satisfactory evidence
20 of his ability to comply with the minimum standards
21 and with all rules and regulations lawfully promulgated
22 hereunder.

§16-5B-4. License fees.

1 The application of any person, partnership, association,
2 corporation, or local governmental unit for a license to
3 operate a hospital, sanatorium, or extended care facility
4 operated in connection with a hospital, shall be accom-
5 panied by a fee to be determined by the number of
6 beds available for patients, according to the following
7 schedule of fees: Those with five beds but less than
8 fifty beds shall pay a fee of twenty dollars; those with
9 fifty beds or more and less than one hundred beds shall
10 pay a fee of thirty dollars; those with one hundred beds
11 or more and less than two hundred beds shall pay a
12 fee of forty dollars; and those with two hundred beds
13 or more shall pay a fee of fifty dollars. No such fee shall
14 be refunded. All licenses issued under this article shall
15 expire on the thirtieth day of June following their is-
16 suance, shall be on a form prescribed by the state de-
17 partment of health, shall not be transferable or assign-
18 able, shall be issued only for the premises named in the
19 application, shall be posted in a conspicuous place on
20 the licensed premises, and may be renewed from year to
21 year upon application, investigation, and payment of the
22 license fee, as in the case of the procurement of an
23 original license: Provided, That any such license in
effect on the thirtieth day of June of any year, for which
timely application for renewal, together with payment
of the proper fee, has been made to the state department
of health in conformance with the provisions of this
article and the rules and regulations issued thereunder,
and prior to the expiration date of such license, shall con-
tinue in effect until (a) the thirtieth day of June next
following the expiration date of such license, or (b)
the date of the revocation or suspension of such license
pursuant to the provisions of this article, or (c) the date
of issuance of a new license, whichever date first occurs.
All fees received by the state department of health under
the provisions of this article shall be paid into the state
treasury general revenue fund.

§16-5B-6. State department of health to issue licenses; suspen-
sion and revocation.

1 The state department of health is hereby authorized
to issue licenses for the operation of hospitals, sanаторiums or extended care facilities operated in connec-
tion with hospitals, which are found to comply with
the provisions of this article and with all regulations
lawfully promulgated by the department.

7 The state department of health is hereby authorized
to suspend or revoke a license issued hereunder, on any
of the following grounds:

10 (1) Violation of any of the provisions of this article
or the rules and regulations issued pursuant thereto;

12 (2) Knowingly permitting, aiding or abetting the com-
mision of any illegal act in such institution;

14 (3) Conduct or practices detrimental to the health
or safety of the patients and employees of such institu-
tion.

17 Before any such license is suspended or revoked, how-
ever, written notice shall be given the licensee, stating
the grounds of the complaint, and of the date, time, and
place set for the hearing of the complaint, which date
shall not be less than thirty days from the time the
notice is given. Such notice shall be sent by registered
mail to the licensee at the address where the institution
Concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the state department of health if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

§16-5B-11. Violations; penalties.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board or agency thereof establishing, conducting, managing, or operating a hospital, sanatorium, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.
§16-5B-12. Injunction; severability of article.

1. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any hospital, sanatorium, or extended care facility operated in connection with a hospital without first obtaining a license therefor in the manner hereinbefore provided.

2. If any part of this article shall be declared unconstitutional, such declaration shall not affect any other part thereof.

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.

Section

1. Purpose.
2. Definitions.
3. West Virginia nursing home licensing board; creation; appointment, qualifications, term, etc., of members; vacancies.
5. Meetings of board; quorum.
6. Chairman of the board; officers; salaries and expenses.
7. License required; applications and licensing procedure; hearings; renewals; posting; transfer; existing operations; provisional renewal; judicial review.
8. License fees; amount, disposition.
9. Inspection.
11. Suspension or revocation of license; notice; hearing; judicial review; appeal; confidential information.
12. Unlawful acts; penalty.
13. Injunctions.
14. License in force upon effective date of article.
15. Repeal of conflicting laws; severability of article.

§16-5C-1. Purpose.

1. It is the policy of this state to encourage and promote the development and utilization of resources to insure the effective care and treatment of persons who are convalescing or whose physical or mental condition requires them to receive a degree of nursing or related health care greater than that necessary for well individuals, but not so acute as to require hospitalization.

2. Such care and treatment requires a living environment for such persons which, to the extent practicable, will
approximate a normal home environment. To this end, the guiding principle for administration of the laws of this state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental nursing homes, it is the policy of this state to encourage, promote and require the maintenance of institutions other than hospitals offering nursing or related health care so as to insure protection of those using the services of such facilities.

§16-5C-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) The term "nursing home" means and shall be construed to include any building, structure, agency, institution, or other place, for the reception, accommodation, board, care or treatment of not less than twenty-four hours in any week of five or more unrelated individuals, hereinafter designated patients, who are unable sufficiently or properly to care for themselves, and for which reception, accommodation, board, care or treatment a charge is made: Provided, That the reception, accommodation, board, care or treatment in a household or family, for compensation, of a person or persons related by blood or marriage to the head of such household or family, or to his or her spouse or family, within the degree of consanguinity of first cousins, shall not be deemed to be a nursing home. The term "nursing home" shall include, but not be limited to, homes for the aged, convalescent homes, and extended care facilities not operated in connection with a hospital. The term "nursing home" shall not include institutions operated by the federal or state governments or hospitals, institutions for the treatment and care of psychiatric patients, boarding homes for children, day nurseries, child-care institutions, children's homes and child-placing agencies, as defined under the laws of this state, nor hotels or offices of physicians.
(b) The term "person" means any individual, firm, partnership, corporation, company, association, or joint-stock association and the legal successor thereof.

(c) The term "board" shall mean the West Virginia nursing home licensing board as herein created.

(d) The term "aged" relates to any individual who has attained the age of sixty-five years.

§16-SC-3. West Virginia nursing home licensing board; creation; appointment, qualifications, term, etc., of members; vacancies.

There is hereby created a state board to be known and designated as the "West Virginia Nursing Home Licensing Board" which shall consist of nine members, six of whom shall be appointed by the governor, by and with the advice and consent of the senate, and the initial appointments shall be made within twenty days after the effective date of this article. One of said six members to be appointed by the governor shall be a member of the medical profession having an unlimited license to practice medicine and surgery in the state of West Virginia, one such member shall be a licensed pharmacist, one such member shall be a registered nurse, one such member shall be a person with experience or education in the field of aging, and two such members shall be persons who have been engaged in the management of an operating nursing home for four years immediately prior to the date of appointment, who shall hereinafter be referred to as nursing home administrators. The three remaining members shall be ex officio members, one of whom shall be the commissioner of welfare, or his official designate, one of whom shall be the state fire marshal, or his official designate, and the other of whom shall be the state director of health, or his official designate. The ex officio members shall always serve during their regular tenure of office. No member of the board, other than the two nursing home administrators, shall have any direct or indirect financial or pecuniary interest in any nursing home in this state. Of the original board members appointed, the one who is a registered nurse shall serve for one year, the one who has experience or education in the field of aging shall serve for two years,
the one who is a member of the medical profession shall serve for three years, the one who is a licensed pharmacist shall serve for four years, one of the two nursing home administrators shall serve for five years, and the other nursing home administrator shall serve for six years. All subsequent appointments shall be for six years, except that in case of a vacancy, the appointee shall be appointed for the remainder of the unexpired term. Any vacancy shall be filled by the governor, with the advice and consent of the senate, from the same group as was represented by the outgoing member. All members of the board, unless sooner removed, shall continue to serve until their respective terms expire and until their successors are appointed and have qualified.

§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall have the following powers, duties and rights:
2 (a) To adopt, promulgate, amend, modify and enforce regulations and standards for nursing homes.
3 (b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes.
4 (c) To adopt, promulgate, amend and modify rules and regulations governing the qualifications of applicants for nursing home licenses including but not limited to educational requirements, financial requirements, moral, personal and ethical requirements.
5 (d) To adopt, promulgate, amend and modify such other reasonable rules and regulations to carry out the intent and purpose of this article.
6 In addition, the board may classify nursing homes into care categories such as homes for the aged, convalescent homes, and extended care facilities not operated by hospitals, and other comparable categories under the terms of this article, if, in the opinion of the board, the best interest of the public is served by so doing. Such classification shall be by rules and regulations duly promulgated and adopted in accordance with the requirements hereinafter set out.
§16-5C-5. Meetings of board; quorum.

1 The first meeting of the board shall be on a date not later than sixty days after the board has been appointed.
2 Thereafter, the board shall meet at least twice each year on dates to be set by the board. Special meetings of the board shall be called by the chairman or on the written request of any three members of the board.
3 Five members shall constitute a quorum for the transaction of all business when such number includes at least one nursing home administrator. The board shall establish rules governing its own deliberations and procedures.

§16-5C-6. Chairman of the board; officers; salaries and expenses.

1 The board shall elect its own chairman and chairman pro tempore and any other officers as the board shall deem necessary in the conduct of its official duties. The members of the board shall serve without salary, but they shall be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of their official duties out of the receipts of the board: Provided, That the ex officio members of the board shall be reimbursed for such expenses out of the funds of their respective departments.

§16-5C-7. License required; applications and licensing procedure; hearings; renewals; posting; transfer; existing operations; provisional renewal; judicial review.

1 Subject to the provisions of section fourteen of this article, no person shall establish, conduct, operate or maintain a nursing home unless and until he first obtains a license therefor as hereinafter provided, which license remains unsuspended, unrevoked and unexpired. The procedure for obtaining such license shall be as follows:
2 (a) The applicant shall submit an application to the board on a form to be prescribed by the board, containing such information as may be necessary to show that the applicant is reputable and responsible and able to comply with the standards for nursing homes as established by the rules and regulations lawfully promulgated under this article. The application shall contain the following in-
formation: The name of the applicant; the type of institution to be operated; the location thereof; the name of the person to be in charge thereof; and such other information as the board may require.

(b) The board may, without further evidence, direct and approve the issuance of a license or a renewal upon application and payment of the required fee when the requirements of the board established pursuant to section four (c) of this article have been satisfied: Provided, That, in its discretion, the board may, and, upon the demand of the applicant, shall hold a hearing to determine whether a license should be issued or renewed, as the case may be. Such hearing shall be held in accordance with and be governed by the provisions of article five, chapter twenty-nine-a of this code with like effect as if the provisions of said article five were set forth in extenso in this section.

(c) If, after such hearing, the board determines that the applicant complies, and will in the future comply, with the provisions of this article, and the rules and regulations promulgated hereunder, the board shall direct the issuance or renewal of a license licensing the applicant to operate said nursing home. An original license shall be renewable, conditioned only upon the licensee filing timely application for the extension of the term of the license accompanied by the fee. A license to operate a nursing home shall be issued only for the premises named in the application and shall be posted in a conspicuous place in such nursing home. No license issued hereunder shall be transferable or assignable without the written consent of the board, but such consent shall not be arbitrarily or capriciously withheld.

(d) In determining whether to approve or reject a license application for a presently existing and operating nursing home, the board shall consider the economic impact of the denial of a license, based upon standards adopted after such nursing home commenced operations and was first licensed, upon the owner or operator of the nursing home and the effects upon the patients served thereby as well as upon the community. If undue hardship would result from denial of said license, the board
shall approve or reject such application on the basis of
the standards adopted and in effect at the time such
nursing home commenced functioning and was first
licensed.

(e) In the event the board finds that an applicant
seeking to renew a license substantially complies and
will soon fully comply with standards set pursuant to
the provisions of this article, it may issue a provisional
renewal of the license conditioned upon full and timely
compliance with requirements specifically stated by the
board. A provisional renewal may be automatically re-
voked if its terms are not met within the period specified:
Provided, That a provisional renewal may not be issued
for a period greater than one year.

In any case where a license or renewal is not issued, the
fee is to be returned to the applicant. If the board re-
fuses to issue or renew the license after a hearing de-
demanded by the applicant as provided in this section, the
applicant is entitled to judicial review thereof. All of the
pertinent provisions of section four, article five, chapter
twenty-nine-a of this code shall apply to and govern such
review with like effect as if the provisions of said section
four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme
court of appeals in accordance with the provisions of sec-
tion one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal
proceedings in any circuit court and the supreme court
of appeals shall be provided by the attorney general or
his assistants, and in appeal proceedings in any circuit
court by the prosecuting attorney of the county as well,
all without additional compensation.

§16-SC-8. License fees; amount, disposition.

An application fee in the amount of one hundred dol-
lars for an original nursing home license shall be paid at
the time application is made for such license. The license
fee for renewal of license shall be one dollar per bed
based on the approved bed capacity as determined by
the board. All such license fees shall be due and payable
to the board on or before June thirtieth of each year. 
Such fee and application shall be submitted to the secre-
tary of the board who shall retain both the applica-
tion and fee pending final action on the application. 
Thereafter, upon order of the auditor of the state, all 
such fees shall be transmitted to the state treasurer 
to be deposited to the credit of the general revenue fund: 
Provided, That authorized expenses of the board are to 
be paid out of such fees.

§16-5C-9. Inspection.
Inspection of nursing homes shall be made regularly as 
required by the board and in accordance with the rules 
and regulations adopted and promulgated hereunder. Re-
ports of such inspection shall be in writing which shall 
be filed with the board. The department of health of 
this state, by its employees or authorized agents, shall 
make all health, sanitation and like inspections. The 
state fire marshal, by his employees or authorized agents, 
shall make all fire, safety, and like inspections. The board 
may provide for such other inspections and the enforce-
ment of its rules and regulations as it may deem neces-
sary to carry out the intent and purpose of this article.

§16-5C-10. Rules and regulations.
All rules and regulations shall be approved by the 
board and promulgated in the manner provided by the 
provisions of article three, chapter twenty-nine-a of this 
code.

§16-5C-11. Suspension or revocation of license; notice; hearing; 
judicial review; appeal; confidential information.
The board may suspend or revoke a license issued 
hereunder on any of the following grounds:
(1) Violation of any of the provisions of this article 
or the standards or rules and regulations promulgated 
pursuant hereto.
(2) Conduct or practices found by the board to be 
detrimental to the welfare of the patients of the nursing 
home.
Whenever a license is suspended or revoked, the board 
shall file a complaint stating facts constituting a ground
or grounds for revocation or suspension. Upon the filing
of the complaint, the board shall notify the licensee in
writing of the filing of the complaint and of the time and
place of the hearing, and shall also enclose a copy of the
complaint with such notice. Such notice and copy of the
complaint shall be served on such licensee by certified
mail, return receipt requested. The hearing shall be held
by the board not less than fifteen days after such service
on the licensee. The licensee shall be entitled to be rep-
resented by counsel at said hearing.

All of the pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern any
such hearing and the administrative procedures in con-
nection with and following such hearing, with like effect
as if the provisions of said article five were set forth in
extenso in this section.

Following such hearing the board shall make and enter
a written order either suspending or revoking such li-
cense, dismissing the complaint or taking such other ac-
tion as is authorized in this article. If the board sus-
pends such license, it may also specify the conditions
giving rise to such suspension, to be corrected by the li-
censee during the period of suspension, in order to en-
title the licensee to reinstatement of his license.

The written order of the board shall be accompanied
by findings of fact and conclusions of law as specified in
section three, article five, chapter twenty-nine-a of this
code, and a copy of such order and accompanying find-
ings and conclusions shall be served upon the licensee
and his attorney of record, if any, by certified mail, re-
turn receipt requested. The order of the board shall be
final unless vacated or modified upon judicial review
thereof in accordance with the provisions of this section.

In addition to all other powers granted it by this sec-
tion, the board may hold the case under advisement and
make a recommendation as to requirements to be met
by said licensee in order to avoid either suspension or
revocation. In such a case, the board shall enter an or-
der accordingly and so notify the licensee and his at-
torney of record, if any, by certified mail, return re-
ceipt requested. If the licensee meets the requirements
of such order, the board shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and his attorney of record, if any, by certified mail, return receipt requested.

Any licensee adversely affected by an order of the board rendered after a hearing held in accordance with the provisions of this section is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

Information received by the board under the provisions of this article shall be confidential and shall not be publicly disclosed except in a proceeding involving the question of the issuance or revocation of a license.

§16-5C-12. Unlawful acts; penalty.

It shall be unlawful for any person to conduct, maintain or operate, or permit to be conducted, maintained or operated, or to participate in the conduct, maintenance or operation of a nursing home in this state, unless and until a license therefor is first issued in accordance with this article, which license remains unexpired, unsuspended and unrevoked.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars for the first offense, and not less than fifty nor more than one hundred dollars for each subsequent offense. Each day
a violation continues after conviction shall be considered a separate offense.

§16-5C-13. Injunctions.

1 If any person conducts, manages or operates a nursing home without first having obtained a license therefor, which license remains unexpired, unsuspended and unrevoked, the circuit court, or the judge thereof in vacation, of the county in which such conduct, management or operation occurred, shall upon proper application by the board in the name of the state, and after ten days' written notice thereof to such person, issue an injunction prohibiting such person from managing or operating such nursing home until he has fully complied with the provisions of this article. The remedy provided in this section shall be in addition to all other penalties and remedies provided by law.

§16-5C-14. License in force upon effective date of article.

1 All licenses for nursing homes which are in force upon the taking effect of this article shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.

§16-5C-15. Repeal of conflicting laws; severability of article.

1 The provisions of all acts or parts of acts, or of this code, which are inconsistent with the provisions of this article are hereby repealed to the extent of such inconsistency. The provisions of this article are severable and if any shall be held unconstitutional or invalid, such determination shall not affect or impair any of the remaining provisions thereof.

CHAPTER 88

(House Bill No. 765—By Mr. Armistead)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fifteen, chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to definition of certain terms used in the state housing law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. STATE HOUSING LAW.

Section

1. Definitions.


1 The following terms, wherever used or referred to in this article, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

2 (a) “Authority” or “housing authority” shall mean a corporate body organized in accordance with the provisions of this article for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

3 (b) “Mayor” shall mean the chief executive of the city, whether the official designation of his office be mayor, city manager or otherwise.

4 (c) “Council” shall mean the chief legislative body of the city.

5 (d) “Commissioner” shall mean one of the members of an authority appointed in accordance with the provisions of this article.

6 (e) “Government” shall include the state and federal governments and any subdivisions, agency or instrumentality, corporate or otherwise, of either of them.

7 (f) The “state” shall mean the state of West Virginia.

8 (g) “City” shall mean any incorporated city, town or village.

9 (h) “Slum clearance” shall include the removal of housing conditions which shall be considered by the housing authority of the city in which such conditions exist to be unsanitary or substandard or a menace to public health.

10 (i) “Low-cost housing” shall include any housing accommodations which are or are to be rented at not in
excess of a maximum rate per room, or maximum average rate per room, which shall be specified or provided by the housing authority of the city in which such housing accommodations are or are to be located, or the Legislature, or a duly constituted agency of the state, or of the United States of America.

(j) “Project” shall include all lands, buildings and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by a housing authority, designed to provide housing accommodations, or stores, offices and community facilities appurtenant thereto, which are planned as a unit, whether or not acquired or constructed at one time, and which ordinarily are contiguous or adjacent to one another. The term “project” may also be applied to the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the clearing of land, the construction, reconstruction and repair of improvements and all other work in connection therewith.

(k) “Community facilities” shall include lands, buildings and equipment of recreation or social assembly, for educational, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed and operated hereunder.

CHAPTER 89

(Com. Sub. for House Bill No. 821—By Mr. Speaker, Mr. White)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article eleven, relating to the West Virginia human rights commission; making unlawful certain discriminatory practices;
authorizing said commission to issue cease and desist orders; providing for hearings and judicial review; providing for the enforcement of such orders; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and a new article eleven be enacted in lieu thereof, to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

Section
1. Short title.
2. Declaration of policy.
3. Definitions.
4. Human rights commission continued; status, powers and objects.
5. Composition; appointment, terms and oath of members; compensation and expenses.
6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.
7. Assistance to commission; legal services.
8. Commission powers; functions; services.
9. Unlawful discriminatory practices.
10. Complaints against discriminatory practices; investigations, hearings, procedures and orders.
11. Enforcement of cease and desist orders.
12. Local human relations commissions.
15. Construction; severability.

§5-11-1. Short title.

1 This article shall be known and may be cited and referred to as “The West Virginia Human Rights Act.”

§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment and equal access to places of public accommodations.
2 Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, age, sex or ancestry.
3 The denial of these rights to properly qualified persons by reason of race, religion, color, national origin or ancestry is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.
§5-11-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons;

(b) The term "commission" means the West Virginia human rights commission;

(c) The term "director" means the executive director of the commission;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing twenty-five or more persons within the state: Provided, That such term shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his parents, spouse, or child, or in the domestic service of any person;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin or ancestry, and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommod-
40 dations to the general public, but shall not include any 41 accommodations which are in their nature private.

§5-11-4. Human rights commission continued; status, pow-42 ers and objects.
1 The West Virginia human rights commission, hereto-43 fore created, is hereby continued. The commission shall 44 have the powers and authority and shall perform the 45 functions and services as in this article prescribed and as 46 otherwise provided by law. The commission shall en-47 courage and endeavor to bring about mutual under-48 standing and respect among all racial, religious and eth-49 nic groups within the state and shall strive to eliminate 50 all discrimination in employment and places of public 51 accommodations by virtue of race, religion, color, na-52 tional origin or ancestry.

§5-11-5. Composition; appointment, terms and oath of mem-53 bers; compensation and expenses.
1 The commission shall be composed of nine members, 2 all residents and citizens of the state of West Virginia 3 and broadly representative of the several racial, reli-4 gious and ethnic groups residing within the state, to be 5 appointed by the governor, by and with the advice and 6 consent of the senate. Not more than five members of 7 the commission shall be members of the same political 8 party and at least one member but not more than three 9 members shall be from any one congressional district.
10 Members of the commission shall be appointed for 11 terms of three years commencing on the first day of July 12 of the year of their appointments, except that the nine 13 members first appointed hereunder shall be appointed 14 for terms of from one to three years, respectively, so 15 that the terms of three members of the commission will 16 expire on the thirtieth day of June of each succeeding 17 year thereafter. Upon the expiration of the initial terms, 18 all subsequent appointments shall be for terms of three 19 years each, except that appointments to fill vacancies 20 shall be for the unexpired term thereof. Members shall 21 be eligible for reappointment. Before assuming and 22 performing any duties as a member of the commission, 23 each commission member shall take and subscribe to the
official oath prescribed by section five, article four of
the constitution of West Virginia, which executed oath
shall be filed in the office of the secretary of state.

Each member of the commission shall receive a salary
of twenty-five dollars per day as compensation for his
services as such, and each member shall be reimbursed
for his reasonable and necessary travel expenses actu-
ally incurred in performance of his commission services.

§5-11-6. Commission organization and personnel; executive
director; offices; meetings; quorum; expenses of per-
sonnel.

As soon as practical after the first day of July of each
year, the governor shall call a meeting of the commis-
sion to be convened at the state capitol. The commis-
sion shall at such meeting organize by electing one of
its members as chairman of the commission and one
as vice chairman thereof for a term of one year or until
their successors are elected and qualified. At such meet-
ing the commission shall also elect from its member-
ship such other officers as may be found necessary and
proper for its effective organization.

The governor shall, by and with the advice and con-
sent of the senate, appoint an executive director to serve
at his will and pleasure. The executive director shall
serve as secretary of the commission. The executive
director shall have a college degree. He shall be selected
with particular reference to his training, experience and
qualifications for the position and shall be paid an an-
nual salary, payable in monthly installments, from any
appropriations made therefor. The commission, upon
recommendation of the executive director and in accord-
ance with the requirements of the civil service law, may
employ such personnel as may be necessary for the effec-
tive and orderly performance of the functions and serv-
ces of the commission.

The commission shall equip and maintain its offices at the
state capitol and shall hold its annual organizational meet-
ing there. The commission may hold other meetings dur-
ing the year at such times and places within the state as
may be found necessary. Any five members of the com-
mission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in the performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

§5-11-7. Assistance to commission; legal services.

1 The commission may call upon other officers, departments and agencies of the state government to assist in its hearings, programs and projects. The attorney general of the state shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin or ancestry, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment and places of public accommodations;
(d) To hold and conduct public and private hearings on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment or places of public accommodations and during the investigation of any formal complaint before the commission relating to employment or places of public accommodations to:

1. Issue subpoenas and subpoenas duces tecum upon the concurrence of at least five members of the commission, administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

2. Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

3. Delegate to a panel of three commission members appointed by the chairman, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and action growing out of or upon any such hearings shall be reserved for determination by the commission;

4. To enter into conciliation agreements;

5. To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement by seeking specific performance of such agreement;

6. To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the commission;

7. To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and ex-
pedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problem of discrimination in all or specific fields or instances or discrimination because of race, religion, color, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;
To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


1. It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

   a. For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required;

   b. For any employer, employment agency or labor organization, prior to the employment or admission to membership, to (1) elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin or ancestry of any applicant for employment or membership; (2) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin or ancestry; or (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin or ancestry;

   c. For any labor organization because of the race, religion, color, national origin or ancestry of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

   d. For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:
35  (1) Select individuals for an apprentice training pro-
36 gram registered with the state of West Virginia on any
37 basis other than their qualifications as determined by
38 objective criteria which permit review;
39  (2) Discriminate against any individual with respect
40 to his right to be admitted to or participate in a guid-
41 ance program, an apprenticeship training program, on-
42 the-job training program, or other occupational train-
43 ing or retraining program;
44  (3) Discriminate against any individual in his pur-
45 suit of such programs or to discriminate against such
46 a person in the terms, conditions or privileges of such
47 programs;
48  (4) Print or circulate or cause to be printed or cir-
49 culated any statement, advertisement or publication, or
50 to use any form of application for such programs or to
51 make any inquiry in connection with such program
52 which expresses, directly or indirectly, discrimination or
53 any intent to discriminate, unless based upon a bona
54 fide occupational qualification;
55  (e) For any employment agency to fail or refuse
56 to classify properly, refer for employment or otherwise
57 to discriminate against any individual because of his
58 race, religion, color, national origin or ancestry;
59  (f) For any person being the owner, lessee, propri­
60 tor, manager, superintendent, agent or employee of any
61 place of public accommodations to:
62  (1) Refuse, withhold from, or deny to any individual
63 because of his race, religion, color, national origin or
64 ancestry, either directly or indirectly, any of the accom­
65 modations, advantages, facilities, privileges, or services
66 of such place of public accommodations;
67  (2) Publish, circulate, issue, display, post or mail,
68 either directly or indirectly, any written or printed
69 communication, notice or advertisement to the effect that
70 any of the accommodations, advantages, facilities, privi-
71 leges, or services of any such place shall be refused,
72 withheld from or denied to any individual on account
73 of race, religion, color, national origin or ancestry, or
74 that the patronage or custom thereat of any individual,
belonging to or purporting to be of any particular race, 
religion, color, national origin or ancestry is unwelcome, 
objectionable, not acceptable, undesired or not solicited;
(g) For any person, employer, employment agency 
or labor organization to:
(1) Engage in any form of threats or reprisal, or to 
engage in, or hire, or conspire with others to commit 
acts or activities of any nature, the purpose of which 
is to harass, degrade, embarrass, or cause physical harm 
or economic loss or to aid, abet, incite, compel, or coerce 
any person to engage in any of the unlawful discrim-
inatory practices defined in this section;
(2) Willfully obstruct or prevent any person from 
complying with the provisions of this article, or to re-
sist, prevent, impede or interfere with the commission 
or any of its members or representatives in the perfor-
ance of duty under this article;
(3) Engage in any form of reprisal or otherwise dis-
 criminate against any person because he has opposed 
any practices or acts forbidden under this article or be-
cause he has filed a complaint, testified, or assisted in 
any proceeding under this article.
§5-11-10. Complaints against discriminatory practices; in-
vestigations, hearings, procedures and orders.
1 Any individual claiming to be aggrieved by an alleged 
unlawful discriminatory practice shall make, sign and 
file with the commission a verified complaint, which 
shall state the name and address of the person, employer, 
labor organization or employment agency alleged to 
have committed the unlawful discriminatory practice 
complained of, and which shall set forth the particu-
lers thereof and contain such other information as may 
be required by the commission's rules and regulations. 
The commission upon its own initiative, or the attorney 
general, shall, in like manner, make, sign and file such 
complaint. Any employer, whose employees, or some 
of them, hinder or threaten to hinder compliance with 
the provisions of this article, shall file with the commis-
sion a verified complaint, asking for assistance by con-
ciliation or other remedial action and, during such period
of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the commission against such employer. Any complaint filed pursuant to this article must be filed within sixty days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors:

Provided, That the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the
commission in the county of residence of the respondent, at a time and place to be specified in such notice: Provided, however, That said written notice be served at least thirty days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as provided in the immediately preceding proviso, all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodations, denied in violation of this article, as in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as afore-
99 said and shall issue and cause to be served on the com-
100 plainant an order dismissing the said complaint as to
101 such respondent.
102 A copy of its order shall be delivered in all cases by
103 the commission to the complainant, the respondent, the
104 attorney general and to such other public officers as the
105 commission may deem proper. Any such order shall
106 not be enforceable except as provided in section eleven
107 of this article.

§5-11-11. Enforcement of cease and desist orders.
1 In the event any person shall fail to obey a lawful
2 cease and desist order of the commission, the commis-
3 sion may seek an order of the circuit court for its en-
4 forcement, in a proceeding as provided in this section.
5 Such proceeding shall be brought in the circuit court of
6 the county wherein any person required in the order
7 to cease and desist from an unlawful discriminatory
8 practice or to take other affirmative action resides or trans-
9 acts business. Such proceeding shall be initiated by the
10 filing of a petition in such court, together with a written
11 transcript of the entire record of the hearing before
12 the commission. Notice of the filing of such petition to-
13 gether with a copy thereof shall be served upon the re-
14 spondent in the manner provided by law for the service
15 of summons in civil actions; no hearing shall be held on
16 such petition within twenty days of the date of service
17 thereof on the respondent. The court may grant such
18 temporary relief or restraining order as it deems just and
19 proper, and shall make and enter upon the pleadings, testi-
20 mony, and proceedings set forth in such transcript an
21 order enforcing, modifying, and enforcing as so modi-
22 fied, or setting aside in whole or in part the order of
23 the commission. All such proceedings shall be heard and
24 determined by the court. The jurisdiction of the circuit
25 court shall be exclusive and its judgment and order shall
26 be final, subject to review by the supreme court of appeals.

§5-11-12. Local human relations commissions.
1 (a) The legislative body of a political subdivision
2 may, by ordinance or resolution, authorize the estab-
3 lishment or membership in and support of a local human
relations commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be deemed necessary, for the purpose of contributing to the operation of a local commission.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose.


Nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin or ancestry, but as to acts declared unlawful by section nine of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.


Any person who shall wilfully resist, prevent, impede or interfere with the commission, its members, agents or agencies in the performance of duties pursuant to this article, or shall wilfully violate a final order of the commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not
§5-11-15. Construction; severability.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

CHAPTER 90

(House Bill No. 597—By Mr. Hill)

[Passed March 1, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of expenses of examiners by insurers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

Section 9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The commissioner or his accredited examiners shall, at least once each three years, visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether
it has complied with all the laws and regulations of this state. The commissioner at such times as he deems necessary may cause an examination to be conducted of any foreign or alien insurer licensed to transact insurance in this state; all expenses of such examination shall be charged to and collected from such insurer in the manner prescribed by the commissioner. The commissioner shall make a full written report of each such examination of an insurer, certified to by the commissioner or the examiner in charge of such examination. The commissioner shall furnish a copy of the report to the insurer examined not less than ten days prior to filing the same in his office. If such insurer so requests in writing, within such ten-day period, the commissioner shall consider the objections of such insurer to the report as proposed, and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against the insurer examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office. The examination of an alien insurer shall be limited to its United States business. In lieu of making his own examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of the state of domicile of a foreign insurer or the state of entry into the United States of an alien insurer. The commissioner may also cause to be examined at such times as he deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker or solicitor licensed by this state.

For such purposes the commissioner, his deputies and employees shall have free access to all books, records,
papers, documents and correspondence of all such insurers (whether domestic, foreign or alien), agents, brokers and solicitors wherever such books, records, papers, documents and records are situate.

(d) The commissioner may revoke the license of any such insurer, agent, broker or solicitor who refuses to submit to such examination.

(e) The commissioner may withhold from public inspection any examination or investigation report for such time as he may deem prudent, but no such report shall be withheld from public inspection for longer than ninety days after the same has been filed.

CHAPTER 91

(Senate Bill No. 111—By Mr. Carson, Mr. President, and Mr. Kaufman)

[Passed February 22, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of public hearings regarding insurance matters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. INSURANCE COMMISSIONER.

Section 12. Notice.


Whenever under the provisions of this chapter the commissioner is required to give notice to any person the service of such notice shall be deemed proper and effective with regard to any licensee of the commissioner (including insurers, agents, brokers and solicitors) or any em-
ployee of such licensee when such notice directed to
such person to be notified shall have been deposited in
the United States mails, postage prepaid, addressed to
the principal place of business or residence of such li-
censee as last of record in the commissioner's office. The
verified return of the person depositing such notice in
the mails as to the fact of such mailing shall be proof
of service. With the exception of notice for public hear-
ing as is stated in subsection (g), section five, article
twenty of this chapter, notice to a person other than a
licensee or employee of a licensee shall be served in the
manner provided by law for service off process in civil
actions, and such manner of service may also be used and
shall constitute effective notice to a licensee or employee
of a licensee.

CHAPTER 92

(Senate Bill No. 118—By Mr. Carson, Mr. President,
and Mr. Kaufman)

[Passed March 8, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to amend article three, chapter thirty-three of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section five-a, relating to the capital or surplus require-
ments of licensed insurers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

Section
5a. Capital or surplus required after January 1, 1968.

§33-3-5a. Capital or surplus required after January 1, 1968.

To qualify for a license to transact insurance, unless
otherwise provided in this chapter, an insurer applying
for said license, after the effective date of this section, shall possess paid-in capital stock (if a stock insurer) or surplus (if a mutual insurer) in the amount set forth below opposite the kinds of insurance for which license is requested:

(a) Life ................................. $ 750,000.00
(b) Accident and Sickness ........... $ 750,000.00
(c) Life and Accident and Sickness ... $1,000,000.00
(d) Fire and Marine ...................... $ 250,000.00
(e) Casualty .............................. $ 250,000.00
(f) Surety ................................ $ 600,000.00
(g) Accident and Sickness together with any one or more of the following:
   Fire and Marine, Casualty ............ $ 500,000.00
(h) Fire and Marine and Casualty ...... $ 500,000.00
(i) Surety together with any one or more of the following: Accident and Sickness, Fire and Marine, Casualty $ 600,000.00

In addition, every insurer applying for said license, after the enactment of this section, shall maintain additional surplus funds in an amount equal to one half such minimum capital or surplus listed above for the kinds of insurance for which license is requested: Provided, That insurers duly licensed to transact insurance in West Virginia prior to the enactment of this section shall not be subject to the capital and surplus requirements of this section but shall be required to maintain capital and surplus as is prescribed in section five of this article, or two hundred thousand dollars capital and one hundred thousand dollars surplus funds whichever be the greater. All insurers duly licensed prior to the enactment of this section whose capital and surplus requirements are increased by virtue of the above proviso shall have until June thirtieth, one thousand nine hundred seventy-one, to meet such increased requirements.
AN ACT to amend and reenact section thirteen, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the insurance commissioner to proceed against unlicensed insurers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

Section
13. Service of process on unlicensed insurers.

§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the insurance commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle
of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (1) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the auditor of the state and his successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit, or proceeding which may be instituted by the insurance commissioner in the name of any such insured or beneficiary or in the name of the state of West Virginia, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer in any such action or proceeding in any court of competent jurisdiction of this state, may be made by serving the auditor of the state or his chief clerk with two
copies thereof and the payment to him of a fee of two
dollars. The auditor shall forward a copy of such proc-
ness by registered mail to the defendant at its last-known
principal place of business, and shall keep a record
of all process so served upon him. Such service of
process is sufficient, provided notice of such service and
a copy of the process are sent within ten days there-
after by or on behalf of the plaintiff to the defendant
at its last-known principal place of business by regis-
tered mail with return receipt requested. The plaintiff
shall file with the clerk of the court in which the action
is pending, or with the judge or justice of such court,
in case there be no clerk, an affidavit of compliance
herewith, a copy of the process, and either a return
receipt purporting to be signed by the defendant or
a person qualified to receive its registered mail in ac-
cordance with the rules and customs of the postoffice
department; or, if acceptance was refused by the de-
fendant or its agent, the original envelope bearing a
notation by the postal authorities that receipt was re-
fused. Service of process so made shall be deemed
to have been made within the territorial jurisdiction of
any court in this state.

(3) Service of process in any such action, suit or
proceeding shall in addition to the manner provided
in subparagraph (2) of this paragraph (b) be valid
if served upon any person within this state who, in
this state on behalf of such insurer, is

A. Soliciting insurance, or
B. Making, issuing or delivering any contract of ins-
urance, or
C. Collecting or receiving any premium, member-
ship fee, assessment or other consideration for insur-
ance; provided notice of such service and a copy of such
process are sent within ten days thereafter, by or on
behalf of the plaintiff to the defendant at the last-known
principal place of business of the defendant, by regis-
tered mail with return receipt requested. The plaintiff
shall file with the clerk of the court in which the action
is pending, or with the judge or justice of such court in
case there be no clerk, an affidavit of compliance here-
with, a copy of the process, and either a return receipt
purporting to be signed by the defendant or a per-
son qualified to receive its registered mail in accordance
with the rules and customs of the postoffice depart-
ment; or, if acceptance was refused by the defendant
or its agent the original envelope bearing a no-
tation by the postal authorities that receipt was
refused.

(4) The papers referred to in subparagraphs (2)
and (3) of this paragraph (b) shall be filed within
thirty days after the return receipt or other official proof
of delivery or the original envelope bearing a notation
of refusal, as the case may be, is received by the plain-
tiff. Service of process shall be complete ten days after
such process and the accompanying papers are filed in
accordance with this section.

(5) Nothing in this section contained shall limit or
abridge the right to serve any process, notice or demand
upon any insurer in any other manner now or here-
after permitted by law.

(c) (1) Before any unlicensed foreign or alien in-
surer shall file or cause to be filed any pleading in
any action, suit or proceeding instituted against it, such
unlicensed insurer shall either (1) deposit with the
clerk of the court in which such action, suit or proceed-
ing is pending, cash or securities or file with such clerk
a bond with good and sufficient sureties, to be approved
by the court, in an amount to be fixed by the court
sufficient to secure the payment of any final judgment
which may be rendered in such action: Provided, how-
ever, That the court may in its discretion make an order
dispensing with such deposit or bond where the
auditor of the state shall have certified to such court
that such insurer maintains within this state funds or
securities in trust or otherwise sufficient and available
to satisfy any final judgment which may be entered
in such action, suit or proceeding; or (2) procure a license
to transact insurance in this state.

(2) The court in any action, suit or proceeding, in
which service is made in the manner provided in sub-
paragraph (2) or (3) of paragraph (b) of this section
may, in its discretion, order such postponement as may
be necessary to afford the defendant reasonable oppor-
tunity to comply with the provisions of subparagraph
(1) of this paragraph (c) and to defend such
action.

(3) Nothing in subparagraph (1) of this paragraph
(c) is to be construed to prevent an unlicensed foreign
or alien insurer from filing a motion to set aside service
thereof made in the manner provided in subparagraph
(2) or (3) of paragraph (b) of this section on the
grounds either (1) that such unlicensed insurer has not
done any of the acts enumerated in subparagraph (1)
of paragraph (b) of this section, or (2) that the person
on whom service was made pursuant to subparagraph
(3) of paragraph (b) of this section was not doing any
of the acts therein enumerated.

(d) In any action against an unlicensed foreign or
alien insurer upon a contract of insurance issued or
delivered in this state to a resident thereof or to a cor-
poration authorized to do business therein, if the ins-
urer has failed for thirty days after demand prior to
the commencement of the action to make payment in
accordance with the terms of the contract, and it appears
to the court that such refusal was vexatious and with-
out reasonable cause, the court may allow to the
plaintiff a reasonable attorney's fee and include such
fee in any judgment that may be rendered in such action.
Such fee shall not exceed twelve and one half per cent
of the amount which the court finds the plaintiff is
entitled to recover against the insurer, but in no event
shall such fee be less than twenty-five dollars. Failure
of an insurer to defend any such action shall be deemed
prima facie evidence that its failure to make payment
was vexatious and without reasonable cause.

(e) The provisions of this section shall not apply
to any suit, action or proceeding against any unlicensed
foreign or alien insurer arising out of any contract of
excess line insurance effected in accordance with article
CHAPTER 94

(Section 22, Article 5, Chapter 33 of the Code of West Virginia, 1931, as amended, relating to the impairment of capital or assets of domestic insurers.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, 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:

ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.

Section 22. Impairment of capital or assets.

§33-5-22. Impairment of capital or assets.

1 (a) If the capital stock of a domestic stock insurer becomes impaired, or the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required of it by this chapter for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to make good the deficiency within ninety days after service of such notice.

(b) The deficiency may be made good in cash or in assets eligible under this chapter for the investment of the insurer's funds; or if a stock insurer by reduction of
the insurer's capital to an amount not below the minimum required for the kinds of insurance thereafter to be transacted; or if a mutual insurer, by amendment of its license to cover only such kind or kinds of insurance for which the insurer has on deposit sufficient surplus.

(c) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it as authorized by this chapter. If such deficiency exists because of increased loss reserves required by the commissioner, or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may in his discretion and upon application and good cause shown, extend for not more than an additional one hundred eighty days the period within which such deficiency may be so made good and such proof thereof so filed.

(d) The ninety-day notice required in subsection (a) of this section shall only affect the grounds for rehabilitation of domestic insurers and grounds for liquidation as set forth in subdivision (c), section five, article ten of this chapter, and shall not affect the rights and duties of the commissioner to take action under any other grounds for rehabilitation of domestic insurers or grounds for liquidation as set forth in article ten of this chapter.

CHAPTER 95
(Senate Bill No. 309—By Mr. Kaufman)

(Passed March 4, 1967; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to provisions in public liability insurance policies issued to charitable associa-
tions in this state, and requiring that such policies contain provisions for waiving the defense of charitable immunity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

Section
14a. Public liability insurance policies issued to charitable associations to contain provision for waiving of charitable or governmental immunity defense.

§33-6-14a. Public liability insurance policies issued to charitable associations to contain provision for waiving of charitable or governmental immunity defense.

No policy or contract of public liability insurance providing coverage for public liability shall be sold, issued, or delivered in this state to any religious or charitable corporation or association, either directly or to the trustees of such associations, or sold, issued or delivered to any governmental unit, agency or subdivision, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense, on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured's charitable or governmental status, unless such provision or endorsement is rejected in writing by the named insured.

CHAPTER 96

(House Bill No. 660—By Mr. Speaker, Mr. White)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the construction of insurance policies.
Be it enacted by the Legislature of West Virginia:

That section thirty, article six, 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 6. THE INSURANCE POLICY.

§33-6-30. Construction of policies.

1. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy: Provided, That the word "physician" when used in any accident and sickness policy or other contract providing for the payment of surgical procedures shall be construed to include a physician, dentist, or chiropodist-podiatrist performing such surgical procedure within the scope of his professional license: Provided further, That any policy of insurance or medical or health service contract providing for payment or reimbursement for any professional services pertaining to eye examination, refractions or the fitting of corrective lenses shall be construed to include payment or reimbursement for such professional service rendered by either a duly licensed physician or a duly licensed optometrist, within the scope of their respective professional licenses, and that the insured or subscriber shall have freedom of choice to select either a physician or an optometrist to render or perform such professional service.

CHAPTER 97

(Senate Bill No. 43—By Mr. Moreland and Mr. McKown)

[Passed March 7, 1967; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated section thirty-one, relating to provisions in a motor vehicle liability policy and requiring that such policies include an omnibus clause and coverage for loss by uninsured motorists.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

Section 31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurers.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurers.

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the department of motor vehicles of this state, unless it shall contain a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his spouse against liability for death or bodily injury sustained, or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by any such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowned automo-
bile is conditioned upon the consent of the owner of such
motor vehicle, the word "owner" shall be construed to in-
clude the custodian of such nonowned motor vehicles.
(b) Nor shall any such policy or contract be so issued
or delivered unless it shall contain an endorsement or
provisions undertaking to pay the insured all sums which
he shall be legally entitled to recover as damages from
the owner or operator of an uninsured motor vehicle,
within limits which shall be no less than the requirements
of section two, article four, chapter seventeen-d of the
code of West Virginia, as amended from time to time:
Provided, That such endorsement or provisions may ex-
clude the first three hundred dollars of property damage
resulting from the negligence of an uninsured motorist.
(c) As used in this section, the term "bodily injury"
shall include death resulting therefrom, and the term
"named insured" shall mean the person named as such in
the declarations of the policy or contract and shall also in-
clude such person's spouse if a resident of the same house-
hold, and the term "insured" shall mean the named insured
and, while resident of the same household, the spouse of
any such named insured, and relatives of either, while in a
motor vehicle or otherwise, and any person, except a bailee
for hire, who uses, with the consent, expressed or implied,
of the named insured, the motor vehicle to which the pol-
icy applies or the personal representative of any of the
above; and the term "uninsured motor vehicle" shall mean
a motor vehicle as to which there is no (i) bodily injury lia-
ability insurance and property damage liability insurance
both in the amounts specified by section two, article four,
chapter seventeen-d, as amended from time to time, or (ii)
there is such insurance, but the insurance company writing
the same denies coverage thereunder, or (iii) there is no
certificate of self insurance issued in accordance with the
provision of section two, article six, chapter seventeen-d of
the code of West Virginia. A motor vehicle shall be deemed
to be uninsured if the owner or operator thereof be unknown:
Provided, That recovery under the endorsement or provi-
sions shall be subject to the conditions hereinafter set forth.
(d) Any insured intending to rely on the coverage re-
quired by subsection (b) of this section shall, if any ac-
tion be instituted against the owner or operator of an uninsured motor vehicle, cause a copy of the summons and a copy of the complaint to be served upon the insurance company issuing the policy, in the manner prescribed by law, as though such insurance company were a named party defendant; such company shall thereafter have the right to file pleadings and to take other action allowable by law in the name of the owner, or operator, or both, of the uninsured motor vehicle or in its own name. Nothing in this subsection shall prevent such owner or operator from employing counsel of its own choice and taking any action in his own interest in connection with such proceeding.

(e) If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured be unknown, the insured, or someone in his behalf, in order for the insured to recover under the uninsured motorist endorsement or provision, shall:

(i) Within twenty-four hours report the accident to a police, peace, or judicial officer, or to the commissioner of motor vehicles, unless the accident shall already have been investigated by a police officer; and

(ii) File with the insurance company, within thirty days after such accident, a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unknown and setting forth the facts in support thereof; and, upon written request of the insurance company communicated to the insured not later than five days after receipt of such statement under oath, shall make available for inspection the motor vehicle which the insured was occupying at the time of the accident; and

(iii) Upon trial establish that the motor vehicle which caused the bodily injury or property damage, whose operator is unknown, was a “hit and run” motor vehicle, meaning a motor vehicle which causes damage to the property of the insured arising out of physical contact of such motor vehicle therewith, or which causes bodily injury to the insured arising out of physical contact of
such motor vehicle with the insured or with a motor
vehicle which the insured was occupying at the time of
the accident. If the owner or operator of any motor
vehicle causing bodily injury or property damage be un-
known, an action may be instituted against the unknown
defendant as "John Doe," in the county in which the
accident took place or in any other county in which such
action would be proper under the provisions of article
one, chapter fifty-six of this code; service of process may
be made by delivery of a copy of the complaint and
summons or other pleadings to the clerk of the court in
which the action is brought, and service upon the insur-
ance company issuing the policy shall be made as pre-
scribed by law as though such insurance company were
a party defendant. The insurance company shall have the
right to file pleadings and take other action allowable by
law in the name of John Doe.

(f) An insurer paying a claim under the endorsement
or provisions required by subsection (b) of this section
shall be subrogated to the rights of the insured to whom
such claim was paid against the person causing such in-
jury, death or damage to the extent that payment was
made. The bringing of an action against the unknown
owner or operator as John Doe or the conclusion of such
an action shall not constitute a bar to the insured, if the
identity of the owner or operator who caused the injury
or damages complained of becomes known, from bringing
an action against the owner or operator theretofore pro-
ceeded against as John Doe. Any recovery against such
owner or operator shall be paid to the insurance company
to the extent that such insurance company shall have
paid the insured in the action brought against such owner
or operator as John Doe, except that such insurance com-
pany shall pay its proportionate part of any reasonable
costs and expenses incurred in connection therewith, in-
cluding reasonable attorney's fees. Nothing in an endorse-
ment or provision made under this subsection, nor any
other provision of law, shall operate to prevent the join-
ing, in an action against John Doe, of the owner or opera-
tor of the motor vehicle causing injury as a party defend-
ant, and such joinder is hereby specifically authorized.
(g) No such endorsement or provisions shall contain any provision requiring arbitration of any claim arising under any such endorsement or provisions, nor may anything be required of the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

(h) The provisions of subsections (a) and (b) of this section shall not apply to any policy of insurance to the extent that it covers the liability of an employer to his employees under any workmen's compensation law.

(i) The commissioner of insurance shall formulate and require the use of standard policy provisions for the insurance required by this section, but use of such standard policy provisions may be waived by the commissioner in the circumstances set forth in section ten of this article.

(j) A motor vehicle shall be deemed to be uninsured within the meaning of this section, if there has been a valid bodily injury or property damage liability policy issued upon such vehicle, but which policy is uncollectible in whole or in part, by reason of the insurance company issuing such policy upon such vehicle being insolvent or having been placed in receivership. The right of subrogation granted insurers under the provisions of subsection (f) of this section shall not apply as against any person or persons who is or becomes an uninsured motorist for the reasons set forth in this subsection.

CHAPTER 98

(Senate Bill No. 30—By Mr. Moreland)

[Passed February 24, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to the cancellation of automobile liability insurance.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

Section
1. Cancellation prohibited except for specified reasons.
2. Cancellation for other reasons void.
3. Insurer to specify reasons for cancellation; immunity from liability or suit.
4. Advance notice of nonrenewal required; assigned risk policies.
5. Hearing and review by commissioner; action by commissioner; judicial review.

§33-6A-1. Cancellation prohibited except for specified reasons.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the following specified reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his operator's license suspended or revoked during the policy period; or

(2) Is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle.

(e) The named insured or any other operator, either resident in the same household or who customarily oper-
ates an automobile insured under such policy is convicted
of or forfeits bail during the policy period for any of the
following:
(1) Any felony or assault involving the use of a
motor vehicle;
(2) Negligent homicide arising out of the opera-
tion of a motor vehicle;
(3) Operating a motor vehicle while under the
influence of intoxicating liquor or of any narcotic drug;
(4) Leaving the scene of a motor vehicle accident
in which the insured is involved without reporting as re-
quired by law;
(5) Theft of a motor vehicle or the unlawful taking
of a motor vehicle;
(6) Making false statements in an application for a
motor vehicle operator's license;
(7) A third violation, committed within a period
of twelve months, of any moving traffic violation which
constitutes a misdemeanor, whether or not the violations
were repetitions of the same offense or were different
offenses.
§33-6A-2. Cancellation for other reasons void.
Any purported cancellation by an insurer of a policy
of automobile liability insurance which has been in effect
for sixty days and which has been renewed shall be void
if such purported cancellation is contrary to section one
of this article.
§33-6A-3. Insurer to specify reasons for cancellation; immunity
from liability or suit.
In every instance in which a policy or contract of auto-
mobile liability insurance which has been in effect sixty
days or which has been renewed is cancelled by the in-
surer, such insurer or its duly authorized agent shall, in
the notice of cancellation or at the written request of the
named insured, specify the reason or reasons relied upon
by such insurer for such cancellation. Such reasons shall
be stated in a written notice and shall, if not provided in
the notice of cancellation, be made within thirty days
after such request: Provided, however, That there shall
be no liability on the part of, and no cause of action shall arise against, any insurer or its agents or its authorized investigative sources for any statements made with probable cause by such insurer, agent or investigative source in such written notice required to be given pursuant to this section.

§33-6A-4. Advanced notice of nonrenewal required; assigned risk policies.

No insurer shall fail to renew an outstanding automobile liability insurance policy unless such nonrenewal is preceded by at least forty-five days of advance notice to the named insured of such insurer's election not to renew such policy: Provided, That subject to this section, nothing contained in this article shall be construed so as to prevent an insurer from refusing to issue an automobile liability policy upon application to such insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan.

§33-6A-5. Hearing and review by commissioner; action by commissioner; judicial review.

For the implementation of this article and for advising all persons of their rights and privileges under this article, the commissioner, by regulation and in accordance with section thirteen, article two of this chapter, shall establish a procedure whereby any person whose automobile liability insurance policy has been cancelled or whose policy has not been renewed without proper notice being given to such insured, may within forty-five days after the mailing of notice of cancellation or nonrenewal appeal such cancellation or nonrenewal to the commissioner for hearing and review. The appeal and hearing shall relate to the ground or grounds upon which the insurer's action is based. The commissioner after such hearing may affirm the insurer's cancellation or nonrenewal, or may reinstate the policy and if reinstated such policy shall become effective from the date of cancellation or nonrenewal. Either
party may appeal the commissioner's ruling to the circuit
court of the county in which the applicant or the insured
resides in accordance with section fourteen, article two of
this chapter.

CHAPTER 99
(Senate Bill No. 361—By Mr. Bowling and Mr. Poffenbarger)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section two, article twelve,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the qualifications for an agent's license; providing for
testing; and for examination fee.

Be it enacted by the Legislature of West Virginia:

That section two, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.

For the protection of the people of West Virginia, the
commissioner shall not issue, renew or permit to exist
any agent's, broker's or solicitor's license except to an
individual who:

(a) Is twenty-one years of age or more, except that
present licensees who otherwise qualify may secure re-
newal even though they be less than twenty-one.

(b) Is a resident of West Virginia, except that a brok-
er's license shall be issued only to nonresidents, and ex-
cept for nonresident life and accident and sickness agents
as provided in section eight of this article.

(c) Is, in the case of an agent applicant, appointed
as agent by a licensed insurer for the kind or kinds of
insurance for which application is made, subject to issuance of license, or, in the case of a solicitor applicant, appointed as solicitor by a licensed resident agent, subject to issuance of license.

(d) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself, members of his family or his relatives; or, as to insurance other than life and accident and sickness, upon his property or insurable interests or those of his family or his relatives or those of his employer, employees or firm, or corporation in which he owns a substantial interest, or of the employees of such firm or corporation, or on property or insurable interests for which the applicant or any such relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which is the security for any loan, shall not be deemed to constitute property or an insurable interest of such vendor or lender.

(e) Satisfies the commissioner that he is trustworthy and competent. The commissioner may, at his discretion, test the competency of an applicant for a license under this section by examination. If such examination is required by the commissioner, each examinee shall pay a five dollar examination fee for each examination. The commissioner shall pay said examination fee into the state treasury for the benefit of the state fund general revenue.

CHAPTER 100

(House Bill No. 565—By Mr. Steptoe and Mr. Cookman)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating
to licensing of nonresident life and accident and sickness insurance agents.

Be it enacted by the Legislature of West Virginia:

That section eight, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

Section
8. Licensing of nonresident life and accident and sickness agents.

§33-12-8. Licensing of nonresident life and accident and sickness agents.

1 (a) Nonresidents otherwise complying with the provisions of this chapter may be licensed as life agents, but all policies issued as a result of solicitation on the part of such nonresidents, in the state, shall be reported, placed, countersigned, and consummated by and through a duly licensed resident agent of the issuing insurer.

2 (b) An individual otherwise complying with the provisions of this chapter, who is a resident of another state and who is a licensed accident and sickness agent of such state, may be licensed as a nonresident accident and sickness agent in this state, if the state of residence of such nonresident has established, by law or regulation like requirements for the licensing of a resident of this state as a nonresident accident and sickness agent. All policies issued as a result of solicitation by such nonresident accident and sickness agents shall be reported, placed, countersigned and consummated by and through a duly licensed resident agent of the issuing insurer.

CHAPTER 101

(Senate Bill No. 110—By Mr. Carson, Mr. President, and Mr. Kaufman)

[Passed March 1, 1967; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty, chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to authority of the insurance commissioner to conduct public hearings.

Be it enacted by the Legislature of West Virginia:

That section five, 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:

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

Section 5. Disapproval of filings.

§33-20-5. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (e) of section four of this article, the commissioner finds that a filing does not meet the requirements of this article, he shall send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this article and stating that such filing shall not become effective.

(b) If within thirty days after a special surety filing subject to subsection (f) of section four of this article or if within thirty days after a specific inland marine rate on a risk specially rated by a rating organization subject to subsection (g) of section four of this article has become effective, the commissioner finds that such filing does not meet the requirements of this article, he shall send to the rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of this article and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

(c) If at any time subsequent to the applicable review period provided for in subsection (a) or (b) of this section, the commissioner finds that a filing does not meet the requirements of this article, he shall, after notice and
hearing to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this article, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(d) Any person or organization aggrieved with respect to any filing which is in effect may demand a hearing thereon. If, after such hearing, the commissioner finds that the filing does not meet the requirements of this article, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this article, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(e) Any insurer or rating organization, in respect to any filing made by it which is not approved by the commissioner, may demand a hearing thereon.

(f) No manual of classifications, rules, rating plans, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, in the case of casualty insurance to which this article applies and no manual, minimum, class rate, rating schedule, rating plan, rating rule, or any modification of any of the foregoing, in the case of fire insurance to which this article applies, and which has been filed pursuant to the requirements of section four of this article, shall be disapproved if the rates thereby produced meet the requirements of this article.

(g) If, in the opinion of the commissioner, the rate or form filing made by an insurer is of such import that it will affect the public he may, at his discretion, issue notice to such insurer of a public hearing. The notice of public hearing to the insurer making such form or rate filing shall be made by United States mail at least fifteen days
prior to hearing date. Notice to the public shall be given
by appropriate publication in a newspaper in the form
and manner prescribed by chapter twenty-nine-a of this
code. The holding of a public hearing as outlined in this
subsection shall have the effect of eliminating the right of
the party making such filing to demand a hearing as
stated in subsections (d) and (e) of this section.

CHAPTER 102

(Ch. 102)

Passed March 11, 1967; in effect from passage. Approved by the Governor.

AN ACT to amend and reenact section two, article twenty-four,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to hospital service corporations and medical service cor­
porations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS AND MEDE­
ICAL SERVICE CORPORATIONS.

Section 2. Definitions.


For the purpose of this article:

(a) "Corporation" shall mean either a hospital service
corporation, a medical service corporation or a dental
service corporation.

(b) "Hospital service corporation" shall mean a non-
profit, nonstock corporation, organized in accordance
with the provisions of article one, chapter thirty-one of
this code, for the sole purpose of contracting with the
public and with hospitals and other health agencies for
hospital or other health services to be furnished to sub-
scribers under terms of their contract with the corpora-
tion.

(c) "Hospital service" shall mean only such hospital or
other health care, to be provided by hospitals or other
health agencies, or such payment therefor, as may be
specified in the contract made by the subscriber with the
corporation.

(d) "Medical service corporation" shall mean a non-
profit, nonstock corporation, organized in accordance
with the provisions of article one, chapter thirty-one of
this code, for the sole purpose of contracting with the
public and with duly licensed physicians, duly licensed
dentists and duly licensed chiropodists-podiatrists for
medical or surgical services and with other health agen-
cies for other health services to be furnished to subscrib-
ers under terms of their contracts with the corporation,
and controlled by a board of directors, the majority of
whom are duly licensed physicians.

(e) "Medical service" shall mean only such medical,
surgical, or other health care, to be provided by duly
licensed physicians, duly licensed dentists, duly licensed
chiropodists-podiatrists or other health agencies, or such
payment therefor, as may be specified in the contract
made by the subscriber with the corporation.

(f) "Dental service corporation" shall mean a non-
profit, nonstock corporation, organized in accordance
with the provisions of article one, chapter thirty-one of
this code, for the sole purpose of contracting with the
public and with duly licensed dentists for dental services
to be furnished to subscribers under terms of their con-
tracts with the corporations, and controlled by a board
of directors, the majority of whom are duly licensed
dentists.

(g) "Dental service" shall mean only such dental care,
to be provided by duly licensed dentists, duly licensed
physicians, or such payment therefor, as may be specified
in the contract made by the subscriber with the corpora-
tion.

(h) "Service" shall mean such hospital, medical, den-
tal or other health service as shall be provided under
the terms of the contracts issued by the corporation to subscribers.

(i) "Commissioner" shall mean the insurance commissioner of West Virginia.

CHAPTER 103
(Senate Bill No. 407—By Mr. Carson, Mr. President)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the commission on interstate cooperation, the membership of said commission and its duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. COMMISSION ON INTERSTATE COOPERATION.

Section
1. Senate committee on interstate cooperation.
2. House committee on interstate cooperation.
3. West Virginia commission on interstate cooperation.
4. Terms of senate and house committees.
5. Function of commission.
6. Commission may establish delegations and committees.
7. Names of committees and commission.

§29-1B-1. Senate committee on interstate cooperation.

There is hereby established a standing committee of the senate of this state, to be officially known as the "Senate Committee on Interstate Cooperation," and to consist of seven senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be
§29-1B-2. House committee on interstate cooperation.

There is hereby established a similar standing committee of the house of delegates of this state, to be officially known as the "House Committee on Interstate Cooperation," to consist of seven members of the house of delegates. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of delegates. In addition to the regular members, the speaker of the house of delegates shall be ex officio an honorary nonvoting member of this committee.

§29-1B-3. West Virginia commission on interstate cooperation.

There is hereby established the West Virginia commission on interstate cooperation. This commission shall be composed of fourteen regular members, namely:

The seven members of the senate committee on interstate cooperation; and

The seven members of the house committee on interstate cooperation.

The president of the senate and the speaker of the house of delegates shall be ex officio honorary nonvoting members of this commission and as such shall serve as cochairmen thereof.

§29-1B-4. Terms of senate and house committees.

The said standing committee of the senate and the said standing committee of the house of delegates shall function during the regular sessions of the Legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American legislators' association.

§29-1B-5. Function of commission.

It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the council of state governments.
(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states of the federal government, and of local units of government.

(3) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts,
(b) The enactment of uniform or reciprocal statutes,
(c) The adoption of uniform or reciprocal administrative rules and regulations,
(d) The informal cooperation of governmental offices with one another,
(e) The personal cooperation of governmental officials and employees with one another, individually,
(f) The institution and consummation of a federal long-range program of flood control, meeting the requirements of the federal flood control act of one thousand nine hundred thirty-six or other acts of Congress relative thereto,
(g) The interchange and clearance of research and information, and
(h) Any other suitable process.

(4) To perform such duties as from time to time may be assigned to it by the joint committee on government and finance and to cooperate with the joint committee on government and finance in joint interim studies.

(5) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose.

§29-1B-6. Commission may establish delegations and committees.

The commission shall establish such delegations and
committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on interstate cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

§29-1B-7. Names of committees and commission.

The committees and the commission established by this article shall be informally known, respectively, as the “Senate Cooperation Committee,” the “House Cooperation Committee,” and the “West Virginia Cooperation Commission.”

CHAPTER 104
(Com. Sub. for Senate Bill No. 202—By Mr. Carson, Mr. President)

(Passed March 11, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two and three, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the preparation of grand jury lists and the qualifications of grand jurors; expressly permitting notaries public to serve as grand jurors; and relating to the summoning of jury commissioners and the selection and summoning of grand jurors.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.

Section 2. Preparation of jury list; qualifications of jurors; ballots; custody of list and ballots.

§52-2-2. Preparation of jury list; qualifications of jurors; ballots; custody of list and ballots.

The jury commissioners appointed under the provisions of section three of article one of this chapter shall select and draw persons for grand juries. Such commissioners shall, at the levy term of the county court each year, and at any other time when required by the court which appointed them, or the judge thereof in vacation, prepare a list of not less than one hundred nor more than two hundred qualified persons of their county for grand jury service, chosen from the respective magisterial districts thereof, as nearly as may be in proportion to the population of the districts. The lists so prepared shall be submitted to the clerk of the court authorized to impanel a grand jury, or the judge thereof when required, and the name of any person who is not qualified shall be stricken from the list by the clerk or judge. The persons so listed shall be of good moral character, who have never been convicted of a felony or of any scandalous offense; and shall have been bona fide citizens of the state and county for at least one year immediately preceding the preparation of the list, and shall not be officeholders under the laws of the United States or of this state: Provided, That the term "officeholders" shall not be taken, read or understood to include notaries public. At the time such jury list is made up, the jury commissioners shall cause all the names thereon to be written, each on a separate ballot, and shall fold, roll or prepare the same so as to resemble each other as nearly as may be, and so that the name written thereon shall not be visible on the outside, and shall include the ballots for each magisterial district in a separate
30 envelope indorsed with the name of the magisterial dis-
31 trict and the number of ballots inclosed, and shall deposit
32 all the ballots, with the list, in a secure box to be prepared
33 for the purpose, which shall be delivered to and safely
34 kept by the clerk of the circuit court, and shall be known
35 as the "grand jury box" and shall be opened only by the
36 jury commissioners or by order of the judge of the court
37 having control thereof.

§52-2-3. Summoning jury commissioners; selection and sum­
moning of jurors.

The clerk of any court requiring a grand jury shall, at
least thirty days before the term of court, summon the
jury commissioners to attend at his office at a day speci-
fied, which shall not be less than twenty days before such
term, and select persons for the grand jury, but the court,
or judge thereof, may require such jury commissioners to
appear forthwith, or at any specified time, and select
grand jurors for either a regular, special or adjourned
term of court. On the day appointed, the jury commis-
sioners shall appear and draw the names of sixteen per-
sons from the grand jury box, and the persons so drawn
shall constitute the grand jury. If when drawing the bal-
lots it shall appear to the commissioners that any person
so drawn is dead, or for any reason disqualified or unable
to serve, they shall destroy the ballot and cancel the name
on the list and draw another in such person's stead. They
shall enter the names of all persons so drawn in a book
kept for that purpose and deliver a list thereof to the
clerk, who shall issue a summons for the persons drawn,
directed to the sheriff of the county requiring him to sum-
mon them to appear on the day required and serve as
grand jurors. The provisions of article one of this chapter
relating to the drawing and summoning of petit jurors and
drawing ballots and cancellation and marking thereof, so
far as applicable and not inconsistent with the provisions
of this article, shall be observed and govern the selection
of a grand jury, except in that the ballots shall be drawn
from the several envelopes in proportion as near as may
be to the numbers indorsed thereon, but so that at least
one ballot shall be drawn from each envelope.
AN ACT to repeal article eight-a, chapter eleven; chapter thirteen-a; section thirty-seven, article five, chapter eighteen; section thirty, article three, chapter fifty-six and section thirty-four, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two and fourteen, article three, chapter one; section seven, article one, chapter three; section two, article four, chapter three; sections ten and twenty-one, article five, chapter three; section three, article six, chapter three; sections two, three, four, five and six, article ten, chapter three; sections twelve and twenty-three, article three, chapter five-a; section one, article three, chapter six; sections three-a and three-h, article one, chapter seven; section four, article two, chapter seven; section three, article three, chapter seven; section sixteen, article five, chapter seven; section seven, article eight, chapter seven; section ten, article nine, chapter seven; section twelve, article twelve, chapter seven; sections three, five, fifteen and seventeen, article two, chapter eight; section two, article three, chapter eight; sections ten-j, fourteen, twenty, twenty-one and twenty-seven, article four, chapter eight; sections six and seventeen, article four-a, chapter eight; sections eighteen, forty-four and forty-eight, article five, chapter eight; section seven, article seven, chapter eight; sections eight and eleven, article seven-a, chapter eight; sections three and eight, article eight, chapter eight; sections two, five and six, article nine, chapter eight; section six, article eleven, chapter eight; sections one-a and four, article twelve, chapter eight; section five, article thirteen, chapter eight; sections four, nine, twelve and fifteen-a, article two, chapter eight-a; section ten, article three, chapter eight-a; section twenty-eight, article four, chapter eight-a; sections seven, eleven and twenty-one, article six, chapter eight-a; section six,
article two-a, chapter ten; section twenty-four, article three, chapter eleven; sections seventeen and thirty-two, article eight, chapter eleven; section eighty-four, article twelve, chapter eleven; section twenty, article seventeen, chapter eleven; section seven-a, article nineteen, chapter eleven; section eight, article one, chapter eleven-a; sections ten-a and thirteenth, article two, chapter eleven-a; sections two, twenty-four and forty-one, article three, chapter eleven-a; sections twelve and twenty-three, article four, chapter eleven-a; sections eight, twenty-one and twenty-five, article one, chapter thirteen; section seven, article three, chapter thirteen; sections eight and twenty-eight, article one, chapter fourteen; section nine, article one-b, chapter fifteen; section one, article ten, chapter sixteen; sections one, four, nine and eleven, article twelve, chapter sixteen; sections six, sixteen, eighteen-a and twenty-three-a, article thirteen, chapter sixteen; sections two and seven, article thirteen-a, chapter sixteen; section twenty, article fifteen, chapter sixteen; sections six, seven and ten, article eighteen, chapter sixteen; section five, article twenty, chapter sixteen; section nineteen, article four, chapter seventeen; sections eight and nine, article ten, chapter seventeen; section thirteen-g, article two, chapter eighteen; sections two and three-a, article nine, chapter eighteen; sections two and three-a, article nineteen, chapter four; sections five, article twenty, chapter twenty; section seven, article one, chapter twenty; section sixteen, article two, chapter twenty; section nineteen, article three, chapter twenty; section seven, article five, chapter twenty-two; section four, article two, chapter twenty-four; section three, article three, chapter twenty-four; section three, article three, chapter twenty-four-a; section thirty-one, article one, chapter twenty-five; section four, article three, chapter twenty-five; section eleven, article five, chapter twenty-eight; section two, article three, chapter twenty-nine-a; sections one and three, article twenty-four, chapter nineteen; sections one and three, article twenty-four, chapter twenty; section seven, article one, chapter twenty; section sixteen, article two, chapter twenty; section nineteen, article three, chapter twenty; section seven, article five, chapter twenty-two; section four, article two, chapter twenty-four; section three, article three, chapter twenty-four-a; section thirty-one, article one, chapter twenty-five; section four, article three, chapter twenty-five; section eleven, article five, chapter twenty-eight; section two, article three, chapter twenty-nine-a; sections four-a, nine, thirteen-a, twenty-one, thirty-four, thirty-seven, sixty-three, eighty and eighty-four, article
one, chapter thirty-one; section fifteen, article two, chapter thirty-one; section two, article three, chapter thirty-one; sections eight and sixteen, article four, chapter thirty-one; sections ten, eleven, fourteen, twenty-five-a, thirty-two, forty-three and forty-four, article eight, chapter thirty-one; section one, article one, chapter thirty-four; section two, article two, chapter thirty-four; section ten, article one, chapter thirty-five; section two, article five, chapter thirty-five; section twelve-a, article two, chapter thirty-six; sections twelve and seventeen, article eight, chapter thirty-six; section twenty-four, article six, chapter thirty-seven; section three, article thirteen, chapter thirty-seven; sections four and ten, article one, chapter thirty-eight; section fifteen, article two, chapter thirty-eight; section eleven, article three, chapter thirty-eight; section twenty, article four, chapter thirty-eight; section eight, article five, chapter thirty-eight; section fourteen, article eleven, chapter thirty-eight; section three, article twelve, chapter thirty-eight; sections five and nine, article thirteen, chapter thirty-eight; section eleven, article three, chapter thirty-nine; section two, article two, chapter forty-four; section eleven, article four, chapter forty-four; section eight, article five, chapter forty-four; sections three and nine, article nine, chapter forty-four; sections two, five and seven, article eleven, chapter forty-four; section two, article three, chapter forty-seven; section three, article four, chapter forty-eight; section one, article five, chapter forty-eight; section eight, article five, chapter forty-nine; section fourteen, article six, chapter fifty-one; section three, article two, chapter fifty-one; section two, article twelve, chapter fifty-five; section two, article two, chapter fifty-six; sections twenty-four and twenty-eight, article three, chapter fifty-six; section three, article seven, chapter fifty-six; section thirteen, article eight, chapter fifty-six; section ten, article four, chapter sixty; section four, article five, chapter sixty; section twenty-one, article six, chapter sixty; section two, article seven, chapter sixty-one; and section twenty-eight, article ten, chapter sixty-one, all of said code; and to amend chapter fifty-nine of said code by adding thereto a new article, designated article three,
relating to county-wide levy for district debt service, public indebtedness not bonded, the authority of boards of education to impose personal school tax, posting notice of election for creation of public service district, licenses to carry weapons, purchasing of commodities and printing produced by nonprofit workshops, air pollution control rules and regulations, the appointment of deputies and local conservators of the peace and the compensation of sheriffs and deputies, the financial statements of municipalities, county courts and county boards of education, the powers of a municipality with respect to an order to cease the pollution of waters, and the publishing and/or posting of notices, advertisements, statements, information and other matters required by law or court to be published and/or posted; defining certain terms and concepts used in said code and elsewhere in law with respect to newspapers, legal advertisements and publication of a newspaper; providing the rates which may be charged and received by a publisher or proprietor of a newspaper for publishing legal and political advertisements; authorizing mandamus to compel publication; providing civil and criminal penalties; relating to construction of other provisions in said code and elsewhere in law relating to newspapers, legal advertisements and publication of a newspaper; and providing a repealer provision and severability clause.

Be it enacted by the Legislature of West Virginia:

That article eight-a, chapter eleven; chapter thirteen-a; section thirty-seven, article five, chapter eighteen; section thirty, article three, chapter fifty-six and section thirty-four, article one, chapter fifty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two and fourteen, article three, chapter one; section seven, article one, chapter three; section two, article four, chapter three; sections ten and twenty-one, article five, chapter three; section three, article six, chapter three; sections two, three, four, five and six, article ten, chapter three; sections twelve and twenty-three, article three, chapter five-a; section one, article three, chapter six; sections three-a and three-h, article one, chapter seven; section four, article two, chapter seven; section three, article three, chap-
ter seven; section sixteen, article five, chapter seven; section seven, article eight, chapter seven; section ten, article nine, chapter seven; section twelve, article twelve, chapter seven; sections three, five, fifteen and seventeen, article two, chapter eight; section two, article three, chapter eight; sections ten-j, fourteen, twenty, twenty-one and twenty-seven, article four, chapter eight; sections six and seventeen, article four-a, chapter eight; sections eighteen, forty-four and forty-eight, article five, chapter eight; section seven, article seven, chapter eight: sections eight and eleven, article seven-a, chapter eight: sections three and eight, article eight, chapter eight; sections two, five and six, article nine, chapter eight; section six, article eleven, chapter eight; sections one-a and four, article twelve, chapter eight; section five, article thirteen, chapter eight; sections four, nine, twelve and fifteen-a, article two, chapter eight-a; section ten, article three, chapter eight-a; section twenty-eight, article four, chapter eight-a; sections seven, eleven and twenty-one, article six, chapter eight-a; section six, article two-a, chapter ten; section twenty-four, article three, chapter eleven; sections seventeen and thirty-two, article eight, chapter eleven; section eighty-four, article thirteen, chapter eleven; section seventy, article seventeen, chapter eleven; section eight, article one, chapter eleven-a; sections ten-a and thirteen, article two, chapter eleven-a; sections two, twenty-four and forty-one, article three, chapter eleven-a; sections twelve and twenty-three, article four, chapter eleven-a; sections eight, twenty-one and twenty-five, article one, chapter thirteen; section seven, article three, chapter thirteen; sections eight and twenty-eight, article one, chapter fourteen; section nine, article one-b, chapter fifteen; section one, article ten, chapter sixteen; sections one, four, nine and eleven, article twelve, chapter sixteen; sections six, sixteen, eighteen-a and twenty-three-a, article thirteen, chapter sixteen; sections two and seven, article thirteen-a, chapter sixteen; section twenty, article fifteen, chapter sixteen; sections six, seven and ten, article eighteen, chapter sixteen; section five, article twenty, chapter sixteen; section nineteen, article four, chapter seventeen; sections eight and nine, article ten, chapter seventeen; section thirteen-g, article two, chapter eighteen; sections two and three-a, article nine, chapter eighteen; section nine, article four, chapter nineteen; section fif-
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teen, article nine, chapter nineteen; section two, article seventeen, chapter nineteen; sections four, six, thirteen, fourteen and twenty-one, article twenty-one, chapter nineteen; section three, article twenty-one-a, chapter nineteen; section eight, article twenty-three, chapter nineteen; sections one and three, article twenty-four, chapter nineteen; section seven, article one, chapter twenty; section sixteen, article two, chapter twenty; section nineteen, article three, chapter twenty; section seven, article five, chapter twenty-two; section four, article two, chapter twenty-four; section three, article three, chapter twenty-four-a; section thirty-one, article one, chapter twenty-five; section four, article three, chapter twenty-five; section eleven, article five, chapter twenty-eight; section two, article three, chapter twenty-nine-a; sections four-a, nine, thirteen-a, twenty-one, thirty-four, thirty-seven, sixty-three, eighty and eighty-four, article one, chapter thirty-one; section fifteen, article two, chapter thirty-one; section two, article three, chapter thirty-one; sections eight and sixteen, article four, chapter thirty-one; sections ten, eleven, fourteen, twenty-five-a, thirty-two, forty-three and forty-four, article eight, chapter thirty-one; section one, article one, chapter thirty-one; section two, article five, chapter thirty-one; section twelve-a, article two, chapter thirty-six; sections twelve and seventeen, article eight, chapter thirty-six; section twenty-four, article six, chapter thirty-seven; section three, article thirteen, chapter thirty-seven; sections four and ten, article one, chapter thirty-eight; section fifteen, article two, chapter thirty-eight; section eleven, article three, chapter thirty-eight; section twenty, article four, chapter thirty-eight; section eight, article five, chapter thirty-eight; section fourteen, article eleven, chapter thirty-eight; section three, article twelve, chapter thirty-eight; sections five and nine, article thirteen, chapter thirty-eight; section eleven, article three, chapter thirty-nine; section two, article two, chapter forty-four; section three, article twelve, chapter forty-four; section eight, article eight, chapter forty-four; sections two, five and seven, article eleven, chapter forty-four; section two, article three, chapter forty-seven; section two, article four, chapter forty-seven; section three, article four, chapter forty-eight; section one, article five, chapter forty-eight; sec-
tion eight, article five, chapter forty-nine; section fourteen, article six, chapter fifty-one; section three, article two, chapter fifty-four; section two, article twelve, chapter fifty-five; section two, article two, chapter fifty-six; sections twenty-four and twenty-eight, article three, chapter fifty-six; section three, article seven, chapter fifty-six; section thirteen, article eight, chapter fifty-six; section ten, article four, chapter sixty; section four, article five, chapter sixty; section twenty-one, article six, chapter sixty; section two, article seven, chapter sixty-one; and section twenty-eight, article ten, chapter sixty-one, all of said code, be amended and reenacted; and that chapter fifty-nine of said code be amended by adding thereto a new article, designated article three, all to read as follows:

Chapter

1. The State and Its Subdivisions.
3. Elections.
5A. Department of Finance and Administration.
7. County Courts and Officers.
8A. Municipal Home Rule.
10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.
11. Taxation.
11A. Collection and Enforcement of Property Taxes.
13. Public Bonded Indebtedness.
14. Claims Due and Against the State.
15. Public Safety.
17. Roads and Highways.
18. Education.
19. Agriculture.
20. Natural Resources.
24A. Motor Carriers of Passengers and Property for Hire.
25. Commissioner of Public Institutions.
29A. State Administrative Procedures.
34. Estrays, Drift and Derelict Property.
36. Estates in Property.
37. Real Property.
38. Liens.
44. Administration of Estates and Trusts.
47. Regulation of Trade.
48. Domestic Relations.
51. Courts and Their Officers.
54. Eminent Domain.
55. Actions, Suits and Arbitration; Judicial Sales.
56. Pleading and Practice.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
60. State Control of Alcoholic Liquors.
61. Crimes and Their Punishment.

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 3. CREATION OF NEW COUNTY; CHANGE IN COUNTY LINE.

Section
1. Notice of intention to create new county.
2. Survey and census; area and population.

§1-3-1. Notice of intention to create new county.

1 When it is intended to apply to the Legislature for the passage of an act to create a new county, a notice of such intention shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county from which any part of such new county is proposed to be taken.

§1-3-2. Survey and census; area and population.

1 The county court of each of the counties out of which the new county is proposed to be formed, at its first session after the notice mentioned in the next preceding section has been published, as required by said section, shall order a survey of the whole county, and of that
portion thereof proposed to be included in the new county, to be made by the surveyor of such county, if there be one, and if not by some other competent surveyor, in order to ascertain the number of square miles in the county, as well as in that portion thereof proposed to be included in such new county. Such court shall also appoint some one or more competent person or persons to take a census of the population of such county, and of that part thereof proposed to be included in such new county, in order to ascertain whether or not there will remain in such county a population of six thousand after the creation of such new county. It shall be the duty of the surveyor so directed or appointed to make such survey, and of the person or persons so appointed to take the census, as soon as their fees are paid or secured to be paid in a manner satisfactory to them to proceed in the shortest time practicable to make such survey and take such census and make report thereof to the county court by which they were appointed; and the surveyor shall return and file with his report two fair plats and certificates of the survey made by him, showing the metes and bounds of the county and the number of square miles of territory contained therein, and the number of square miles contained within that portion thereof proposed to be included in the new county, and the metes and bounds thereof. The return of such survey and census shall be noted in the records of the court, and such reports shall be filed and preserved by the clerk of such court in his office, and a notice in writing that such return of the survey and census has been made shall be sent to the county court of the other county out of which such new county is proposed to be formed.

§1-3-14 Notice and survey in case of changing county line.

When it is proposed to change a county line, a notice thereof shall be published prior to the application for a survey of the proposed change as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county from which
any territory is proposed to be taken. At any time after such notice has been published, the county court of the county, a part of whose territory is proposed to be attached to another county, shall, on application of any person interested, and at his expense, cause a survey of the proposed change of line to be made by the surveyor of the county, or by some competent surveyor appointed for the purpose. The surveyor so appointed, or directed, to make such survey shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, proceed to make such survey and return a plat and report thereof to said court, and the clerk thereof shall file and preserve the same in his office; and shall, as provided in section three of this article, make out and deliver to any person who may demand the same, a certified copy thereof. Every application to the Legislature for the change of a county line shall be accompanied by a duly certified copy of such plat and report. If the county court of such county refuse to order such survey to be made, or if the surveyor appointed by such court to make such survey fail or refuse to do so, then and in that event the county court of the county to which such territory is proposed to be added shall, on the application of any person interested, and at his expense, order the survey to be made and appoint a surveyor to make the same; and the surveyor so appointed shall, as soon as his fees therefor are paid or secured to be paid to his satisfaction, make and report such survey to the county court of his county as hereinbefore required.

CHAPTER 3. ELECTIONS.

Article

4. Voting Machines.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

Section

7. Precinct changes; procedure; precinct record.

§3-1-7. Precinct changes; procedure; precinct record.

1 Subject to the provisions and limitations of section
five of this article, the county court of any county may
change the boundaries of any precinct within such
county, or divide any precinct into two or more pre-
cincts, or consolidate two or more precincts into one,
or change any place of holding elections, whenever the
public convenience may require it. If by reason of the
destruction of the house or structure at which a voting
place is established, or if for any other reason the elec-
tion cannot be held thereat, and no provision has been
made by the county court for holding the election at
another place, the commissioners of election at such
place may hold the election at the place nearest thereto
which they can secure for the purpose; and in such case
they shall make known by proclamation, to the voters
assembled at such first named place of voting, the place
at which the election will be held. The county court
shall, in such case, establish another place of voting for
said precinct as soon thereafter as practicable. No order
effecting such change, division, or consolidation shall
be made by the county court within ninety days next
preceding an election nor without giving notice thereof
at least one month before such change, division or con-
solidation, by publication of such notice as a Class II-0
legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
in which such precinct or precincts are located.
Such court shall also, within fifteen days after the
date of such order, cause a copy thereof to be published
as aforesaid.

Such court shall also, before the next succeeding elec-
tion, cause the voters in the several precincts so af-
fected by such order to be duly registered in the proper
precinct or precincts.
The county court shall keep in a well-bound book,
marked "election precinct record," a complete record
of all their proceedings hereunder and of every order
made creating a precinct or precincts or establishing a
place of voting therein. Such "election precinct record"
shall be kept by the county court clerk in his office,
and shall, at all reasonable hours, when not actually
in use by the county court, be open to inspection by any 
citizen of the county.

**ARTICLE 4. VOTING MACHINES.**

Section 2. Procedures for adopting voting machines.

§3-4-2. Procedures for adopting voting machines.

1 Voting machines may be adopted for use in general, pri-
mary and special elections in any county by either of the 
following procedures, and not otherwise:

2 (1) By a majority of the members of the county court 
voting to adopt the same at a meeting regularly called 
in regular or special session: Provided, however, That 
such meeting shall be held not less than six months prior 
to a general election or six months prior to a primary 
election. If at such meeting, such county court shall enter 
an order of its intention to adopt the use of voting ma-
achines, it shall thereafter forthwith cause to be published 
a certified copy of such order as a Class II-0 legal adver-
tisement in compliance with the provisions of article 
three, chapter fifty-nine of this code, and the publication 
area for such publication shall be the county involved. 
The first publication of such order shall not be less than 
twenty days after the entry of such order. Such county 
court shall not adopt the use of voting machines until 
ninety days after the entry of such order of its intention to 
adopt the same. Promptly after the expiration of ninety 
days after the entry of such order of intention to adopt the 
use of voting machines, if no petition has theretofore been 
filed with such county court requesting a referendum on 
the question of adoption of voting machines as hereinafter 
provided, such county court shall enter a final order adopt-
ing voting machines, and voting machines shall thereby 
be adopted.

2 If five per cent or more of the registered voters of such 
county shall sign a petition requesting that voting ma-
achines be not adopted for use in such county and such 
petition be filed with the county court of such county 
within ninety days after the entry of such order of inten-
tion to adopt the use of voting machines, such county 
court shall submit to the voters of such county at the next
general or primary election, whichever shall first occur, the question: "Shall voting machines be adopted in County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, voting machines shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of voting machines shall not be adopted.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of the adoption of voting machines in such county. If five per cent or more of the registered voters of such county shall sign a petition requesting the adoption of voting machines for use in such county, and such petition be filed with the county court of such county, such county court shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall voting machines be adopted in County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, voting machines shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of voting machines shall not be adopted.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

Section 10. Publication and printing of ballots; number.

§3-5-10. Publication and printing of ballots; number.

1 Between the sixtieth and the thirtieth days next prior to the date of the 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 political party, and, as the case may be, the nonpartisan candidates to be voted for at such primary election. During the two weeks next preceding the primary election they shall publish such sample official primary election ballot as a Class II-0 legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county.
The second publication shall be on the last day upon
which each newspaper is published before the election.

The ballot commissioners shall determine the total num-
ber of official ballots required for conducting the primary
election in all of the election precincts of the county and
shall cause same to be printed at least thirty days next
preceding the date of the election and made ready for
delivery to the several precincts along with other election
supplies. The number of official ballots of a political party
prepared for delivery to a precinct shall not exceed one
and one-twentieth times the number of registered voters
of such party in that precinct.

§3-5-21. Party conventions to nominate presidential electors;
candidates; organization; duties.

Candidates for presidential electors shall be nominated
by the delegated representatives of the political party
assembled in a state convention to be held between the
first and fifteenth days of August next preceding any
general election at which presidential electors are to be
elected. The state executive committee of the political
party, by resolution, shall designate the place and fix the
date of such convention, shall prescribe the number of
delegates thereto, and shall apportion the delegates among
the several counties of the state in proportion to the vote
cast in the state for the party’s candidate for governor at
the last preceding general election at which a governor
was elected. The state executive committee shall also
ascertain and designate all offices for which candidates
are to be nominated at such convention.

At least sixty days prior to the date fixed for holding
any state convention, the chairman of the party’s state
executive committee shall cause to be delivered to the
party’s county executive committee in each county of the
state a copy of the resolutions fixing the time and place of
holding the state convention and prescribing the number
of delegates from each county to the convention. Within
ten days after receipt of the copy of such resolutions, the
party executive committee of each county shall meet and,
by resolution, shall apportion the delegates to the state
convention among the several magisterial districts of the
county, on a basis of the vote received in the county by
the candidate of the party for governor at the last pre-
ceeding general election at which a governor was elected,
but in such apportionment of county delegates each magis-
terial district shall be entitled to at least one delegate to
such state convention. The party’s county executive com-
ittee shall call a meeting of the members of the political
party in mass convention in the several magisterial dis-
tricts of the county, which district meeting shall be held
at least thirty days prior to the date fixed for the state
convention and at which meeting the members of the
political party in each magisterial district shall elect the
number of delegates to which such district is entitled in
the state convention.

The meeting place in the magisterial district shall be
as central and convenient as can reasonably be selected,
and all recognized members of the political party shall be
entitled to participate in any such mass convention and in
the selection of delegates. Notice of the time and place
of holding the several magisterial district mass conven-
tions and of the person who shall act as temporary chair-
man thereof shall be given by publication as a Class II-0
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the county.
The first publication shall be made not more than fifteen
days and the second publication shall be made not less
than five days prior to the date fixed for holding the
convention. The notice published shall specify the num-
ber of delegates which each magisterial district in the
county is entitled to elect to the state convention.

Upon assembling, the mass convention of each magis-
terial district shall choose a chairman and a secretary,
who, within five days after the holding of such conven-
tion, shall certify to the chairman of the state executive
committee of the political party and the chairman of the
county committee of the political party, the names and
addresses of the parties selected as delegates to the state
convention.
All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and such county executive committee shall, upon written petition of any contestant, meet for such hearings and determinations within ten days after the holding of such magisterial district mass convention. The circuit court of the county and the supreme court of appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state, and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in such convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within fifteen days thereafter, by the chairman and the secretary of the convention, to the secretary of state, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate and promulgate such party platform or declaration of party principles as to them shall seem advisable.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.
Section
3. Publication of nominations.

§3-6-3. Publication of nominations.

1 At least ten days before an election to fill any public office at which the voters of any county are entitled to vote, the clerk of the circuit court of such county shall cause to be published the nominations for office certified
to him and filed in his office, excepting nominations for
office to be filled by the voters of any subdivision less
than a county, such nominations to be published as a
Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county. The second publication shall be on the last
day upon which each newspaper is published before the
election. Whenever it shall appear by affidavit that an
error or omission has occurred in the publication of the
names or description of candidates nominated for public
office, or in the printing of the ballots, the board of ballot
commissioners shall correct such error. The list of
nominations published by clerks of the circuit courts of
the several counties shall be arranged in the order and
form in which they will be printed upon the ballot.

ARTICLE 10. FILLING VACANCIES.

Section

3. Vacancies in offices of state officials, United States senator and
judges.
4. Vacancies in representation in Congress.
5. Vacancies in state Legislature.

§3-10-2. Vacancy in office of governor.

1 In case of the death, conviction or impeachment,
2 failure to qualify, resignation or other disability of the
governor, the president of the senate shall act as gov-
3 ernor until the vacancy is filled or the disability re-
4 moved; and if the president of the senate, for any of the
5 above-named causes, shall be or become incapable of
6 performing the duties of governor, the same shall de-
7 volve upon the speaker of the house of delegates; and
8 in all other cases where there is no one to act as gov-
9 ernor, one shall be chosen by the joint vote of the Legis-
10 lature. Whenever a vacancy shall occur in the office
11 of governor before the first three years of the term shall
12 have expired, a new election for governor shall take
13 place to fill the vacancy. If the vacancy shall occur
14 more than thirty days next preceding a general elec-
15 tion, the vacancy shall be filled at such election and the
acting governor for the time being shall issue a proclamation accordingly, which shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state. But if it shall occur less than thirty days next preceding such general election, and more than one year before the expiration of the term, such acting governor shall issue a proclamation, fixing a time for a special election to fill such vacancy, which shall be published as hereinbefore provided.

If the vacancy is to be filled at a general election and shall occur before the primary election to nominate candidates to be voted for at such general election, candidates to fill the vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five of this chapter. When nominations to fill such vacancy cannot be so accomplished at such primary election, and in all cases wherein the vacancy is to be filled at a special election, candidates to be voted for at such general or special elections shall be nominated by a state convention to be called, convened and held under the resolutions, rules and regulations of the political party executive committees of the state. The laws prescribing the manner of calling, constituting and holding conventions to nominate candidates for presidential electors shall, insofar as applicable, govern conventions to nominate candidates to fill any vacancy in any office to be filled by the voters of the state as a whole, except that, in lieu of the magisterial district conventions in the several counties, the county executive committee shall call and convene a county convention at the county seat with delegates thereto apportioned to and representative of the several magisterial districts of the county as provided in section twenty-one of article five of this chapter. The county convention shall proceed to select the county's prescribed number of state convention delegates from the several magisterial districts thereof and the chairman and secretary of the conven-
tion shall promptly certify the names and addresses of
the persons so selected as delegates to the state conven-
tion to the chairman of the state executive committee
of the political party.

§3-10-3. Vacancies in offices of state officials, United States
senator and judges.

1 Any vacancy occurring in the office of secretary of
state, auditor, treasurer, attorney general, commissioner
of agriculture, United States senator, judge of the su-
preme court of appeals, or in any office created or made
elective, to be filled by the voters of the entire state,
or judge of a circuit court, a common pleas, intermedi-
ate, criminal or other inferior court, shall be filled by
the governor of the state by appointment. If the unex-
pired term of a judge of the supreme court of appeals,
or a judge of the circuit court, a common pleas, inter-
mediate, criminal or other inferior court, be for less than
two years; or if the unexpired term of any other office
named in this section be for a period of less than two
years and six months, the appointment to fill the va-
cancy shall be for the unexpired term. If the unexpired
term of any office be for a longer period than above
specified, the appointment shall be until the next gen-
eral election and until the election and qualification of
a successor to the person appointed, at which election
the vacancy shall be filled by election for the unexpired
term. Proclamation of any election to fill an unexpired
term shall be made by the governor of the state, and,
in the case of an office to be filled by the voters of the
entire state, shall be published prior to such election as
a Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
each county of the state. If the election be to fill a
vacancy in the office of judge of a circuit court, the
proclamation shall be published prior to such election
as a Class II-0 legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be each county in the judicial circuit. If the election
be to fill a vacancy in the office of judge of a common
pleas, intermediate, criminal or other inferior court, the
proclamation shall be published prior to such election
as a Class II-0 legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be the county in which such court is located. Candidates
to fill any vacancy in any office named in this section
shall be nominated in the manner provided in this
article for nominating candidates to fill a vacancy in the
office of governor, to be voted for at a general election,
but, in selecting candidates for the office of judge to serve
in a single county, the county executive committee of
the county shall perform the duties relating thereto,
and, in selecting candidates for the office of judge of a
circuit court in circuits embracing more than one county,
the county executive committees of the counties con-
cerned shall resolve themselves into a judicial circuit
committee for discharge of the duties relating to such
nominations.

§3-10-4. Vacancies in representation in Congress.

If there be a vacancy in the representation from this
state in the House of Representatives in the Congress of
the United States, the governor shall, within ten days
after the fact comes to his knowledge, give notice thereof
by proclamation, to be published prior to such election
as a Class II-0 legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be each county in the congressional district. In such
proclamation he shall appoint some day, not less than
thirty nor more than seventy-five days from the date
thereof, for holding the election to fill such vacancy.
Nominations to fill such vacancy shall be made in the
manner prescribed for nominating a candidate to fill a
vacancy in the office of governor, to be voted for at a
special election. The congressional district executive
committee of a party shall perform the duties devolving
upon the state executive committee in filling a state off-

§3-10-5. Vacancies in state Legislature.

Any vacancy in the office of state senator or member of the house of delegates shall be filled by appointment by the governor, in each instance from a list of three legally qualified persons submitted by the county party executive committee in the case of a member of the house of delegates elected from a county that is not situated in a delegate district, by the party executive committee of the delegate district in the case of a member of the house of delegates elected from such delegate district, and by the party executive committee of the state senatorial district in the case of a state senator, of the party with which the person holding the office immediately preceding the vacancy was affiliated, and of the county, delegate district or state senatorial district, respectively, in which he resided at the time of his election or appointment. The appointment to fill a vacancy in the house of delegates shall be for the unexpired term. If the unexpired term in the office of the state senator be for less than two years and two months, the appointment shall be for the unexpired term. If the unexpired term be for a period longer than two years and two months, the appointment shall be until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of state senator shall be given by the governor by proclamation and shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the senatorial district. Nominations for candidates to fill such vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of governor to be voted for at a general election. The state senatorial district executive committee of the political party shall discharge the duties incident to state senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.
§3-10-6. Vacancy in office of circuit court clerk.

1 When a vacancy occurs in the office of clerk of the circuit court, the circuit court, or the judge thereof in vacation, shall fill the same by appointment until the next general election, and the person so appointed shall hold office until his successor is elected and qualified. At such general election a clerk shall be elected for the unexpired term. The circuit court, or the judge thereof in vacation, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. If the vacancy occurs before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five of this chapter. Otherwise, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five, of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the circuit court of such county, shall be placed upon the ballot to be voted at such next general election.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

Section
12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.
23. Disposition by director of obsolete, etc., commodities; application of proceeds from sale.

§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops.

1 The director shall solicit sealed bids for the purchase of commodities and printing that is estimated to exceed two thousand dollars. No spending unit shall issue a series of requisitions which would circumvent this two
thousand dollar maximum. Bids shall be obtained by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the department or agency making the requisition is located. Such notice shall be so published within the fourteen days next preceding the final date of submitting bids. The notice may also be published by any other advertising medium the director may deem advisable. The director may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in his office: Provided, That the director shall, without competitive bidding, purchase commodities and printing produced and offered for sale by nonprofit workshops, as defined in section one of article one of this chapter, which are located in this state: Provided, however, That such commodities and printing shall be of a price and quality comparable to other commodities and printing otherwise available.

§5A-3-23. Disposition by director of obsolete, etc., commodities; application of proceeds from sale.

The director shall have the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state, when any such commodities are or shall become obsolete, unusable or are not being used, or need to be replaced, and are so reported in writing by the department owning or having custody or control thereof as available for the director's disposition.

It shall be the duty of the director to determine what commodities or expendable commodities should be disposed of and he shall make such disposition in the manner which in his opinion will be most advantageous to the state, either by transferring the particular commodities or expendable commodities between departments, by trading in such commodities as a part payment on the purchase of new commodities, or by sale thereof to the highest bidder by means of public auctions, or sealed bids after having first advertised the time, terms and place of
such sale as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be the county wherein the sale is to be conducted.
The sale may also be advertised in such other advertising
medium as the director may deem advisable. The direc-
tor shall have the authority to sell to the highest bidder
or to any one or more of the highest bidders, if there be
more than one, or, if in his opinion the best interest of
the state will be served, to reject all bids. Upon the trans-
fer of commodities or expendable commodities between
departments, the director shall set the price to be paid
by the receiving department with due consideration given
to current market prices. The proceeds of such sales or
transfers shall be deposited in the state treasury to the
credit on a prorata basis of the fund or funds out of which
the purchase of the particular commodities or expendable
commodities was made.

CHAPTER 6. GENERAL PROVISIONS RESPECTING
OFFICERS.

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE
PEACE.

Section
1. Appointment of deputies and local conservators of the peace;
powers and duties; compensation; vacating appointment of
deputy sheriff; removal of conservators.

§6-3-1. Appointment of deputies and local conservators of the
peace; powers and duties; compensation; vacating appo-
intment of deputy sheriff; removal of conservators.

1 (a) (1) The clerk of the supreme court of appeals, or
of any circuit, criminal, common pleas, intermediate or
county court, or of any tribunal established by law in lieu
thereof, may, with the consent of the court, or such tri-
bunal, duly entered of record, appoint any person or per-
sons his deputy or deputies.

7 (2) A sheriff, surveyor of lands, or assessor may, with
the consent of the county court duly entered of record,
appoint any person or persons his deputy or deputies.

10 (3) A sheriff, when in the opinion of the judge of the
circuit court the public interest requires it, may, with the
assent of said court, duly entered of record, appoint any
person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies,
(5) May receive, directly or indirectly, any gift or donation from any person, firm or corporation.

(6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the supreme court of appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the attorney general, or any three or more citizens of the county, to require any sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the attorney general either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his princi-
pal and he shall not perform any services or duties, either
private or public, except the duties required by law of
conservators of the peace pursuant to the provisions
hereof, for any person, firm, or corporation. No such
local conservator shall be entitled to collect or receive
any fees provided by law to be paid to the sheriff or to
a deputy sheriff, but all fees provided by law for the
sheriff, when such duties and services are rendered by
such local conservator, shall be paid to the sheriff as reg-
ular collections of the sheriff's office. The local conser-
vator shall be paid for the public services performed by
him a salary of not less than seventy-five dollars per
month out of the county treasury from a fund to be paid
into such treasury by a resident or the residents of the
community for which he is appointed, for the sole pur-
pose of compensating such local conservator or conser-
vators and no such local conservator shall receive any
other compensation, directly or indirectly, from any per-
son, firm, or corporation, for any private or public serv-
ice, except the salary payable to him for his public serv-
dices and duties and from such fund, except that he shall
be entitled to witness and mileage fees when a witness
in a court of record. Each local conservator so appointed
shall take the same oath of office required of his prin-
cipal and any default or misfeasance in the office of such
local conservator shall constitute a breach of the condi-
tions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the
appointment of a local conservator and has determined
that the appointment is proper, he shall select the per-
son whom he proposes to have appointed such conser-
vator and shall notify the county court of the community
for which such conservator is to be appointed and the
name of the person proposed for such appointment. The
county court shall thereupon cause notice that the sher-
iff has recommended the appointment of the person
named as conservator for the community named to be
published as a Class II legal advertisement in complinace
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be the county. The notice shall designate a
day not less than five days after the date of the last pub-

cication when the county court will act upon the petition

and recommendation. Neither the county court nor the

judge of the circuit court shall assent and approve the

appointment of such local conservator until such pub-

lication has been made. The costs of the publication

shall be paid by the person or persons petitioning for the

appointment of the conservator.

No local conservator shall be appointed except it be

made to appear to the satisfaction of the county court

and the judge of the circuit court that because of the lack

of sufficient funds, geographical location of the unincor-

porated community for which such conservator is to be

appointed, or other good reason, the sheriff and his reg-

ular deputies and the constables of the county are not

sufficient to afford proper local policing of such commu-

nity and that the person or persons moving for the ap-

pointment of such local conservator have made satisfac-

tory arrangements to compensate him for his services as

such local conservator of the peace.

(3) Such local conservator of the peace shall have

all the powers and duties of a regularly appointed dep-

uty sheriff except that he shall not execute any civil

process except such process as may be necessary to bring

parties before the court in any action at law or suit in

equity and subpoenas for witnesses within the unincor-

porated community for which he is appointed and within

a distance of one mile outside the boundaries thereof,

except as hereinafter expressly provided, but he shall

not participate in any strike, unemployment boycott, or

other industrial or labor dispute, nor serve any court

process of any character relating thereto. He shall act

as such local conservator only in the unincorporated

community for which he is appointed, and within a dis-

tance of one mile from the boundaries thereof as fixed

by the county court: Provided, however, That the au-

thority of one local conservator shall not extend into any

other unincorporated community for which another local

conservator is appointed and acting, except as otherwise

expressly provided by subdivision (6) of this subsection,

except that in fresh pursuit he may affect arrests anywhere
in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his regular deputies, or to a regular constable of the county to be dealt with according to law, and his authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of such local conservator shall not constitute the person, firm or corporation making such payment or contribution the employer of such local conservator and no person, firm or corporation paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act of such local conservator.

(5) No person appointed such local conservator shall thereby be entitled to carry weapons, but such local conservator may carry weapons when he shall be duly licensed and shall have given bond as provided by section two, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one.

(6) Not more than one local conservator of the peace shall be appointed, to perform the duties of conservator of the peace, for each two thousand five hundred inhabitants of the county as ascertained by the last regular decennial census after deducting the number of inhabitants of the county residing in the incorporated cities, towns and villages in such county. Not more than one local conservator shall be appointed for any unincorporated community unless the population thereof exceed fifteen hundred people and in such case not more than two conservators shall be appointed for such community.

(7) The phrase “unincorporated community” within the meaning of this section shall mean any center of
(8) The county court and the judge of the circuit court in approving the appointment of a local conservator shall enter of record an order making such appointment and shall show therein the necessity for the appointment, the person or persons on whose motion the appointment is made, the arrangement for the payment of compensation to such local conservator, the unincorporated community, or communities, for which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than three hundred dollars, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the supreme court of appeals at the instance of the prosecuting attorney, the attorney general, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty,
or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

Editor's note.—This Act (S. B. 270) was passed by the Legislature March 11, 1967, and supersedes Chapter 32 of these Acts (H. B. 809), passed February 25, 1967.

CHAPTER 7. COUNTY COURTS AND OFFICERS.

Article

1. County Courts Generally.
2. County and District Boundaries; Change of County Seat and Names of Unincorporated Towns and of Districts.
3. County Property.
5. Fiscal Affairs.
8. Jail and Jailer.
9. County and City Workhouses.
12. County Development Authorities.

ARTICLE 1. COUNTY COURTS GENERALLY.

Section

3a. Construction of waterworks, sewers and sewage disposal plants; improvement of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

3h. Authority and procedure for closing unused roads, streets and travel ways; notice and hearing; circuit court review.

§7-1-3a. Construction of waterworks, sewers and sewage disposal plants; improvement of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

1 In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer
lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county court of Webster is authorized to expend county funds in the opening of, and upkeep of, a sulphur well now situate on county property: Provided, That such authority and power herein conferred upon county courts shall not extend into the territory within any municipal corporation: Provided, however, That any county court is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such courts by this section.

In addition to the foregoing, the county court shall have the power to improve streets, sidewalks and alleys and lay sewers as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county court so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, the county court may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: Provided, however, That the county court is further authorized, if the said county court so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county court may order such improvements as one single unit and project, upon petition in writing duly
verified of the persons, firms or corporations owning
not less than sixty per cent of the frontage of the lots
abutting on both sides of all streets or alleys, or por-
tions thereof included by said county court in said
unit and project.

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

Upon petition in writing duly verified, of the persons,
firms or corporations owning not less than sixty per
cent of the frontage of the lots abutting on one side
of any street between any two cross-streets or between
a cross-street and an alley in any unincorporated com-
munity requesting the county court so to do according
to plans and specifications submitted with such peti-
tion and offering to have their property so abutting
assessed with the total cost thereof, the county court
may cause any sidewalk to be improved, or paved, or
repaved, substantially with such materials according to
such plans and specifications and the total cost in-
cluding labor and materials, engineering and legal service
of improving, grading, paving, or repaving such side-
walk and assessing the cost thereof shall, when the
work is completed and accepted, be assessed against
the owners of the lots or fractional part of lots abutting
on such sidewalk, in such portion of the total cost as
the frontage in feet of each owner's land so abutting
bears to the total frontage of all lots so abutting on such
sidewalk so paved or improved, as aforesaid, which
Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty per cent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county court so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county court may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted, the county engineer or surveyor shall report to the county court, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and laying the sewer including labor, materials, legal and engineering services shall be borne by the owners of the land abutting upon the streets and alleys, in which the sewer is laid according to the following plan:

Payment is to be made by each landowner on either side of such portion of a street or alley in which such sewer is laid, in such proportions as the frontage of his land upon said street or alley bears to the total frontage of all lots so abutting on such street or alley. In case of a corner lot, frontage is to be measured along the longest dimensions thereof abutting on such street or alley in which such sewer is laid. Any lot having a depth of two hundred feet or more, and fronting on two streets, or alleys, one in the front and one in the rear of said lot, shall be assessed on both of said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer and where it has been assessed on the side
It shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such street, alley or sidewalk in a manner which does not require the permanent paving or repaving thereof, the county court shall likewise have authority to improve such street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion which the frontage of their lots abutting upon such street, alley or sidewalk bears to the total frontage of all lots abutting upon such street, alley or sidewalk, so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county court shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the street, alley or sidewalk affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county court may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving, or sewer- ing, will result in special benefits to all owners of property abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The court shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.
Any owner of property abutting upon said street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county court by filing within ten days after the entry of such order, a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county court be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county court.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at the rate of six per cent per annum as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

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

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm, or corporation: Provided, That the county court in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinafter provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county court shall let the work of grading, paving, curbing or sewering to contract to the lowest responsible bidder. In each such case the county court shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county court of the certificates evidencing the lien, duly cancelled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county court.

The owner of any lot or fractional part of a lot abutting upon such street, alley or sidewalk so improved, paved, repaved or sewered shall have the right to an-
ticipate the payment of any such assessment or certifi-
cate by paying the principal amount due, with interest
accrued thereon to date of payment, and also to pay
the entire amount, without interest at any time,
within thirty days following the date of the as-
essment.

Nothing in this section contained shall be construed
to authorize the county courts of the various counties
to acquire any road construction, ditching, or paving
equipment. The county courts are hereby authorized
to rent from the state road commissioner or any other
person, firm or corporation such equipment as may be
necessary from time to time, to improve any street or
sidewalk which petitioners do not desire to have paved
in a permanent manner, and for such purpose to
employ such labor as may be necessary but no
expense connected therewith shall be charged to
any county funds.

No county court shall be under any duty after the
paving, repaving or improvement of any street, alley or
sidewalk or the laying of any sanitary sewer under
the provisions of this section, to maintain or repair
the same, but any such court shall have authority upon
petition duly verified, signed by at least sixty per cent
of the owners of property abutting upon any improve-
ment made under this section, to maintain or repair
such improvement or sewer and to assess the cost thereof
against the owners of such abutting property in the
same manner as the cost of the original improvement.

§7-1-3h. Authority and procedure for closing unused roads,
streets and travel ways; notice and hearing; circuit
court review.

1 The county court of any county, upon the verified ap-
lication of any landowner whose land abuts on any
unused road, street, or other travel way designated on
any map or plat of a subdivision of land or otherwise
within such county but outside of incorporated towns
or cities thereof, is hereby authorized to close and va-
cate any part or all of any such unused road, street or
other designated travel way by order entered of record
after hearing as hereinafter provided. Before acting to close and vacate any such road, street or travel way, the county court shall consider the application and shall fix a time and place for hearing on such application. Such hearing shall be held not less than fifteen days after the hearing date and place have been so fixed. The applicant shall cause notice of the time and place of such hearing and the purpose thereof to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The notice shall be published at least fifteen days before such hearing. The applicant shall also cause to be served, at least fifteen days before such hearing, in the manner provided by law for the service of notices and process, a notice showing the time, place and purpose of such hearing, upon every owner of property, and every person holding a lien thereon, abutting on such unused road, street or other travel way. The affidavit of publication of such notice shall be filed with the county court at or before the hearing as a part of the record in the proceedings.

At the time and place fixed for the hearing, the county court shall hear any evidence relating to the use of and rights or claims in or to any such road, street or other designated travel way sought to be closed and vacated. If the county court concludes and finds upon the record and evidence in the proceedings that the use and rights of no person or persons in such road, street or other travel way will be impaired or lost by the closing and vacation thereof, the county court shall proceed to enter an order closing and vacating such road, street or other travel way and shall cause a copy of said order to be prepared and certified for entry of record in the office of the clerk of such county court. The applicant shall pay the recording fee thereon.

Any person aggrieved by the action of the county court in any such case may seek review thereof in the circuit court of the county as provided in article three of chapter fifty-eight of this code.
ARTICLE 2. COUNTY AND DISTRICT BOUNDARIES; CHANGE OF COUNTY SEAT AND NAMES OF UNINCORPORATED TOWNS AND OF DISTRICTS.

Section 4. Change of name of unincorporated town or of district; petition; notice.

§7-2-4. Change of name of unincorporated town or of district; petition; notice.

1 When the people of any town or village not incorporated, or of a district in a county, are desirous to change the name of such town, village or district, they may petition the county court, or other tribunal established in lieu thereof, of the county wherein such town, village or district is situated; and if it appear to such court or other tribunal that a majority of the actual resident voters of such town, village or district is in favor of such change, it shall cause the following described notice to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the town, village or district, as the case may be. The notice shall be published at least thirty days prior to the sitting of such court or tribunal. The notice shall state the fact that a petition has been presented to the court or tribunal by the people of such town, village or district, praying for such change, and that unless those interested in the change appear at the next term, or such term as the court or tribunal may designate, and show cause why such change should not be made, there will be an order rendered granting such change, which notice shall be signed by the president of the court or tribunal.

ARTICLE 3. COUNTY PROPERTY.

Section 3. Sale of county or district property.

§7-3-3. Sale of county or district property.

1 In all instances where the county court of a county is by law authorized to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof, the same shall be sold at public auction, at the front door of the court-
house of the county, and such sale shall be conducted by
the president of the county court, but before making any
such sale, notice of the time, terms and place of sale,
together with a brief description of the property to be
sold, shall be published as a Class II legal advertisement
in compliance with the provisions of article three, chap-
ter fifty-nine of this code, and the publication area for
such publication shall be the county: Provided, however,
That this section shall not apply to the sale of any one
item of property of less value than one thousand dollars:
Provided further, That the provisions of this section
concerning sale at public auction shall not apply to a
county court selling or disposing of its property for a
public use to the United States of America, its instru-
mentalities, agencies or political subdivisions or to the
state of West Virginia, or its political subdivisions, in-
cluding county boards of education, for an adequate con-
sideration without considering alone the present com-
mercial or market value of the property.

ARTICLE 5. FISCAL AFFAIRS.

Section

16. Preparation, publication, and disposition of financial statements.

§7-5-16. Preparation, publication, and disposition of financial statements.

The county court of every county, within four weeks
after the first session held after the beginning of each
fiscal year, shall prepare on a form to be prescribed
by the state tax commissioner, and cause to be published
a statement revealing (a) the receipts and expenditures
of the county during the previous fiscal year arranged
under descriptive headings, (b) the name of each firm,
corporation, and person who received more than fifty
dollars from any fund during the previous fiscal year,
together with the amount received and the purpose for
which paid, and (c) all debts of the county, the purpose
for which each debt was contracted, its due date, and
to what date the interest thereon has been paid. Such
statement shall be published as a Class I-0 legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area for such publication shall be the county.

The county court shall transmit to any resident of the county requesting the same a copy of the published statement for the fiscal year designated, supplemented by a list of the names of each firm, corporation, and person who received less than fifty dollars from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

If a county court wilfully fail or refuse to perform the duties hereinbefore named, every member of such court, concurring in such failure or refusal, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars; and the prosecuting attorney of any such county shall, when such failure or refusal shall come to his knowledge, immediately present the evidence thereof to the grand jury if in session, and if not in session, he shall institute proper criminal proceedings before a justice against any such offender, and cause such failure or refusal to be investigated by the next succeeding grand jury.

ARTICLE 8. JAIL AND JAILER.

Section 7. Jail physician; clothing for indigent prisoners.

§7-8-7. Jail physician; clothing for indigent prisoners.

The county court for every county may appoint a physician to attend all persons confined in jail as lunatics, or persons charged with felony or misdemeanor, and such physician shall furnish all medicines and drugs for, and give proper attention to, all such persons at a stipulated, fixed and exclusive annual allowance. The appointment of such physician shall be made in open court. The court, or president thereof in vacation, shall cause notice of the days during court when sealed bids will be received to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The bids shall be opened only in court, on the day specified in the notice, if the
court then be in session, and, if not, on the first day of
the session thereafter, and the appointment awarded to
the lowest responsible bidder; and such court shall
have the right to reject any or all bids. The person re-
ceiving the appointment shall give bond with sufficient
surety, to be approved by the court, for the faithful
performance of the trust and agreement. The court shall
have power to vacate the appointment for failure or
neglect of duty; but such vacation shall in no manner
affect the liability on the bond. All of the proceedings
shall be entered in the order book of the court. The
county court may also, after examination, when a per-
son in its jail charged with or convicted of an offense
is unable to provide himself with sufficient clothing,
direct the jailer to provide him clothing, and allow there-
for not exceeding twenty dollars in one year. Allowances
under this section, on being certified by the court, shall
be paid out of the county treasury.

ARTICLE 9. COUNTY AND CITY WORKHOUSES.

Section
10. Accounts and reports.

§7-9-10. Accounts and reports.
1 The accounts of the institutions shall be annually closed
2 and balanced on the first Monday of January in each
3 year. And full reports of the preceding year shall then
4 be made and submitted to the city council and county
5 commissioners, which shall be published as a Class I
6 legal advertisement in compliance with the provisions of
7 article three, chapter fifty-nine of this code, and the pub-
8 lication area for such publication shall be the county; and
9 the city council and county commissioners, or either of
10 such bodies, may require such other reports and exhibits
11 of the condition and management of such institution as
12 they may deem proper.

ARTICLE 12. COUNTY DEVELOPMENT AUTHORITIES.

Section
12. Contributions by county courts, municipalities and others; funds
and accounts; reports; audits and examination of books, records
and accounts.
§7-12-12. Contributions by county courts, municipalities and others; funds and accounts; reports; audits and examination of books, records and accounts.

Contributions may be made to the authority from time to time by the county court of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county court and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the county development authority is located. The books, records and accounts of the authority shall be subject to audit and examination by the office of the state tax commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article


3. Election, Appointment and Qualification of Officers.

4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

4A. Municipal Public Works; Bonds.

5. Urban and Rural Planning and Zoning.

7. Taxation and Finance.

7A. Low Cost Improvements.

8. Assessments to Improve Streets, Sidewalks and Sewers.


11. Airports and Aviation.

12. Waterworks.

ARTICLE 2. CREATION, ALTERATION, DISSOLUTION AND POWERS OF MUNICIPAL CORPORATIONS.

Section
3. Hearing on petition; notice; dismissal.
5. Election—time of election; precincts; supplies; commissioners and clerks; notice.
15. Same—hearing and notice.
17. Same—special election; time of election; notice.

§8-2-3. Hearing on petition; notice; dismissal.
1 Upon the filing of such petition, the county court shall set the same for hearing not sooner than ten days and not later than thirty days thereafter, and petitioners shall cause notice of the filing of said petition and of the time and place of hearing thereon, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory sought to be incorporated.
2 Upon the day set for hearing, the county court shall hear evidence for and against the proposed incorporation, and if it shall determine that the requirements of sections one and two of this article have not been met, it shall forthwith enter an order dismissing said petition.

§8-2-5. Election—Time of election; precincts; supplies; commissioners and clerks; notice.
1 Upon receiving such report of said enumerators, the county court shall forthwith fix a day, not later than thirty days thereafter, on which all qualified electors residing within the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said court. For the purpose of conducting said election, the county court shall divide the territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections, and shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established dividing the election officials as nearly
as possible equally between those favoring incorporation and those opposed to incorporation, and shall give notice of the day and place of election by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory sought to be incorporated.

§8-2-15. Same—Hearing and notice.

When it shall have completed its draft of charter, a charter board shall conduct a public hearing thereon. Notice of the time, place and purpose of the hearing shall be given by publication of such notice at least ten days prior to the date set for the hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory to be incorporated. The notice shall state where copies of the draft of charter may be obtained. The hearing may be continued by the charter board by adjournments over a period not exceeding fourteen days.

§8-2-17. Same—Special election; time of election; notice.

The proposed charter shall be submitted to the voters for approval at a special election to be held not less than thirty days nor more than ninety days following filing of the completed charter with the clerk of the county court, at which election the officers provided by said charter shall be voted upon in the manner provided by said charter. Notice of the time, place and purpose of a charter election shall be given by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory incorporated. The first of said publications shall be made not less than thirty days prior to the date fixed for the election. Each such notice of election shall state that any qualified voter of said territory may obtain a copy of the proposed charter, from a designated person and place, upon request.
ARTICLE 3. ELECTION, APPOINTMENT AND QUALIFICATION OF OFFICERS.

Section
2. When first election held; notice.

§8-3-2. When first election held; notice.
1 The first election for officers of such corporation shall
2 be held within sixty days from the date of the certificate
3 mentioned in section eleven, article two of this chap-
4 ter, and the commissioners of election appointed at the
5 time of such order shall cause notice to be given of the
6 time and place of holding such election, which notice
7 shall specify the officers to be voted for, and shall be
8 published, within fourteen consecutive days next pre-
9 ceding the day appointed for such election, as a Class II-0
10 legal advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code, and the pub-
12 lication area for such publication shall be such town.

ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPAL CORPORATIONS, COUNCILS OR OFFICERS.

Section
10j. Adoption of ordinances; notice and procedure.
14. Conditions to granting of franchise by council or county court; term of franchise.
20. Charges for municipal services.
21. Sale or lease of municipal public utility.
27. Additional powers of municipal corporations.

§8-4-10j. Adoption of ordinances; notice and procedure.
1 Except as hereinafter provided in this section, and not-
2 withstanding the provisions of any existing municipal
3 charter, it shall not be necessary for the governing body
4 of a city to publish a proposed ordinance in a newspaper
5 prior to adoption thereof. In case of a proposed ordi-
6 nance to codify, reenact or enact a comprehensive code
7 of ordinances, or in case of a proposed ordinance having
8 as its principal object the raising of revenue for the city,
9 said governing body shall, at least five days before the
10 meeting at which said ordinance is to be finally adopted,
11 cause the following described notice of the proposed
12 adoption to be published as a Class I legal advertisement
13 in compliance with the provisions of article three, chap-
14 ter fifty-nine of this code, and the publication area for
such publication shall be the city. The notice shall state
the general title or titles of said ordinance, the time and
place of the proposed final adoption, and the place or
places where, within the city, the entire ordinance will
be available for public inspection; a reasonable number
of copies of the proposed ordinance shall be kept at such
place and be made available for public inspection.

§8-4-14. Conditions to granting of franchise by council or
county court; term of franchise.

No franchise shall hereafter be granted by the county
court of any county, or other tribunal acting in lieu
thereof, or by the council of any town incorporated under
the laws of this state where the application for such
franchise has not been filed, with the clerk of such court
or council, at least thirty days prior to the time when it
is to be acted upon by such county court or council, and
where notice of such application, stating the object of
such franchise, has not been given by publication thereof
as a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
for which publication the publication area shall be the
county or town, as the case may be, wherein such fran-
chise is to be granted. Nor shall such franchise be
granted within thirty days after the application has been
filed, nor until an opportunity has been given any citizen
or corporation interested in the granting or refusing of
such franchise to be heard. Nor shall any franchise here-
after be granted by any county court, or other tribunal
acting in lieu thereof, or by any council of any such town,
for a longer term than fifty years: Provided, however,
That nothing in this section shall prevent the renewal
of any such franchise for a term not exceeding fifty
years, when the same shall have expired. No franchise
hereafter granted for any longer term than fifty years
shall be of any force or validity.

§8-4-20. Charges for municipal services.

The governing authority of every municipal corpora-
tion that furnishes any essential or special municipal
service, including police and fire protection, parking
facilities on the streets or otherwise, recreational facil-
cities, 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 as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. In the event thirty per cent of the registered voters by written petition duly signed by them and filed with the municipal authority within fifteen days after the expiration of such publishing protest against such ordinance, the ordinance shall not become effective until it shall be ratified by a majority of the votes cast by the duly qualified voters of such municipality at an election duly and regularly held as provided by the laws and ordinances of the municipality and the result of such election ascertained and declared. Such election shall be held after notice of such submission shall be given by publication as above provided for the publication of the ordinance when adopted. The powers hereby given to such municipalities and to the authorities thereof are in addition to and supplemental of the powers named in the respective charters thereof: Provided, That in the event fees and charges herein provided for, shall be imposed by the governing body of any municipal corporation for the purpose of, and in amounts approximately sufficient, to replace in its general fund such amounts as shall be appropriated to be paid out of ad valorem taxes upon property within the municipality
pursuant to an election duly called and held under the
constitution and laws of the state to authorize the
issuance and sale of general obligation bonds of the
municipality for public improvement purposes, in the
call for which election it shall be stated that the
governing body of the municipality proposes to impose
fees and charges in specified amounts under this section
for the use of one or more of the services above specified,
which shall be related to the public improvement
proposed to be made with the proceeds of the bonds,
no notice, publication of notice, or referendum or
election or other condition or prerequisite to the imposi-
tion of such rates shall be required or necessary other
than the legal requirements for issuance and sale of
such general obligation bonds.

§ 8-4-21. Sale or lease of municipal public utility.

1 In any case where a town shall own a waterworks
system, electric light plant or other public utility, and
the council thereof shall deem it for the best interest
of such town that such utility be sold, leased or rented,
it shall be lawful for the council, by ordinance legally
passed, to submit to the legal voters of such munici-
pality, at any regular election or at any special election
called for that purpose, the question of making such
sale, lease or renting. In such case the council shall,
in the ordinance submitting such question to a vote,
set forth in full the terms of such proposed sale, lease
or renting, the name of the proposed purchaser or lessee,
the date of such election, and such ordinance shall be
published as a Class II-0 legal advertisement in compli-
ance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such pub-
llication shall be such town. Such election shall be held
in all respects in compliance with the provisions of
chapter three of this code, so far as the same are appli-
cable and not inconsistent herewith. If a majority of
the votes cast at such election upon such question be
in favor of the proposed sale, lease or renting of such
utility, the council, upon the ascertainment of the result
of such election, shall have full power and authority
to proceed to execute such sale, lease or renting in accordance with the terms and conditions prescribed in the ordinance aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, however, That if at any time after such election and before the execution of the authority under the ordinance, any person, firm or corporation should present to the council and offer to buy such public utility or plant at a greater price than the sale price which shall have been so voted upon and authorized or to lease the same upon terms which the council, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been authorized by vote as aforesaid, the council shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, without resubmitting the question to a vote. But, if a sale shall have been authorized by vote as aforesaid, and such subsequent proposition be for a lease, or, if a lease shall have been so authorized, and the subsequent proposition shall be for a sale, the council shall have no power to accept the same without submitting the question thereof to a vote of the people as first above provided. And before any such second or subsequent proposition shall be submitted to vote, after a sale or lease shall have been authorized at an election held hereunder, the person making such proposition shall execute bond with security to be approved by the council, in a penalty of not less than twenty-five per cent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved at the election to be called thereon. In any case where such public utility as is mentioned in this section shall be sold, leased, or rented by the council as hereinabove provided, no part of the moneys derived from such sale, lease or renting shall be applied to the payment of current expenses of the municipality; but the proceeds of such sale or lease shall be applied in payment and discharge of any bonded indebtedness created in respect to such public utility; and in case there be no such bonded indebtedness, the
66 council, in its discretion, shall have power to expend
67 all such moneys when received in the purchase or
68 construction of fire-fighting equipment and buildings
69 for housing such equipment, a town hall, and the neces-
70 sary land upon which to locate the same, or in the con-
71 struction of paved streets, sidewalks, sewers and other
72 like permanent improvements, and for no other pur-
73 poses, or in case there be a surplus after the payment
74 of such bonded indebtedness, such surplus may be used
75 as aforesaid.

§8-4-27. Additional powers of municipal corporations.

1 On and after the effective date of this article every
2 municipal corporation in this state shall have all the
3 powers and authority conferred by article five, chapter
4 eight-a of this code upon home rule cities of the class
5 to which such municipal corporation belongs, according
6 to the classification of municipal corporations
7 prescribed in section four, article one, chapter eight-a
8 of this code: Provided, however, That prior to the
9 adoption of any ordinance or resolution under the
10 authority herein granted pertaining to taxes, the gov-
11 erning body of such municipality shall cause a notice
12 of such ordinance or resolution to be published as a
13 Class II-0 legal advertisement in compliance with the
14 provisions of article three, chapter fifty-nine of this
15 code, and the publication area for such publication shall
16 be such municipality. Such notice shall state the purpose
17 of the pending ordinance or resolution and the time,
18 place and body before which the same will be con-
19 sidered.

ARTICLE 4A. MUNICIPAL PUBLIC WORKS; BONDS.

Section
6. Ordinance or resolution for construction, etc., of works.
17. Charges for services rendered by works.

§8-4A-6. Ordinance or resolution for construction, etc., of
works.

1 Before any municipality shall construct, acquire, im-
2 prove or extend any works under this article, the
3 municipal authorities shall enact an ordinance or ordi-
4 nances, or shall adopt a proper resolution which shall
to proceed to execute such sale, lease or renting in accordance with the terms and conditions prescribed in the ordinance aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, however, That if at any time after such election and before the execution of the authority under the ordinance, any person, firm or corporation should present to the council and offer to buy such public utility or plant at a greater price than the sale price which shall have been so voted upon and authorized or to lease the same upon terms which the council, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been authorized by vote as aforesaid, the council shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, without resubmitting the question to a vote. But, if a sale shall have been authorized by vote as aforesaid, and such subsequent proposition be for a lease, or, if a lease shall have been so authorized, and the subsequent proposition shall be for a sale, the council shall have no power to accept the same without submitting the question thereof to a vote of the people as first above provided. And before any such second or subsequent proposition shall be submitted to vote, after a sale or lease shall have been authorized at an election held hereunder, the person making such proposition shall execute bond with security to be approved by the council, in a penalty of not less than twenty-five per cent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved at the election to be called thereon. In any case where such public utility as is mentioned in this section shall be sold, leased, or rented by the council as hereinabove provided, no part of the moneys derived from such sale, lease or renting shall be applied to the payment of current expenses of the municipality; but the proceeds of such sale or lease shall be applied in payment and discharge of any bonded indebtedness created in respect to such public utility; and in case there be no such bonded indebtedness, the
council, in its discretion, shall have power to expend
all such moneys when received in the purchase or
construction of fire-fighting equipment and buildings
for housing such equipment, a town hall, and the neces-
sary land upon which to locate the same, or in the con-
struction of paved streets, sidewalks, sewers and other
like permanent improvements, and for no other pur-
poses, or in case there be a surplus after the payment
of such bonded indebtedness, such surplus may be used
as aforesaid.

§8-4-27. Additional powers of municipal corporations.
1 On and after the effective date of this article every
municipal corporation in this state shall have all the
powers and authority conferred by article five, chapter
eight-a of this code upon home rule cities of the class
to which such municipal corporation belongs, accord-
ing to the classification of municipal corporations
prescribed in section four, article one, chapter eight-a
of this code: Provided, however, That prior to the
adoption of any ordinance or resolution under the
authority herein granted pertaining to taxes, the gov-
erning body of such municipality shall cause a notice
of such ordinance or resolution to be published as a
Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be such municipality. Such notice shall state the purpose
of the pending ordinance or resolution and the time,
place and body before which the same will be con-
sidered.

ARTICLE 4A. MUNICIPAL PUBLIC WORKS; BONDS.

Section
6. Ordinance or resolution for construction, etc., of works.
17. Charges for services rendered by works.

§8-4A-6. Ordinance or resolution for construction, etc., of
works.
1 Before any municipality shall construct, acquire, im-
prove or extend any works under this article, the
municipal authorities shall enact an ordinance or ordi-
nances, or shall adopt a proper resolution which shall
(a) set forth a brief and general description of the works, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension or improvement of such works; (d) direct that revenue bonds of the municipality be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary or proper in the premises. Before such ordinance shall become effective, it shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. Said notice shall specify a time and place for a public hearing, the time being not less than ten days after the first publication of said notice at which time and place all parties and interests may appear before the municipal authorities, and may be heard as to whether or not said ordinance shall be put into effect. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premise: Provided, however, That if at such hearing written protest is filed by thirty per cent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided further, That in case written protest is filed by thirty per cent or more of owners of real estate as herein provided, the governing body shall have authority to appoint a committee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether or not thirty per cent of the property owners have in fact protested and said committee shall report its findings to the governing body.

§8-4A-17. Charges for services rendered by works.

Municipal authorities shall have the power and it
shall be their duty, by ordinance or resolution, to estab-
lishe and maintain just and equitable rates or charges
for the use and services rendered, or the improvement
or protection of property, provided or afforded by such
works, to be paid by the person using the same,
receiving the services thereof, or owning the property
improved or protected thereby, and may readjust such
rates or charges from time to time. Rates or charges
heretofore or hereafter established and maintained for
the improvement or protection of property, provided
or afforded by a municipal flood control system, to be
paid by the person owning the property improved or
protected thereby, shall be collectible and enforceable
from the time provided in such ordinance or resolution,
any provision of this or any other law to the contrary
notwithstanding, if, at such time, such works, though
not yet fully constructed, are nearing completion and
such municipal authorities are reasonably assured that
such works will be completed and placed in operation
without reasonable delay. Such rates or charges shall
be sufficient in each year for the payment of the proper
and reasonable expenses of operation, repair, replace-
ments and maintenance of the works, and for the
payment of the sums herein required to be paid into
the sinking fund.

Revenues collected pursuant to this section shall be
deemed the revenues of the works. No such rates or
charges shall be established until after a public hearing
at which all the users of the works and/or owners of
the property served, or to be served thereby, and others
interested, shall have an opportunity to be heard con-
cerning the proposed rates or charges. After intro-
duction of proposal of the ordinance or resolution fixing
such rates or charges and before the same is finally
enacted or passed, notice of such hearing, setting forth
the proposed schedule of such rates or charges, shall
be given by publishing same as a Class II-0 legal
advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be such
municipality. The first publication of said notice shall
be at least ten days before the date fixed in such notice
for the hearing, which hearing may be adjourned from
time to time. No other or further notice to parties at
interest shall be required. After such hearing the
ordinance or resolution establishing rates or charges,
either as originally proposed or introduced, or as modi-
fied and amended, shall be passed or adopted and put
into effect. A copy of the schedule of such rates and
charges so established shall be kept on file in the office
of the board having charge of the operation of such
works, and also in the office of the municipal authorities,
and shall be open to inspection by all parties interested.
The rates or charges so established for any class of
users or property served, shall be extended to cover
any additional class of users or property thereafter
served which fall within the same class, without the
necessity of any hearing or notice. Any change or read-
justment of rates may be made in the same manner as
such rates or charges were originally established as
hereinabove provided. The aggregate of the rates or
charges shall always be sufficient for such expense of
operation, repairs and maintenance, and for such sink-
ing fund payments. If any service rate, charge or fee
so established shall not be paid within thirty days after
the same is due, the amount thereof may be recovered
by the board in a civil action in the name of the
municipality, and in the case of charges due for services
rendered, such charges, if not paid when due, may, if
council so provide in the ordinance provided for under
section six of this article, constitute a lien upon the
premises served by such works, which lien may be fore-
closed against such lot, parcel of land or building so
served, in accordance with the laws relating to the fore-
closure of liens on real property. Upon failure of any
person receiving any such service to pay for same when
due, the board may discontinue such service without
notice.

ARTICLE 5. URBAN AND RURAL PLANNING AND ZONING.

Section
18. Same—notice and public hearing.
44. Same—final report; notice and hearing; action.
48. Election on zoning ordinance; form of ballot; procedure.

Prior to the adoption of a comprehensive plan, the commission shall give notice and hold a public hearing on the plan and a proposed ordinance for its enforcement.

At least thirty days prior to the date set for hearing, the commission shall publish a notice of the time and place of the hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city or county, as the case may be.

§8-5-44. Same—Final report; notice and hearing; action.

After the final report has been submitted by the planning commission the governing body of a city or the county court shall afford all interested persons an opportunity to be heard with reference to it at public hearings convenient for all persons affected to be held at times and places to be specified in notices to be published, within fourteen consecutive days next preceding the time set for the hearings, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city or county, as the case may be.

The notices shall state the time and places of the hearings, that the report contains a comprehensive zoning ordinance for the city or county, that written objections to the final report filed with the clerk of the governing body of a city or with the county clerk at or before the hearings will be heard and that the hearings will be continued from time to time as may be found necessary. During the period between the date of the first publication of the notice and the date of the hearing, the final report shall be on file in the office of the planning commission for public examination. Upon completion of the public hearings, the governing body of a city or the county court shall proceed to the consideration of the ordinance.

§8-5-48. Election on zoning ordinance; form of ballot; procedure.

If within sixty days following the approval of the zoning ordinance by the county court or the governing body of the city a petition is filed with the county clerk praying
for the submission of such zoning ordinance for approval
or rejection to the electors residing in the area within the
jurisdiction of the city or county planning commission,
such ordinance shall not take effect until the same shall
have been approved by a majority of the electors voting
in said election at any regular or special election called
for that purpose. The petition provided herein may be
in any number of counterparts and must be signed by a
number of registered voters residing in the area affected
by the proposed zoning equal to not less than fifteen per
cent of the total votes cast in the affected area for all
candidates for governor at the last preceding general
election at which a governor was elected. Only registered
voters residing in the area affected by the proposed
ordinance shall be eligible to vote in said election.

Upon the ballots cast at such election there shall be
written or printed the following:

☐ For zoning.
☐ Against zoning.

If a majority of the votes cast upon the question be for
zoning, the provisions of said zoning ordinance shall, upon
the day the results of such an election are declared, be
effective. If a majority of the votes cast be against zoning,
the question may again be submitted to a vote at any
regular election or election for officers in the manner
herein provided.

Elections for the purpose of voting upon the question
of zoning may be held at any general, primary or special
election which the governing body of a city or the county
court in its order submitting the same to a vote may
designate.

Notice of all zoning elections shall be given by publi-
cation of the order calling such election as a Class II-0
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the area in
which the election is to be held.

Elections shall be held at the voting precincts estab-
lished for holding general elections. All the provisions
of the general election laws of this state concerning gen-
eral, primary or special elections, when not in conflict
with the provisions of this article, shall apply to elections hereunder, insofar as practicable.

ARTICLE 7. TAXATION AND FINANCE.

Section

7. Preparation, publication and disposition of financial statements.

§8-7-7. Preparation, publication and disposition of financial statements.

Every municipal corporation having a population of more than two thousand, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner, and cause to be published a sworn statement revealing (a) the receipts and expenditures of the municipality during the previous fiscal year arranged under descriptive headings, (b) the name of each firm, corporation, and person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the municipality, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality.

Every municipal corporation having a population of more than two thousand shall transmit to any resident of such municipality requesting the same a copy of any published statement for the fiscal year designated, supplemented by a list of the names of each firm, corporation, and person who received less than fifty dollars from any fund during such fiscal year showing the amount paid to each and the purpose for which paid.

Each municipal corporation having a population of two thousand or less, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing (a) the receipts and expenditures of the municipality during the previous fiscal year arranged under descriptive headings, (b) the name of each firm, cor-
poration, and person who received money from any fund
during the previous fiscal year, together with the amount
received and the purpose for which paid, and (c) all debts
of the municipality, the purpose for which each debt was
contracted, its due date, and to what date the interest
thereon has been paid.

Every municipal corporation subject to the provisions
of the preceding paragraph shall transmit to any resident
of such municipality requesting the same a copy of any
such statement for the fiscal year designated.

The statement required under the first paragraph of
this section and the statement required under the third
paragraph of this section shall be sworn to by the re-
corder or clerk of the municipality and the mayor or other
executive head thereof and two members of the govern-
ing body of such municipality. As soon as practicable
following the close of the fiscal year, a copy of any state-
ment herein required shall be filed by the municipality
with the state tax commissioner, the clerk of the county
court and the clerk of the circuit court. If the governing
body fail or refuse to perform any of the duties set forth
in this section, every member of such governing body
and the recorder or clerk thereof concurring in such
failure or refusal shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than ten
nor more than one hundred dollars. If any of the pro-
visions of this section are violated, it shall be the duty
of the prosecuting attorney of the county in which such
violations occur to immediately present the evidence
thereof to the grand jury if in session, and if not in ses-
sion, he shall cause such violations to be investigated by
the next succeeding grand jury.

ARTICLE 7A. LOW COST IMPROVEMENTS.

Section
8. Procedure when total cost to be apportioned among all abutters;
notice to abutting owners before authorizing improvements; form
of notice; protest meeting; certificate of publication; notice to
railroad or foreign corporation; automatic revocation of grant
of petition; charges upon automatic revocation.

11. Apportionment among all abutters; limit on total cost chargeable
to abutters; engineer's report; notice; hearings; correcting and
laying assessments.
§8-7A-8. Procedure when total cost to be apportioned among all abutters; notice to abutting owners before authorizing improvements; form of notice; protest meeting; certificate of publication; notice to railroad or foreign corporation; automatic revocation of grant of petition; charges upon automatic revocation.

If the petitioner has stated in the petition that he desires the total cost to be apportioned among all of the abutters, the council shall, as soon as the petition is granted, cause notice to be given to all abutters that the petition has been granted, that the engineer's memorandum, certifying reasonable necessity, plans and specifications, and cost estimates, will be reconsidered, before work is started, at a public meeting of the council at a time and place named in the notice, and that all abutters will be given an opportunity to protest or be heard concerning any or all particulars of the engineer's memorandum at that meeting or an adjournment thereof.

The above-mentioned notice to the abutters may be by personal service on abutters at least ten days before the protest meeting. In lieu of personal service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such abutters, by publication, within fourteen consecutive days next preceding said meeting, of the following notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality:

“NOTICE TO ALL PERSONS OWNING PROPERTY ABUTTING ON ............... (here describe the portions of the streets, alleys, public ways or easements to be improved) IN THE MUNICIPALITY OF ....... (name of municipality);

A petition has been conditionally granted by the ....... (common council, board of directors, commissioners or other governing body) of the municipality of ....... (name of municipality) to improve the ............. (street, alley, public way or easement)
above described in ________ (name of municipality) by ________ (grading, regrading, constructing storm sewers or other general description of the proposed improvement), as specifically described in the engineer's memorandum certifying the reasonable necessity of the proposed improvement, the plans and specifications thereof, and the estimate of the items of cost thereof, and to apportion the cost of such improvement among the owners, as of ________ (the date of the first publication of this notice), of the abutting property.

The engineer's memorandum above described will be reconsidered by the ________ (governing body) at a public meeting to be held on ________ (date) at ________ (time) at ________ (place). Any abutting owner or interested party will be given an opportunity to protest or be heard at said meeting or an adjournment thereof.

_________ (name of the clerk or recorder), ________ (official position)."

An affidavit of publication of the notice, made by the newspaper publisher, and a copy of the notice shall be made a part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons, firms or corporations owning any interest in any property abutting upon any portion of said street, alley, public way or easement to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed: Provided, That where any foreign railroad or other foreign corporation is the owner of property abutting upon any street, alley, public way or easement sought to be improved under the provisions hereof, notice shall be given to such railroad or other foreign corporation as prescribed by section one, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, before the adoption of any ordinance or resolution relating to, and providing for, such improvements.

Any part or parts of the engineer's memorandum may be modified or remodeled at the protest meeting in
accordance with the evidence introduced at such meet-
ing, including the extent of the portions of the streets,
alleys, public ways or easements proposed to be im-
proved as designated in the engineer’s memorandum.

If, after modification at such protest meeting, the
memorandum indicates that the proposed improvement
is not reasonably necessary and/or that its estimated total
cost is more than one thousand dollars, then the peti-
tion shall be automatically revoked; and the petitioner
shall be charged with all municipal expense in connec-
tion therewith except salaries and wages of regular
municipal employees, which charge shall be made by
ordinance or resolution of the council; and a statement
of said charge shall be mailed to the petitioner at the
address listed in the petition unless the petitioner shall
have notified the council in writing of a change in
his actual mailing address, in which case the state-
ment shall be mailed according to such change.

If the engineer’s memorandum has not been so modi-
fied at the protest meeting as to render the petition
automatically revoked as provided above, the council
shall order by ordinance or resolution the proper munici-
al authorities to proceed with the accomplishment of
the improvement according to the plans and specifications
in the engineer’s memorandum, as modified at the pro-
test meeting in the event that they were modified.

§8-7A-11. Apportionment among all abutters; limit on total
cost chargeable to abutters; engineer’s report; notice;
hearings; correcting and laying assessments.

Where the petitioner has indicated in the petition his
desire to have the total cost apportioned among all of the
abutters, the engineer shall, as soon as the council has
ordered the proper municipal authorities to proceed under
section eight of this article, determine or cause to be
determined the several frontages abutting on the im-
provement, a brief description thereof, and the owners
of such frontages as of the date of the first publication of
the notice described in section eight of this article; and he
shall keep an account of all items of cost connected ther-
with that affect the total cost. As soon as the improvement
is completed and the account mentioned in section nine of this article is given to him, the engineer shall compute the actual total cost of the improvement.

The total cost shall be personally borne by such abutters, including the petitioner, as of the date of the first publication of the notice described in section eight of this article; and the amount of the assessment against each shall be apportioned by the engineer on the basis of the following formula. Each lot or parcel of land so abutting shall be assessed with that portion of the total cost of the entire project which is represented by the proportion which the abutting frontage in feet of such lot or parcel bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the streets, public ways, alleys or easements so improved: Provided, however, That if the character of the improvements shall be substantially different upon different streets, public ways, easements or alleys, or portions thereof, the cost may be equitably apportioned to the respective streets, public ways, alleys, easements, or portions thereof, in proportion to the character and cost of the improvements respectively thereon; and as a part of the cost so apportioned to each respective street, public way, easement, or alley, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: Provided further, That if any part of the street, alley, easement or public way improved is used by a railway then the cost of the portion of the improvements between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway: Provided further, That if there be any land or other property abutting on the portion of the street or alley so improved which it has been determined by the governing body of the municipality, and, shown in the ordinance or resolution authorizing the improvement, not to be specially benefited by the improvement, or for other reasons would not be liable to assessment for any of the cost of improvement, then the cost of the improvements abutting such part of said street or alley, as is so determined to be nonassessable shall be apportioned among, assessed and
borne by the remaining property abutting upon the portion of the street, alley, public way or easement improved in proportion to the frontage of such remaining abutting property as hereinabove provided: Provided further, That if such improvement includes the construction or reconstruction of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so constructed: Provided further, That if there be land or other property abutting the street, alley, easement or public way so improved which is owned by the United States of America, and for that reason not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned land or property: Provided further, That if the actual total cost exceeds one thousand dollars, the municipality shall be responsible for such excess over one thousand dollars; and that, notwithstanding that the actual total cost is less than one thousand dollars, if the actual total cost exceeds the estimated total cost by more than ten per cent of the latter, the municipality shall be responsible for such excess over one hundred ten per cent of the estimated total cost.

The engineer shall formulate a report showing the chargeable total cost to be borne by the abutters, the names of the abutters (including the petitioner), the several frontages owned by said abutters and a brief description thereof, and the proper amount of the chargeable total cost to be assessed personally against each abutter, and shall deliver such report to the council. The council shall thereupon give notice to the abutters to be assessed, that, on or after a date named in said notice, an assessment may be laid personally against the abutters as embodied in said report. Said notice shall state that the abutters so named, or other interested party, may on said date appear before the council to move the correction or revision of such proposed assessment. Said notice shall show the same facts embodied in the engineer's report hereinabove described and shall be published as a Class II legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
in which the municipality is located. On or after the
date so advertised, the council may revise, amend, cor-
rect and verify the report according to the evidence in-
troduced by appealing abutters or by the engineer, and
shall thereafter proceed by ordinance or resolution to lay
the assessments, as corrected and verified, against the
abutters personally.

ARTICLE 8. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS
AND SEWERS.

Section

3. Notice for abutting owners before authorizing improvement; form
   of notice; certificate of publication; notice to railroad or foreign
corporation.

8. Report on completion; notice to abutting owners of assessments;
   hearing; correcting and laying assessments.

§8-8-3. Notice to abutting owners before authorizing improve-
ment; form of notice; certificate of publication; notice
to railroad or foreign corporation.

1 Before the adoption of such resolution or ordinance of
2 necessity or convenience, the governing body shall cause
3 notice to be given to owners of abutting property that
4 such resolution or ordinance will be considered before
5 adoption at a public meeting of the governing body at a
6 time and place named in the notice and all persons or cor-
7 porations shall at that meeting, or an adjournment there-
8 of, be given an opportunity to protest or be heard
9 concerning the adoption or rejection of said resolution or
10 ordinance. Such notice to owners of property abutting
11 on the portion of the street, alley, public way or easement
12 to be improved may be by personal service on owners at
13 least ten days before said meeting. In lieu of personal
14 service of such notice, the following described notice, or
15 one in substantially the same form, may be given, and
16 shall be deemed to have been served on all such owners
17 of abutting property, by publication of such notice as a
18 Class II legal advertisement in compliance with the pro-
19 visions of article three, chapter fifty-nine of this code,
20 and the publication area for such publication shall be
21 such municipality:
"NOTICE TO ALL PERSONS OR CORPORATIONS OWNING PROPERTY ABUTTING ON _______________________ (here describe the portion of the street, alley, public way or easement to be improved) IN THE _______________________ (town or city) OF _________.

Proposals have been made to the ____________ (common council, board of directors, commissioners, or other governing body) of the _______________________ (town or city) of ------------------ (name of municipality) to permanently improve the portion of the street (alley, public way or easement) above described in __ (name of municipality) by __________ _____ (grading, paving, constructing sanitary or storm sewers, constructing sidewalks, or other general description of the proposed improvements) as the ---------------------------------- (council, board of directors, commissioners, or other governing body) may deem proper, and to assess the cost of such improvements on the property abutting said portion of said street (alley, public way or easement).

The proposals to make such improvements, and the plans, specifications, profiles and estimates will be considered by the ____________ (governing body) at a public meeting to be held on the ______ day of ________, 19______, at ____ M. at ___________________. Any abutting owner or interested party will be given an opportunity to protest or be heard at said meeting or an adjournment thereof.

_______________________ (name of the clerk or recorder) ______________________ (official position)."

An affidavit of publication of the notice, made by the newspaper publisher, and a copy of the notice shall be made a part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons, firms or corporations owning any interest in any property abutting upon any portion of said street, alley, public way or easement to be improved shall conclusively be deemed to have been given when such newspaper publication shall have been completed: Provided, That where any foreign railroad or other foreign corporation is the owner of
property abutting upon any street, alley, public way or
easement sought to be improved under the provisions
hereof, notice shall be given to such railroad or other
foreign corporation as prescribed by section one, article
ten, chapter eight of the code of West Virginia, one thou-
sand nine hundred thirty-one, before the adoption of any
ordinance or resolution relating to, and providing for,
such improvements.

§8-8-8. Report on completion; notice to abutting owners of
assessments; hearing; correcting and laying assess-
ments.

When the improvement of such street, alley, easement,
or public way has been completed, the governing body
shall cause the engineer, or other person charged by the
governing body with the supervision of the work of im-
provement, to make a report showing the several front-
ages abutting thereon, and the total cost, and showing
the respective amounts chargeable upon each lot or parcel
of land assessed abutting thereon, and showing the proper
amounts to be assessed against the respective abutting
lots or parcels of land as provided herein, with a descrip-
tion of the abutting lots and lands as to ownership, front-
age and location. The governing body of the municipality
shall thereupon give notice to the owners of the property
to be assessed that on or after a date named in said notice
an assessment may be laid against the property so im-
proved as embodied in said report. Said notice shall
state that the owner or owners whose property is to be
assessed, or other interested party, may on said date ap-
pear before the governing body to move the revision or
correction of such proposed assessment. Such notice
shall be published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county in which the municipality
is located. The notice shall show the total cost of the
improvement, the several frontages abutting thereon and
the respective amounts to be assessed against the abut-
ting property, with a description of the respective abut-
ting lots and lands as to ownership, frontage and location.
On or after the date so advertised, the governing body
may revise, amend, correct and verify the report and proceed by resolution or ordinance to lay the assessments as corrected and verified.

ARTICLE 9. ALTERNATE METHOD FOR STREET AND SEWER IMPROVEMENTS.

Section 2. Assessments for paving or other permanent street improvements; liens.

§8-9-2. Assessments for paving or other permanent street improvements; liens.

Whenever the council of any such municipal corporation shall deem it expedient to cause any street or alley in such corporation, or portion thereof, to be curbed or recurbed, paved or repaved, macadamized or remacadamized or otherwise improved or reimproved in a permanent manner, upon the petition in writing of persons owning the greater amount of the frontage of the lots abutting on both sides of any street or alley, between any two cross streets or between a cross street and an alley, it shall order the work done in the following manner and upon the following terms: After due advertisement in which the council shall reserve the right to reject any and all bids, the contract for such improvement, if let, shall be let to the lowest responsible bidder. The contractor shall look only to the town for the payment of the work, and in no sense to the abutting landowners. Subject to the provisions of section ten of this article, the total cost of curbing, grading and paving or otherwise improving or reimproving any such street or alley, with the exception, in the case of a street occupied by streetcar tracks or other railways, of the distance between the rails and two additional feet outside of each rail, which portion shall, unless otherwise provided by an ordinance of such town or by the franchise of such streetcar or other railway company, be borne and paid entirely by the streetcar or other railway company operating such streetcar or other railway, shall be borne by the owners of land abutting upon such street, alley or portion thereof, ac-
according to the following plan: Payment is to be made by all landowners on either side of such portion of a street or block so paved or improved, in such portion of the total cost, less the portion, if any, chargeable to such streetcar or other railway company, as the frontage in feet of his land so abutting bears to the total frontage of all land so abutting on such street, alley or portion thereof so paved or improved as aforesaid: Provided, however, that where a foreign railroad or other foreign corporation is the owner of property abutting upon such street or alley, notice shall be given to such corporation, in the manner provided in article ten of this chapter, of the intention to improve such street or alley, before the enactment or adoption of any ordinance or resolution relating to such work.

When the paving or repaving of any street, or alley, or portion thereof, shall have been let to contract, and the work done as hereinbefore provided, it shall be the duty of the engineer of such town to cause the several frontages abutting thereon to be measured and to calculate the assessment upon each and every landowner so abutting and to certify the same to the council showing the proper amount to be determined as provided in the foregoing plan. It shall be the duty of the council to examine and compare such assessment, amounts and names so certified to it, and thereupon such council shall publish the following described notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the town. The notice shall state that an assessment under this section is about to be laid against the abutting property for paving, repaving or improvements done on such streets or alleys, describing the location of such paving, repaving, or improvements, and that any owner or owners thereof shall have the right to appear before such council, within two weeks from the first publication thereof and move such council to correct any apportionment or assessment excessive or improperly made as charged, which corrections such council shall have the power to make, and if found to be correct or when corrected by the council, as afore-
said, it shall enter the same together with a description of the lots of land as to location, frontage, depth and ownership, so far as the same may be ascertained, upon its records and enter in its records that such owners and lots be assessed and chargeable with the amounts so ascertained to be borne by them, respectively, and when so approved, certified and entered of record the same shall be and constitute an assessment against such owners and lots for such respective amounts. And it shall be the duty of the council immediately to certify such assessment to the treasurer for collection as herein provided, and a copy of such order shall be certified by the recorder to the clerk of the county court of the county wherein such property is situated, who shall be required to record and index the same in the proper trust deed book in the name of each person against whose property assessments appear therein. The amount so assessed against such abutting landowners shall be paid in ten payments as follows: One tenth of such amount, together with interest on the whole assessment for one year, shall be paid into the treasury of the town before the first day of May next after such work is completed and after such assessments have been certified to the county clerk. And a like one tenth together with interest for one year upon the whole amount remaining unpaid shall be paid on or before the first day of May in each succeeding year thereafter until all has been paid. And each of such installments of one tenth, beginning with the first, shall, until paid, bear interest on the amount of such installment at six per cent per annum from the date of the record of same in the office of the clerk of the county court: Provided, however, That any abutting owner so liable for any portion of the cost of such improvements shall have the right at any time after the same is certified as aforesaid to the treasurer for collection to anticipate the payment of any or all of such assessments and shall be allowed to pay the face of such assessment with interest at six per cent per annum only to the time of payment.

To each of such installments of assessments remaining unpaid in the treasurer's hands on the days herein specified for the payment thereof, a penalty of ten per cent
shall be added, and any assessments so remaining unpaid in the treasurer's hands on such date shall be taken up by council, on such settlements had with the treasurer on such dates, and thereupon such council shall place such assessments, with the penalty added thereto, in the hands of the sergeant or other officer of such town whose duty it is to collect assessments, to be treated and considered, and payment thereof enforced in all respects as here-inbefore provided for the collection of taxes due the town, and they shall be a lien upon the property liable therefor the same as a lien for taxes, which lien may be enforced in the same manner as provided for taxes.

The liens hereinbefore provided for shall have priority over all other liens except those for taxes. Whenever all such assessments for such improvements shall be paid in full to the treasurer he, on behalf of the municipality, shall execute and deliver to the party paying the same a release of the lien therefor, which may be recorded in the office of the clerk of the county court as other releases of liens; and whenever any such assessments shall not be in the hands of the treasurer for collection, but the same shall be shown, to the satisfaction of the town auditor or other official performing the duties of auditor, to have been paid in full to any officer entitled to receive the same, such auditor or the mayor, in cases where the corporation has no auditor, may in like manner execute such release.

§8-9-5. Resolution for improvements; publication; special assessments; how payable; sale and assignment of assessments; lien of assessment; assessments nontaxable.

Whenever it is deemed expedient by the council to provide for grading, paving, curbing, sewering, macadamizing or otherwise improving or reimproving any street or alley therein, to be paid for in whole or in part by special assessments, such council shall declare by resolution, three fifths of the whole number elected thereto concurring, by an aye and no vote, the necessity for such improvement. At the time of the passage of such resolution, the council shall have on file, in the office of the recorder or clerk of the town, plans, specifications, estimates and profiles of the proposed improvements, show-
when the proposed grade of the street and the proposed im-
provement, after completion, with reference to the prop-
erty abutting thereon, which plans, specifications, esti-
mates and profiles shall be open to the inspection of all
persons interested. Such resolution shall determine the
general nature of the improvement, what shall be the
grade of the street, alley or other public place to be im-
proved, as well as the grade or elevation of the curbs, and
such council shall approve the plans, specifications, esti-
mates and profiles for the proposed improvement.

The council shall also determine in such resolution the
method of paying for the work contemplated in such
plans and specifications, whether by an appropriation
from funds in the treasury unappropriated, or by the is-
suance of certificates as hereinafter provided, or whether
or not the bonds shall be issued in anticipation of the
collection of special assessments to be made against the
abutting property owners, as provided for in section two
of this article. But before any such resolution shall be
passed, providing that improvements shall be made, the
same to be paid for by assessments against abutting prop-
erty, at least thirty days' written notice of the intention
to pass such resolution shall be served on each of the
abutting property owners in the manner provided in sec-
tions one and two, article two, chapter fifty-six of this
code: Provided, however, That where a foreign railroad
or other foreign corporation is an abutting property
owner, notice to such corporation shall be given in the
manner provided in article ten of this chapter. And such
owner or owners shall have the right to be heard for or
against the passage thereof.

Assessments shall be payable in ten installments as
provided for in section two of this article, and shall be
recorded and constitute a lien as provided in sections two
and four of this article. The resolution herein provided
for declaring the necessity for such improvement shall be
published as a Class II-0 legal advertisement in compli-
ance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such pub-
lication shall be the town in which such improvements
are to be made. An affidavit of the publisher showing
publication for such time, together with a copy of such
notice attached, shall be filed with the recorder or clerk
of the council and spread upon the record of the minutes
of the next meeting of the council. Such resolution shall
be in effect from and after the first publication thereof as
herein provided for.

In all cases where an assessment is made upon the prop-
erty abutting on the street or alley improved in accord-
ance with the provisions contained in this section and in
sections two and three of this article, the council may by
resolution entered of record by it, sell, assign and trans-
fer to any person or persons, for a cash consideration, all
or any of the assessments perfected as herein provided,
and apply the amount received thereby to the payment
of costs of such improvements. But no such sale and
assignment shall be made until either bonds or certificates
of indebtedness shall have been issued for such assess-
ment, which shall be described in detail in the notice of
the lien thereof to be recorded in the trust deed record in
the office of the clerk of the county court. But no sale
or transfer of such assessment shall be at a greater dis-
count than five per cent of the aggregate sum represented
by such sale. When authorized to do so by the council,
the mayor of such town may make an assignment and
transfer of such assessments, so evidenced by such bonds
or certificates of indebtedness as aforesaid; and, when so
made and recorded in the trust deed book in the office
where such assessments are recorded, the purchaser of
such assessments shall be and remain until the payment
thereof subrogated to all of the rights and remedies, with-
out recourse on such town, as were obtained by recording
such assessments in the first instance, and such council
may issue against each of the several properties upon
which such assessments have been made, bonds or cer-
tificates of indebtedness corresponding in denomination
and otherwise to the annual sum to be paid on each of the
properties so assessed, and the assessments on such prop-
erties shall, when so made and recorded, remain and be a
lien thereon until all such bonds or certificates of indebt-
edness are discharged. The lien created by such assessment
and by the issuance of any bonds or certificates issued
therefor may be released as provided by law in the case
of other liens, and, in addition thereto, upon presentation
to the clerk of the county court of the county wherein
the real estate subject to such lien is situated all the bonds
or certificates issued thereunder, as to any specific real
estate therein described or located, showing that the same
have all been paid, such clerk is hereby empowered to
release the lien of such assessment as to any such real
estate, by noting a release thereof on the record of the lien
as to such real estate on the margin of the trust deed book,
where the same is recorded, and such annotation by such
clerk shall have the effect to release such real estate from
such lien as effectively as a regularly executed and re-
corded release thereof. The proceeds of the sale of such
bonds or certificates of indebtedness shall be applied to
the payment of the indebtedness incurred in making the
improvements on account of which such bonds or certifi-
cates of indebtedness were issued. Should such govern-
ing body of any town decide to issue bonds or certificates
of indebtedness, as herein provided, it may call upon the
attorney general of this state for a proper form, and it
shall be the attorney general's duty to furnish a proper
form for all such bonds or certificates of indebtedness.

In addition to the methods hereinbefore and hereinafter
prescribed for the payment of the cost of construction
and improvement of streets, sewers and sewer systems,
the council may order any street, alley, or portion thereof,
to be graded and paved, repaved, or otherwise perma-
nently improved or reimproved or may order any sewer
constructed and laid in any street, alley or in any right
of way or easement, or portion thereof, and the council
may order to be issued a certificate for each installment
of the amount of the assessment to be paid by the owner
of any lot or fractional part thereof abutting on the street,
or alley so improved, or on the street, alley, right of way
or easement, or portion thereof, in which such sewer is
laid. The amount specified in such assessment shall be
a lien as aforesaid in the hands of the holder of such cer-
tificate upon such abutting lot or part of lot, and such
certificate shall draw interest from the date of such as-
se ssment and the payment may be enforced in the name
of the holder of such certificate by proper suit in equity in any court having jurisdiction to enforce such lien. The council shall fix the amount of such assessment, advertise for bids and do all other things in connection therewith as are hereinbefore and hereinafter provided in this chapter, except (a) that the amount of such certificate shall include the whole cost of such improvement, including the cost of grading, paving and curbing squares at intersections of streets, the costs of which intersections shall be apportioned against the several properties abutting upon the street or portion thereof so improved, but such cost, if any, as is chargeable to streetcar or railway companies shall be charged to and paid by such companies; (b) when a sewer is completed, the cost of which is to be paid by the issuance of certificates, payment is to be made by such landowner on either side or such portion of a street, alley, right of way or easement in which such sewer is laid, in such proportion as such frontage of his land upon such street, alley, right of way or easement bears to the total frontage of all lands so abutting on such street, alley, right of way or easement. In case of a corner lot, frontage is to be measured along the longest dimensions thereof abutting on such street, alley, right of way or easement in which such sewer is laid. Any lot having a depth of two hundred feet or more and fronting on two streets, alleys, right of ways or easements, one in front and one in the rear of such lot shall be assessed on both of said streets, alleys, right of ways or easements, if a sewer is constructed in both such streets, alleys, right of ways or easements. Where a corner lot has been assessed on the end it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on the end; (c) the cost of a sewer system shall be calculated in every respect in the same manner as the cost of the construction of a single sewer, except that such a system shall be deemed to include all elements of the system which serve to drain a definite drainage area as specified in the order of the council directing the work to be done, and the owner of property abutting upon either side of such portion of a street or right of way in which any part of such system is laid shall be assessed in the proportion that the frontage of his abutting land
bears to the total frontage of all lands so abutting on such street or right of way. Paving certificates shall be issued in the same number of installments and payable at the same time as other paving assessments provided for in this chapter. Sewerage certificates shall be issued in such number of installments as the council may determine, the aggregate amount of such certificates to be payable in not less than one nor more than five years, and to be divided in as nearly equal installments as practicable. Nothing contained in this section shall be construed as imposing a time limit upon the enforcement by appropriate suit of any lien for public improvements, herefore or hereafter created.

Certificates authorized by this section may be issued, sold or negotiated to the contractor doing the work, or to any other person if the council deem it expedient: Provided, That the town in issuing such certificates shall not be held as guarantor or in any way liable for payment thereof, except upon the direct action of the council expressed by resolution of record before sale.

Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one of such certificates when due, and such default continuing for a period of sixty days, then all unpaid certificates shall become due and payable and the holder of such certificates may proceed to collect all of such unpaid certificates in the manner hereinbefore provided. Certificates issued in pursuance of this section shall be negotiable at any bank in the town by which they are issued.

Such certificates or assessments shall be exempt from state, county, district or municipal taxes.

The owner of the land or lot of land assessed under this section may at any time anticipate and pay such assessment or certificate with accrued interest thereon.

§8-9-6. Notice of resolution for improvements; how served.

A notice of the passage of the resolution required in the preceding section embodying a copy of such resolution, shall be served upon the owner of each piece of property to be assessed, such service to be made in the manner provided in section one, article two, chapter fifty-six of
Provided, That if any of the owners or persons be not residents of the county wherein such improvement is proposed, or if it appears by the return, in any case, that the owner cannot be found, then a notice of the passage of such resolution shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the town in which such improvement is proposed to be made. Such notice, whether by service or publication, shall be completed at least three days before such improvement is begun or the assessment is levied, and the return of the officer serving such notice or a certified copy of such return, or where published, the certificate of the publisher of such newspaper, shall be prima facie evidence of the service of the notice as herein required: Provided further, That if the owner be a railroad company or other corporation, notice shall be served upon such agent or attorney for such railroad company or corporation within the county wherein such town is situate, if there be such agent or attorney within such county; and such service shall be made two weeks before such improvement is begun or the assessment is levied. Notice upon infants may be served on their guardians and upon insane persons by service upon their committees.

ARTICLE 11. AIRPORTS AND AVIGATION.

Section
6. State and political subdivisions empowered to lease airports and grounds.

§8-11-6. State and political subdivisions empowered to lease airports and grounds.

The state, acting through the aeronautics commission, or any county, incorporated city, town or village owning, either severally or jointly with other like governmental units, an airport and any grounds used or useful in connection therewith may severally or jointly lease the same, for use as such airport and for any other purposes incidental to and not inconsistent therewith, for a term not exceeding thirty years: Provided, however, That no lease shall be executed by such owner or owners of any
such airport or grounds unless and until such owner or owners shall have given notice by publication of the following described notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state if it is the state which proposes to make such lease or the political subdivision or subdivisions involved if it is a political subdivision or subdivisions which propose to make such lease. The notice shall state its or their intent to lease said airport or grounds, shall accurately describe what is proposed to be leased, the purpose or purposes for which it may be used and the terms of said lease, and shall state the time and place for the public opening of proposals for such lease, and shall reserve the right to reject any and all proposals. Nothing herein contained, however, shall prevent such owner or owners of such airport or grounds from granting or renting landing rights for airplanes, hangar space, gasoline storage, or handling facilities, ticket or general office space, or any other facilities or rights in connection with such airport or grounds, covering or affecting less than the whole thereof, without notice and upon such terms as such owner or owners may deem advisable. All income received by a county court, or incorporated city, town or village under the terms of any such lease or grant shall be paid to the state sinking fund commission to retire the bonded indebtedness, if any, created for the acquisition, building and construction of such airport or grounds. And if there be no such outstanding bonded indebtedness, then such income to be paid into the general funds of such county, incorporated city, town or village.

ARTICLE 12. WATERWORKS.

Section

1a. Municipality of ten thousand population or less prohibited to sell or lease water plant without first submitting question to voters.

§8-12-1a. Municipality of ten thousand population or less prohibited to sell or lease water plant without first submitting question to voters.

1 The common council of any municipality having a population of less than ten thousand of the state of West Vir-
Virginia is hereby prohibited from selling, leasing or disposing of its municipally owned water plant, unless upon submission of the question of the proposed sale or lease to the voters of said municipality for ratification or rejection at any general or special election, three fifths of the votes cast shall be in favor of ratification. Should any such municipality desire to sell, lease or dispose of its water plant, it shall publish the following described notice immediately prior to the general election or the special election, as fixed by the council, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice shall set forth the terms and conditions of such sale, lease or disposition of said water plant, the price which has been agreed upon, the name of the purchaser or purchasers or lessee or lessees, and such other information to the voters of said municipality as the council may deem necessary, and at such election each voter desiring to vote shall deposit a ballot in a ballot box to be provided for that purpose which ballot shall have written or printed thereon the following words:

☐ For ratification.
☐ Against ratification.

Such election shall be held under the superintendence of the commissioners of election appointed by the governing body of such municipality and the results of such election shall be certified under oath and returned by said election commissioners to the governing body of said municipality as soon as may be after such election. In the event of a vacancy due to the failure or refusal to act of any election commissioner, such vacancy may be filled by the other commissioners. In the event that the sale, lease or disposition of said water plant is ratified by three fifths of the voters voting at said special or general election, the governing body of said municipality having control of such water plant shall proceed to consummate the lease or sale to the purchaser or purchasers upon the terms and provisions as have been agreed upon.
§8-12-4. Publication of adoption of ordinance; hearing.

1 After such ordinance shall have been adopted, the ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said ordinance shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body, upon a certain date which shall not be less than ten days subsequent to the date of the last publication of such ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, however, That if at such hearing written protest is filed by thirty per cent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

ARTICLE 13. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

Section 5. Publication of ordinance; petition for referendum; election.

§8-13-5. Publication of ordinance; petition for referendum; election.

1 After the ordinance for any project under this article has been adopted and approved, it shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality undertaking such project. If no petition is filed with the clerk of the governing body as hereinafter provided, within ten days after the publication of such ordinance, then after the expiration of such ten-day period such ordinance shall be in full force and effect, but if within such period of ten days a petition is filed with
the clerk of such municipality signed by fifteen per cent of the number of voters voting at the last preceding general municipal election, asking that the question of acquiring, constructing, extending or improving or combining such waterworks and sewerage systems as provided in such ordinance and the issuance of revenue bonds in connection therewith, be submitted to the legal voters of the municipality, the governing body of such municipality shall call a special election in the manner provided by law to vote upon such question. If it appears upon the canvass of the election by the governing body that a majority of the voters voting upon such question at such election voted in favor thereof then such ordinance shall be in full force and effect, but if a majority of the votes cast are unfavorable, then such municipality shall proceed no further under such ordinance.

CHAPTER 8A. MUNICIPAL HOME RULE.

Article
3. Home Rules Charters; Ordinances.
6. Consolidation.

ARTICLE 2. HOME RULE PROCEDURE; CHARTER ELECTIONS.

Section
9. Public hearing on draft of charter.
12. Submission of charter to voters; notice.
15a. Same—alternate plan for class II and class III cities.


1. The notice of an election on the question of whether a charter shall be framed shall consist of the initiatory ordinance and a brief prefatory statement setting out the purpose and date of the election, naming the candidates, if any, nominated by the governing body for membership on the charter board and stating how and within what time limit other nominations may be made. It shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The first publication shall be made not less than thirty days prior to the date fixed for the election.

1 When it shall have completed its draft of charter a charter board shall conduct a public hearing thereon.
2 Notice of the time, place and purpose of the hearing and of where copies of a draft of the charter may be obtained shall be given by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The date of the last publication of notice shall be at least ten days prior to the date set for the hearing. The hearing may be continued by the charter board by adjournments over a period not exceeding fourteen days.

§8A-2-12. Submission of charter to voters; notice.

1 The proposed charter shall be submitted to the voters at a special election to be held at the time determined by the charter board. Notice of the time, place and purpose of a charter election shall be given by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The first of said publications shall be made not less than thirty days prior to the date fixed for the election. Each such notice of election shall state that any qualified voter of the city may obtain a copy of the proposed charter, from a designated officer and place, upon request.

§8A-2-15a. Same—Alternate plan for Class II and Class III cities.

1 Whenever the council of any Class II or Class III city, as defined under section four, article one, chapter eight-a of this code, shall deem it expedient to amend the charter of any such city, either in whole or in part, it shall, by ordinance or resolution, set out in its proper record book the proposed amendments in full. The council shall set a time and place for a public hearing thereon, which date shall not be less than thirty days after the date of the first publication hereinafter required. The proposed amendments, together with a notice of the time and place fixed for the hearing thereon, shall be published as a Class
II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The notice shall also state that the proposed amendments will be considered at the time and place fixed by the council and any elector of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment shall become operative on and after a date to be fixed in the notice, which date shall be not less than ten days after the date of the hearing. If no objections are filed, or if objections are filed and withdrawn at the time of the hearing, or within ten days thereafter, the council shall, by ordinance, adopt the amendments as amendments to the charter, and cause a transcript of the proceedings to be certified to the clerk of the house of delegates, as keeper of the rolls, and a copy thereof to be recorded in the office of the clerk of the county court.

If, at the time and place set for the hearing, objections to the amendments are filed and not withdrawn ten days thereafter, the council may abandon the proposed amendments to which objections have been filed, or it may submit the proposed amendments, either as a unit or separately, at the next regular city election, or at a special election, if the date of the regular election shall be more than six months from such date, for ratification or rejection. A notice of an election shall set out the proposed amendments at length or state that copies may be obtained by any qualified voter from a designated officer at a stated place, upon request. Notice of such election shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city.

The amendments, or such of them as may be adopted, shall take effect on the date that the canvass and declaration of result showing approval by the voters has been made and entered in the minutes of the governing body. A transcript of the proceedings shall be filed and recorded as hereinbefore provided.

The method of charter amendment provided by this
ARTICLE 3. HOME RULE ChARTERS; ORDINANCES.

Section 10. Ordinance procedure.

§8A-3-10. Ordinance procedure.

1 The governing body shall enact an ordinance in the cases specified in section nine of this article in accordance with the following requirements:

(1) An ordinance shall be read at not less than two meetings with at least one week intervening between each meeting;

(2) At least five days before the meeting at which such ordinance is finally adopted the governing body shall cause notice of the proposed adoption of said ordinance to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The notice shall state the subject matter of such ordinance and the time and place of the proposed final vote on adoption, and the place or places within the city where such ordinance may be inspected by the public;

(3) An ordinance shall not be finally passed until after three days from the date of the publication and until all interested parties have been given an opportunity to attend a meeting of the council and be heard with respect to such ordinance;

(4) An ordinance shall not be materially amended at the same meeting at which finally passed.

The governing body of any municipality may adopt building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, by ordinance, in the manner herein prescribed. Before any such code shall be adopted, it shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies shall be made available for public inspection. The
ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on passage of said ordinance shall be the same as on any other ordinance. After its adoption, such code or codes shall be certified to by the chief executive officer and shall be filed as a permanent record in the office of the clerk, who shall not be required to transcribe and record the same in the ordinance book as other ordinances. It shall not be necessary that such ordinance adopting such code or the code itself be published in full, but before final passage of such ordinance, notice of the proposed adoption of such code shall be given by publication as herein provided for other ordinances, which notice shall state where, within the city, the code or codes will be available for public inspection.

A home rule charter may prescribe a procedure for the enactment of ordinances in greater detail than prescribed by this section, but the provisions of this section shall be required. A governing body may enact an ordinance under suspension of the rules prescribed by this section only in the case of a pressing public emergency making a procedure in accordance with the section dangerous to the public health, safety, or morals, and by affirmative vote of two thirds of the members elected to the governing body. The nature of the emergency shall be set out in full in the ordinance.

ARTICLE 4. POWERS OF HOME RULE CITIES.

Section 28. Franchises.

§8A-4-28. Franchises.

1. A city shall have power to grant franchises or rights to use the streets, waters, water front, public ways and public places in the city. No franchise shall be granted for a period in excess of twenty-five years, nor until after a public hearing has been held thereon after notice of the time, place and purpose of the hearing shall have been published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city.
ARTICLE 6. CONSOLIDATION.

Section
7. Certification by circuit court; filing; publication.
11. Commission on wards and election districts.

§8A-6-7. Certification by circuit court; filing; publication.

1 If a majority of the votes cast by the qualified voters
2 in each of the municipalities are shown by the county
3 court's certificate to have been cast in favor of the con-
4 solidation, the circuit court or judge, if satisfied as to
5 the correctness of the returns evidenced by that certifi-
6 cate, shall so certify upon the certificate. He shall cause
7 the same to be filed forthwith in the office of the clerk
8 of the county court, and to be published as a Class I
9 legal advertisement in compliance with the provisions of
10 article three, chapter fifty-nine of this code, and the
11 publication area for such publication shall be each of the
12 municipalities so voting.

§8A-6-11. Commission on wards and election districts.

1 Within one week after the filing and publication pro-
2 vided for in section seven of this article, a joint com-
3 mission shall be formed consisting of the mayor or other
4 chief executive officer and the clerk or other recording
5 officer of each municipality to be consolidated, and
6 three inhabitants thereof appointed by the governing
7 body.
8 The commission shall be called together by the mayor
9 or other chief executive of the consolidating municipality
10 largest in population, at a time and place fixed by him,
11 but not later than ten days from the formation of the
12 commission. The commission shall organize by selecting
13 a chairman and clerk. The clerk shall keep a record
14 of all proceedings and expenses and shall file the same,
15 not more than fourteen days after the commission has
16 filed its report and certificate hereinafter prescribed, in
17 the office of the clerk of the county court, together
18 with an affidavit as to the truth and correctness
19 thereof.
20 The commission shall fix and determine the ward lines
21 (if the largest municipality is so divided) and election
22 districts of the new municipality. The commission shall,
within forty-five days from the date of its organization, make a report and certificate over the signatures of a majority of its members, and shall file the same in the office of the clerk of the county court. The certificate shall set forth and accurately describe the ward lines, if any, and election district lines fixed by the commission, and shall contain a proper map of the new municipality with such lines set out thereon. The clerk of the commission shall cause a copy of the certificate to be filed in the office of the secretary of state.

The lines fixed and determined by the commission shall be those of the new municipality until changed in accordance with law. Wards, if any, shall be formed of contiguous territory. No election district shall be in more than one ward. In dividing the new municipality into wards and election districts, the commission shall have regard for, and shall take into consideration, the election laws of the state, as well as the area and population in all wards and election districts, and shall divide and arrange the same so that each will contain, as nearly as possible, an equal number of inhabitants.

A notice setting forth the ward lines, if any, and election district lines as fixed by the commission shall be published by the clerk thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each of the municipalities concerned. The notice shall be published within seven consecutive days next succeeding the filing of the certificate with the clerk of the county court. The expenses of the publication shall be paid by the new municipality. Upon the completion of the publication, the wards and election districts of the consolidating municipalities shall be superseded. The commission shall appoint, in accordance with the charter of the new municipality, election officers to serve at the election provided for by section twelve of this article.

The commission may employ an engineer and an attorney to assist in performing its duties. The commission may provide for compensation to be allowed to its clerk,
engineer and attorney, which shall be paid by the new
municipality. The commission members shall not receive
compensation for their services, but all expenses incurred
by them in the performance of their duties, when item-
ized and sworn to by the chairman and clerk, shall be
paid by the new municipality.


1. Ten per cent of the inhabitants of the municipality
may file a petition, in writing and signed by them, with
the governing body, setting forth by metes and bounds
the territory proposed to be annexed and asking that a
vote be taken upon the proposed annexation. Upon the
filing of the petition, the governing body shall order a
vote of the qualified voters of the municipality to be
taken upon the proposed annexation at a time to be
named in the order, but not less than twenty nor more
than sixty days from the date of the order. The govern-
ning body shall, at the same time, order a vote of all the
qualified voters residing in the contiguous territory, and
of all the qualified voters owning any part of such ter-
ritory whether resident thereon or not, to be taken upon
the question on the same day at some convenient place
on or near such contiguous territory. The orders shall
be published, at the cost of the municipality, as a Class
II-0 legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the munici-
pality and the contiguous territory. The first publication
shall be at least fourteen days prior to the date the vote
is to be taken. The orders so published shall contain an
accurate description by metes and bounds of the territory
proposed to be annexed, and, if practicable, shall contain
also a popular description of such territory.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION;
ATHLETIC ESTABLISHMENTS; MONUMENTS AND ME-
MORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL
BROADCASTING AUTHORITY.

ARTICLE 2A. ATHLETIC ESTABLISHMENTS.

Section

6. Resolution for construction, etc., of establishment; notice and
hearing.
§10-2A-6. Resolution for construction, etc., of establishment; notice and hearing.

Before any board shall construct, acquire, improve, extend or equip any athletic establishment under this article, the board shall adopt a resolution which shall (a) set forth a brief general description of the athletic establishment, and if the same is to be constructed a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension, improvement or equipment of such establishment; (d) direct that revenue bonds of the county board of education be issued pursuant to this article; in such amount as may be found necessary to pay the costs of such athletic establishment; and (e) contain such other provisions as may be necessary or proper in the premises. Before such resolution shall become effective it, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such board of education is located. The notice shall specify a time and place for a public hearing, the time being not less than ten days after the first publication of said notice; at which time and place all parties and interests may appear before the board, and may be heard as to whether or not said resolution shall be put into effect. At such hearing all objections and suggestions shall be heard and the board shall take such action as it shall deem proper in the premises: Provided, however, That if at such hearing a written protest is filed by thirty per cent or more of the owners of real estate situate in said county, then the board of education shall not take further action unless four fifths of the members of said board assent thereto: And provided further, That in case written protest is filed purporting to have been signed by or on behalf of thirty per cent or more of the owners of real estate in said county, the board shall have authority to appoint a subcommittee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether
or not thirty per cent of the property owners have fact
protested, and said subcommittee shall report its findings
to the board.

CHAPTER 11. TAXATION.

Article
3. Assessments Generally.
8. Levies.
12. License Taxes.
17. Excise Tax on Sale of Cigarettes.

ARTICLE 3. ASSESSMENTS GENERALLY.

Section
24. Review and equalization by county court.

§11-3-24. Review and equalization by county court.

1 The county court shall annually, not later than the
2 first day of February, meet for the purpose of review-
3 ing and equalizing the assessment made by the assessor.
4 It shall not adjourn for longer than three days at a
time until this work is completed, and shall not remain
6 in session for a longer period than twenty-eight days.
7 At the first meeting, the assessor shall submit the prop-
8 erty books for the current year, which shall be com-
9 plete in every particular, except that the levies shall
10 not be extended. The assessor and his assistants shall
11 attend and render every assistance possible in connec-
12 tion with the value of property assessed by them. The
13 court shall proceed to examine and review the prop-
14 erty books, and shall add on the books the names of
15 persons, the value of personal property and the descrip-
16 tion and value of real estate liable to assessment which
17 was omitted by the assessor. They shall correct all
18 errors in the names of persons, in the description and
19 valuation of property, and they shall cause to be done
20 whatever else may be necessary to make the valuation
21 comply with the provisions of this chapter. But in no
22 case shall any question of classification or taxability be
23 considered or reviewed. If the court determine that any
24 property or interest is assessed at more or less than its
25 true and actual value, it shall fix it at the true and actual
26 value. But no assessment shall be increased without
27 giving the property owner at least five days' notice, in
writing, and signed by the president of the court, of the
intention to make the increase. Service upon the prop-
erty owner shall be sufficient, or upon his agent or attor-
ney in person, or if sent by registered mail to such
property owner, his agent, or attorney, at the last known
place of abode. If he be not found and have no known
place of abode, then notice shall be given by publication
thereof as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be the county. The date of the publication
shall be at least five days prior to the increase. When
it is desired to increase the entire valuation in any one
district by a general increase, notice shall be given by
publication thereof as a Class II-0 legal advertisement
in compliance with the provisions of article three, chap-
ter fifty-nine of this code, and the publication area for
such publication shall be the county. The date of the
last publication shall be at least five days prior to the
increase in valuation. When an increase is made, the
same valuation shall not again be changed unless notice
is again given as heretofore provided.

The clerk of the county court shall publish notice of
the time, place and general purpose of the meeting as
a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county involved. The expense of publication shall
be paid out of the county treasury.

If any person fails to apply for relief at this meeting,
he shall have waived his right to ask for correction in
his assessment list for the current year, and shall not
thereafter be permitted to question the correctness of
his list as finally fixed by the county court, except on
appeal to the circuit court. After the county court com-
pletes the review and equalization of the property books,
a majority of the court shall sign a statement that it is
the completed assessment of the county for the year;
then the property books shall be delivered to the assessor
and the levies extended as provided by law.
ARTICLE 8. LEVIES.

Section

17. Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot.

32. Publication.

§11-8-17. Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot.

1 The local levying body shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within fourteen consecutive days next preceding the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The local levying body, however, shall provide the election supplies necessary for such election and shall canvass the returns thereof. A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled: “Special election to authorize additional levies for the year(s) _________ and for the purpose of ___________ according to the order of the ___________ day of ___________.

The additional levy shall be on Class I property _______ cents; on Class II property ___________ cents; on Class III property (if any) ___________ cents; on Class IV property (if any) ___________ cents.

§11-8-32. Publication.

1 The requirement of publication under this article shall
be met by publication as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the taxing unit.

**ARTICLE 12. LICENSE TAXES.**

**Section 84. Publication of list of delinquent corporations.**

§11-12-84. Publication of list of delinquent corporations.

1 The auditor shall, between the first and fifteenth day of the second month of the license tax year in every year, publish a list of all corporations failing to pay the license tax, or any part thereof, due therefrom on or before the first day of the first month of the license tax year, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. Such list shall contain the names of such delinquent corporations, arranged in two classes, domestic and foreign. The cost of such publication shall be paid by the auditor, when allowed by the board of public works, out of the moneys in the treasury. Any such delinquent corporation may, on or before the first day of the fifth month of the license tax year following or at any time before judgment or decree is entered as hereinafter provided, pay the amount of such tax and a penalty of one per cent per month for each month or fractional part thereof that such failure continued, but the amount of such penalty shall not be less than five dollars. After the publication of the list of delinquent corporations by the auditor, he shall mail to the last known post-office address of each of such corporations a supplemental notice, together with a statement of the total amount of tax and penalties due therefrom, which notice shall be mailed at least thirty days before the first day of the fifth month of the license tax year.

**ARTICLE 17. EXCISE Tax ON SALE OF CIGARETTES.**

**Section 20. Seizure and sale of cigarettes by commissioner; forfeiture; collection of tax.**
§11-17-20. Seizure and sale of cigarettes by commissioner; forfeiture; collection of tax.

1 Whenever the commissioner or any of his deputies or employees authorized by him for the purpose shall discover any cigarettes, subject to tax as provided by this article and upon which the tax has not been paid as herein required, the commissioner, or such deputy or employee is hereby authorized and empowered forthwith to seize and take possession of such cigarettes, which shall thereupon be deemed to be forfeited to the state and the commissioner shall within a reasonable time thereafter sell such forfeited cigarettes, and from the proceeds of such sale shall collect the tax due thereon together with a penalty of fifty per centum thereof and all expenses and costs incurred in such proceedings, and deduct and pay any other sums due the tax commissioner by the person in possession of said forfeited cigarettes, and pay the balance, if any, to such possessor: Provided, however, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale may be made in any county the tax commissioner deems most convenient and economical. Notice of such sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

ARTICLE 19. SOFT DRINKS TAX.

Section

7a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.

§11-19-7a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.

1 Whenever the commissioner or any of his duly author-
ized agents shall discover any soft drink syrups, subject
to tax as provided by this article and upon which the
tax has not been paid as herein required, the commis-
sioner or his duly authorized agent is hereby authorized
and empowered forthwith to seize and take possession
of such soft drink syrups, which shall thereupon be
deemed to be forfeited to the state and the commissioner
shall within a reasonable time thereafter sell such for-
feited soft drink syrups; and from the proceeds of such
sale shall collect the tax due thereon together with a
penalty of fifty per cent thereof and the cost incurred
in such proceedings, and pay the balance, if any, to the
person in whose possession such soft drink syrups were
found: Provided, however, That such seizure and sale
shall not be deemed to relieve any person from fine or
imprisonment provided herein for violation of any pro-
vision of this article. Such sale shall be made in the
county where most convenient and economical. Notice
of such sale shall be published as a Class I legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the county wherein such
seizure was made and the county wherein the sale is
to take place. Notice shall be published at least five
days prior to the sale. All moneys collected under the
provisions of this section shall be paid into the state
treasury and treated as other taxes collected under this
article.

CHAPTER 11A. COLLECTION AND ENFORCEMENT
OF PROPERTY TAXES.

Article
1. Accrual and Collection of Taxes.
2. Delinquency and Methods of Enforcing Payment.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

Section
8. Notice of time and place for payment.


1 The sheriff may give notice by posting at not less than
2 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 purpose of receiving taxes due by the people
residing or paying taxes in such district. The notice
shall also state that those who pay the first installment
of their taxes on or before September first will be en-
titled to a discount of two and one-half per cent. Like
notice may be given that between January fifteenth and
February twenty-eighth he will again appear in each
district for the collection of taxes, and that those who
pay their second installment on or before March first
will be entitled to the same discount. Failure of the
sheriff to post such lists shall not impair the right of
the state to collect such taxes.

The county court of any county may order that the
above notice shall also be given by advertisement. Such
order, once entered, shall continue in effect until
rescinded by the county court. Upon entry of such order,
the sheriff shall, besides posting as required above, pub-
lish the proper notice as a Class II legal advertisement
in compliance with the provisions of article three, chap-
ter fifty-nine of this code, and the publication area for
such publication shall be the county. Such notice shall
be so published within fourteen consecutive days next
preceding the fifteenth day of July or the fifteenth day of
January as the case may be. For every failure so to
advertise, the sheriff shall forfeit one hundred dollars.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING
PAYMENT.

Section
10a. Notice of delinquency.
13. Publication and posting of delinquent tax lists.


On or after April first of each year, the sheriff may
prepare and publish a notice stating in effect that the
taxes assessed for the previous year have become de-
linquent, and that unless paid by April thirtieth will be
included for publication in the forthcoming delinquent
lists, which notice, if published, shall be published as a
Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.


A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county court at which they are to be presented for examination. At the same time a copy of each list shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Only the aggregate amount of the taxes owed by each person need be published. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of two dollars and fifty cents shall be added to the taxes and interest already due on each item listed.

Any person, whose taxes were delinquent on May first, may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication, by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only fifty cents if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

ARTICLE 3. SALE OF LAND FOR TAXES.

Section

2. Second publication of list of delinquent real estate; notice.

41. Publication by sheriff of sales list.

§11A-3-2. Second publication of list of delinquent real estate; notice.

On or before September tenth of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his county remaining delinquent as of September first, together with a notice of sale, in form or effect as follows:
Notice is hereby given that the following described
tracts or lots of land or undivided interests therein in
the County of ____________ which are delinquent for
the nonpayment of taxes for the year (or years) 19_____,
will be offered for sale by the undersigned sheriff (or
collector) at public auction at the front door of the
courthouse of the county, between the hours of ten in
the morning and four in the afternoon, on the ______
day of ______________, 19_____.

Each unredeemed tract or lot, or each unredeemed
part thereof or undivided interest therein, will be sold
at public auction to the highest bidder for cash in an
amount which shall not be less than the taxes, in-
terest and charges which shall be due thereon to the
date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before sale, of the total amount of taxes, interest and charges due thereon up to the date of redemption.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Given under my hand this ______ day of ______________, 19_____.

____________________________________
Sheriff (or collector)

The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

To cover the costs of preparing and publishing the delinquent list, a charge of three dollars and fifty cents shall be added to the taxes, interest and charges already due on each item listed. The sum of the taxes, interest to the date of sale, and other charges shall be stated in the list as the total amount due.
Any person, whose taxes were delinquent on September first, may have his name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by such person at the date of such redemption. In such case, the sheriff shall include but fifty cents of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.


1 As soon as the clerk has prepared the notice provided for in the preceding section, he shall cause it to be served upon the following persons: (1) The person in whose name the real estate was returned delinquent and sold, or, in case of his death, his heir or devisee and his personal representative, if such there be; (2) any grantee of such person, or his heir or devisee and his personal representative, if such there be, if a conveyance of such real estate is recorded or filed for record in the office of the clerk; (3) any person having a lien upon such real estate disclosed by any paper recorded in the clerk's office; and (4) any other person having such an interest in the property as would entitle him to redeem, if the existence of such interest appears of record.

The notice shall be personally served upon all such persons residing or found in the state in the manner provided for serving process commencing a suit, on or before the first day of February following the request for such notice. If any person entitled to notice is a nonresident of the state or if his residence is unknown to the clerk and cannot by due diligence be discovered, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced within two weeks after February first, and a copy of
§11A-3-41. Publication by sheriff of sales list.

1. Within one month after completion of the sale, the sheriff shall prepare and publish a list of all the sales made by him, in form or effect as follows, which list shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

2. List of real estate sold in the county of ____________,

3. in the month (or months) of ____________, 19_____, for nonpayment of taxes thereon for the year (or years) 19_____, and purchased by individuals or by the state of West Virginia:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Local description of land charged</th>
<th>Quantity of land</th>
<th>Quantity of land sold</th>
<th>Name of purchaser</th>
<th>Whole amount paid by purchaser</th>
</tr>
</thead>
</table>

4. The owner of any real estate listed above, or any other person entitled to pay the taxes thereon, may, however, redeem such real estate as provided by law.

5. Given under my hand this __________ day of ____________, 19_____.

6. To cover the costs of preparing and publishing such list, a charge of three dollars shall be added to the taxes, interest and charges already due on each item listed.

ARTICLE 4. SALE OF LANDS FOR SCHOOL FUND.

Section

12. Service of process by publication; failure to name person as defendant; failure to obtain personal service in prior suits.

23. Notice of sale.
§11A-4-12. Service of process by publication; failure to name person as defendant; failure to obtain personal service in prior suits.

Upon the institution of a suit as provided in section ten of this article, the clerk of the circuit court shall enter an order of publication, without the filing of any affidavit by the deputy commissioner as required in other cases. Such order of publication shall give the style of the suit, as, state of West Virginia v. A. B., et al; shall state that the object of the suit is to obtain a decree of the circuit court ordering the sale for the benefit of the school fund of all lands included in the suit; shall list all such lands, setting forth as to each item its local description, the former owner in whose name the land was forfeited, or was returned delinquent and sold, or escheated, as the case may be, and the names of such other defendants as may be interested therein; and shall require all the named defendants, and all unknown parties who are or may be interested in any of the lands included in the suit to appear within one month after the date of the first publication thereof and do what is necessary to protect their interests.

The order shall be published as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The cost of such publication shall be charged rateably to each item listed in the suit, and shall be taxed to the state as part of its costs in the suit and paid as hereinafter provided.

In view of the fact that the state has absolute title to all forfeited land, to all land sold to the state for non-payment of taxes and become irredeemable, to all escheated land, and to all waste and unappropriated land, and must under the constitution have such an absolute title before the land may be sold for the benefit of the school fund; and in view of the fact that the former owner of any such land, or any person claiming under him, has no further interest therein nor rights in respect thereto except such privilege of redemption
as may be extended to him by the Legislature as an act of grace; and in view of the further fact that all parties known and unknown who may claim an interest in any of the lands included in the suit are given notice thereof by the order of publication provided for above; therefore, the Legislature deems it both expedient and necessary to provide that failure to name any such person as a defendant shall in nowise affect the validity of any of the proceedings in the suit for the sale of the state's title to such land; and in view of the fact that the supreme court of appeals in a decision just rendered has held that there is no constitutional requirement that the former owner or any other interested person be personally served with process in a suit for the sale for the benefit of the school fund of lands that are and must be the absolute property of the state; and in view of the further fact that in its last previous enactment of this section the Legislature had no intention of requiring that personal service of process on named defendants in such a suit should be a mandatory condition precedent to the validity of any step or proceeding in such suit, but on the contrary expressly stated that failure to serve the summons on any named defendant should in nowise affect the validity thereof; now therefore, the Legislature also deems it both expedient and necessary to provide that the failure to obtain such personal service on any named defendant in any suit instituted under the provisions of this article prior to the effective date hereof shall in no way affect the validity of any step or proceeding in any such suit or the validity of the title acquired by the purchaser of land sold under any decree made or to be made in any such suit.

§11A-4-23. Notice of sale.

1 In order to encourage attendance and bidding at the sale, the deputy commissioner shall, beginning at least fifteen days before the day on which the court has ordered that any lands be sold, publish a list of all such lands as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publica-
tion shall be the county. At the head of the list shall
be a notice of the sale in form or effect as follows:

Notice is hereby given that, pursuant to the order of
the Circuit Court of ___________ County, the following
described tracts or lots of land, or undivided interests
therein, will unless sooner redeemed be sold for cash
to the highest bidder. Such sale will be held at
______________ (here insert place of sale fixed by the
court) beginning at ten o'clock in the morning on the
_______ day of ____________, 19____.

The list shall set forth as to each item its quantity,
local description and, except in the case of waste and
unappropriated lands, the name of the former owner.
The cost of such publication shall be taxed to the state
as part of its costs in the suit and shall be paid as here-
inafter provided.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article
1. Bond Issues for Original Indebtedness.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

Section
8. Publication of notice of election.
21. Advertisement and sale of bonds; purchase by state governmental
agency.
25. Copy of proceedings to be transmitted to attorney general for
approval or disapproval; publication of approval or disapproval.

1 Notice of all bond elections shall be given by publi-
cation, within fourteen consecutive days next preceding
the date of the election, of the order provided for in sec-
tion four of this article as a Class II-0 legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the political division in
which the election is to be held.

§13-1-21. Advertisement and sale of bonds; purchase by state
governmental agency.
1 The governing body of the political division issuing
such bonds shall sell the same and collect the proceeds,
which proceeds shall be deposited with its treasurer. Whenever any bonds are to be sold, the body authorized to sell the same shall, before offering them to the public, offer them in writing to the secretary of state for purchase by any of the governmental agencies of the state authorized by law to purchase such bonds, which offer shall be held to be an offer to sell the bonds at their par value to the state sinking fund commission and to any other of the governmental agencies of the state authorized by law to purchase such bonds. If, after such offer is made, the governing body of the political division making the offer shall be notified in writing that none of such agencies of the state has elected to purchase such bonds, or after ten days have elapsed after such offer of sale has been made without an acceptance by any of such agencies of the state, then the governing body of the political division shall advertise such bonds for sale, on sealed bids, which advertisement shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the political division. The first publication shall be made at least fourteen days before the date fixed for the reception of bids. Such advertisement shall also be published in a financial paper published either in the city of New York or the city of Chicago, or in a newspaper published in a city of this state having a population of not less than twenty thousand inhabitants, according to the last federal census. The governing body may reject any and all bids. If the bonds be not sold pursuant to such advertisement, they may, within sixty days after the date advertised for the reception of bids, be sold by the governing body at private sale, but no private sale shall be made at a price less than the highest bid which shall have been received. If not sold, such bonds shall be readvertised in the manner herein provided. In no event shall bonds be sold for less than their par value.
§13-1-25. Copy of proceedings to be transmitted to attorney general for approval or disapproval; publication of approval or disapproval.

1 The governing body of any political division issuing bonds under this article shall, as soon as practicable after the result of the election authorizing their issuance shall have been officially ascertained, transmit to the attorney general a duly certified copy of all orders, ordinances, proclamations, notices, advertisements, affidavits, resolutions and records of all the proceedings connected with or pertaining to such bond issue, and any other matters relative thereto which the attorney general may require.

2 The attorney general shall thereupon either approve or disapprove the validity of such bond issue, and shall immediately notify the governing body of the political division which authorized the issuance of the bonds of his action by mail, and as soon as practicable notify the people of such political division of his approval or disapproval of such bond issue, by causing notice thereof to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the political division.

ARTICLE 3. STATE SINKING FUND COMMISSION.

Section 7. Where and how bonds and interest payable; substitute paying agent.

§13-3-7. Where and how bonds and interest payable; substitute paying agent.

1 Payment of bonds and interest coupons hereafter issued shall be made from funds specified in section eight of this article. The place or places of payment of such bonds and coupons shall be in accordance with the provisions of articles one and two of this chapter. In the event of the insolvency, threat of insolvency, death, or discontinuance from business of the paying agent or in the case of discontinuance of the place of payment as designated by the terms of such bonds, it shall be the duty of the sinking fund commission to appoint another paying agent or designate another place of payment. Such action by
the commission shall be valid only if sanctioned by the recorded votes of three fourths of the commission's membership. Upon appointment of a substitute paying agent, it shall be the duty of the commission to publish notice of such action as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the former paying agent had residence. Upon designation of another place of payment, publication of notice shall be made in the county in which was located the former place of payment.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 1. CLAIMS DUE THE STATE.

Section
8. Sale of real estate under execution—notice; place.

§14-1-8. Sale of real estate under execution—Notice; place.
1 When a levy is so made upon real estate, the officer making it shall publish notice thereof and of the time and place of sale as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The sale shall take place at the premises or at the front door of the courthouse, as the officer may deem most advisable.

1 The sheriff, after having received a transcript of the account which is to be sold, shall give notice by publication as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within the twenty-one consecutive days next preceding the date of sale. The notice shall state that he will proceed to sell to the highest bidder the claims or accounts mentioned in such notice. Such notice shall show the name of the sheriff or other officer and his sureties, in case there is evidence of his having executed a bond, the year or years for which he was indebted to the state, upon
what account such indebtedness exists, and the amount
shown to be due thereon by the auditor's books, exclusive
of interest, as well as the amount appearing to be due,
with interest calculated to the day of sale.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

Section
9. Same—discharge.

§15-1B-9. Same—Discharge.

1 a. Enlisted men may be honorably discharged, dis-
charged, or discharged dishonorably; but in no case may
an enlisted man be dishonorably discharged unless by
sentence of a general court-martial, except as hereinafter
provided. No enlisted man shall be honorably discharged
from service unless he produces the certificate of his im-
mediate commanding officer that he has turned over or
satisfactorily accounted for all property issued to him.

9 b. Whenever any enlisted man of the national guard
shall have performed service therein for the term of his
enlistment or reenlistment, and has turned in to the
proper officer all state or military property for which he is
responsible, his commanding officer shall grant him a full
and honorable discharge, except in time of insurrection
or invasion or other emergency declared by the governor,
when his enlistment shall be automatically extended for
the period he shall be in the active service of the state,
and until released therefrom by proper order. Discharge
for physical disability shall be granted pursuant to ap-
licable rules and regulations. The governor may au-

or charge of enlisted men, with or without their consent, at
any time, upon the recommendation of the commanding
officer of the unit of organization to which they belong.

An enlisted man who cannot, after due diligence, be
found, or who shall remove his residence from the state,
or to such a distance from the armory of his organization,
as to render it impracticable for him to perform properly
military duties, or who shall be convicted of a felony, may
be discharged by order of the governor.
c. A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general at the time of such discharge, and as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such dishonorably discharged person resides. No person so discharged shall be admitted to any armory or other meeting place of the national guard or to the immediate vicinity of any encampment, drill or parade of troops. All commanding officers are hereby required to enforce these prohibitions.

CHAPTER 16. PUBLIC HEALTH.

Article
10. Sterilization of Mental Defectives.
13A. Public Service Districts for Water and Sewerage Services.
15. State Housing Law.
18. Slum Clearance.
20. Air Pollution Control.

ARTICLE 10. STERILIZATION OF MENTAL DEFECTIVES.

Section
1. Persons subject to sterilization; procedure; order of state board of health.

§16-10-1. Persons subject to sterilization; procedure; order of state board of health.

1 Whenever the superintendent of any of the following state institutions, namely, the Weston state hospital, the Huntington state hospital, the Spencer state hospital, the Lakin State hospital, the West Virginia industrial school for boys or the West Virginia industrial home for girls, shall be of the opinion that it is for the best interests of the inmates of the institution of which he is superintendent and of society that any inmate of such institution who is afflicted with any hereditary form of insanity that is recurrent, idiocy, imbecility, feeble-mindedness or epilepsy should be sexually sterilized, such superintendent
shall present to the board of health of this state a written petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform, or to have performed by some competent physician or surgeon to be designated by him in his petition or by the board in its order, upon such inmate named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female.

A copy of such petition shall be served upon such inmate named therein, together with a notice in writing designating the time and place in said institution, not less than thirty days before the presentation of such petition to the West Virginia board of health, when and where the board will hear and act upon such petition. If such inmate has a parent, child, brother, sister, guardian or committee residing in this state whose name and place of residence are known to such superintendent, a copy of such petition and notice shall be served upon such parent or parents, child, brother, sister, guardian, or committee. If such notice cannot be so served, the superintendent shall file a copy of such petition in the office of the clerk of the county court of the county where the inmate last resided, and shall cause such notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the inmate last resided. Such publication shall be completed thirty days before the presentation of said petition to the board. Costs of the publication shall be paid out of the county treasury of the county wherein published. Such notice shall be in the following form:

To the next kin of __________________________, (here name inmate or inmates if more than one.)

Notice is given pursuant to law that the superintendent of __________________________ (name of the institution filing the petition) will, on the _______ day of ________________, 19______ , file a petition before the West Virginia board of health to be heard at __________________________ (name place
of hearing), asking for an order directing the sterilization of ________________ (name of inmate), at which time and place any valid reason for not entering such order may be offered.

A copy of said petition is filed in the office of the clerk of the county court of this county.

Superintendent of ________________

Any number of cases from the same county may be included in the same notice.

After the notice required by this article shall have been given as herein provided, the West Virginia board of health, at the time and place named therein, with such reasonable continuances from time to time and from place to place as the board may determine, shall proceed to hear and consider the said petition and the evidence offered in support of and against the same. For every such inmate the board shall appoint a guardian ad litem who must be present at the hearing to defend the rights and interests of such inmate. And the board shall see to it that such inmate shall have leave and opportunity to attend such hearings in person, if desired by him, or by his parent, guardian or committee served with such petition as aforesaid.

The West Virginia board of health may receive and consider as evidence at such hearing the commitment papers and other records of such inmate in any of the aforesaid state institutions as certified by the superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceeding. Any member of the board shall have the power to administer oaths to the witnesses at such hearings. Depositions may be taken by any party after due notice as in pending cases and such depositions may be read in evidence if pertinent to the issue: Provided, however, That no deposition shall be read against such inmate, except with the consent of his guardian ad litem, unless it be taken in the presence of the guardian ad litem or upon interrogatories agreed on by him. The board shall preserve and keep all record evidence offered at such hearings, and shall have all oral evidence heard thereat
reduced to writing and preserved and kept with its records. Any party to the proceedings shall have the right to be represented by counsel at such hearings.

The West Virginia board of health may deny the prayer of said petition or, if the board shall find that such inmate is insane, idiotic, imbecile, feeble-minded or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted; that such inmate may be sexually sterilized without detriment to his or her general health; and that the welfare of such inmate and of society will be promoted by such sterilization, it may order such superintendent to perform, or cause to be performed by some competent physician or surgeon named in such order, upon such inmate, after not less than thirty days from the date of such order, the operation of vasectomy, if such inmate be a male, or of salpingectomy, if such inmate be a female.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.

Section

1. Incorporation as sanitary district for sewage disposal; petition; notice and hearing; election; form of ballot; expenses of election.

4. Publication and effective date of ordinances imposing penalty or making appropriation; certificate of clerk as proof of ordinances, orders and resolutions; evidence of passage and legal publication.

9. Borrowing money; procedure for issuance of revenue or tax obligation bonds; debt limitation.

11. Letting contracts; manner and cost of building additions or extensions.

§16-12-1. Incorporation as sanitary district for sewage disposal; petition; notice and hearing; election; form of ballot; expenses of election.

That whenever any area of contiguous territory shall contain one or more incorporated cities, towns and/or villages, and shall be so situated that the construction and maintenance of a plant or plants for the purification and treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated and purified by and through such plant or plants will conduce to the preservation of the public health, comfort and convenience, the same may be incorporated as a sanitary district under this article in the manner following, to wit:
Any four hundred legal voters, residents within the limits of such proposed sanitary district, may petition the county court of the county in which the proposed sanitary district, or the major portion thereof, is located, to cause the question to be submitted to the legal voters of such proposed sanitary district, whether such proposed territory shall be organized as a sanitary district under this article; such petition shall be addressed to the county court and shall contain a definite description of the boundaries of the territory to be embraced in the such sanitary district, and the name of such proposed sanitary district: Provided, however, That no territory shall be included within more than one sanitary district organized under this article.

Notice shall be given by such county court within ten days after receiving the petition, of the time and place when a hearing on the petition for a sanitary district will be held, by publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the area of the sanitary district. The first publication shall be made at least twenty days prior to such hearing. The hearing on the petition for a sanitary district shall be held not later than thirty days after the county court receives the said petition. At such hearing the president of the county court shall preside, and all persons resident within the limits of such proposed sanitary district shall have an opportunity to be heard upon the question of the location and boundary of such proposed sanitary district, and to make suggestions regarding the same, and the said county court, after hearing statements, evidence and suggestions, shall fix and determine the limits and boundaries of such proposed sanitary district as stated in the original petition unless by a vote of the majority of the legal voters resident within the limits of such proposed sanitary district, present at the said hearing, it should be decided to alter and amend such petition to change and redetermine the limits and boundaries of such proposed sanitary district.

After such determination by the county court, the same shall be incorporated in an order which shall be spread
at length upon the records of the county court. Upon
the entering of such order, the county court shall submit
to the legal voters of the proposed sanitary district, the
question of organization and establishment of the pro-
posed sanitary district as determined by said county
court, at a special election, to be held within sixty days
after the entering of such order, notice whereof shall
be given by the county court at least twenty days prior
thereto by publication of such notice as a Class II-0 legal
advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the area of
the proposed sanitary district. Such notice shall specify
briefly the purpose of such election, with a description
of such proposed sanitary district, and the time and place
for holding such election.

Each legal voter resident within such proposed sani-
tary district shall have the right to cast a ballot at such
election. Ballots at elections held under this section shall
be in substantially the following form, to wit:

☐ For sanitary district.
☐ Against sanitary district.

The ballots so cast shall be issued, received, returned
and canvassed in the same manner and by the same
officers as is provided by law in the case of ballots cast
for county officers, except as herein modified. The county
court shall cause a statement of the result of such elec-
tion to be spread on the records of the county court. If
a majority of the votes cast upon the question of the
incorporation of the proposed sanitary district shall be
in favor of the proposed sanitary district, such proposed
sanitary district shall thenceforth be deemed an organized
sanitary district under this article. All courts in this
state shall take judicial notice of the existence of all
sanitary districts organized under this article.

The expenses of holding said special election shall be
paid by the county court of said county, in which said
proposed sanitary district, or the major portion thereof,
is located, out of the general funds of said county: Pro-
vided, however, That in the event such sanitary district
is established and incorporated under this article, then
said sanitary district shall repay to said county the expenses incurred in holding said special election within two years from the date of incorporating said sanitary district.

§16-12-4. Publication and effective date of ordinances imposing penalty or making appropriation; certificate of clerk as proof of ordinances, orders and resolutions; evidence of passage and legal publication.

All ordinances imposing any penalty or making any appropriations shall, within one month after they are passed, be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the sanitary district. No such ordinance shall take effect until ten days after it is so published, and all other ordinances, orders and resolutions shall take effect from and after their passage unless otherwise provided therein.

All ordinances, orders and resolutions, and the date of publication thereof, may be proven by certificate of the clerk under the seal of the corporation, and when printed in book or pamphlet form, and purporting to be published by the board of trustees, such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, orders and resolutions, as of the dates mentioned in such book or pamphlet in all courts and places without further proof.

§16-12-9. Borrowing money; procedure for issuance of revenue or tax obligation bonds; debt limitation.

Said sanitary district may borrow money for corporate purposes and may issue revenue and/or tax obligation bonds therefor, but shall not become indebted in any manner, or for any purpose whatsoever, beyond an amount in the aggregate to exceed five per cent of the valuation of the taxable property within said district, to be ascertained by the last assessment for state and county taxes, previous to incurring of said indebtedness. Whenever the board of trustees of such sanitary district desires to issue bonds hereunder they shall order an elec-
tion to be held in such sanitary district upon the question. Notice of such election shall be given by said board of trustees by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the sanitary district. The first publication shall be made at least twenty days prior to said election. The notices of election shall state the amount of bonds to be issued and the polling places at which the election shall be held. The board of trustees shall appoint judges and clerks for such election and the return of such election shall be filed with the clerk of the board of trustees and be canvassed and the result ascertained by said board and entered upon the records of the sanitary district. If it shall appear that a majority of the voters voting at said election on said question shall have voted in favor of the issue of the said bonds, the board of trustees shall order and direct the execution of the bonds for and on behalf of said sanitary district. All bonds issued hereunder shall mature in not exceeding thirty annual installments. The ballots at elections held under this section shall be in substantially the following form, to wit:

Proposition to issue bonds of ______________ sanitary district to the amount of ______________ dollars.

☐ Yes.
☐ No.

§16-12-11. Letting contracts; manner and cost of building additions or extensions.

All contracts for work to be done by such sanitary district, the expense of which will exceed five hundred dollars, shall be let to the lowest responsible bidder therefor. The board of trustees shall cause to be published a notice informing the public and contractors of the general nature of the work and of the fact that detailed plans, drawings and specifications are on file in the office of such board of trustees and calling for sealed proposals for the construction of the work to be done at a date not earlier than ten days after the last of such publications, such notice to be published as a Class II
12 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the sanitary district. Said board of trustees shall require each bidder to deposit with his respective bid a certified check for an amount not less than two and one-half per cent of the engineer's estimate of such work to insure the execution of the contract for which such bid is made. The board of trustees may impose such conditions as it may deem necessary upon the bidders with regard to bond and surety, guaranteeing the good faith and responsibility of such bidders, and the faithful performance of such work according to contract, or for any other purpose. The board of trustees shall have the right to reject any and all bids, but if it does reject all bids, before other bids may be received notices shall be published as originally required. The board of trustees shall have power to let portions of said proposed work under different contracts. Any additions or extensions to any sewage disposal plant, or sewers or drains or any other work constructed under the provisions of this article, shall be built under contract entered into under the provisions of this section in the same manner as the contract for the original plant or work. The cost of such additions or extensions, and of any additional lands or right of ways acquired by said board, may be met by the sale of additional bonds to be issued and sold by the trustees, and the levy of taxes and/or the collection of service charges to retire such bonds, all as provided in this article.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

Section
6. Publication and hearing upon ordinance.
16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.
18a. Publication of financial statement.
23a. Additional powers of municipality upon receipt of order to cease pollution.

§16-13-6. Publication and hearing upon ordinance.
1 After such ordinance shall have been adopted, the ordinance, together with the following described notice, shall be published as a Class II legal advertisement in com-
pliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date which shall not be less than ten days subsequent to the last date of publication of such ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, however, That if at such a hearing written protest is filed by thirty per cent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto.

§16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the
proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten per cent, and a reasonable attorney’s fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, however, That where both water and sewer services are furnished by any
municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. The board collecting such charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities to any delinquent user of either until all delinquent charges for both water facilities and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

§16-13-18a. Publication of financial statement.

1 Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hun-
dred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense.

§16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

1 Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the chief of the division of water resources or the state water resources board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the chief of the division of water resources or the state water resources board, and for the operation, main-
tenance and repair of the entire works and system; and
the governing body shall create, by ordinance, a sinking
fund to accumulate and hold any part or all of the pro-
ceeds derived from rates or charges until completion of
said construction, to be remitted to and administered by
the state sinking fund commission by expending and pay-
ing said costs and expenses of construction and operation
in the manner as provided by said ordinance; and after
the completion of the construction such rates or charges
shall be sufficient in each year for the payment of the
proper and reasonable costs and expenses of operation,
maintenance, repair replacement, and extension from time
to time, of the entire sewer and works. No such rates or
charges shall be established until after a public hearing, at
which all the potential users of the works and owners of
property served or to be served thereby and others inter-
ested shall have an opportunity to be heard concerning the
proposed rates or charges. After introduction of the ordi-
nance fixing such rates or charges, and before the same is
finally enacted, notice of such hearing, setting forth the
proposed schedule of such rates or charges, shall be given
by publication of such notice as a Class II-0 legal adver-
tisement in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the municipality. The first
publication shall be made at least ten days before the date
fixed therein for the hearing. After such hearing, which
may be adjourned from time to time, the ordinance estab-
lishing the rates or charges, either as originally introduced
or as modified and amended, may be passed and put into
effect. A copy of the schedule of such rates and charges
so established shall be kept on file in the office of the san-
itary board having charge of the construction and opera-
tion of such works, and also in the office of the clerk of the
municipality, and shall be open to inspection by all parties
interested. The rates or charges so established for any class
of users or property served shall be extended to cover any
additional premises thereafter served which fall within the
same class, without the necessity of any hearing or notice.
Any change or readjustment of such rates or charges
may be made in the same manner as such rates or charges
were originally established as hereinbefore provided: Pro-
vided, however, That if such change or readjustment be
made substantially pro rata, as to all classes of service, no
hearing or notice shall be required. If any rate or charge
so established shall not be paid within thirty days after
the same is due, the amount thereof, together with a pen-
alty of ten per cent, and a reasonable attorney’s fee, may
be recovered by the sanitary board of such municipal cor-
poration in a civil action in the name of the municipality.
Any municipal corporation exercising the powers given
herein shall have authority to construct, acquire, improve,
equip, operate, repair and maintain any plants, machinery,
or works necessary to comply with such order of the state
water resources board, and the authority provided herein
to establish, maintain and collect rates or charges shall be
construed as a further additional and alternative method
of financing such works and matters, and shall be inde-
pendent of any other provision of this article insofar as
such article provides for or requires the issuance of
revenue bonds or the imposition of rates and charges in
connection with such bonds: Provided, however, That
except for the method of financing such works and mat-
ters, the construction, acquisition, improvement, equip-
ment, custody, operation, repair and maintenance of any
plants, machinery or works in compliance with an order
of the state water resources board, and the rights, powers,
and duties of such municipal corporation and the respec-
tive officers and departments thereof, including the sani-
tary board, shall be governed by the provisions of this
article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND
SEWERAGE SERVICES.

§16-13A-2. Creation of districts by county court; enlarging or
reducing district; consolidation; agreements, etc.,
infringing upon powers of county court.

1 The county court of any county may on its own motion
2 by order duly adopted propose the creation of such public
3 service district within such county, setting forth in such
order a description sufficient to identify the territory to
be embraced therein and the name of such proposed
district, or any one hundred legal voters resident within
and owning real property within the limits of such pro-
posed public service district within one or more counties
may petition for the creation thereof, which petition
shall contain a description sufficient to identify the ter-
ritory to be embraced therein and the name of such
proposed district. Any territory may be included re-
gardless of whether or not such territory includes one
or more cities, incorporated towns or other municipal
corporations which own and operate any public service
properties and regardless of whether or not it includes
one or more cities, incorporated towns or other municipal
corporations being served by privately owned public
service properties: Provided, however, That no terri-
tory shall be included within more than one public
service district organized under this article and the
boundaries shall conform to or follow magisterial district
lines except where less than a whole of any magisterial
district is to be included, in which latter case that part
of any such boundary shall conform to other natural
boundary lines, or the lines of a fixed survey: And
provided further, That no city, incorporated town or other
municipal corporation shall be included within the
boundaries of such proposed district except upon the
adoption of a resolution of the governing body of such
city, incorporated town or other municipal corpora-
tion consenting thereto.

Such petition shall be filed in the office of the clerk
of the county court of the county in which the territory
to constitute the proposed district is situated, and if such
territory is situated in more than one county then such
petition shall be filed in the office of the clerk of the
county court of the county in which the major portion
of such territory extends, and a copy thereof (omitting
signatures) shall be filed with each of the clerks of the
county courts of the other county or counties into
which the territory extends. It shall be the duty of the
clerk of the county court receiving such petition to pre-
sent same to the county court of such county at
the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county clerk of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county court shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action.

If the territory proposed to be included is situated in more than one county, the county court, when fixing a date of hearing, shall provide for notifying the county court and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county court of each county in which any territory in the proposed public service district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid the person filing the petition shall advance or satisfactorily indemnify the payment of the costs and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county court out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before said hearing.
All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county court before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. When it shall have been thus determined that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement, and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, then such county court shall by order create such public service district, and such order shall be conclusive and final in that regard. If the court shall, after due consideration, determine that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area, or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the same, or it may enter an order amending the description of the proposed district, and create said district as amended. The clerk of the county court of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating the same: Provided, however, That if at such hearing written protest is filed by thirty per cent or more of the qualified voters registered and residing within said district, then the county court shall not take any further action in creating such district unless the creation of such district shall be approved by a majority vote of the qualified registered voters voting at a referendum to be called by the county court for such purpose. Such referendum shall be called and held in the manner provided in the general election laws of the state of West Virginia applicable thereto and the funds therefor shall be supplied from any county funds available for such purpose, or from funds supplied from the persons who petitioned for the creation of such district. If a majority of the qualified registered electors participating in said election shall vote against
the creation of said district, then such district shall not be created. If, however, a majority of the qualified registered voters participating in such referendum vote in favor of the creation of such district, then the county court shall duly enter its order creating such district.

After the creation of such district the county court may, if in its discretion it deems it necessary, feasible and proper, enlarge the said district to include additional areas, reduce the area of said district, where facilities, equipment, service or materials have not been extended, or establish or consolidate two or more such districts:

Provided, That where the county court determines on its own motion by order entered of record, or there is a petition, to enlarge the district or reduce the area of the district, all of the applicable provisions of this article providing for hearing, notice of hearing and protest shall apply with like effect as if a district were being created. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county court, as set forth in this article, or conflicts with any provision of this article.

§16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district and shall have power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than two thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the district. The publication shall not be less than ten days prior to the making of any such contract. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or
limitations of the constitution but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

ARTICLE 15. STATE HOUSING LAW.

Section 20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

§16-15-20. Bonds authorized by resolution; interest rate and life; forms; denominations; redemption; how payable; sale; signatures of commissioners or officers ceasing to be such before delivery; presumptions in suit, etc., involving validity.

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding six per cent per annum, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

The bonds shall be sold at not less than par at public sale held after notice published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city or county, as the case may be. The notice shall be published at least five days prior to such sale. The notice shall also be published in a financial newspaper published in the city of New York, New York: Provided, however, That such bonds may be sold to the federal government at
private sale at not less than par and, in the event less
than all of the bonds authorized in connection with any
project or projects are sold to the federal government,
the balance of such bonds may be sold at private sale
at not less than par at an interest cost to the authority
of not to exceed the interest cost to the authority of the
portion of the bonds sold to the federal government.

In case any of the commissioners or officers of the
authority whose signatures appear on any bonds or
coupons shall cease to be such commissioners or officers
before the delivery of such bonds, such signatures shall,
nevertheless, be valid and sufficient for all purposes, the
same as if they had remained in office until such deliv-
ery. Any provisions of any law to the contrary notwith-
standing, any bonds issued pursuant to this article shall
be negotiable.

In any suit, action or proceedings involving the valid-
ity or enforceability of any bond of an authority or the
security therefor, any such bond reciting in substance
that it has been issued by the authority to aid in financ-
ing a housing project to provide dwelling accommoda-
tions for persons of low income shall be conclusively
deemed to have been issued for a housing project of such
character, and said project shall be conclusively deemed
to have been planned, located and constructed in accord-
ance with the purposes and provisions of this article.

ARTICLE 18. SLUM CLEARANCE.

Section
6. Preparation and approval of redevelopment plans.
7. Disposal of property in redevelopment project.

§16-18-6. Preparation and approval of redevelopment plans.
1 (a) An authority shall not acquire real property for
2 a redevelopment project unless the governing body of
3 the community in which the redevelopment project area
4 is located has approved the redevelopment plans, as
5 prescribed in subsection (i) below.
6 (b) An authority shall not prepare a redevelopment
7 plan for a redevelopment project area unless the govern-
8 ing body of the community in which such area is located
has, by resolution, declared such area to be a slum or blighted area in need of redevelopment.

(c) An authority shall not recommend a redevelopment plan to the governing body of the community in which the redevelopment project area is located until a general plan for the development of the community has been prepared.

(d) The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to:

1. The boundaries of the redevelopment project area, with a map showing the existing uses and conditions of the real property therein;

2. A land use plan showing proposed uses of the area;

3. Information showing the standards of population densities, land coverage and building intensities in the area after redevelopment;

4. A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

5. A site plan of the area; and

6. A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

(e) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission of the community in which the redevelopment project area is located for review and recommendations as to its con-
formity with the general plan for the development of
the community as a whole. The planning commission
shall submit its written recommendations with respect
to the proposed redevelopment plan to the authority
within thirty days after receipt of the plan for review.
Upon receipt of the recommendations of the planning
commission or, if no recommendations are received within
said thirty days, then without such recommendations,
an authority may recommend the redevelopment
plan to the governing body of the community for ap-
proval.

(f) Prior to recommending a redevelopment plan
to the governing body for approval, an authority shall
consider whether the proposed land uses and building
requirements in the redevelopment project area are
designed with the general purpose of accomplishing, in
conformance with the general plan, a coordinated, ad-
justed and harmonious development of the community
and its environs which will, in accordance with present
and future needs, promote health, safety, morals, order,
convenience, prosperity and the general welfare, as well
as efficiency and economy in the process of development;
including, among other things, adequate provision for
traffic, vehicular parking, the promotion of safety from
fire, panic and other dangers, adequate provision for light
and air, the promotion of the healthful and convenient
distribution of population, the provision of adequate
transportation, water, sewerage and other public utilities,
schools, parks, recreational and community facilities and
other public requirements, the promotion of sound
design and arrangement, the wise and efficient expendi-
ture of public funds, the prevention of the recurrence
of insanitary or unsafe dwelling accommodations, slums,
or conditions of blight, and the provision of adequate,
safe and sanitary dwelling accommodations.

(g) The recommendation of a redevelopment plan
by an authority to the governing body shall be accom-
panied by the recommendations, if any, of the planning
commission concerning the redevelopment plan; a state-
ment of the proposed method and estimated cost of
the acquisition and preparation for redevelopment of
the redevelopment project area and the estimated
proceeds or revenues from its disposal to redevel-
opers; a statement of the proposed method of fi-
nancing the redevelopment project; and a statement of
a feasible method proposed for the relocation of families
to be displaced from the redevelopment project
area.

(h) The governing body of the community shall hold
a public hearing on any redevelopment plan or sub-
stantial modification thereof recommended by the au-
thority, after public notice thereof by publication as a
Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the
community. The last publication shall be at least
ten days prior to the date set for the hearing. The
notice shall describe the time, date, place and purpose
of the hearing and shall also generally identify the area
to be redeveloped under the plan. All interested parties
shall be afforded at such public hearing a reasonable
opportunity to express their views respecting the pro-
posed redevelopment plan.

(i) Following such hearing, the governing body may
approve a redevelopment plan if it finds that said plan
is feasible and in conformity with the general plan for
the development of the community as a whole: Pro-
vided, That if the redevelopment project area is a blighted
area, the governing body must also find that a shortage
of housing of sound standards and designs, adequate
for family life, exists in the community; the need for
housing accommodations has been or will be increased
as a result of the clearance of slums in other areas under
redevelopment; the conditions of blight in the redevelop-
ment project area and the shortage of decent, safe and
sanitary housing cause or contribute to an increase
in and spread of disease and crime and constitute a
menace to the public health, safety, morals or welfare;
and that the development of the blighted area for pre-
dominantly residential uses is an integral part of and
essential to the program of the community for the elimi-
nation of slum areas. A redevelopment plan which has
not been approved by the governing body when recom-
manded by the authority may again be recommended
to it with any modifications deemed advisable.

(j) A redevelopment plan may be modified at any
time by the authority: Provided, That if modified after
the lease or sale of real property in the redevelopment
project area, the modification must be consented to by
the redeveloper or redevelopers of such real property
or his successor, or their successors in interest affected
by the proposed modification. Where the proposed
modification will substantially change the redevelopment
plan as previously approved by the governing body the
modification must similarly be approved by the govern-
ning body.

§16-18-7. Disposal of property in redevelopment project.

(a) An authority may sell, lease, exchange or other-
wise transfer real property or any interest therein in
a redevelopment project area to any redeveloper for
residential, recreational, commercial, industrial or other
uses or for public use in accordance with the redevelop-
ment plan, subject to such covenants, conditions and
restrictions as it may deem to be in the public interest
or to carry out the purposes of this article: Provided,
That such sale, lease, exchange or other transfer, and
any agreement relating thereto, may be made only after,
or subject to, the approval of the redevelopment plan
by the governing body of the community. Such real
property shall be sold, leased or transferred at its fair
value for uses in accordance with the redevelopment
plan notwithstanding such value may be less than the
cost of acquiring and preparing such property for rede-
velopment. In determining the fair value of real prop-
erty for uses in accordance with the redevelopment plan,
an authority shall take into account and give consider-
ation to the uses and purposes required by such plan;
the restrictions upon, and the covenants, conditions and
obligations assumed by the redeveloper of, such prop-
erty; the objectives of the redevelopment plan for the
prevention of the recurrence of slum or blighted areas;
and such other matters as the authority shall specify
as being appropriate. In fixing rentals and selling prices, an authority shall give consideration to appraisals of the property for such uses made by land experts employed by the authority.

(b) An authority shall publish the following notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community. The notice shall be published prior to the consideration of any redevelopment contract proposal, and shall invite proposals from, and make available all pertinent information to private redevelopers or any persons interested in undertaking the redevelopment of an area, or any part thereof, which the governing body has declared to be in need of redevelopment. Such notice shall identify the area, and shall state that such further information as is available may be obtained at the office of the authority. The authority shall consider all redevelopment proposals and the financial and legal ability of the prospective redevelopers to carry out their proposals and may negotiate with any redevelopers for proposals for the purchase or lease of any real property in the redevelopment project area. The authority may accept such redevelopment contract proposal as it deems to be in the public interest and in furtherance of the purposes of this article: Provided, That the authority has, not less than thirty days prior thereto, notified the governing body in writing of its intention to accept such redevelopment contract proposal. Thereafter, the authority may execute such redevelopment contract in accordance with the provisions of subsection (a) and deliver deeds, leases and other instruments and take all steps necessary to effectuate such redevelopment contract. In its discretion, the authority may, without regard to the foregoing provisions of this subsection, dispose of real property in a redevelopment project area to private redevelopers for redevelopment under such reasonable competitive bidding procedures as it shall prescribe, subject to the provisions of subsection (a).
(c) In carrying out a redevelopment project, an authority may:

(1) Convey to the community in which the project is located, such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways;

(2) Grant servitudes, easements and right of ways, for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan; and

(3) Convey to the municipality, county or other appropriate public body, such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(d) An authority may temporarily operate and maintain real property in a redevelopment project area pending the disposition of the property for redevelopment, without regard to the provisions of subsections (a) and (b) above, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan.


(a) An authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. An authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether
or not they are financed in whole or in part with the
proceeds of such bonds: Provided, That any such bonds
may be additionally secured by a pledge of any loan,
grant or contributions, or parts thereof, from the federal
government or other sources, or a mortgage of any rede-
development project or projects of the authority.

(b) Neither the commissioners of an authority nor
any person executing the bonds shall be liable per-
sonally on the bonds by reason of the issuance thereof.
The bonds and other obligations of the authority (and
such bonds and obligations shall so state on their face)
shall not be a debt of the municipality, the county, or
the state and neither the municipality, the county, nor
the state shall be liable thereon, nor in any event shall
such bonds or obligations be payable out of any funds
or properties other than those of said authority acquired
for the purposes of this article. The bonds shall not
constitute an indebtedness within the meaning of any
constitutional or statutory debt limitation or restriction.
Bonds of an authority are declared to be issued for an
essential public and governmental purpose and to be
public instrumentalities and, together with interest there-
on and income therefrom, shall be exempt from all taxes.
Such bonds need not be offered by the authority to
the state sinking fund commission at any time and
an authority shall not be required to turn over
any surplus or sinking funds to the state sinking
fund commission.

(c) Bonds of an authority shall be authorized by its
resolution and may be issued in one or more series and
shall bear such date or dates, be payable upon demand or
mature at such time or times, bear interest at such rate
or rates, not exceeding six per centum per annum, be
in such denomination or denominations, be in such form
either coupon or registered, carry such conversion or
registration privileges, have such rank or priority, be
executed in such manner, be payable in such medium
of payment, at such place or places, and be subject to
such terms of redemption (with or without premium)
as such resolution, its trust indenture or mortgage may
provide.
(d) The bonds shall be sold at not less than par at public sale held after notice published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the area of operation. Such publication shall be made at least ten days prior to such sale. The notice may be published in such other medium of publication as the authority may determine: Provided, That such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any project or projects are sold to the federal government, the balance of such bonds may be sold at private sale at not less than par at an interest cost to the authority of not to exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

(e) In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security therefor, any such bond reciting in substance that it has been issued by the authority to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this article.

ARTICLE 20. AIR POLLUTION CONTROL.

Section

5. Same—powers and duties; legal services; rules and regulations; public hearings.
§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation and control of pollution of the air of the state;

3 (2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

4 (3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

5 (4) To adopt and to promulgate reasonable regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule or regulation of the commission shall specify the design of equipment, type of construction, or particular method which a person shall use to reduce the discharge of air pollutants, nor shall any such rule or regulation apply to any aspect of an employer-employee relationship;

6 (5) To enter orders requiring compliance with the provisions of this article and the regulations lawfully promulgated hereunder;

7 (6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of regulations and the entry of compliance orders hereunder;

8 (7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

9 (8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this article;

10 (9) To enter at reasonable times upon any private or public property for the purpose of investigating an
alleged statutory air pollution: Provided, however, That no such investigation shall extend to information relating to secret processes or methods of manufacturing or production;
(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;
(11) To cooperate with, receive and expend money from the federal government and other sources;
(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution; and
(13) To appoint technical advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members for each area so designated, at least two of whom shall be truly representative of industries operating within such area, and may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule or regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county
wherein such hearing is to be held. Full opportunity
to be heard shall be accorded to all persons in attendance
and any person, whether or not in attendance at such
hearing, may submit in writing his views with respect
to any such rule or regulation to the commission within
thirty days after such hearing. After such thirty-day
period, no views or comments shall be received in writing
or otherwise, unless formally solicited by the commission.
The proceedings at the hearing before the commission
shall be recorded by mechanical means or otherwise as
may be prescribed by the commission. Such record of
proceedings need not be transcribed unless requested by
an interested party, in which event the prevailing rates
for such transcripts will be required from such interested
party.

CHAPTER 17. ROADS AND HIGHWAYS.

Article

4. State Road System.

10. County Courts; General Authority and Duties as to Roads.

ARTICLE 4. STATE ROAD SYSTEM.

Section

19. Contracts for construction, materials, etc.; work by prison labor,
e tc.; bidding procedure.

§17-4-19. Contracts for construction, materials, etc.; work by
prison labor, etc.; bidding procedure.

All work of construction and reconstruction of state
roads and bridges, and the furnishing of all materials and
supplies therefor, and for the repair thereof shall be done
and furnished pursuant to contract except that the com-
mmissioner shall not be required to award any contract
for work, which can be done advantageously, economi-
cally and practicably by commission forces or prison
labor and by use of state road equipment, or for mate-
rials and supplies, which are manufactured, processed
or assembled by the commissioner: Provided, however,
That the commissioner shall not be required to award
any contract for work, materials or supplies for an
amount less than three thousand dollars. In all such
work, the commissioner shall utilize state road forces or
prison labor and state road equipment and shall manu-
facture, process and assemble all such materials and supplies for such work whenever and wherever the commissioner, in his discretion, finds such work and services advantageous, economical and practicable in the state road program.

When the commissioner is about to construct, reconstruct, or improve any road or highway, he shall cause to be filed with the clerk of the county court, or of the municipality, as the case may be, in which such road lies, a certified copy of the plans and specifications therefor, and a notice that the commissioner is about to enter upon and proceed with the work in question. If the work is to be done, or the materials therefor are to be furnished by contract, the commissioner shall thereupon publish the following described advertisement as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or municipality in which the road lies. Such advertisement shall also be published at least once in at least one daily newspaper published in the city of Charleston and in such other journals or magazines as may to the commissioner seem advisable. The advertisement shall solicit sealed proposals for the construction or other improvement of such road, and for the furnishing of materials therefor, accurately describing the same, and stating the time and place for opening such proposals and reserving the right to reject any and all proposals: Provided, however, That whenever the estimated amount of any contract for work or for materials or supplies is less than three thousand dollars, the commissioner shall not be required to advertise the letting of said contract in newspapers as above required, but may award the contract to the lowest responsible bidder, when two or more sealed proposals or bids have been received by him without such advertisement, but such contract shall not be so awarded unless the bid of the successful bidder is three thousand dollars or less. The commissioner shall have the power to prescribe proper prequalifications of contractors bidding on state road construction work. To all sealed proposals there shall
be attached the certified check of the bidder or bidder’s bond acceptable to the commissioner, in such amount as the commissioner shall specify in the advertisement, but not to exceed five per cent of the aggregate amount of the bid; but such amount shall never be less than five hundred dollars. Such proposals shall be publicly opened and read at the time and place specified in the advertisement, and the contract for such work, or for the supplies or materials required therefor shall, if let, be awarded by the commissioner to the lowest responsible bidder for the type of construction selected. In case all bids be rejected, the commissioner may thereafter do the work with commission forces or with prison labor, or may readvertise in the same manner as before and let a contract for such work pursuant thereto.

ARTICLE 10. COUNTY COURTS; GENERAL AUTHORITY AND DUTIES AS TO ROADS.

Section
9. Same—opening bids; award or rejection of bids; contractor’s bond; publication of information as to bids; reserving portion of payment for work; penalties for unlawful conduct as to bids.

1 In case the county court desires to contract for the construction, reconstruction or maintenance of a road or bridge or for the purchase of supplies and equipment, it shall advertise for the letting of the contract by publishing such advertisement as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such publication shall be so made within fourteen consecutive days next preceding the date of the letting of the contract.

§17-10-9. Same—Opening bids; award or rejection of bids; contractor’s bond; publication of information as to bids; reserving portion of payment for work; penalties for unlawful conduct as to bids.
1 All bids for work to be done by contract on roads and bridges under the control of the county court shall be received at the courthouse of the county at the time
specified in the advertisement, and shall be opened only
in open court, and the amount and items comprising
each bid shall be publicly announced, and the contract,
if let, shall be awarded to the lowest bidder for the type
of construction selected. The contractor shall give bond
with security to be approved by the court in an amount
equal to fifty per cent of the contract price, conditioned
for the faithful performance of the contract.

After such bids have been opened the county court
shall publish immediately the names of all persons bid-
ing on such contract, together with the itemized amount
of their respective bids, designating the person to whom
such contract was awarded, if awarded, together with
the amount of his bid. Such information shall be pub-
lished as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publication
shall be the county.

The court may reject any and all bids, and may there-
after have the work done in any other manner that it
may deem advisable. If there be two bids of the same
amount for any section of road, or for any other im-
provement thereon, the court shall have the power to
accept either of such bids.

The court may reserve from payment not more than
twenty per cent of the amount accruing on the contract
until the work has been completed and approved.

Any person who shall open any of the bids at any
other time or place than herein provided, or shall make
known the name of the bidder, or the amount of his
bid, otherwise than as herein provided, shall be guilty
of a misdemeanor, and, upon conviction thereof, shall
be fined not less than fifty nor more than two hundred
dollars, and be imprisoned in the county jail not less than
one nor more than six months. Any member of the
county court who shall violate any of the provisions of
this section shall be deemed guilty of a misdemeanor,
and, upon conviction, shall in addition to the penalties
provided above forfeit his office.
CHAPTER 18. EDUCATION.

Article
2. State Board of Education.
9. School Finances.

ARTICLE 2. STATE BOARD OF EDUCATION.

Section
13g. Procedure for contracting with insurers; licensing of insurer; exemption of certain insurers from premium and annuity taxes.

§18-2-13g. Procedure for contracting with insurers; licensing of insurer; exemption of certain insurers from premium and annuity taxes.

1 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 published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. Such notice shall be so published within fourteen consecutive days next preceding 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 non-
31 profit institutions or foundations engaged primarily in
32 education or research, by issuing insurance and annuity
33 contracts only to or for the benefit of such institutions
34 and to individuals engaged in the service of such insti-
35 tutions, it shall be exempt from the payment of premium
36 and annuity taxes provided for by sections fourteen,
37 fourteen-a and fifteen, article three, and any other perti-
38 nent premium tax sections, of chapter thirty-three of this
39 code, as amended, as to all annuity or insurance con-
40 tracts made with educational institutions located within,
41 or relative to subjects of insurance resident in, West
42 Virginia.

ARTICLE 9. SCHOOL FINANCES.

Section
2. Elections under this chapter; procedure.
3a. Preparation, publication and disposition of financial statements
   by county boards of education.

§18-9-2. Elections under this chapter; procedure.
1 Any and all elections authorized by this chapter for
2 school purposes may, unless otherwise provided, be held
3 separately or in connection with any general or special
4 election. Notice of any such election shall be given by
5 the publication of the order of the board calling the
6 same as a Class II-0 legal advertisement in compliance
7 with the provisions of article three, chapter fifty-nine
8 of this code, and the publication area for such publication
9 shall be the territory in which the election is to be held.
10 The order shall be so published within fourteen con-
11 secutive days next preceding the day of election.
12 All provisions of the law concerning general and
13 special elections shall apply in such elections insofar
14 as is practicable, except that in cases of special elections
15 the board calling the election shall appoint necessary
16 election officers and shall canvass the returns, and
17 the secretary of the board shall procure and furnish
18 to the election commissioners at each place of voting
19 the ballots, poll books, tally sheets and other things
20 needed. In calling elections, district and county boards
21 of education shall follow the forms to be prescribed by
22 the attorney general.
§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.

1 The county board of education of every county, within
2 four weeks after the beginning of each fiscal year, shall
3 prepare on a form to be prescribed by the state tax
4 commissioner and the state superintendent of free schools,
5 and cause to be published a statement revealing (a)
6 the receipts and expenditures of the board during the
7 previous fiscal year arranged under descriptive headings,
8 (b) the name of each firm, corporation, and person who
9 received more than fifty dollars in the aggregate from all
10 funds during the previous fiscal year, together with the
11 aggregate amount received from all funds and the pur-
12 pose for which paid: Provided, That such statement
13 shall not include the name of any person who has entered
14 into a contract with this board pursuant to the provisions
15 of section one, article seven of this chapter and is regu-
16 larly employed by such board for instructional purposes,
17 and (c) all debts of the board, the purpose for which
18 each debt was contracted, its due date, and to what date
19 the interest thereon has been paid. Such statement
20 shall be published as a Class I-0 legal advertisement in
21 compliance with the provisions of article three, chapter
22 fifty-nine of this code, and the publication area for such
23 publication shall be the county. The county board of
24 education shall pay the cost of publishing such statement
25 from the maintenance fund of the board.

26 As soon as is practicable following the close of the
27 fiscal year, a copy of the published statement herein
28 required shall be filed by the county board of education
29 with the state tax commissioner and with the state
30 superintendent of free schools.

31 The county board of education shall transmit to any
32 resident of the county requesting the same a copy of
33 the published statement for the fiscal year designated,
34 supplemented by a list of the names of all teachers em-
35 ployed by the board during such fiscal year showing
36 the amount paid to each, and a list of the names of each
37 firm, corporation, and person who received less than
38 fifty dollars from any fund during such fiscal year show-
CHAPTER 19. AGRICULTURE.

Article
4. Cooperative Associations.
17. Fences
21A. Soil Conservation Districts.
23. Horse Racing.
24. Race Tracks.

ARTICLE 4. COOPERATIVE ASSOCIATIONS.

Section
9. General and special meetings.

§19-4-9. General and special meetings.

1 In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting:

Provided, however, That the bylaws may require instead that such notice may be given as provided by this section, namely, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal place of business of the association is located.

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

Section
15. Establishment of general quarantine.


1 A general quarantine may be established and maintained whenever any communicable disease of domestic animals shall exist in any locality in the state larger in extent than that which may be included in a special quarantine. A general quarantine shall be estab-
lished and maintained by order of the commissioner only; but in establishing and maintaining such quarantine the commissioner may act through and by an officer or agent employed by him, to whom such power is delegated, and the establishment and maintenance of such quarantine by any officer, agent or employee of the commissioner shall be prima facie the establishment and maintenance of quarantine by the commissioner. Such quarantine shall include such premises, locality or territorial district, and such animals, and shall continue for such time, as may be deemed necessary by the commissioner. Whenever any premises or any locality or territorial district shall be placed under a general quarantine, it shall be the duty of the officer, agent or employee by whom the order of quarantine is executed, to post at least ten notices in the most public places within the premises, locality or territorial district quarantined, declaring the quarantine and the duration thereof, the extent and limits of the premises, locality, or territorial district so quarantined, and the animals subject thereto. A copy of such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the quarantined area. If the quarantine shall be for the purpose of preventing the spread of rabies or hydrophobia, and in the case of other communicable diseases, if the commissioner deems such action necessary, the notice shall require all dogs within the quarantined area to be confined by their owners.

ARTICLE 17. FENCES.

Section 2. Rivers and streams as lawful fences; establishment or discontinuance.

§19-17-2. Rivers and streams as lawful fences; establishment or discontinuance.

All rivers and streams, and parts thereof, within this state, which are lawful fences at the time this code takes effect, under existing laws, shall continue such until otherwise ordered by the county court of the county.
5 The county court of any county, upon the written ap-
6 plication of any owner or tenant of lands on any river
7 or stream in such county, or which constitutes a bound-
8 ary line thereof, may, in its discretion, by order entered
9 of record, declare and establish such river or stream,
10 or any part of either, a lawful fence as to any stock
11 named in section one of this article. Notice of the appli-
12 cation shall be given by publishing the same as a
13 Class II legal advertisement in compliance with the
14 provisions of article three, chapter fifty-nine of this
15 code, and the publication area for such publication
16 shall be the county. Any person interested may ap-
17 pear and oppose such application.
18 The county court may, upon like application and notice
19 of any person, annul or amend any order made by said
20 court establishing any river or stream, or any part of
21 either, as a lawful fence; but such order shall not be
22 made within one year from the date of the order sought
23 to be annulled or amended, and shall not take effect
24 until six months after it is made.

ARTICLE 21. DRAINAGE DISTRICTS.

Chapter 19-21

4. Appointment of engineer; duties and compensation thereof; notice
5 of application to form drainage district.
6. First meeting of owners; election of board of supervisors.
13. Assessment of benefits and damages; extension of district to include
14 other lands; report of appraisers; compensation.
14. Publication of appraisers' report.
21. When taxes payable; suit by supervisors to collect delinquent
22 taxes; suit by bondholder.

§19-21-4. Appointment of engineer; duties and compensation
thereof; notice of application to form drainage dis-

1 trict.

1 Immediately after such petition shall have been filed
2 it shall be the duty of the court, or the judge thereof in
3 vacation, to enter upon its records an order appointing
4 an engineer to be selected by the petitioners, provided
5 the engineer whom they select is a qualified and suit-
6 able person. If the engineer designated by the petitioners
7 is, in the opinion of the court, not a proper person, the
8 court shall appoint such other engineer as it may deem
9 qualified to perform the duties imposed upon him by
10 this article. Such engineer shall forthwith proceed to
ascertain in a general manner the limits of the region
which will be benefited by the proposed improvements,
and the names of the landowners and the approximate
acreage of each landowner's holdings, as nearly as they
can be determined without actual survey, and file a
report of his findings with the clerk of the circuit court
at the earliest date practicable. In his report the engi-
neer shall give a general idea of the improvements re-
quired and an approximate estimate of their cost, to-
gether with such other suggestions as he may think will
be of service to the court in passing on the prayer of
the petitioners. For service rendered in this connection
the compensation of the engineer shall be fixed by the
court.

Immediately upon the filing of the engineer's report,
the clerk of the circuit court shall give notice by causing
publication to be made as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be each county in which are
situated lands of the proposed district. The last publi-
cation shall be made at least fifteen days prior to the
first day of the next regular or special term of the circuit
court at which such petition is to be heard. Such notice
shall be substantially in the following form which shall
be deemed sufficient for all purposes of this article:

NOTICE OF APPLICATION TO FORM
DRAINAGE DISTRICT.

Notice is hereby given to all persons interested in the
following described real estate in _______________ county
of West Virginia (here describe the property as set out
in the petition) that a petition asking that the foregoing
lands and other property be formed into a drainage dis-
trict under the provisions of the statutes of West Vir-
ginia, and that the lands and other property above de-
scribed will be affected by the formation of such drain-
age district and be rendered liable for taxation for the
purposes of paying the expenses of organizing, making
and maintaining the improvements that may be found
necessary to drain, protect and reclaim the lands and
other property in said district, and you and each of
you are hereby notified to appear at a term of the circuit
court of ________________ county, to be held on the
____________ day of ____________, 19_____, at the court-
house thereof, and show cause, if any there be, why
such drainage district, as set forth in the petition, should
not be organized.

Clerk of the Circuit Court ________________ County.

The circuit court of the county in which the petition
shall have been filed shall thereafter maintain and have
original and exclusive jurisdiction coextensive with the
boundaries and limits of such district, without regard
to county lines, for all purposes of this article.

§19-21-6. First meeting of owners; election of board of super-
visors.

Within thirty days after any drainage district shall
have been organized and established under the provi-
sions of this article the circuit clerk of the court organiz-
ing such district shall call a meeting of the owners of
real estate or other property situate in such district,
at a day and hour specified, in some public place in the
county in which the district was organized, for the pur-
pose of electing a board of three supervisors, to be com-
posed of owners of real estate in such district, two of
whom at least shall be residents of the county or counties
in which such district is situate, or some adjoining coun-
ties. Notice of such meeting shall be given by such clerk
by causing publication thereof to be made as a Class II
legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be each county
in which lands of the district are situate. The last publi-
cation shall be at least ten days before the day of such
meeting. The landowners, when assembled, shall organ-
ize by the election of a chairman and a secretary of the
meeting who shall conduct the election. At such election
each owner shall be entitled to one vote in person or by
proxy for every acre of land or mile of right of way
owned by him in such district, and the three persons
receiving the highest number of votes shall be declared
26 elected as supervisors. Such supervisors shall immediately by lot determine the terms of their office, which shall be respectively one, two and three years, and they shall serve until their successors shall have been elected and qualified.

§19-21-13. Assessment of benefits and damages; extension of district to include other lands; report of appraisers; compensation.

1 Within thirty days after qualifying, as provided in the previous section, the appraisers shall begin their duties; and the chief engineer or one of his assistants shall accompany such appraisers at all times and shall render his opinion in writing when called for. The appraisers shall proceed to view the premises and determine the value of all land and other property, within or without the district, to be acquired and used for right of ways or other works set out in “the plan for reclamation” and shall assess the amount of benefits, and the amount of damages, if any, that will accrue to each parcel of land, public highway, railroad and other right of way, railroad, roadway and other property, from carrying out and putting into effect “the plan for reclamation” heretofore adopted. The appraisers, in assessing the benefits to right of ways, railroad, roadway and other right of ways, railroad, roadway and other property not traversed by such works and improvements as provided for in “the plan for reclamation,” shall not consider what benefits will be derived by such property after other drains, ditches, improvements or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in “the plan for reclamation,” or as the same may afford protection from overflow to such property. The appraisers shall give due consideration and credit to any other ditch or other systems of reclamation, which may have already been constructed and which afford partial or complete protection to any tract or parcel of land in the new district, and if the appraisers shall find that any drain or other works have been constructed under any general or special law of this state, which can be used in making
the drains and improvements herein contemplated, they
shall include the same in their report, and thereafter
the board of supervisors may order such drains or such
works to be used, so far as they extend, for the purpose
of the drainage district in which they are situated, and
that the district or other owners of such drains or other
improvements or persons having an interest therein by
virtue of having contributed money, material or labor in
the construction of the same, shall be allowed, in pro-
portion to the interest held or owned in said drains or
improvements, a compensation which shall not exceed
the amount of such drainage district's indebtedness as
evidenced by outstanding script, bonds or other evi-
dences of indebtedness. The railroad and other right
of ways, railroad and other property shall be assessed
according to the increased physical efficiency and de-
creased maintenance cost by reason of the protection to
be derived from the proposed works and improvements.
The appraisers shall also assess all damages that will
accrue to any landowner by reason of the proposed
improvement, including all injury to lands taken or
damaged; and when they return no such assessment
of damages as to any tract of land, it shall be deemed
a finding by them that no damage will be sustained.

If the board of appraisers finds that other lands not
embraced within the boundaries of the district will be
affected by the proposed improvement, they shall assess
the estimated benefits and damages to such land and
shall specifically report to the court the assessments
which they have made on the lands beyond the bound-
aries of the district as already established. It shall then
be the duty of the clerk of the circuit court to give the
following described notice by publication as a Class II-0
legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
where such lands lie. The notice shall describe the lands
which have been assessed, and the owners of real prop-
erty so assessed shall be allowed twenty days after the
publication of such notice to file with the clerk of the
circuit court their protest against being included within
the district. The circuit court shall at its next session investigate the question whether the lands beyond the boundaries of the district so assessed by the appraisers will in fact be benefited or damaged by the making of the improvement; and from its findings in that regard either the property owners affected by the assessment of the appraisers or the district may within twenty days file an appeal. If the finding is in favor of the district, the limits of the district shall be extended so as to embrace any lands that may be affected by the making of the improvements, and such lands shall be subject to the taxes provided for in section eleven of this article. The appraisers shall have no power to change "the plan for reclamation" heretofore provided for.

The board of appraisers shall prepare a report of their findings, which shall be arranged in tabular form, the columns of which shall be headed as follows: Column one, "owner of property assessed"; column two, "description of property assessed"; column three, "number of acres assessed"; column four, "amount of benefits assessed expressed in dollars and cents"; column five, "number of acres taken for right of way"; column six, "value of property taken"; column seven, "damages assessed." They shall also, by and with the advice of the engineer of the district, estimate the cost of works set out in "the plan for reclamation," which estimate shall include the cost of property required for right of ways and damages and the actual expenses of organization and administration, as estimated by the board of supervisors, and shall itemize and tabulate the same. Such reports shall be signed by at least a majority of the appraisers and filed in the office of the circuit clerk in which the petition was filed. The secretary of the board of supervisors, or his deputy, shall accompany such appraisers while engaged in their duties, and shall perform all the clerical work of such board; he shall also, under the advice, supervision and direction of the attorney for the district, prepare their report. The board of appraisers shall report to the board of supervisors the number of days each had been employed and the actual expenses incurred. Each appraiser shall be paid five dollars per
day for his services, and necessary expenses in addition thereto.

§19-21-14. Publication of appraisers' report.

Upon the filing of the report of the appraisers, the clerk of such court shall give notice thereof by causing publication of such report to be made as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the district. Notice shall be in form as follows:

NOTICE OF FILING OF APPRAISERS' REPORT

For __________ Drainage District.

Notice is hereby given to all persons interested in any land and property included within __________ Drainage District in __________ county (or counties), West Virginia, that the appraisers heretofore appointed to assess benefits and damages to the property and lands situated in such drainage district and to appraise the cash value of the land necessary to be taken for right of ways and other works of such district, within or without the limits of such district, filed their report in this office on the ___ day of __________, 19__, as follows:

(Here insert report of appraisers.) And you and each of you are hereby notified that you may examine such report and file exceptions to all or any part thereof, as provided by law.

Clerk of the Circuit Court of __________ County, West Virginia.

Provided, That where lands in different counties are contained in such report, it shall not be necessary to publish in each county the appraisers' report on all of such lands in such district, but only that part relating to property situate in the respective counties.

§19-21-21. When taxes payable; suit by supervisors to collect delinquent taxes; suit by bondholder.

All taxes levied under the terms of this article shall
be payable between the first day of October and the
last day of December of each year; and if any taxes
levied by the board of supervisors in pursuance to this
article are not paid at maturity, the sheriff shall not
embrace such taxes in the taxes for which he shall sell
the lands, but he shall report such delinquencies
to the board of supervisors of such district, who
shall add to the amount of the tax a penalty of
twenty-five per cent. The board of supervisors shall
enforce the collection of such delinquent taxes by chan-
cery proceedings in the circuit court of the county in
which the lands are situated; and said court shall give
judgment against such lands, or other property, for the
amount of such taxes and the penalty of twenty-five
per cent, and interest on the same, from the end of the
period allowed for the collection thereof, at the rate
of six per cent per annum, and all costs of the
proceedings. Such judgment shall provide for the sale
of such delinquent lands for cash, by a commissioner
of the court, after advertisement hereinafter set out.
Such proceeds and judgment shall be in the nature
of proceedings in rem, and it shall be immaterial
that the ownership of such lands be incorrectly alleged
in such proceedings, and such judgment shall be en-
forced wholly against such lands or other property so
assessed, and not against any other property or estate
of the defendant. All or any part of such delinquent
lands or other property for each of such counties may be
included in one suit for each county, instituted for the
collection of such delinquent taxes, together with
interest, penalties and costs, as aforesaid; and notice
of the pendency of such suit shall be given by pub-
lication before judgment is entered for the sale of
such lands or other property, which notice shall be
published as a Class III-0 legal advertisement in com-
pliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county where such suits may
be pending. The public notice may be in the following
terms:
Board of Supervisors, Drainage District v. Delinquent lands.

All persons having or claiming an interest in any of the following described lands are hereby notified that suit is pending in the circuit court of __________ county, West Virginia, to enforce the collection of certain drainage taxes on the subjoined list of lands, the name of each supposed owner having been set opposite his or her or its lands, together with the amounts severally due from each, to wit:

(The shall follow a list of supposed owners, with a descriptive list of such delinquent lands, and the amounts due thereon respective as aforesaid, and such public notice may conclude in the following form:)

All persons and corporations interested in such lands are hereby notified that they are required by law to appear within thirty days after the first publication hereof and make defense to such suit, or the same will be taken for confessed and final judgment will be entered directing the sale of such lands for the purpose of collecting such taxes, together with the payment of interest, penalty and costs allowed by law.

Clerk of said Court.

Such suit shall be set for trial at the first term of court after the completion of such publication, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance may be granted as to a part of such lands or defendants, without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted, and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court by its decree shall grant the relief as prayed for in the complaint and shall direct such commissioner to sell the lands or other property described in the complaint at the front door of the courthouse of the county.
wherein the decree is entered, at public outcry, to the highest and best bidder for cash in hand, after having first advertised such sale (such advertisement may include all the lands described in the decree) as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. If all the lands or other property be not sold on the day as advertised, such sale shall continue from day to day until completed. The commissioner shall sell such lands as directed, and the court, upon approval and confirmation of such sale, shall appoint a commissioner to execute proper deeds conveying to the purchaser the lands and other property so sold, and the title to such lands and other property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and to insane persons having no guardian or committee the right they now have by law to appear and except to such proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney’s fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the supervisors shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have right to bring suit for collection of the delinquent assessments, and the proceedings in such suit brought by the bondholder shall in all respects be governed by the provisions applicable to suits by the supervisors.

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

Section 3. Definitions.


Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) “District” or “soil conservation district” means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the
powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(3) "Committee" or "state soil conservation committee" means the agency created in section four of this article.

(4) "Petition" means a petition filed under the provisions of subsection (a), of section five of this article for the creation of a district.

(5) "State" means the state of West Virginia.

(6) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(7) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Landowners" or "owners of land" includes any person or persons, firm, or corporation who shall hold title to three or more acres of any lands lying within a district organized under the provisions of this article.

(9) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

(10) "Due notice" means notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.
(11) The terms "soil conservation," "erosion control," or "erosion prevention projects," when used throughout the article, shall denote those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(12) The term "governing body" means the supervisors of any soil conservation district, town or city, council, city commission, county court, or body acting in lieu of a county court, in this state, and the term "governmental division" means any soil conservation district, town, city, or county in this state.

(13) "Works of improvement" means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

ARTICLE 23. HORSE RACING.

Section

8. Disposition of funds for payment of outstanding pari-mutuel tickets; awards to resident owners, etc., of winning horses.

§19-23-8. Disposition of funds for payment of outstanding pari-mutuel tickets; awards to resident owners, etc., of winning horses.

1 All moneys held by any licensee for payment of outstanding pari-mutuel tickets, if not claimed within ninety days after the close of any race meeting, shall be turned over by the licensee to the commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the commission and kept by it in a special account to be known as "West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets." Notice of the amount, time and place of such deposit shall be given by the commission, in writing, to the state treasurer. The commission shall cause to be published a notice to the holders of such unredeemed tickets, notifying them to present such tickets for the payment at the office of the commission in the city of Charleston within ninety
Such notice shall be published in the week following the close of any race meeting as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such race meeting was held.

Any such tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such tickets shall become the property of the commission, and be deposited, as aforesaid, and be expended as follows:

To the owner of the winning horse in any horse race, at any horse race track licensed in this state, provided that the owner of such horse is at the time, of such race, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

To the breeder, that is the owner of the mare, of the winning horse in any horse race, at any horse race track licensed in this state, provided, that such breeder was, at the time such winning horse was foaled, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

To the owner of the stallion which sired the winning horse in any horse race, at any horse race track licensed in this state, provided, that the mare which foaled such winning horse, was served by such stallion in this state, and the owner of such stallion, was, at the time of such service, a bona fide resident of this state, a sum equal to ten per cent of the purse won by such horse.

One person may qualify for any one or all of the awards aforesaid.

The cost for the publication of the notice provided for by this section shall be paid from the funds in the hands of the state treasurer collected from the license tax on pari-mutuel wagering, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.
ARTICLE 24. RACE TRACKS.

Section
1. Race track construction permits; application therefor; action by racing commission; review.
3. Local option election procedure.

§19-24-1. Race track construction permits; application therefor; action by racing commission; review.

1 No person, after the date on which this article becomes effective, shall construct a race track where horse race meetings are to be held and the pari-mutuel system of wagering conducted, as provided in article twenty-three of this chapter, unless and until such person shall first have applied for and obtained from the West Virginia racing commission a construction permit which may be issued by said commission in strict accordance with the provisions of this article, and not otherwise. Any person desiring to obtain such construction permit shall prepare and file with the West Virginia racing commission an application therefor in such form and to such effect as said commission may require or approve. Among other things, said application shall specify:

(1) The names and addresses of all persons who are financially interested in the proposed race track, including the names of all partners, if the applicant be a partnership, and of all stockholders, if the applicant be a corporation, and the names of any persons who have agreed to lend the applicant money for use in connection with such race track;

(2) The county where the race track is to be established; and

(3) Plans showing, in such detail as the commission may require, the proposed race track and all buildings and improvements to be used in connection therewith. The commission shall prescribe blank forms for use in making such application.

When such application shall have been prepared and filed in accordance with the foregoing requirements, the commission shall consider the same, and if the commission be of opinion that the applicant intends to proceed in good faith to establish a race track complying in all particulars with the laws of this state, that the plans
therefore are adequate and have been prepared with due
regard to the safety of all persons who will use such race
track, and that the applicant is financially able to com-
plete such race track in accordance with the plans shown
on such application, the commission shall enter an order
giving its tentative approval to such application, or, if
the commission be not satisfied in the particulars above
set forth, it shall refuse such application.

If such application be refused, the commission shall en-
ter an order on its records specifying the reasons for its
refusal thereof and such order shall be attached to said
application and both the application and such order shall
be open to inspection, upon application to the commission,
of anyone desiring to inspect the same. The action of the
commission in refusing any application shall be subject
to review by mandamus in any court of this state having
jurisdiction, with the right of appeal to the supreme court
of appeals in the manner prescribed by law.

If the commission shall give tentative approval to such
application, it shall prepare and publish a notice to the
public that the commission has given tentative approval
to the application and that the commission will confirm
such tentative approval and issue a construction permit
to the applicant at the expiration of sixty days from the
date of the first publication of such notice (which date
shall be specified in said notice), unless within said time
an application for a local option election shall have been
filed with the county court of the county in which said
race track is proposed to be established in accordance
with the provisions of this article. Such notice shall be
published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be the county in which such race track is to be es-
tablished.

§19-24-3. Local option election procedure.
1 Upon the filing of a petition for a local option election
2 in accordance with the provisions of the next preceding
3 section, the county court shall enter an order calling a
4 local option election and providing that the same shall
5 be held at the same time and as a part of the next primary
6 or general election to be held in said county. A copy of
7 the order so entered by the county court shall be served
8 upon the West Virginia racing commission and that com-
9 mission shall take no further action in connection with
10 the issuance of such construction permit until said local
11 option election shall be held. Said county court shall
12 give notice of such local option election by publication
13 of such notice as a Class II-0 legal advertisement in com-
14 pliance with the provisions of article three, chapter fifty-
15 nine of this code, and the publication area for such pub-
16 lication shall be the county. Such notice shall be so pub-
17 lished within fourteen consecutive days next preceding
18 the date of said election.
19 Each person qualified to vote in said county at said
20 primary or general election shall likewise be qualified
21 to vote at the local option election. The election officers
22 appointed and qualified to serve as such at said primary
23 or general election shall conduct said local option elec-
24 tion in connection with and as a part of said primary or
25 general election. The ballots in said local option election
26 shall be counted and returns made by the election offi-
27 cers and the results certified by the commissioners of
28 election to said county court which shall canvass the bal-
29 lots, all in accordance with the laws of the state of West
30 Virginia relating to primary and general elections inso-
31 far as the same are applicable. The county court shall,
32 without delay, canvass the ballots cast at such local op-
33 tion election and certify the results thereof to the West
34 Virginia racing commission and thereupon said commis-
35 sion shall issue or refuse to issue the construction permit
36 in accordance with the results of such local option elec-
37 tion.

CHAPTER 20. NATURAL RESOURCES.

Article
1. Organization and Administration.
2. Game and Fish.
3. Forests and Wildlife Areas.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

Section
7. Additional powers, duties and services of director.
§20-1-7. 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 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 wildlife in any or all counties of the state with the prior ap-
proval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic of disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(9) Supervise the fiscal affairs and responsibilities of the department;

(10) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(11) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(12) Acquire for the state in the name of the “department of natural resources” by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, esthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping, or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;
(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(13) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(14) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the tim-
ber so sold, shall be paid to the treasurer of the state of
West Virginia, and shall be credited to the department
and used exclusively for the purposes of this chapter;

(15) Sell or lease with the approval in writing of the
governor, coal, oil, gas, sand, gravel and any other min-
erals that may be found in the lands under the jurisdic-
tion and control of the director, except those lands that
are designated as state parks. The director, before mak-
ing sale or lease thereof, shall receive sealed bids there-
for, after notice by publication as a Class II legal adver-
tisement in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be each county in which such
lands are located. The minerals so advertised shall be
sold or leased to the highest responsible bidder, who shall
give bond for the proper performances of the sales con-
tract or lease as the director shall designate; but the di-
rector shall have the right to reject any and all bids and
to readvertise the bids. The proceeds arising from any
such sale or lease shall be paid to the treasurer of the
state of West Virginia and shall be credited to the de-
partment and used exclusively for the purposes of this
chapter;

(16) Exercise the powers granted by this chapter for
the protection of forests, and regulate fires and smoking
in the woods or in their proximity at such times and in
such localities as may be necessary to reduce the danger
of forest fires;

(17) Cooperate with departments and agencies of
state, local and federal governments in the conservation
of natural resources and the beautification of the state;

(18) Report to the governor each year all information
relative to the operation and functions of his department
and he shall make such other reports and recommenda-
tions as may be required by the governor, including an
annual financial report covering all receipts and disburse-
ments of the department of each fiscal year, and he shall
deliver such report to the governor on or before the first
day of December next after the end of the fiscal year so
covered. A copy of such report shall be delivered to each
house of the Legislature when convened in January next following;

(19) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his office, except as otherwise provided by law;

(20) Offer and pay, in his discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(21) Require such reports as he may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(22) Purchase as provided by law all equipment necessary for the conduct of his department;

(23) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(24) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(25) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the department for any and all purposes specified in this chapter, and he shall account for and report on all such receipts and expenditures to the governor;

(26) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he deems advisable;

(27) Maintain in his office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be avail-
able for public inspection on all business days during the business hours of working days as prescribed by the state board of public works;

(28) Delegate the powers and duties of his office, except the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

(29) Conduct schools, institutes and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state; and

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board.

ARTICLE 2. GAME AND FISH.

Section

16. Dogs chasing deer.


1 No person shall permit his dog to hunt or chase deer. A conservation officer shall take into possession any dog known to have hunted or chased deer and the director shall advertise that such dog is in his possession, giving a description of the dog and stating the circumstances under which it was taken. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. He shall hold the dog for a period of ten days after the date of the publication. If, within ten days, the owner does not claim the dog, the director shall destroy it. In this event the cost of keeping and advertising shall by paid by the director. If, within ten days, the owner
claims the dog, he may repossess it on the payment of
costs of advertising and the cost of keep, not exceeding
fifty cents per day. A conservation officer, or any officer
or employee of the director authorized to enforce the pro-
visions of this section, after a bona fide but unsuccessful
effort to capture dogs detected chasing or pursuing deer,
may kill such dogs.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-19. Protection of forests against destructive insects and diseases; purposes and intent of section.

In order to protect and preserve forest resources of the
state of West Virginia from ravages of bark beetles, de-
foliators, rusts, blights, wilts and other destructive forest
pests and diseases, and thereby enhance the growth and
maintenance of forests; promote the stability of forest-
using industries and employment associated therewith;
reduce the fire risk created by dying and dead trees in-
jured or killed by insects or diseases; conserve forest
cover on watersheds and protect recreational and other
forest values, it shall be the policy of the state of West
Virginia independently and through cooperation with
adjoining states, the federal government, and private tim-
ber owners and other private organizations, to prevent,
retard, control, suppress, or eradicate incipient, potential
or emergency outbreaks of destructive insects and dis-
eases on, or threatening, all forest land irrespective of
ownership.

(a) Authority.—The director is authorized either di-
rectly or in cooperation with other agencies, subject to
such conditions as he may deem necessary and using such
funds as have been, or may hereafter be made available
for those purposes, to conduct surveys on any forest land
to detect and appraise infestations of forest insect pests
and tree diseases, to determine the measures which should
be applied on such lands, in order to prevent, retard, con-
trol, suppress or eradicate incipient, threatening, poten-
tial or emergency outbreaks of such insects or disease
pests, and to plan, organize, direct and carry out such
measures as he may deem necessary to accomplish the
objectives and provisions of this section: Provided, That
actual control measures shall be conducted with the co-
operation and consent of the quarantine and regulatory
official of the department of agriculture.

(b) Establishing control zone; notice to landowners.—
Where an insect infestation or disease infection is be-
lieved to exist on a forest land within this state, the di-
rector shall investigate the condition. Whenever he finds
that an infestation or infection exists, he shall request
the quarantine officials of the state department of agri-
culture to declare the same a public nuisance. When
same has been declared a public nuisance he shall estab-
lish a control zone of the forest land wherein the same
is found, and shall give notice thereof by publication as
a Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
each county in which the area or areas are located in
which the control zone is established. Such notice shall
also be given by mail or otherwise to forest landowners
within the control zone, advising them of the nature of
the infestation or infection, recommending control meas-
ures and offering technical advice on methods of carry-
ing out the control measures.

(c) Institution of control measures.—If, after notifica-
tion by the director, any landowner fails, neglects, or is
unable to carry out the control measures recommended
by the director as set forth in subdivision (b), the direc-
tor may, through his agents, institute and carry out such
control measures.

(d) Appeals.—Any person damaged or aggrieved by
any action of any officer or employee of the department
under the provisions of this section shall have the right
to appeal from such action to the director and then to
the circuit court of the county in which such person resides
in which he owns forest land affected by such action. The
court, after hearing the evidence in the case, may make
such orders as may be appropriate to protect the inter-
ests of the appellant, adjacent forest landowners, or the
state.
(e) Cooperation with individuals and public agencies.—The director is authorized to cooperate with landowners and appropriate authorities of town, city, county, adjoining state and the United States government, and other agencies having jurisdiction of state lands, concerning forest tree insect and disease investigation and control, and to accept money, gifts and donations, and to disburse the same for the purpose of carrying out the provisions of this section.

(f) Annual appropriation; forest pest control fund.—There is hereby created in the state treasury a special fund to be known as the forest pest control fund. Such fund shall consist of all moneys appropriated thereto by the Legislature and all moneys received and deposited with the state treasurer under the provisions of this section. All such funds are hereby appropriated to the department of natural resources to be used to carry out the purposes of this section.

(g) Definitions.—As used in this section, unless the context clearly requires otherwise:

(1) "Forest trees" means only those trees which are a part of and constitute a stand of potential, immature, or mature commercial timber trees: Provided, That the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways and within cities and towns if the same constitute an insect or disease menace to nearby timber trees or timber stands;

(2) "Forest land" means land on which forest trees occur;

(3) "Control zone" means an area of potential or actual infestation or infection, the boundaries of which are fixed and clearly described in a manner to definitely identify the zone;

(4) "Infestation" means infestation by means of any insect in any stage of growth which is determined to be dangerously injurious to forest trees; and

(5) "Infection" means infection by any disease affecting forest trees which is determined to be dangerously injurious thereto.
CHAPTER 22. MINES AND MINERALS.

ARTICLE 5. TRANSPORTATION OF OILS.

Section 7. Same—further provisions concerning such orders and certificates.

§22-5-7. Same—Further provisions concerning such orders and certificates.

1 No receipt, certificate, accepted order or other voucher shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncanceled, except such original papers shall have been lost, in which case a duplicate, plainly marked “duplicate” upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be reissued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued or put in circulation until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof as a Class II legal
advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such duplicate is to be issued. Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered or the petroleum represented thereby delivered, shall be immediately canceled by stamping and punching the same across the face in large and legible letters with the word "canceled," and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for a period of six years.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

Section 4. Procedure for changing rates.


1 No public utility subject to this chapter shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect. But the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, however, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

2 Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any
rate or charge, the commission shall have authority,
either upon complaint or upon its own initiative with-
out complaint, to enter upon a hearing concerning the
propriety of such rate, charge, classification, regulation
or practice; and, if the commission so orders, it may
proceed without answer or other form of pleading by
the interested parties, but upon reasonable notice, and,
pending such hearing and the decision thereon, the com-
mision, upon filing with such schedule and delivering
to the public utility affected thereby a statement in
writing of its reasons for such suspension, may suspend
the operation of such schedule and defer the use of such
rate, charge, classification, regulation or practice, but not
for a longer period than one hundred and twenty days
beyond the time when such rate, charge, classification,
regulation or practice would otherwise go into effect;
and after full hearing, whether completed before or
after the rate, charge, classification, regulation or prac-
tice goes into effect, the commission may make such or-
der in reference to such rate, charge, classification, regu-
lation or practice as would be proper in a proceeding
initiated after the rate, charge, classification, regulation
or practice had become effective: Provided, That if any
such hearing and decision thereon cannot be concluded
within the period of suspension, as above stated, such
rate, charge, classification, regulation or practice shall
go into effect at the end of such period. In such case
the commission may require such public utility to enter
into a bond in an amount deemed by the commission
to be reasonable and conditioned for the refund to the
persons or parties entitled thereto of the amount of the
excess, plus interest at the rate of six per cent per an-
um, if such rates so put into effect are subsequently
determined to be higher than those finally fixed for such
utility. No such accrued interest paid shall be deemed
part of the cost of doing business in a subsequent appli-
cation for changing rates or any decision thereon. At
any hearing involving a rate sought to be increased or
involving the change of any fare, charge, classification,
regulation or practice, the burden of proof to show that
the increased rate or proposed increased rate, or the
proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 3. CONTRACT CARRIERS BY MOTOR VEHICLES.

Section

3. Permit.

§24A-3-3. Permit.

(a) Required; application; hearing; granting.—It shall be unlawful for any contract carrier by motor vehicle to operate within this state without first having obtained from the commission a permit. Upon the filing of an application for such permit, the commission shall fix a time and place for hearing thereon: Provided, however, That the commission may, after giving notice as herein-after provided and if no protest is received, waive formal hearing on such application. Said notice shall be by publication which shall state that formal hearing may be waived in the absence of protest to such application. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the area of operation. Such notice shall be published at least ten days prior to
the date of hearing. After hearing or waiver of hearing as aforesaid, as the case may be, the commission shall grant or deny the permit prayed for or grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such permit such terms and conditions as in its judgment are proper and will carry out the purposes of this chapter. No permit shall be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public or unduly interfere with the use of the highways or impair unduly the condition or unduly increase the maintenance cost of such highways, directly or indirectly, or impair the efficient public service of any authorized common carrier or common carriers adequately serving the same territory.

(b) *Rules and regulations; evidence at hearing.*—The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section and may designate any of its employees to take evidence at the hearing on any application for a permit and submit findings of fact as a part of report or reports to be made to the commission.

(c) *Permit not franchise, etc.; assignment or transfer.*—No permit issued in accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable or to confer any proprietary or property rights in the use of the public highways. No permit issued under this chapter shall be assigned or otherwise transferred without the approval of the commission. Upon the death of a person holding a permit, his personal representative or representatives may operate under such permit while the same remains in force and effect and, with the consent of the commission, may transfer such permit.

(d) *Suspension, revocation or amendment.*—The commission may at any time, for good cause, suspend and, upon not less than fifteen days' notice to the grantee of any permit and an opportunity to be heard, revoke or amend any permit.

(e) *Notice of cessation or abandonment.*—Every contract carrier by motor vehicle who shall cease operation
or abandon his rights under a permit issued shall notify the commission within thirty days of such cessation or abandonment.

CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

Article

1. Supervision and Control of State Institutions.

ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTITUTIONS.

Section 31. State debt not to be incurred for dormitories, homes or refectories; federal and private assistance; provisions separable.

§25-1-31. State debt not to be incurred for dormitories, homes or refectories; federal and private assistance; provisions separable.

1 Nothing in these sections dealing with dormitories, homes or refectories shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the constitution of this state in relation to the state debt. The dormitories, homes or refectories herein are of the character described as self-liquidating projects under the laws of the United States.

2 Any state agency authorized to issue bonds under the provisions of this article is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of construction of the dormitories, homes or refectories and the other purposes herein authorized, from the United States of America or such federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the 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 such federal or public agency or department of the United States, or with any private agency, corporation or individual: Provided, however, That if such bonds are
not sold to and purchased by the United States of America or any such federal or public agency or department, then the state agency shall advertise such bonds for sale, on sealed bids, which advertisement shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. Such advertisement shall be so published within the fourteen consecutive days next preceding the date fixed for the reception of bids. Such advertisement shall also be published in a financial paper published either in the city of New York, in the state of New York, or the city of Chicago, in the state of Illinois. The state agency may reject any and all bids. If the bonds be not sold pursuant to such advertisement, they may, within sixty days after the date advertised for the reception of bids, be sold by the state agency at private sale, but no private sale shall be made at a price less than the highest bid which shall have been received pursuant to such advertisement. If not sold, such bonds shall be re-advertised in the manner herein provided.

The provisions and parts of this act are separable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions, or parts thereof, are for any reason illegal or invalid, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

ARTICLE 3. CLAIMS OF CITIZENS AGAINST UNITED STATES GOVERNMENT FOR ILLEGAL TAX PAYMENTS.

Section

4. Notice to claimants.

§25-3-4. Notice to claimants.

Upon receipt of such funds from the United States by the treasurer of this state, it shall be the duty of the state commissioner of public institutions to give notice to all claimants thereof by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for
such publication shall be each county of the state. Such notices shall set forth that such moneys have been collected and shall notify all claimants of the same to present their claims in writing by filing them with said commissioner, and the commissioner shall warn all claimants and persons interested therein that a failure so to file their respective claims within a period of two years from the date on which such moneys were paid into the treasury of this state shall forever bar their respective rights to such funds, or any part thereof, and that in default of the filing of such claims such funds shall escheat to and become the absolute property of this state.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

Section 11. Employment of convicts by contract; advertisement.

§28-5-11. Employment of convicts by contract; advertisement.

In order to provide employment for convicts not employed as provided in the two preceding sections, the state commissioner of public institutions may let and hire the labor of such convicts, on the piece price system or otherwise, in such branches of business, and for the manufacture of such articles, as in his judgment will best accomplish the ends and subserve the interests of the state. Such letting and hiring shall be advertised by the commissioner of public institutions as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state. The letting and hiring may also be advertised in such other manner as said commissioner may determine. The advertisement shall specify the number of convicts to be let, the length of time of the hiring or letting, which shall not exceed five years, the last day, at twelve o'clock meridian, on which bids will be received and such other information as the commissioner may desire. The commissioner may in his discretion designate what articles or class of articles shall be manufactured.
CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3. RULE MAKING.

Section 2. Notice by mail of proposed rule; requests for notification; fee; notice by publication.

§29A-3-2. Notice by mail of proposed rule; requests for notification; fee; notice by publication.

1 On and after the effective date of this chapter, no agency shall make any rule unless and until notice thereof has been given to all persons who, in the manner hereinafter provided in this section, have requested notice of any proposed rule. The notice shall either contain the express terms of the proposed rule, or shall contain an informative summary thereof. The notice shall be given by mail as specified in section two, article seven of this chapter. The notice shall include a statement of the time, date and place at which interested persons may submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule, and such notice must be given not less than thirty nor more than sixty days prior to the date fixed. The request by any person to receive notice shall be in writing and shall request the agency to notify him of any rule proposed by such agency during the calendar year in which the request is made. Each agency by rule may prescribe the form of such written request for notification, and may require an annual fee in an amount not to exceed one dollar to accompany each such written request. All such fees shall be deposited in the state treasury to the credit of the state general fund. An agency may, in its discretion, also publish the required notice, at the expense of the agency. If an agency determines to give notice also by publication, the notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state, or, if the rule has only local application, the publication area for such publication shall be the locality to which
33 it applies. No rule hereafter adopted is valid unless 34 adopted in substantial compliance with the provisions 35 of this section.

CHAPTER 31. CORPORATIONS.

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

ARTICLE 1. PROVISIONS RELATING TO CORPORATIONS GENERALLY.

Section
4a. Special provisions as to nonstock corporations.
9. Time of organization.
13a. Reduction of capital by resolution of stockholders.
21. Time and place of corporate meetings; notice; quorum.
34. Same—action for amount due; sale of stock; forfeiture of stock and amount paid.
37. Certificates for stock; lost or destroyed certificates.
63. Consolidation or merger of domestic corporations.
80. Procedure upon voluntary dissolution of domestic corporation.
84. Surrender by foreign corporation of authority to do business; certificate of withdrawal.

§31-1-4a. Special provisions as to nonstock corporations.

1 Nonstock corporations have no capital stock, no shares 2 of stock, and no stockholders, and various provisions 3 of this article are not appropriate for nonstock corpora- 4 tions where the interests of the members are equal and 5 not determined by the number of shares owned, and 6 where numerous persons may be technically members 7 but have no real interest in the management of the 8 corporation, and this article does not make provision for 9 certain other situations peculiar to nonstock corpora- 10 tions, and for these and other reasons the following 11 provisions are made, relating only to nonstock corpora- 12 tions:

13 (1) The charter of any nonstock corporation may 14 provide: (i) For the division of its members into classes 15 with varying qualifications and requirements and with 16 varying voting and other rights and privileges; and 17 (ii) the number or proportion of its members or of a 18 specified class or classes of its members, whose presence
in person or by proxy shall be necessary to constitute a quorum at any meeting of members of the corporation; and (iii) that any specified action may be taken or authorized upon the concurrence of a specified number or proportion of the votes of all members or of all of a specified class or classes of members. Such provisions may be different from what is otherwise required under this article; and any action taken or authorized in accordance with any such charter provisions shall be valid and effective.

(2) In any case in which the charter of any nonstock corporation does not provide for members thereof as such and such corporation has in fact no members other than the members of its governing body (by whatever names they or it may be called), the members for the time being of its governing body shall, for the purposes of any statutory provision or rule of law relating to members of a nonstock corporation, be considered to be the members of such corporation, as well as members of such governing body, and may meet as members of such corporation and exercise all of the rights and powers of members thereof.

(3) In any case in which the charter of any nonstock corporation provides for a definite minimum number of members, whenever the membership is reduced below the prescribed number the corporation shall not on that account be dissolved, but the vacancies shall be filled either in the manner provided in its charter or by the surviving or continuing members, so long as the number thereof is one or more.

(4) A member of a nonstock corporation who is entitled to vote on any matter shall have but one vote, and shall not be entitled to cumulate his vote in the election of members of its governing body.

(5) In any case in which there shall be doubt concerning the number and identity of the persons, firms and corporations entitled to membership or to membership in a class or classes of members, in a nonstock corporation, and the determination of those so entitled
59 is deemed necessary by its governing body, the circuit
court of the county in which the principal office of a
nonstock corporation is located, or the judge thereof
in vacation, shall have jurisdiction in equity, on applica-
tion by the corporation by petition in a summary way,
notice of the hearing on the application having been
given as directed by the court or judge, to determine
who are at that time members of the corporation or of
such class or classes of members, and to make such orders
and decrees as may seem reasonable and proper.

(6) If a meeting of the members of any nonstock
corporation shall be duly called for any lawful purpose
and at such meeting there is not present in person or by
proxy the number of members entitled to vote required
by the charter (or, in the absence of an applicable char-
ter provision, by the provisions of this article) to consti-
tuate a quorum or to take the proposed action, then, if
the notice of such meeting states that the procedure
authorized by this subdivision may be invoked, the mem-
bers entitled to vote who are present at such meeting
in person or by proxy may by majority vote call a fur-
ther meeting of the members for the same purpose. A
notice of the time, place and purpose of such further
meeting shall be given by publication of such notice as
a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county of the principal office of the corporation. At
such further meeting the members entitled to vote
who are present in person or by proxy shall constitute
a quorum, and by majority vote may take the proposed
action and may also take any other action which might
have been taken at the original meeting if a sufficient
number of members entitled to vote had been present;
and the notice of such further meeting shall so state.

(7) The charter of a nonstock corporation may pro-
vide for the disposition of its assets upon its dissolu-
tion. In any case in which a resolution to dissolve has
been adopted by the members of a nonstock corporation
entitled to vote thereon, or in any case in which a non-
99 stock corporation has been inactive for ten years except
100 for the holding of assets, or in any case in which the
101 purpose, for which a nonstock corporation has been
102 formed, has been attained, then in any such case the
103 circuit court of the county in which its principal office
104 is located, or the judge thereof in vacation, shall have
105 jurisdiction in equity, on the application by petition in
106 a summary way of the corporation or of any member
107 thereof or of the attorney general, notice of the hearing
108 on the application having been given as directed by the
109 court or judge, to determine the assets and liabilities
110 of the corporation, to provide for the payment of the
111 liabilities, to direct the disposition of the assets, to dis-
112 solve the corporation, and to make such orders and de-
113 crees as may seem reasonable and proper. The court
114 shall consider the purposes for which the corporation
115 was formed, any charter provision for the disposition
116 of its assets upon dissolution, and the circumstances
117 which have occurred since its incorporation. The clerk
118 of such court shall promptly send to the secretary of
119 state a certified copy of each order and decree made in
120 such proceeding.

121 (8) Insofar as the provisions of this section are in-
122 consistent with the provisions of any other law, the pro-
123 visions of this section shall be controlling as to non-
124 stock corporations. The provisions of this section are
125 severable, and the unconstitutionality or invalidity of
126 one portion shall not affect any other portion.

§31-1-9. Time of organization.

1 When a certificate of incorporation is issued hereunder,
2 the incorporators named in the agreement, or a majority
3 of them, shall appoint the time and place for holding
4 a general meeting of the stockholders or members, as
5 the case may be, to elect a board of directors or other
6 managing body, make bylaws, and transact any other
7 business which may lawfully be done by such stock-
8 holders or members in general meeting. The time ap-
9 pointed for such meeting shall not be more than six
10 months from the date of the certificate and at least two
11 weeks’ notice shall be given by mailing a copy to each
subscriber, or by advertisement, as hereinafter provided,
unless notice is waived as hereinafter provided. If notice
is given by advertisement, such notice shall be published
as a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall
be the county in which the principal office of the corpo-
ration is located.

§31-1-13a. Reduction of capital by resolution of stockholders.
  1 Every corporation of this state heretofore or hereafter
  2 incorporated may reduce its capital at any time and in
  3 the manner herein provided, by a resolution or resolu-
  4 tions adopted by a majority vote of all of the shares of
  5 capital stock of the corporation entitled to vote, at a
  6 meeting of the stockholders called for that purpose by
  7 notice given as provided by the bylaws of the corpo-
  8 ration, or in the absence of a provision in the bylaws
  9 for such notice, in the manner provided in this article.
  10 The president or a vice president of the corporation,
  11 under his signature and the seal of the corporation, shall
  12 certify the resolution or resolutions and the fact and
  13 manner of the adoption of the same, and of the assenting
  14 of all stockholders, the consent of whom is required
  15 under this section for such reduction of capital, to
  16 the secretary of state, who shall issue his certificate
  17 reciting such resolution, corporate action and facts certi-
  18 fied in like manner as an original certificate of in-
  19 corporation and transmit the same to the corporation.
  20 Such certificate or a certified copy thereof shall be re-
  21 corded and received in evidence as provided for the re-
  22 cordation and admission in evidence of an original certifi-
  23 cate of incorporation or a certified copy of such original.
  24 Such certificate shall declare the reduction of capital as
  25 in effect from the date thereof. No such reduction, how-
  26 ever, shall be made in the capital of the corporation un-
  27 less the assets of the corporation remaining after such
  28 reduction are sufficient to pay any debts, the payment
  29 of which shall not have been otherwise provided for and
  30 the certification of said president and vice president
  31 shall so state.
Such reduction of the capital of the corporation may be
effected by retiring or reducing the outstanding shares
of any class or by drawing the necessary number of the
outstanding shares of any class by lot for retirement,
or by the exchange by the holders of outstanding shares
of any class of the shares of such class held by them
for a decreased number of shares of stock of the same
or of a different class of stock, or by the exchange of
shares having par value for shares having no par value,
or of shares without par value for shares with par
value, or by reducing (in conjunction with appropriate
action under section eleven of this article) the par value
of the shares of any class of stock having par value, or
where the amount of capital represented by shares of
stock having par value exceeds such par value, by re-
ducing the amount of capital represented by such shares
by an amount not greater than such excess, or by re-
ducing the amount of capital represented by shares of
stock having no par value, or, in case the capital shall
have been increased by the transfer thereto from surplus
and the transfer shall not have been made in respect of
any designated class or classes of stock, by retransferring
to surplus all or any part of the amount by which capital
shall have been so increased, or by the purchase of shares
for retirement, either pro rata from all holders of shares
of that class of stock or by purchasing such shares from
time to time in the open market or at private sale in
both cases at not exceeding such price or prices as may
be fixed or approved by the stockholders entitled to vote
upon the reduction of capital to be effected in that
manner, or by retiring shares owned by the corporation.
If such reduction of capital of the corporation be effected
by retiring shares, then, if the resolution or resolutions
of stockholders above referred to shall so provide, an
amount not exceeding that part of the capital of the
corporation represented by such shares may be charged
against or paid out of the capital of the corporation in
respect of such shares.

When any corporation shall decrease the amount of
its capital as hereinbefore provided, the above-mentioned
certificate of the secretary of state shall be published
by the corporation as a Class II legal advertisement
in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county in which the principal
office of the corporation is located. The first publication
shall be made within fifteen days after the issuance of
such certificate. In default thereof the directors of the
corporation shall be jointly and severally liable to any
creditors of the corporation who shall suffer loss by
reason of the noncompliance with the provisions of this
section and the stockholders shall be similarly liable up
to the amount of such sums as they may respectively
receive of the amount so reduced: Provided, That no such
decrease of capital shall release the liability of any stock-
holder, whose shares have not been fully paid, for debts
of the corporation theretofore contracted.

If the principal office of any corporation mentioned in
this section is not located within West Virginia, the
publication area for the notice provided by the fore-
going paragraph shall be any county in this state in
which it has an office or does business; and if it neither
has any office nor does any business in any county in
this state, then the publication area for such notice shall
be the county of this state wherein the seat of govern-
ment is located.

§31-1-21. Time and place of corporate meetings; notice; quo-
rum.

1 The stockholders and/or directors of any corporation
2 created under the laws of this state may hold all regu-
3 lar, annual and special meetings for the transaction of
4 the lawful business of the corporation, including the first
5 general meeting for purposes of organization, and keep
6 the principal office of such corporation, either in or out
7 of this state. Regular meetings of the stockholders shall
8 be held at such time and place as the bylaws may pre-
9 scribe, or if there be no such bylaws, then annually on
10 the fourth Tuesday of January, at eleven o'clock in the
11 forenoon, at the principal office of the company. Notice
12 of regular and special meetings shall be given as re-
13 quired by the bylaws, and if none is prescribed therein,
then by mailing to each stockholder, at least ten days prior to the date of the meeting, a written notice thereof; or by publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county of the principal office or place of business of the corporation. Special meetings may be held at such places and after such notice as the bylaws prescribe, or, if none, then at the same place and after the same notice as a regular meeting. Special meetings of the stockholders may be called by the board of directors, the president and secretary, or any number of stockholders owning in the aggregate at least one tenth of the number of shares outstanding. The notice of special meetings shall state the business to be transacted, and no business other than that included in the notice or incidental thereto shall be transacted at such meeting.

Regular meetings of the board of directors may be held at such time and place as the bylaws may prescribe, or the board may from time to time designate by resolution.

Special meetings of the board of directors may be called by the president, vice president, any two directors of a stock or nonstock corporation, or by any two members of a nonstock corporation. Notice of such meetings shall be given as required by the bylaws, and if none is prescribed therein, then by mailing a written notice to each director at his last known post-office address at least five days before the time of the meeting.

A quorum of the stockholders shall consist of at least a majority of all of the shares of stock entitled to vote. Unless otherwise prescribed in the bylaws, or provided in the charter, a quorum of the directors shall consist of a majority of the board of directors. Any number less than a quorum present may adjourn any stockholders’ or directors’ meeting until a quorum is present: Provided, however, That a quorum of the stockholders or members of a cooperative association organized under the provisions of this chapter shall consist of at least fifteen per cent of such stockholders or members.
§31-1-34. Same—Action for amount due; sale of stock; forfeiture of stock and amount paid.

1 When any stockholder fails to pay any installment or call upon his stock which may have been properly assessed thereon by the directors, at the time when such payment is due, the directors may collect the amount of such installment or call, or any balance thereof remaining unpaid, from the stockholder by an action at law, or they may sell at public sale such part of the shares of such delinquent stockholder as will pay all assessments then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who, upon payment of the same, shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by publication thereof as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the principal office or place of business of such corporation is located. Such notice shall be so published within fourteen consecutive days next preceding the sale. Such notice shall also be mailed by the treasurer of the corporation to such delinquent stockholder at his last known post-office address at least twenty days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, brought within the county or city wherein the principal office of such corporation is located, or in which the delinquent stockholder resides, within six months from the date of the bringing of such action at law, such stock shall be forfeited to the corporation and the amount previously paid in by the delinquent on the stock shall be forfeited to the corporation. A sale of the shares of stock may be made without resorting to the action at law authorized in this section.

§31-1-37. Certificates for stock; lost or destroyed certificates.

1 Every holder of stock in a corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the president or a vice president and
the treasurer or an assistant treasurer, or the secretary
or an assistant secretary of such corporation, certifying
the number of shares owned by him in such corpora-
tion: Provided, however, That where such certificate is
signed by a transfer agent or an assistant transfer agent
or by a transfer clerk acting on behalf of such corpora-
tion and a registrar, the signature of any such president,
vice president, treasurer, assistant treasurer, secretary
or assistant secretary may be facsimile. In case any
officer or officers who shall have signed, or whose fac-
simile signature or signatures shall have been used on,
any such certificate or certificates shall cease to be such
officer or officers of such corporation, whether because
of death, resignation or otherwise, before such certificate
or certificates shall have been delivered by such corpo-
ration, such certificate or certificates may nevertheless be
adopted by such corporation and be issued and delivered
as though the person or persons who signed such certifi-
cate or certificates or whose facsimile signature shall
have been used thereon had not ceased to be such officer
or officers of such corporation.

All certificates for stock which is given any preference,
priority or preferred rights over any other shares as to
dividends or otherwise, or which contains any limitation
or restriction of voting or other rights, shall contain
an accurate statement of all such preferences, priorities
or preferred rights, restrictions and limitations. No
certificate for any share of stock shall be issued or de-

divered to the stockholder until his subscription or sale
price for such share is paid in full.

A certificate may be issued in lieu of a certificate lost
or destroyed upon such terms and conditions as may
be prescribed by the bylaws of the corporation, upon
compliance with such terms and conditions by the per-
son who appears by the books of the corporation to be
the owner of the lost or destroyed certificate; and the
owner may require the officers of the corporation to
issue a certificate in the place and stead of one lost or
destroyed upon the following conditions: (a) He shall
file with the officers of the corporation, first, an affidavit
setting forth the time, place and circumstances of the
loss to the best of his knowledge and belief; second, proof of his having advertised the loss as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, for which advertisement the publication area shall be the county in which is located the principal office of the corporation; (b) he shall execute and deliver to the corporation a bond with good security in a penalty of at least the value of the shares of stock represented by the lost or destroyed certificate conditioned to indemnify the corporation and all persons whose rights may be affected by the issuance of the new certificate against any loss in consequence of the new certificate being issued: Provided, however, That a new certificate may be issued in lieu of the one lost, in the discretion of the board of directors, without requiring the publication of the above notice or the giving of a bond.

Whenever a certificate for shares of the capital stock of a corporation of this state which has heretofore been or may hereafter be issued to a person as agent or trustee, and as to which the stock ledger of such corporation does not disclose the principal or cestui que trust, is lost or destroyed, and no person, except the administrator of the person to whom such certificate was issued as agent or trustee, has made claim to it against the corporation for more than twenty-five years, and such corporation has been a going concern for more than ten years during such period of twenty-five years, and has declared five or more dividends upon its capital stock during the last twenty-five years, and such dividends declared upon the shares of stock alleged to be lost or destroyed have not been paid to any person, and such agent or trustee, the holder of such certificate, is dead, then, and in such case, the administrator of the person to whom the alleged lost or destroyed certificate was issued as agent or trustee aforesaid, and who is still the owner of record of such certificate, shall, after ten days’ written notice to such corporation demanding the issuance of a new certificate of stock to him as such administrator, be entitled to receive, in his name as administrator, such new certificate in place of the one alleged to be
lost or destroyed, and such administrator shall be entitled to receive all dividends that may have been declared upon such certificate or number of shares of stock alleged to be lost or destroyed and remaining unpaid, under and upon the following conditions: (a) If such administrator of such holder of record as agent or trustee of such certificate of stock has given the aforesaid ten days’ notice in writing to the corporation, he shall cause to be advertised, as hereinafter provided, the fact that he gave to such corporation the required ten days’ notice in writing; that more than twenty-five years prior thereto a certificate for the number of shares of the capital stock of such corporation was issued to his intestate as agent or trustee; that it is unknown to him who such principal or cestui que trust may be; that no person except the administrator of such agent or trustee has made claim to such certificate for more than twenty-five years; that such certificate has been lost or destroyed; that such stock represented by the certificate lost or destroyed and all dividends payable in respect thereto are claimed by such administrator for the purpose of distributing and accounting for the same to the person or persons entitled thereto; that at least two weeks after the last publication thereof such administrator, unless such corporation issues and delivers unto him such new certificate in the place of the one lost or destroyed and pays over and delivers to him as such administrator all dividends payable in respect thereto, will institute suit for the same; and such notice shall warn any and all persons, except such administrator, to produce to such corporation, on or before the expiration of two weeks after the last publication thereof as aforesaid, a statement in writing under oath of such claimant or his administrator, of the origin, circumstances and grounds upon which his claim as principal or cestui que trust to such stock and dividends is asserted, as well as the reasons for his delay in asserting title thereto; (b) if within such period of time for producing such certificate to such corporation such statement, satisfactory to such corporation, be not forthcoming, such corporation shall issue and deliver to such admin-
istrator a new certificate of stock in the place and
stead of that alleged to be lost or destroyed and also
deliver and pay over to him all dividends payable in
respect thereto. The notice required to be published
by this paragraph shall be published as a Class II legal
advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the
county wherein he was granted his letters of admin-
istration.

Such issuance and delivery of a new certificate and
the payment of such dividends by the corporation to
such administrator shall relieve such corporation from
any and all liability whatsoever to any person claiming
in any capacity such shares of stock represented by the
certificates lost or destroyed or such dividends in respect
thereto.

The procedure provided in this section is cumulative
and not exclusive, and nothing herein contained shall
be taken or construed as limiting in any way the right
of any party who claims to be entitled to a new certifi-
cate of stock in the place of a lost or destroyed certificate,
or the accumulated dividends thereon, which was issued
in the manner hereinbefore provided, to have his or its
rights to such new certificate and dividends determined
and adjudicated without regard to this section by resort
to any court of law or equity having jurisdiction to
determine and adjudicate such rights, before the corpo-
rination shall have paid such dividends and issued a new
certificate under the requirements of this section. The
right to prosecute any suit pending at the time this
article takes effect and growing out of the loss of a cer-
tificate of stock issued in the name of the trustee or
agent shall not be impaired by anything herein contained.

§31-1-63. Consolidation or merger of domestic corporations.

Any two or more corporations organized under the
provisions of this chapter, or existing under the laws
of this state, for the purpose of carrying on any kind of
business, may consolidate or merge into a single corpo-
ration which may be any one of such constituent cor-

porations or a new corporation to be formed by means
of such consolidation or merger as shall be specified
in the agreement hereinafter required. The directors,
or a majority of them, of such corporations as desire
to consolidate or merge, may enter into an agreement
signed by them and under the corporate seals of the
respective corporations, prescribing the terms and condi-
tions of consolidation or merger, the mode of carrying
the same into effect, and stating such other facts re-
quired or permitted by the provisions of this article
to be set out in an agreement of incorporation, as can
be stated in the case of a consolidation or merger, stated
in such altered form as the circumstances of the case
require, as well as the manner of converting the shares
of each of the constituent corporations into shares of
the consolidated or merged corporation, with such other
details and provisions as are deemed necessary.

Such agreement shall be submitted to the stockholders
of each constituent corporation, at a meeting thereof,
called separately for the purpose of taking the same
into consideration; of the time, place and object of which
meeting due notice shall be given by publication as a
Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the
county wherein each such corporation either has its
principal office or conducts its business. A copy of such
notice shall also be mailed to the last known post-office
address of each stockholder of each such corporation,
at least twenty days prior to the date of such meeting:
Provided, however, That in the consolidation or merger
of banking institutions as defined in this chapter, in
the case of emergency, and upon the order of the com-
missioner of banking, the meeting may be held upon
at least twelve hours' notice sent by mail or telegraph
to the last known post-office address of each stockholder,
and without publication.

At any such stockholders' meeting of any corporation
said agreement shall be considered and a vote by ballot,
in person or by proxy, taken for the adoption or rejec-
tion of the same, each share entitling the holder thereof
to one vote; and if the votes of stockholders of each such
corporation representing two thirds of the total num-
ber of shares of its capital stock then issued and out-
standing shall be for the adoption of such agreement,
then that fact shall be certified on such agreement by
the secretary of each such corporation under the seal
thereof; and the agreement so adopted and certified
shall be signed by the president and secretary of each
of such corporations under the corporate seals thereof and
acknowledged by the president of each of such corpo-
rations before any officer authorized by the laws of this
state to take acknowledgments of deeds to be the re-
pective act, deed and agreement of each of such corpo-
rations, and the agreement so certified and acknowledged
shall be filed in the office of the secretary of state, and
shall thence be taken and deemed to be the agreement
and act of consolidation or merger of the said corporations;
and a copy of such agreement and act of consolidation
or merger, duly certified by the secretary of state under
the seal of his office, shall also be recorded in the offices
of the clerks of the county courts of the counties of this
state in which the respective corporations so consolidat-
ing or merging shall have their original certificates of
incorporation recorded, if any, or if any of the corpo-
rations shall have been specially created by a public
act of the Legislature, then such agreement shall be
recorded in the county where such corporation shall have
had its principal place of business, if any, and such rec-
ord, or a certified copy thereof, shall be evidence of the
agreement and act of consolidation or merger of such
corporations, and of the observance and performance
of all acts and conditions necessary to have been ob-
served and performed precedent to such consolidation
or merger.

When an agreement shall have been signed, acknowled-
ged, filed and recorded as herein required, for all
purposes of the laws of this state, the separate exist-
ence of all the constituent corporations, parties to said
agreement, or of all such constituent corporations except
the one into which the other or others of such constit-
uent corporations have been merged, or consolidated, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers, franchises and trust and fiduciary duties, powers and obligations, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular the rights, privileges, powers, franchises, and trust and fiduciary rights, powers, duties and obligations, of each of said corporations; and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers, and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations; and the title to any real estate, whether vested by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this chapter: Provided, however, That all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

§31-1-80. Procedure upon voluntary dissolution of domestic corporation.

At any time during the fiscal year in which any corporation may be created and before it engages in the transaction of business and acquires any property other
than the amounts paid in on subscriptions to its stock, the incorporators may abandon the corporation and by indorsing and signing a statement of the intention so to do on the certificate and returning the same to the secretary of state, the secretary of state on receipt thereof shall cancel and preserve such certificate of incorporation and the corporation created thereby shall be dissolved. If such charter shall have been recorded in the office of the clerk of the county court of any county in the state, the incorporators shall execute and acknowledge a writing setting forth the facts of the surrender and dissolution of the corporation and cause such writing to be recorded in the office of the clerk of the county court in which the certificate of incorporation is recorded, and the clerk shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact of the dissolution of the corporation.

The stockholders at any time may resolve to discontinue the business of the corporation, at least sixty percent of the shares of capital stock entitled to vote being present at the meeting and voting in favor of such discontinuance, and may divide the property and assets among those entitled thereto after paying all the debts and liabilities of the corporation. A copy of the resolution shall be certified by the president, or a vice president under his hand and the seal of the corporation, to the secretary of state, who shall file the same in his office and shall issue a certificate under his hand and the great seal of the state reciting such resolution and certifying the dissolution of the corporation, but such certificate of dissolution shall not be issued unless and until the corporation has paid into the state treasury any amount it may owe as license tax, including interests and penalties. The officers of the corporation shall cause the certificate of dissolution to be recorded in the office of the clerk of each county court of the state in which the certificate of incorporation is recorded and the clerk of the court shall note on the margin of the record book in which the certificate of incorporation is engrossed the fact and the date of the dissolution of the corporation.

As soon as practicable after the passage of such resolu-
tion the directors and officers of the corporation shall
cause the corporate assets to be applied to the payment
of the corporate debts and liabilities, and no division of
the assets among the stockholders shall be made until
ample provision has been made for the payment of all
the debts and liabilities and until notice of the resolution
of dissolution shall have been published as a Class II legal
advertisement in compliance with the provisions of ar-
ticle three, chapter fifty-nine of this code, and the pub-
ication area for such publication shall be the county in
which the principal office or place of business of the cor-
poration is located. The right of the state or of any
county, district or city therein for any license taxes ac-
crued unto the date of dissolution, or any other taxes or
claims, or the remedies for the collection thereof, shall
not be impaired by the dissolution of the corporation.

§31-1-84. Surrender by foreign corporation of authority to do
business; certificate of withdrawal.

1 If any foreign corporation desires no longer to hold
property and transact business in this state, it may sur-
render to the state its authority therefor, in the follow-
ing manner: It shall publish a notice of its intention to
withdraw from the state, such notice to be published as
a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
some county in the state where it carries on its business.
After such publication it shall make application to the
secretary of state for a certificate of withdrawal, which
application shall be signed by the president of the cor-
poration, sealed with its corporate seal, and attested by
its secretary, and be accompanied by a copy of such
notice and the publisher's certificate of such publication.
The secretary of state shall file the same in his office
and issue to such corporation a certificate of withdrawal;
but such certificate of withdrawal shall not be issued
unless and until the corporation has paid into the state
treasury any amount it may owe as license tax, includ-
ing all interest and penalties. The issuance of such cer-
tificate of withdrawal shall not relieve the corporation
23 of any debt or obligation due from it to the state or any
24 resident thereof.

ARTICLE 2. RAILROAD COMPANIES.

Section
15. Same—rights and duties of purchaser.


1 The corporation created by or in consequence of such
2 sale and conveyance shall succeed to all such franchises,
3 rights and privileges, but not immunity from taxation,
4 and perform all such duties as would have been had, or
5 should have been performed by the first company, but
6 for such sale and conveyance; save only, that the cor-
7 poration so created shall not be entitled to debts due to
8 the first company, and shall not be liable for any debts
9 of, or claims against the first company, which may not
10 be expressly assumed in the contract of purchase; and
11 that the whole profits of the business done by such cor-
12 poration shall belong to such purchaser and his assigns.
13 His interest in the corporation shall be personal estate,
14 and he or his assigns may create so many shares of stock
15 therein as he or they may think proper, not exceeding
16 together the amount of stock in the first company at the
17 time of the sale, and assign the same in a book kept for
18 that purpose. Such shares shall thereupon be on the
19 footing of shares in corporations generally, except only
20 that the first meeting of the stockholders shall be held
21 on such day and at such place as shall be fixed by such
22 purchaser, of which notice shall be published as a Class
23 II legal advertisement in compliance with the provisions
24 of article three, chapter fifty-nine of this code, and the
25 publication area for such publication shall be each county
26 in the state wherein such corporation may do business.

ARTICLE 3. BOOM COMPANIES.

Section
2. Powers of boom company; boomage; lien; sale for tolls; free pas-
3 sage of logs.

§31-3-2. Powers of boom company; boomage; lien; sale for tolls; free passage of logs.

1 Every such corporation shall, after erecting its boom,
have the exclusive privilege of maintaining a suitable
boom or booms, with or without piers, dam or dams,
across the stream designated, within two miles above its
principal boom, for the purpose of stopping and securing
boats, rafts, sawlogs and other timber of value, but such
boom or booms shall be so constructed as to permit boats,
rafts and other timber, when desired by the owner, to pass
them without unavoidable delay and without paying toll,
boomage or other charges, and may erect their booms
on the rivers and other streams, and may dredge and
clear the channels thereof, and remove obstructions
therefrom; and such corporation may build sawmills on
lands acquired in any other way than by condemnation;
and may manufacture and sell lumber and construct
tram-railways and dams, and do such other work as may
be necessary for the purpose of getting logs and lumber
to, down and from the river and its branches, on which
such boom is located; and, in the event the lands neces-
sary for such tram-railways cannot be purchased from
the owner or owners thereof at a reasonable price, then
such corporation may have the same condemned for such
purpose in the manner now provided by law for cases
of a similar nature: Provided, That nothing in this sec-
tion shall be so construed as to prevent any boom com-
pany from using water surface for two miles below its
boom for assorting and bunching its own and other boats,
rafts, sawlogs and other timber of value, and that no
company shall so construct its boom as to deprive another
company of such right, nor shall any boom company which
may construct a boom within two miles below a boom
heretofore constructed have exclusive privileges of the
water or stream above such other boom.

Boomage or toll shall be charged at a rate not less than
twenty-five cents nor more than one dollar per thousand
feet board measure; or not less than twenty nor more
than eighty cents per one hundred cubic feet, except as
hereinafter provided, which rate shall be determined by
a commission in the manner following to wit: The cir-
cuit court of each county, the timber of which can be
floated into the boom, or the judge of such court in va-
cation, shall appoint one person, and such corporation
shall appoint a person and if such persons are unable
to agree, they shall choose another person. None of the
persons so selected shall be a stockholder or interested
in such corporation. The persons so appointed and chosen
shall be versed in the timber and lumber business, and
be qualified to make such measurements and calculations
as may be necessary. Persons so appointed or chosen
shall constitute a commission, whose duty it shall be to
fix the rates of boomage which the corporation may
charge; and in determining this rate they shall take into
consideration the ease or difficulty, as the case may be,
of booming logs, etc., in such boom, and also any extra-
ordinary expenditure of money which the corporation
may have made to facilitate its business; and such com-
missioners shall fix a rate, which shall be in their judg-
ment a fair and just compensation to the corporation for
the capital invested and labor performed in booming
logs, timber, etc., in the limits above described. And
such commissioners may, in their discretion, or when
requested to do so by parties interested, fix the separate
rate which shall be charged for logs, ties, lumber, staves,
or any other specific kind of lumber or timber which
may be floated in such boom, by the hundred, thousand,
or by bulk, as the case may be. The report of such com-
missioners shall be filed in the office of the clerk of the
circuit court of each county in which a commissioner
was appointed, and published within ten days after the
report has been agreed upon as a Class I legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be each county interested
in such boom. Should the corporation or any interested
party not be satisfied with the report of the commission-
ers, they may take exceptions thereto, which exceptions
may be heard by the judge of the circuit court of any
county interested, in term time or in vacation, and, if
it appear to the court or judge that the rates established
by the commissioners are unjust, either to the corpora-
tion or private persons, such report may be set aside and
a new commission appointed. But unless exceptions are
taken to the report of such commissioners within sixty
days after the filing of the same, the report shall be taken
as confirmed, and be binding upon all parties interested.
Any boom company organized under the provisions of
this chapter, or any party interested, may, if it so desire,
ask for a commission once every five years, to revise the
rate of boomage; such commission to be constituted as
provided for in this section. When the stream boomed
lies wholly in one county, there shall be two commis-
sioners appointed by the circuit court of that county,
who, together with the one appointed by the corporation,
as hereinbefore provided, shall constitute such commis-
sion. If any controversy shall arise between such cor-
poration and any person or persons having timber or
other lumber in such boom, on account of such lumber,
or the rates of boomage, the commissioners authorized
to be appointed by this section may, if the parties inter-
ested and such corporation so desire it, act as arbitrators
to settle the same in such manner and with such result
as the law provides in other cases of arbitration. The
commissioners appointed under this section shall receive
three dollars per day for their services, to be paid by
such corporation, except that, after the rates have been
fixed, any subsequent commission shall be paid by the
party asking it.

Such corporation shall have a lien on all sawlogs and
other timber and lumber thus boomed for the payment
of all tolls for booming, until the same shall be paid.
If any timber shall have been boomed securely, as
aforesaid, and no person shall appear to claim the same,
and pay the tolls thereon, within ninety days, it shall
be lawful for the corporation, after advertising the same
as hereinafter provided, reciting the marks, if any, to
make application to any justice of the peace of such
county, whose duty it shall be, upon proper proof of the
publication of such notice, to direct a sale of such tim-
ber, and designate some officer or other person to make
such sale, either by public auction or by private sale,
as to the justice shall seem most advantageous to the
parties interested; and at any time within a year from
such sale, the owner shall be entitled to receive the pro-
ceeds thereof, after deducting the toll and expenses; but
if not claimed within one year, the proceeds shall inure
to and be vested in the general school fund. Such ad-
vertisement shall be published as a Class II legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be each county in which
such boom or booms are located.

Where several companies are operating on the same
stream, the upper companies shall pass free of charge
through or around their booms, with as little delay as
possible, all logs, lumber, etc., distinctly marked as be-
longing to or in care of the boom or booms below them.

ARTICLE 4. BANKING INSTITUTIONS.

Section

8. Certificate as to capital to be filed annually before exercising trust
powers; penalty; notice of failure to comply.

§31-4-8. Certificate as to capital to be filed annually before
exercising trust powers; penalty; notice of failure to
comply.

No banking institution shall exercise any of the trust
powers mentioned in the preceding section until it shall
have filed with the secretary of state a duly authenticated
certificate, showing the unimpaired capital of such com-
pany to be at least one hundred thousand dollars and
a like duly authenticated certificate shall be filed with
the secretary of state and a copy thereof with the com-
mmissioner of banking in the month of January of each
year thereafter. If any banking institution shall exer-
cise, or attempt to exercise, any such powers or rights
without having complied with the requirements of this
section as to the filing of such certificate, it shall be guilty
of a misdemeanor, and, upon conviction thereof, shall
be fined not more than five hundred dollars; and in every
such case, whether or not there shall have been a prose-
cution or conviction of the company so offending, the
commissioner of banking, being satisfied of the facts,
may publish a notice of the fact that it has failed to
comply with the requirements of this section and is therefore not entitled to exercise the trust powers and rights mentioned in the preceding section. In the event a notice is published as aforesaid, it shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such institution is located.

§31-4-16. Liability of stockholders.

Each stockholder of any banking institution, organized under the laws of this state, in addition to the liability imposed upon him as a stockholder of a corporation under the provisions of article one of this chapter, shall be liable to the creditors of the banking institution, on obligations accruing while he is a shareholder, to an amount equal to the par value of the shares of stock held by him; and no sale or transfer of the shares of stock made by any such stockholder, after the liability of the banking institution originated or accrued, shall relieve the stockholder from the liability imposed by this section. Any proceeding in equity to enforce the liability of stockholders imposed by this section may be prosecuted severally against any one stockholder or jointly against any number of stockholders: Provided, That the additional liability imposed upon such stockholders by this section shall not apply on and after the first day of July, one thousand nine hundred thirty-nine, with respect to any such institution, so long as such institution, in pursuance of the provisions of chapter seventeen, acts of the Legislature, one thousand nine hundred thirty-five, has its deposits insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such instrumentality in existence and available for the purpose: Provided further, That such additional liability shall not apply on and after the first day of July, one thousand nine hundred thirty-nine, with respect to any banking institution from and after the time it shall obtain from the commissioner of banking a certificate setting forth that such institution has, as
ascertained by him, an unimpaired surplus equal to at least fifty per cent of the authorized capital of such institution. Upon application by any banking institution to the commissioner of banking for such certificate, the commissioner shall ascertain whether such institution has in fact such unimpaired surplus, and if such unimpaired surplus be found by him to exist, then he shall issue such certificate. If impairment of such surplus shall thereafter occur, such impairment shall not impose further or additional liability upon the stockholders of such institution: And provided further, That not less than three months prior to the first day of July, one thousand nine hundred thirty-nine, such institution shall have caused notices of such prospective termination of liability to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such institution is located. If the institution fails to give such notice, as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date three months subsequent to publication of the notice in the manner above provided.

Nothing in this section shall affect or impair the authority of the officers and directors of a banking institution to cause to be made good any impairment of the capital of such institution, under the provisions of section fourteen, article eight of this chapter.

ARTICLE 8. BUSINESS OPERATIONS AND SUPERVISION OF BANKING INSTITUTIONS, INDUSTRIAL LOAN COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Section

10. Periodical reports of industrial loan companies and building and loan associations; publication.

11. Periodical reports of banking institutions; publication.


25a. Permissive closing of banking institution on fixed weekday; procedure.

32. Liquidation of banking institutions and other corporations with impaired capital or insolvent.

43. Appointment and duties of conservators for banking institutions; withdrawals and deposits during conservatorship; termination of conservatorship; reorganization.
§31-8-10. Periodical reports of industrial loan companies and building and loan associations; publication.

Every industrial loan company and building and loan association and every other corporation by law placed under the supervision of the department of banking and not covered in the next following section, engaged in business in this state shall, at least twice a year, at the request of the commissioner of banking and as of a date named by him, furnish, within fifteen days after such request, a statement, verified by its president or secretary, and approved by three of its directors, in such form as may be prescribed by the commissioner of banking, showing in detail the actual financial condition and the amount of the assets and liabilities of such corporation, and shall furnish such other information as to its business and affairs as the commissioner of banking may require, which reports, in the same form in which they are transmitted to the commissioner of banking, shall be printed and circulated among all of the stockholders of the corporation or published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the corporation is located.

§31-8-11. Periodical reports of banking institutions; publication.

Every banking institution organized and authorized to transact business under this chapter shall make at least four reports each year to the commissioner of banking. Such reports shall be called for as nearly as conveniently may be on the dates on which the comptroller of the currency shall call for reports by national banking associations, and be of such form and contain such details as shall be prescribed by the commissioner of banking; which reports shall be verified by oath of the president or active vice president and cashier, and attested by the signature of at least three directors of the banking institution. Each report shall show in detail, under appropriate
heads, the resources and liabilities of the banking institution at the close of the business on the date specified by the banking commissioner, and shall be transmitted to the office of the department of banking and supervision within five days from the receipt of the request for the same.

Such report, in the same form in which it is made to the commissioner of banking, shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the banking institution is located.

In lieu of such report and publication, the commissioner of banking shall have discretion to accept from a banking institution which is a member of the federal reserve system a report, and the publication thereof required of such banking institution by the federal reserve board or by its agency: Provided, That such report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the day specified by the federal reserve board, or by its agency, and shall contain such further details as may be deemed necessary or desirable by the commissioner of banking.

Any report and the publication thereof shall be at the expense of the banking institution, and it shall furnish to the commissioner of banking such proof of the publication as may be required by him.

§31-8-14. Impairment of capital of banking institution forbidden; how remedied.

The officers and directors of a banking institution organized and authorized to transact business under this chapter shall not pay out, disburse or withdraw, or permit to be paid out, disbursed or withdrawn, in any manner whatever, any part of the capital of the corporation except in case of merger or consolidation, as hereinafter provided. Whenever, from any cause, the capital of such banking institution shall become impaired, it shall be the duty of the officers and directors of such institution,
forthwith, to cause any such impairment to be made good,
by assessing the amount of the deficiency pro rata on
the shares of the capital stock outstanding, which assess-
ments shall be paid within thirty days after notice
ter thereof. If any stockholder shall neglect or refuse to
pay the assessment on his shares after thirty days' notice,
it shall be the duty of the board of directors to cause
a sufficient number of his shares of stock to be sold for
cash, at public outcry at the banking room of the banking
institution, to pay the amount of such assessment and
expenses of making the sale. Notice of such sale shall
be published as a Class II legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
ine of this code, and the publication area for such
publication shall be the county in which the banking
institution is located. The first publication shall be made
at least ten days before the date of such sale. Any surplus
from the sale of any share shall be paid to the defaulting
stockholder and should such stock not sell for a sum
sufficient to pay such assessment and expense of making
such sale, the banking institution may recover the de-
ficiency by action at law from the stockholder whose
stock was so sold. A sale of stock as provided in this sec-
tion shall effect an absolute cancellation of the outstand-
ing certificate, or certificates, evidencing the stock so sold,
and shall make such certificate null and void, and a new
certificate shall be issued by the bank to the purchaser
of such stock.

§31-8-25a. Permissive closing of banking institution on fixed
weekday; procedure.

Any banking institution or trust company in this state,
or combined banking institution and trust company, in-
cluding national banking associations, may remain closed
on any one fixed weekday or portion of such day in each
calendar week, other than Sunday, which may be desig-
nated by the adoption of a resolution by the board of
directors thereof. Not less than fifteen nor more than
thirty days in advance of closing of any such weekday
or portion thereof, such banking institution shall post
a notice in a conspicuous place in its banking room
stating that on or after a day certain and until further notice given in like manner, such banking institution will remain closed on a fixed weekday or portion thereof. Concurrently with the posting of such notice, such banking institution shall cause a notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal office of such bank is located. Such notice shall set forth the weekday or portion thereof on which said bank will remain closed and the date when such closing becomes effective. A certified copy of such resolution certified by the cashier or secretary of such banking institution, together with an affidavit of posting and proof of publication of the notice herein required shall be filed with the commissioner of banking.

Any fixed weekday or portion thereof on which any banking institution shall elect to close pursuant to the authority of this section shall constitute a legal holiday or partial legal holiday with respect to such banking institution and not a business day for the purposes of the law relating to negotiable instruments, and any act or contract authorized, required or permitted to be carried out or performed at, by or with respect to such banking institution may be performed on the next business day, and no liability or loss of rights on the part of any person or banking institution shall result therefrom.

§31-8-32. Liquidation of banking institutions and other corporations with impaired capital or insolvent.

If the commissioner of banking shall ascertain from any source that the capital of any banking institution or other corporation by law placed under the supervision of the department of banking is substantially impaired, and that such institution or other corporation, upon notice from him, does not promptly make good such impairment, or that any banking institution or such other corporation in this state is insolvent, he shall have authority to appoint an employee of the department of banking receiver of such banking institution or other
corporation to take charge of the papers, books, records, moneys and assets of every description of such institution or other corporation; and immediately upon taking charge of any such institution or other corporation, the commissioner of banking shall make in duplicate a complete inventory of all assets and an itemized list of all liabilities of such institution or other corporation. The original and copy of such list shall be subscribed and sworn to by the persons making the same and the original shall be filed with the department of banking and one copy shall be furnished such receiver, and such receiver, upon assuming office, shall open and keep such books and records as are prescribed by the commissioner of banking.

Such receiver shall have all the powers vested in special receivers by general law. The receiver, under the authority of the commissioner of banking, shall institute and prosecute any suit or suits necessary to obtain possession of any property and to sell and dispose of the same and to collect all obligations due such institution or other corporation. The receiver in such suit, or by separate suits, under the authority of the commissioner of banking, shall enforce against the officers, directors and stockholders any liability incurred by them and existing in favor of the creditors of such institution or other corporation, and collect from such officers, directors and stockholders any sums for which they are liable as aforesaid.

If it shall appear that the assets of such insolvent institution or other corporation are not sufficient to pay in full all of its creditors and depositors, without waiting to administer the assets of such institution or other corporation, or delaying for any other cause, in the same suit or in separate suits, to be forthwith instituted in the same or any other jurisdiction in his name, the receiver, under the authority of the commissioner of banking, shall collect from each of the several stockholders of such institution or other corporation all sums for which they are severally liable to such institution or other corporation, for the benefit of its creditors.
If it shall be necessary to institute any suit against any stockholder in the courts of any other state, the same may be either instituted and prosecuted in the name of the commissioner of banking, or, at his election, in the name of the receiver or the corporate name of the institution or other corporation which is in process of liquidation, and any such receiver may bring a suit in the circuit court of the county where such institution or other corporation is located, to ascertain the several depositors and creditors of such institution or other corporation and the amounts and priorities of their respective claims. Such banking institution or other corporation and the stockholders of such banking institution or other corporation, residing in this state, shall be made defendants to such suit, and all persons who shall file proofs of claim shall be deemed parties thereto as though they had been named as defendants. The court shall refer the cause to a commissioner in chancery, and such commissioner shall thereupon cause to be published a notice to all depositors and creditors of such banking institution or other corporation, requesting them to present their claims to such commissioner for allowance. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the suit is pending. After publication of such notice is completed, such commissioner in chancery shall proceed as promptly as possible to ascertain and report the several depositors and creditors of such banking institution or other corporation and the amounts and priorities of their respective claims, if any, proven before him. All claims as shall have been duly proved and allowed by the receiver or the commissioner of banking, before the decree of reference, may be allowed and reported by the commissioner in chancery without further proof, unless the same shall be contested and disallowed for proper cause. The commissioner in chancery shall also ascertain and report what funds and assets of such banking institution or other corporation have come into the hands of the receiver, what disposition has been made of such
assets, and what dividends, if any, have been paid, and
settle the accounts of such receiver. When the report
of such commissioner is confirmed, the court shall enter
such orders and decrees and take such proceedings as
are proper to ascertain the several depositors and cred-
itors of such banking institution or other corporation,
and adjudicate their respective rights and direct the dis-
tribution of the assets and funds in the hands of the re-
ceiver and confirm any distribution made under orders
of the commissioner of banking, and may confirm any
and all sales made by such receiver, of property and
assets of such banking institution or other corporation.
Any creditor whose claim is not presented and allowed
before any decree of distribution becomes final shall be
forever barred from participating in the funds distrib-
uted under such decree, or theretofore distributed and
confirmed by such decree, and shall have no claim by
reason of such distribution against any creditor sharing
therein or against the commissioner of banking, the re-
ceiver, or any surety upon the receiver's bond. Any
claim which shall have been proved and allowed after
any dividend or distribution has been made by the re-
ceiver, shall be paid dividends equal or proportionate in
amount to those already received by the other creditors
of the same rank and priority, if the funds and assets
in the hands of the receiver are sufficient therefor, be-
fore such other creditors receive any further dividend
or distribution.

In any such suit brought by the receiver for the pur-
pose of ascertaining the several depositors and creditors
of such institution or other corporation, as hereinbefore
provided, the receiver may also proceed against the offi-
cers, directors and stockholders of the banking institu-
tion or other corporation to enforce their individual lia-
ibilities as hereinabove provided, or for the adjudication
of any other pertinent matter involved in the adminis-
tration of the assets and affairs of such institution or
other corporation.

All of the assets of any such insolvent institution or
other corporation shall be administered under, applied
and paid out through the orders of the commissioner of banking, as herein provided. The costs and expenses of the receivership and of any suit or suits brought by the receiver under the direction of the commissioner of banking shall be entitled to priority of payment out of the assets of such institution or other corporation.

The receiver shall, by proper proceedings, ascertain the several creditors and the amounts and priorities of their respective claims against such institution or other corporation, and shall, from time to time, as the assets of such institution or other corporation are reduced to possession, and converted into cash, pay the same to the several creditors in the order and the manner in which they are respectively entitled to payment: Provided, however, That without regard to priority, the receiver may at any time pay in full the claim of any creditor which is less than five dollars.

If the assets of any such institution or other corporation, including any sums collected from the stockholders, shall more than suffice to pay all of the creditors of such institution or other corporation who have presented and proved, or caused to be allowed, their several demands, the surplus shall be disbursed as follows: First, in the case of a banking institution, to the stockholders, who have paid in any sums upon their extraordinary liability as stockholders, pro rata up to the respective amounts paid by each of them. Second, if anything shall remain thereafter it shall be paid to the stockholders of the institution or other corporation, in proportion to the number of shares owned by them respectively.

The salary of such receiver for the time devoted to such receivership and all expenses incurred by such receiver in the discharge of his duties, including reasonable fees paid for legal services, shall be paid out of the assets of such institution or other corporation as a part of the costs of the receivership. No other compensation shall be paid to such officer for acting as receiver for such institution or other corporation.

The receiver of any such insolvent institution or other
corporation, before entering upon the discharge of his duties, or receiving into his possession any of the assets of such insolvent institution or corporation, shall enter into bond in favor of the state of West Virginia, in a penalty fixed by and with corporate surety approved by the governor, conditioned for the faithful discharge of his duties as receiver, and for accounting for and paying over, as required by law, all properties, moneys and funds which shall come into the hands of such receiver, his agents, attorneys or representatives. The bond and certificate of appointment of such receiver shall be recorded in the office of the clerk of the county court of the county in which such banking institution or other corporation is situated, and a certified copy thereof shall be forthwith transmitted by the receiver to the commissioner of banking.

Upon the appointment of a receiver for a banking institution engaged in business in this state and authorized to exercise trust powers, such trust powers and authority shall end, and for every case where such banking institution has acted as fiduciary, such receiver shall immediately make a final settlement before the court in which such banking institution qualified as such fiduciary, which settlement shall cover all matters not included in a prior settlement, if any. Thereupon such court shall proceed as is provided in section six, article five, chapter forty-four of this code, and no formal revoking or annulling order shall be necessary.

Nothing in this section shall impair the right of any court of chancery in any suit, on a proper showing, to appoint a receiver for any such institution or other corporation, in cases where the commissioner of banking has failed, refused or neglected to act.

§31-8-43. Appointment and duties of conservators for banking institutions; withdrawals and deposits during conservatorship; termination of conservatorship; reorganization.

Whenever the commissioner of banking shall deem it necessary, in order to conserve the assets of any bank-
ing institution for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such banking institution. The conservator may be an employee of the department of banking, and may be required to give such bond and security as the commissioner deems proper.

The conservator, under the direction of the commissioner of banking, shall take possession of the papers, books, records and assets of every description of such banking institution and take such action as may be necessary to conserve such assets pending further disposition of the business of such institution.

The conservator shall have all the rights, powers and privileges now possessed by or hereafter given receivers of insolvent banking institutions and shall be subject to all the liabilities, obligations and penalties, not inconsistent with the provisions of this article, to which receivers are now or may hereafter become subject.

During the period that such conservator remains in possession of such banking institution, the legal relations of all parties with respect thereto shall, subject to the other provisions of this section, be the same as if a receiver had been appointed therefor.

All expenses of any such conservatorship shall be paid out of the assets of such banking institution and shall be a lien thereon, which shall be prior to any other lien. The conservator shall receive a reasonable compensation for his services to be fixed by the commissioner of banking, but in no event shall such compensation exceed that paid to employees of the department of banking for similar services.

(a) Immediately upon taking charge of such banking institution, the conservator, in conjunction with a representative of the bank designated by the directors thereof, shall make in duplicate a complete inventory of all assets and an itemized list of all liabilities of such institution. The original and copy of such list shall be subscribed and sworn to by the persons making the same and the original shall be filed with the department of
banking as soon as practicable, and the copy shall be retained by the conservator.

(b) If the commissioner of banking becomes satisfied that such a course of action may be pursued safely and that it will be in the public interest, he may, in his discretion, terminate the conservatorship and permit such banking institution to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as he may prescribe.

(c) While such banking institution is in the hands of the conservator, the commissioner of banking may require such conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a rateable basis, such amounts as in the opinion of the commissioner may be used safely for this purpose, subject to such priorities and preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits. Such deposits shall not be subject to any limitation as to payment or withdrawal. The deposits shall be segregated and shall not be used either to liquidate any indebtedness of such banking institution existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such banking institution existing at the time such conservator was appointed.

Deposits received while the banking institution is in the hands of a conservator shall: (1) Be kept on hand in cash or, (2) be deposited with a federal reserve bank or deposited with such banking institution organized under the United States National Bank Act, or the law of this state as the commissioner of banking may, in his discretion, designate or, (3) be invested in the direct obligations of the United States or the state of West Virginia or the funded obligations of any political subdivision of this state approved by the commissioner of banking.

(d) In any reorganization of any banking institution under a plan of a kind which, by its own terms or under existing law, requires the consent, as the case may
be, (a) of depositors and other creditors; or (b) of stockholders; or (c) of both depositors and other creditors, and stockholders, such reorganization shall become effective only (1) when the commissioner of banking shall be satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders, and that the plan is in the public interest and when he shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe; and (2) when, after reasonable notice of such reorganization, as the case may require, (a) depositors and other creditors of such banking institution representing at least seventy-five per cent in amount of its total deposits and other liabilities; or (b) stockholders owning at least two thirds in amount of its outstanding capital stock; or (c) both depositors and other creditors representing at least seventy-five per cent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock, shall, as the plan may require, have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of said banking institution in determining the seventy-five per cent thereof as above provided.

When such reorganization becomes effective, all books, records, and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the banking commissioner. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.
(e) Fifteen days after the affairs of a banking institution shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in subdivision (d) hereof, the provisions of subdivision (c) hereof shall no longer be effective. Before the conservator shall turn back the affairs of the institution to its board of directors he shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the banking institution will be returned to its board of directors and that the said provisions of subdivision (c) will not be effective fifteen days after such date. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such bank is located. On the date of the publication of such notice the conservator shall send a copy of such notice by registered mail to the last known address of every person who is a depositor as shown by the records of the institution. The conservator shall send a similar notice in like manner to every person making deposit in such institution under subdivision (c) after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

(f) Nothing in this section shall be construed to impair in any manner any powers of the governor or the commissioner of banking.

(g) The commissioner of banking is hereby authorized to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this section.

§31-8-44. Appraisal of assets of banking institutions in conservatorship or receivership.

Within sixty days after an inventory shall have been made of the assets of a banking institution in receivership its assets shall be appraised in the manner herein provided and a copy filed with the commissioner of banking. The banking commissioner shall not approve or
consent to the reorganization, consolidation, merger or sale of the business of a banking institution in conservatorship or receivership until an appraisal shall have been made and published as provided in this section. Appraisal shall be made on the basis of present true and actual value by three appraisers: The conservator or receiver, a representative of the banking institution designated by its board of directors and a representative of the depositors, who was a depositor at the time the conservator or receiver was appointed and shall not have disposed of his claim, to be designated by the commissioner of banking upon the nomination in writing of a majority in amount of depositors or assigns if filed with the commissioner not later than two weeks after inventory in receivership or conservatorship. If no such nomination is made the commissioner shall designate the depositors' representative in his discretion. In the event of disagreement as to a valuation the determination of any two of the appraisers shall be final. A completed appraisal shall be published, in form approved by the commissioner of banking, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the banking institution is located. A copy of the appraisal shall also be filed with the banking commissioner. The expense of appraisal and publication shall be deemed part of the cost of the conservatorship or receivership and shall include reasonable compensation allowed the appraisers, other than a conservator or receiver, by the commissioner of banking.

CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.

Article
1. Estrays and Drift Property.
2. Derelict Property.

ARTICLE 1. ESTRAYS AND DRIFT PROPERTY.
Section
1. Taking up estray or boat.
§34-1-1. Taking up estray or boat.

1 Any person may take up an estray found on his land, or a boat or vessel adrift. He shall immediately post notices at three public places in the district wherein the property is so found, giving a description of the property and stating when the same was so taken up; and if the owner of such property shall not appear and claim the same within two weeks from the posting of such notice, then the person so taking such property up shall cause a like notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the property was taken up. In either case the owner may have possession of such property upon paying the costs of such posting and publishing of such notice and of keeping the property; and if the owner shall not appear and claim such property within three weeks from the date of the first publication of such notice in a newspaper, the person taking the same up shall immediately inform a justice of the district thereof, who shall issue his warrant to three freeholders, requiring them under oath to view and appraise such estray, or boat or vessel, and certify the result, with a description of the kind, marks, brand, stature, color and age of the animal, or kind, burden and build of the boat or vessel.

ARTICLE 2. DERELICT PROPERTY.

Section 2. Notice of suit.


1 When any such suit as is mentioned in the preceding section is instituted, the court shall cause a publication to be made setting forth the nature of the claim, the name and nativity (when known) of the deceased person, or of the former owner of the property, if known, as the case may be, and describing the property or estate claimed, and requiring all persons claiming an interest therein to appear and make themselves defendants, by a given day of an ensuing term. Such publication shall
be made as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the seat of state government may be.

CHAPTER 35. PROPERTY OF RELIGIOUS, EDUCATIONAL AND CHARITABLE ORGANIZATIONS.

Article

1. Religious Organizations.
5. Cemeteries.

ARTICLE 1. RELIGIOUS ORGANIZATIONS.

Section

10. Notice of conveyance or lien; proof thereof.

§35-1-10. Notice of conveyance or lien; proof thereof.

1  Before any such conveyance of real estate or instrument creating a lien thereon shall be made, the proper authorities of such church, religious sect, society, or denomination, or of any individual church, parish, congregation or branch, shall cause to be published a notice describing the real estate and stating that the same will be sold and conveyed, or subjected to a lien, as the case may be, on or following a designated date. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the land is situated. In lieu of such publication, the notice may be read at the principal services of such church, parish, congregation or branch, on at least two separate occasions during a period of two weeks. No conveyance or instrument creating a lien shall be made or become effective until such notice shall be published or read, as aforesaid. An affidavit setting forth the facts regarding such publication or reading, shall accompany, and be recorded with, any deed of conveyance or instrument creating a lien, and shall be sufficient proof of the facts therein set forth.

ARTICLE 5. CEMETERIES.

Section

2. Sale of part of cemetery; prohibitions.
§35-5-2. Sale of part of cemetery; prohibitions.
1 The trustees of any burial grounds, or any incorporated
2 cemetery association whenever it is deemed advisable by
3 such trustees or association, and is not prohibited by
4 the terms of the conveyance, dedication or devise of such
5 grounds, may sell and convey any part of such burial
6 grounds or land of such association, without restriction
7 as to its use, if such sale and conveyance will not render
8 any lot previously sold for burial purposes inaccessible
9 for such purposes, or detach it from the main body of
10 the cemetery. But no such sale shall be made by such
11 trustees or such association unless authorized by a major-
12 ity of the lot owners present and voting at a general
13 meeting or special meeting, of which meeting and its
14 object previous notice shall be given by advertising the
15 same as a Class II legal advertisement in compliance
16 with the provisions of article three, chapter fifty-nine of
17 this code, and the publication area for such publication
18 shall be the county in which the cemetery is situated.
19 No desecration shall be made of any grave or monu-
20 ment, or any of the walks, drives, trees, or shrubbery
21 within the inclosure of any burial grounds; nor shall
22 any shaft or entry be made within the inclosure of such
23 burial grounds, or any building be erected therein for
24 any purpose whatever other than cemetery purposes.

CHAPTER 36. ESTATES IN PROPERTY.

Article
2. Disposition of Estates Subject to Future Interests.

ARTICLE 2. DISPOSITION OF ESTATES SUBJECT TO FUTURE INTERESTS.

Section
12a. Summary proceedings for sale or lease; petition.

§36-2-12a. Summary proceedings for sale or lease; petition.
1 In addition to the proceedings authorized by the first
2 section of this article, any person having any interest
3 mentioned in section two of this article in the personal
4 property, land, timber, oil, gas, coal or other minerals
5 sought to be sold, leased or otherwise conveyed, may
apply by petition, in a summary way, to the circuit court, or to the judge thereof in vacation, or to any court of concurrent jurisdiction with the circuit court, or to the judge thereof in vacation, of the county in which the estate proposed to be sold, leased or otherwise conveyed, or some part thereof, may be. Such petitions shall describe the property sought to be sold, leased or otherwise conveyed with reasonable certainty and shall set forth the names of all persons interested in such property, together with their respective interests or estates, either vested, contingent or executory, so far as is known by the plaintiff. Such petition shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale, lease or other conveyance of such property. The petition shall be verified by the oath of the plaintiff or one of the plaintiffs, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, however, That in the case of nonresident defendants and/or unknown or unascertainable parties an order of publication may be entered, on proper affidavit as in any other chancery proceeding, requiring publication of such notice, with respect to any nonresident defendants and/or any unknown or unascertainable parties who may have or claim any interest or estate in such property, as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the property or the greater part of the property concerned is situate. Such published notice, with the certificate of publication, when filed with the record in said proceedings, shall be and constitute valid and sufficient notice herein. All other provisions of this article not inconsistent herewith shall apply to and implement the procedures provided in this section.

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

Section
12. Notice and publication of lists of abandoned property.
17. Sale of abandoned property.
§36-8-12. Notice and publication of lists of abandoned property.

1 (a) Within one hundred twenty days from the filing of the report required by section eleven, the state treasurer shall cause notice to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the publication area for the notice shall be the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled “Notice of Names of Persons Appearing to Be Owners of Abandoned Property,” and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property shall be placed in the custody of the state treasurer, to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than fifty dollars unless he deems such publication to be in the public interest.

(d) Within ten days after the first publication of the notice required by subsection (a) of this section, the state treasurer shall mail a notice to each person having an
address listed therein who appears to be entitled to prop-
erty of the value of fifty dollars or more presumed aban-
doned under this article.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with
the state treasurer, property is being held to which the
addressee appears entitled.

(2) The name and address of the person holding the
property and any necessary information regarding
changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is
not presented by the owner to the holder by the date
specified in the published notice, the property will be
placed in the custody of the state treasurer, to whom all
further claims must be directed.

(f) Within five days after the date specified in the
published notice, the state treasurer shall mail to each
holder a notice specifying the date on which the holder's
payment or delivery of abandoned property is due to the
state treasurer.

§36-8-17. Sale of abandoned property.

(a) All abandoned property other than money deliv-
ered to the state treasurer under this article shall within
one year after the delivery be sold by him to the highest
bidder at public sale in whatever city in the state affords
in his judgment the most favorable market for the prop-
erty involved. The state treasurer may decline the high-
est bid and reoffer the property for sale if he considers
the price bid insufficient. He need not offer any prop-
erty for sale if, in his opinion, the probable cost of sale
exceeds the value of the property.

(b) Any sale held under this section shall be pre-
ceded by a publication of notice thereof as a Class I legal
advertisement in compliance with the provisions of arti-
cle three, chapter fifty-nine of this code, and the publi-
cation area for such publication shall be the county where
the property is to be sold. The publication shall be at
least three weeks in advance of sale.
(c) The purchaser at any sale conducted by the state treasurer pursuant to this article shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

CHAPTER 37. REAL PROPERTY.

Article


ARTICLE 6. LANDLORD AND TENANT.

Section

24. Record of reentry; publication of certificate.

§37-6-24. Record of reentry; publication of certificate.

Where actual reentry shall be made, the party, by or for whom the same shall be made, shall return a written act of reentry, sworn to by the sheriff or other officer acting therein, to the clerk of the county court of the county wherein the lands or tenements shall be, who shall record the same in the deed book, and shall deliver, to the party making the reentry, a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded, which certificate shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county. Such publication shall be proved by affidavit to the satisfaction of such clerk, who shall note the fact on the margin of the deed book against the record of the act of reentry in the words, "Publication made and proved according to law, A..................B................................., Clerk,"

and shall return the original act of reentry to the party entitled thereto. Such written act of reentry, when recorded, and the record thereof, or a duly certified copy from such record, shall be evidence in all cases of the facts therein set forth.
ARTICLE 13. REMOVAL, TRANSFER AND DISPOSITION OF REMAINS IN GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

Section

3. Parties; notice.


1 All owners, lessees and other persons having an interest in such lands, other than plaintiffs, and also the surviving next of kin, heirs at law, administrator, executor, or personal representative of each deceased, so far as can be determined through reasonable and diligent effort, shall be made defendants in such action. Insofar as possible all defendants shall be served with notice of the institution of the action and the date of the first hearing upon the same, such service to be made in the same manner provided by law for the service of process in other civil actions. If the address of any defendant be unknown, or, if there be any unknown next of kin, heirs at law, administrator, executor or personal representative of any known or unknown person whose remains may be interred within any such grave, then, in such event, a copy of said notice shall be published prior to the hearing upon the same as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

CHAPTER 38. LIENS.

Article

1. Vendor's and Trust Deed Liens.
4. Executions.
5. Proceedings in Aid of Execution; Interrogatories; Suggestion.
11. Miscellaneous Liens and Pledges.
12. Release and Assignment of Liens.
13. Assignment by Insolvent for the Benefit of all Creditors.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

Section

10. Who may require trustee to give bond; new trustee on failure to give; notice.

§38-1-4. Notice of sale.

1 When any property is about to be sold under a trust
2 deed, the trustee shall, unless it be otherwise provided
3 in such trust deed, or in the opinion of the trustee the
4 property to be sold be of less value than three hundred
5 dollars, publish a notice of such sale as a Class III-0 legal
6 advertisement in compliance with the provisions of arti-
7 cle three, chapter fifty-nine of this code, and the publi-
8 cation area for such publication shall be the county where
9 the property is located. Such notice shall be so pub-
10 lished within twenty-one consecutive days next preceding
11 the day of sale. If, in the opinion of the trustee, the prop-
12 erty be of less value than three hundred dollars, such
13 notice of sale shall be posted at least twenty days prior
14 thereto at the front door of the courthouse of the county
15 in which the property to be sold is, and three other
16 public places at least in the county, one of which shall be
17 as near the premises to be sold (in case the sale be of
18 real estate) as practicable; and in all cases whether the
19 notice be published or not, a copy of such notice shall be
20 served on the grantor in such trust deed, or his agent or
21 personal representative, if he or they be within the
22 county, at least twenty days prior to the sale. Every
23 notice of sale by a trustee under a trust deed shall show
24 the following particulars: (a) The time and place of
25 sale; (b) the names of the parties to the deed under which
26 it will be made; (c) the date of the deed; (d) the office
27 and book in which it is recorded; (e) the quantity and
28 description of the land or other property, or both, con-
29 veyed thereby; and (f) the terms of sale.

§38-1-10. Who may require trustee to give bond; new trustee
on failure to give; notice.

1 The grantor or his assignee, or any cestui que trust, may
2 at any time after the execution of the trust deed, by no-
3 tice in writing, require any trustee to give the bond
4 mentioned in the following section of this article, and,
5 upon his failure to do so for twenty days after such notice,
6 the power of such trustee shall cease and another trus-
7 tee may be appointed by the circuit court of any county
8 wherein such deed of trust is recorded, or by the judge
9 thereof in vacation, to execute such trust, upon the appli-
10 cation of any cestui que trust, or the grantor or any
assignee of the grantor, if, upon the hearing of such application, the failure of the trustee to give such bond be made to appear to the satisfaction of such court or judge, by affidavits or otherwise. At least ten days’ notice in writing of such application shall be given to the trustee, grantor, or assignee of the grantor, and to all cestuis que trust in such deed if they be residents of the county, stating the court or judge before whom such application is to be made. If such trustee and grantor or assignee of the grantor, or either of them, are not residents of such county, the notice as to them, or the one not a resident, may be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county.

ARTICLE 2. MECHANICS’ LIENS.

Section 15. Publication and posting of notice to nonresident owner or owner not found.

§38-2-15. Publication and posting of notice to nonresident owner or owner not found.

In the event that any owner, upon whose real estate or improvement thereof it is desired to take a lien under this article, should be a nonresident of this state, or in the event that any officer of this state authorized by law to execute legal process should make return “not found” upon any notice of a mechanic’s lien which may be presented to him for service, then it shall be sufficient service of any such notice of mechanic’s lien upon such nonresident owner, or upon such owner as to whom any such return, of “not found” shall be made by any such officer, to publish a copy of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the real estate lies. A copy of such notice shall also be posted in a conspicuous place upon the property sought to be charged thereby, which publishing and posting shall be sufficient, if commenced within the period provided by this article for the filing of such notice. The costs of such
publication may be added to the account for which the lien is claimed, and, if included in the amount mentioned in the recorded notice, the lien shall cover such costs.

ARTICLE 3. JUDGMENT LIENS.

Section 11. Same—publication of notice to lienholders.

§38-3-11. Same—Publication of notice to lienholders.  
No decree for the distribution of the proceeds of real estate in a suit in equity to enforce a judgment shall be made until a notice to all persons holding liens on the real estate of the judgment debtor be published, under a decree of the court, as hereinafter provided. Such notice shall be sufficient if it be in form or effect as follows:

To all persons holding liens by judgment or otherwise, on the real estate, or any part thereof, of A __________:  
In pursuance of a decree of the circuit court of __________ county, made in a cause therein pending, to subject the real estate of the said A __________ to the satisfaction of the liens thereon, you are hereby required to present all claims held by you and each of you against the said A __________, which are liens on his real estate, or any part of it, for adjudication to me, at my office in the county (or city, town or village, as the case may be) of __________ on or before the __________ day of __________.  
Given under my hand, this __________ day of __________.  
C __________, D __________, Commissioner.

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Publishing of such notice shall be equivalent to the personal service thereof on all persons holding liens, on any such real estate, unless the court shall, in the decree directing such notice to be so published, otherwise order.

ARTICLE 4. EXECUTIONS.

Section 20. Time and place for sale of personal property under distraint, levy or order of court; posting or publishing notice; conduct and terms of sale.
§38-4-20. Time and place for sale of personal property under distraint, levy or order of court; posting or publishing notice; conduct and terms of sale.

In any case where an officer shall distrain or levy upon personal property, otherwise than under an execution or order issued by a justice, or under an attachment, and in any case in which he may be directed to sell personal property by an order of a court or judge, unless such order prescribes a different course, he shall fix upon a time and place for the sale thereof, and publish notice of such sale at least ten days by posting the same at the door of the courthouse of his county and some other conspicuous place near the residence of the owner, if he resides in the county: Provided, That any sheriff or other officer proceeding to sell under a writ of fieri facias or venditioni exponas, if the property be of the value of five hundred dollars or more, shall advertise the sale as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. If the property be perishable or expensive to keep, it may be sold by order of the court, or the judge thereof in vacation, upon such notice as the court or judge may direct.

At the time and place so appointed the officer shall sell to the highest bidder for cash, except as hereinafter provided in section twenty-three of this article, such personal property, or so much thereof as may be necessary.

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

§38-5-8. Sale of real estate conveyed to officer.

Real estate conveyed to an officer under this article shall, unless such court direct otherwise, be sold, after giving at least thirty days' notice, by posting the same at the door of the courthouse of such officer's county and some other conspicuous place, near the residence of the owner, if he be a resident of the county, and by publishing the same as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The real estate shall be conveyed to the purchaser by the officer or his deputy.

ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

Section

14. Enforcement of lien or pledge; sale of property.

§38-11-14. Enforcement of lien or pledge; sale of property.

Any person holding personal property in his possession under a lien or pledge may satisfy such lien in any manner agreed upon between the owner and the lienor, or, if there be no such agreement, in the following manner:

The lienor or pledgee shall give a written notice to the person on whose account the goods are held, and to any other person known by the lienor to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the lienor's or pledgee's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien or pledge exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of the post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the lienor or pledgee for which he has a lien or pledge on the goods. The sale shall be had in the
place where the lien or pledge was acquired, or, if such
place is manifestly unsuitable for the purpose, at the
nearest suitable place. After the time for the payment of
the claim specified in the notice to the depositor has
elapsed, an advertisement of the sale, describing the
goods to be sold, and stating the name of the owner or
person on whose account the goods are held, and the time
and place of the sale, shall be published as a Class II
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the place where
such sale is to be made. The sale shall not be held less
than fifteen days from the time of the first publication:
Provided, however, That if the property to be sold is of
the value of less than five hundred dollars, then it shall
not be necessary to advertise the sale in a newspaper as
hereinbefore provided, but notice of the sale may be
published by posting the same at least ten days before
such sale in three conspicuous places therein, one of
which places shall be the premises where the property is
sold.

From the proceeds of such sale or pledge the lienor or
pledgee shall satisfy his lien, including the reasonable
charges of notice, advertisement and sale. The balance,
if any, of such proceeds shall be held by the lienor or
pledgee and delivered on demand to the person to whom
he would have been bound to deliver or justified in
delivering the goods.

At any time before the goods are so sold any person
claiming a right of property or possession therein may
pay the lienor or pledgee the amount necessary to satisfy
his lien or pledge and to pay the reasonable expenses
and liabilities incurred in serving notices and advertising
and preparing for the sale up to the time of such pay-
ment. The lienor or pledgee shall deliver the goods to the
person making such payment, if he is a person entitled
to the possession of the goods or payment of charges
thereon. Otherwise the lienor or pledgee shall retain
possession of the goods according to the terms of the
original contract of deposit.
ARTICLE 12. RELEASE AND ASSIGNMENT OF LIENS.

Section

3. Release by trustee when unnamed persons are secured; publication; effect.

§38-12-3. Release by trustee when unnamed persons are secured; publication; effect.

If a trustee in a trust deed which secures persons not named in the trust deed shall publish, as hereinafter provided, a notice that he will, on a day named in such notice, such day to be not more than thirty nor less than ten days after the last publication of such notice, release such trust deed, such trustee may execute such release and make distribution of any funds in his hands as such trustee without any liability to any person not named in the trust deed nor known to the trustee to be a beneficiary of the trust. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such trust deed is recorded.

ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF ALL CREDITORS.

Section

5. Notice by trustee to creditors; publication and mailing.

§38-13-5. Notice by trustee to creditors; publication and mailing.

Within ten days after the filing of the schedule the trustee shall cause to be published a notice reading substantially as follows:

"To the Creditors of ___________________________

Take notice that a general assignment for the benefit of creditors was made by the above named debtor to ____________________________, Trustee, on ____________________________, and that said assignment has been duly recorded in the office of the Clerk of the County Court of ____________________________, County.
All persons having claims against the said debtor are hereby notified that the same shall be presented to the undersigned trustee on or before .......................... The estate has been referred to ........................., Commissioner of Accounts, and the first meeting of the creditors will be held in his office at ........................., in County, West Virginia, on ........................., at ................. o'clock ........ M. Dated this ......................... day of

(Signed) ........................., Trustee (Address of Trustee) .........................

Said notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the assignment, conveyance or transfer was recorded. A copy of the said notice shall be mailed by the trustee on or before the date of the first publication thereof to every creditor whose name appears in the schedule or of whom the trustee has notice, to the assignor and to the commissioner of accounts, and an affidavit evidencing such mailing and publication shall be filed by the trustee with the commissioner.

§38-13-9. Sales by trustee; creditors may prescribe manner and terms; powers of commissioner; compromising claims; continuing operation of business.

At the first meeting of creditors a majority in number and amount of the creditors present may prescribe in what manner and on what terms the property belonging to the estate shall be sold, and the trustee shall not sell, or otherwise dispose of, any property belonging to the estate prior to the first meeting of the creditors, unless expressly authorized to do so by the commissioner of accounts after good cause therefor has been shown. The trustee shall not sell or otherwise dispose of, the property belonging to the estate for less than seventy-five per cent of its appraised value without the approval of the commissioner. The trustee may compromise or compound any claim or debt belonging to the estate with the
approval of the commissioner. All sales by the trustee shall be made at public auction, unless otherwise ordered by the commissioner or authorized by the creditors. The trustees shall give at least ten days' notice by mail to all of the creditors of the time and place of sale of any property belonging to the estate of the value of five hundred dollars, or more, and shall advertise the sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice and advertisement may be waived by the creditors at their first meeting. Upon application to the commissioner, and for good cause shown, the trustee may be authorized to sell any portion of the estate at private sale, in which case he shall keep an accurate record of each article sold, the price received therefor and to whom sold, which account he shall file with the commissioner. Upon application by the trustee or a creditor setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be loss if the same is not sold immediately, the commissioner, if satisfied, of the facts stated and that the sale is required in the interests of the estate, may order the same to be sold without notice or with such notice as he may direct. Upon application by the trustee or a creditor setting forth that it is for the best interest of the estate that the trustee continue to operate the business, the commissioner may authorize the trustee to operate the business until the first meeting of the creditors, at which meeting a majority in number and amount of the creditors present shall determine whether such operation is to be continued thereafter.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 3. RECONSTRUCTION OF LOST RECORDS AND PAPERS.

Section

11. Same—publication of notice.

§39-3-11. Same—Publication of notice.

1 Such clerk shall give notice, as hereinafter provided, of
the time and place of the commencement of taking such
testimony. A copy of which notice, together with the affi-
davit of publication, shall be recorded in the book afore-
said. Such notice shall be published as a Class II legal
advertisement in compliance with the provisions of ar-
ticle three, chapter fifty-nine of this code, and the publi-
cation area for such publication shall be the county. The
costs of publishing such notice shall be paid by the
county.

CHAPTER 44. ADMINISTRATION OF ESTATES
AND TRUSTS.

Article
2. Proof and Allowance of Claims Against Estates of Decedents.
4. Accounting by Fiduciaries.
8. Real Estate of Decedents.
9. Persons Presumed to be Dead and Their Estates.
11. Transfer of Property of Nonresidents.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST
ESTATES OF DECEDEI"TS.

Section
2. Commissioner to publish notice of time for receiving claims against
decedents' estates.

§44-2-2. Commissioner to publish notice of time for receiving
claims against decedents' estates.

Each month the commissioner of accounts shall pub-
lish a notice designating a convenient time and place
when and where claims against the estate or estates
referred to him during the previous calendar month may
be presented, examined and allowed. The time so desig-
nated by the commissioner shall not be less than four
months nor more than six months from the date of the
first publication of the notice hereinafter set forth. The
notice shall be to the following effect:

To the Creditors and Beneficiaries of the Estate(s) of

(Naming the decedent or de-
cedents, as the case may be)

All persons having claims against the estate(s) of the
said (Naming the de-
cedent or decedents, as the case may be) deceased,
whether due or not, are notified to exhibit same, with
the voucher thereof, legally verified, to the undersigned,
at (designating the place) on or before the day of
otherwise they may by law be excluded from all benefit of said estate(s). All beneficiaries of said estate(s) may appear on or before said day to examine said claims and otherwise protect their interests.

Given under my hand this... day of .................,

Commissioner of Accounts,

County of..............................................

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The publication of such notice shall be equivalent to personal service on the creditors, distributees and legatees, or any of them.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

Section
11. Publication of list of fiduciaries prior to settlements.

§44-4-11. Publication of list of fiduciaries prior to settlements.

Every commissioner of accounts shall, on the first Monday of every month, prepare a list of the fiduciaries whose accounts are at the date of such list before him for settlement, except those that may have been mentioned in some previous list, stating the names of such fiduciaries, the nature of their accounts, whether as personal representative, guardian, curator, committee, or trustee, and the names of their decedents, or of the persons for whom they are guardians, curators, or committees or under whose deed or other instrument of trust they are acting; and shall also publish such list each month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The first publication of such list shall be made on said first Monday of the month, or on some following day of the same week. No account of any fiduciary shall be completed by any commissioner until it shall have
been mentioned in such a list, nor until the completion of such publication. Any commissioner of accounts who fails to publish such list shall be fined twenty dollars. The cost of the publication of such list shall be borne by the commissioner, but he may charge to, and collect from, each of the fiduciaries in the list his proportionate part of the cost thereof as and when the commissioner collects his fees for settling the accounts of such fiduciary.

ARTICLE 8. REAL ESTATE OF DECEDENTS.

Section

8. Reference to commissioner and publication of notice to creditors in such suit.

§44-8-8. Reference to commissioner and publication of notice to creditors in such suit.

1 No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until there shall have been a reference to a commissioner in chancery to ascertain and report all the liens on the real estate or any part thereof, the holders of such liens, the amount due to each, and the priorities thereof, and report made of all general claims and the priorities of the same, and until a notice to all creditors to present and prove their claims shall have been published as hereafter provided, which notice shall be in the following form or to the following effect:

To all creditors of A.......................... B........................., deceased, including those holding liens by judgment or otherwise on his real estate, or any part thereof.

In pursuance of a decree of the..........................court, of the county of......................, made in a cause there- in pending, to subject the real estate of the said A.......................... B......................... to the payment of his debts, including those which are liens on such real estate, or any part of it, you are hereby required to present your claims to the undersigned for adjudication, at (designating place) on or before the.........day of............................; otherwise you may by law be excluded from all benefit of such real estate.

Given under my hand this.........day of........................., 19.......
C ___________________ D ____________________,

Commissioner in chancery.

Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the action is pending. The court shall designate the newspaper in which such notice shall be published. The court may direct such other notice to be given as it may deem proper. Such publication of such notice shall be equivalent to personal service thereof on all creditors, including those holding liens on such real estate, unless the court shall in the order directing publication otherwise order. Any creditor who may have filed his claim before a commissioner of accounts may withdraw the same and the proof thereof made before such commissioner, and may file such claim and proof before the commissioner in chancery, and such commissioner in chancery shall, unless there be objection by any party to the suit, accept such proof for what the same may legally show. No other publication to creditors than the one provided by this section shall be necessary, and when any notice of the reference is required by law or by the court to be published, such notice of the reference shall be included in the above notice, so that there may be but one publication.

ARTICLE 9. PERSONS PRESUMED TO BE DEAD AND THEIR ESTATES.

Section

3. Application for probate or administration, and publication of notice thereof.

9. Publication in such suit.

§44-9-3. Application for probate or administration, and publication of notice thereof.

Whenever letters testamentary or of administration are applied for on the estate of any person supposed to be dead on account of the existence of facts giving rise to the presumption of death, the county court or clerk thereof, if satisfied that the person applying therefor, or presenting a will or codicil of the supposed decedent for probate, would be entitled to such letters,
or to such probate, if the supposed decedent were in fact
death, shall cause to be published, as hereinafter pro-
vided, a notice that such application has been made and
that on a day certain, which shall not be less than two
weeks after the last publication of such notice, the court
will hear evidence concerning the alleged absence of
the supposed decedent and the circumstances and dura-
tion thereof. Such notice shall be published as a Class II
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the publi-
cation area for such publication shall be the county.

§44-9-9. Publication in such suit.

Such personal representative, upon the institution of
such suit, shall cause notice to the supposed decedent
to be issued by the clerk of the circuit court, that such
suit has been instituted and that such supposed dece-
dent, if alive, is required to appear on a certain day of
a regular or special term of said court not less than three
nor more than six months from the date of the first
publication of such notice as hereinafter required. Such
notice shall be published as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the county where the suit
is brought. When practicable, such notice shall also
be published once a week for two successive weeks in a
newspaper published at or near the place where such
supposed decedent was last known to reside beyond this
state, or in this state, if the supposed decedent was not
known to have left the same and such place is in a
county other than the one where the suit is pending.

ARTICLE 11. TRANSFER OF PROPERTY OF NONRESIDENTS.

Section
2. Affidavit as to publication of notice.
5. Notice of application and evidence required before order of trans-
fer made.
7. What notice and evidence required before such transfer made.

§44-11-2. Affidavit as to publication of notice.

There shall be filed, with such officer or agent as is
mentioned in the preceding section, the affidavit of some
credible person that notice of the proposed transfer has
been published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which are kept the books upon which the transfer is proposed to be made. But if, before such transfer be actually made, a notice in writing forbidding the same be served on such officer or agent, such transfer only shall be made as would have been lawful if this and the preceding section had not been enacted.

§44-11-5. Notice of application and evidence required before order of transfer made.

No such order as is mentioned in the two preceding sections shall be made until notice of the application shall have been published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the petition is filed; nor until it shall be shown by authentic documentary evidence that such foreign guardian, committee or trustee has, where he qualified, given bond, with surety sufficient to insure his accountability for the whole amount of the estate of such infant, insane person, or cestui que trust in his hands, or which will probably be received by him as such guardian, committee or trustee; nor until the court shall be satisfied that the removal of such money or property from this state will not impair the rights or be prejudicial to the interests of such infant, insane person or cestui que trust or of any other person.

§44-11-7. What notice and evidence required before such transfer made.

No such order as is mentioned in the preceding section shall, when applied for by petition, be made until notice of the application shall have been given to all persons interested in such trust estate, either by personal service or by publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county...
9 wherein the petition is filed. Whether the application
10 be by petition or bill in equity, such order shall not
11 be made until the court shall be satisfied by authentic
documentary evidence that the nonresident trustee, ad-
13 ministrator, or executor, appointed as aforesaid, has given
14 bond with sufficient security for the faithful execution of
15 the trust, nor until it is satisfied that the payment and
16 removal of such estate out of the state will not prejudice
17 the right of any person interested or to become interested
18 therein.

CHAPTER 47. REGULATION OF TRADE.

Article
3. Trademarks of Dealers in Liquids.
4. Brands of Timber Dealers.

ARTICLE 3. TRADEMARKS OF DEALERS IN LIQUIDS.

Section
2. Manner of adoption of trademark; recordation; publication.

§47-3-2. Manner of adoption of trademark; recordation; publication.

1 Every such bottler desiring to adopt a trademark may
2 do so by the execution of a writing in form or effect as
3 follows:
4 Notice is hereby given that I (or we, etc., as the case
5 may be,) have adopted the following trademark to be
6 used in my (or our, etc.,) business as a bottler, to wit:
7 (Here insert the words, letters, figures, etc., constitut-
8 ing the trademark, or if it be any device other than words,
9 letters or figures, etc., insert a facsimile thereof.)
10 Dated this................ day of ______________________, 19.......
11 (signed) A.......................... B..........................
12 Such writing shall be acknowledged or proved for rec-
13 ord in the same manner as deeds are acknowledged or
14 proved for record, and shall be recorded in the office of
15 the clerk of the county court of the county where the
16 principal office or place of business of such bottler may
17 be, and also in the office of the secretary of state, and a
18 copy thereof shall be published as a Class II legal adver-
19 tisement in compliance with the provisions of article
20 three, chapter fifty-nine of this code, and the publica-
21 tion area for such publication shall be said county.
ARTICLE 4. BRANDS OF TIMBER DEALERS.

Section 2. Manner of adoption of brand; recordation; publication.

§47-4-2. Manner of adoption of brand; recordation; publication.
1 Every such dealer desiring to adopt a brand may do so by the execution of a writing in form or effect as follows:
2 Notice is hereby given that I (or we, etc., as the case may be,) have adopted the following brand to be used in my (or our, etc.,) business as timber dealer (or dealers), to wit: (Here insert the words, letters, figures, etc., constituting the brand, or if it be any device other than words, letters or figures, insert a facsimile thereof.)
3 Dated this_______day of______________________________, 19______.
4
5 Such writing shall be acknowledged or proved for record in the same manner as deeds are acknowledged or proved, and shall be recorded in the office of the clerk of the county court of the county in which the principal office or place of business of such timber dealer may be, and also in the office of the secretary of state, and a copy thereof shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county.

CHAPTER 48. DOMESTIC RELATIONS.

Article 4. Adoption.
5. Change of Name.

ARTICLE 4. ADOPTION.

Section 3. Proceedings on petition; appointment of next friend; contents of decree.

§48-4-3. Proceedings on petition; appointment of next friend; contents of decree.
1 Upon the presentation of such petition to the court, or judge thereof in vacation, the same shall be ordered filed with the clerk of such court, and the court or judge
thereof shall appoint a day for the hearing of such petition and the examination under oath of the parties in interest. And the court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court may cause a discreet inquiry to be made respecting the child, for the purpose of ascertaining whether such child is a proper subject for adoption and shall cause a discreet inquiry to be made respecting the home of the petitioner or petitioners to determine whether it is a suitable home for such child. Such inquiry shall be made by any suitable person or agency designated by the court, and the results thereof shall be embodied in a full written report and shall be submitted to the court at or prior to the hearing upon the petition and shall be filed with the records of the proceeding and become a part thereof. If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested. Upon the day so appointed the court or judge thereof shall proceed to a full hearing of the petition and examination of the parties in interest, under oath and of such other witnesses as the court or the judge thereof may deem necessary to fully develop the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testi-
mony that the facts stated in the petition are true, and if upon examination the court or the judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make a decree reciting at length the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such decree, the rights, duties, privileges and relations, therefore, existing between the child and his or her parents, shall be in all respects at an end, excepting the right of inheritance, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the right of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article.

ARTICLE 5. CHANGE OF NAME.

Section

1. Petition to circuit court for change of name; contents thereof; notice of application.

§48-5-1. Petition to circuit court for change of name; contents thereof; notice of application.

1 Any person desiring a change of his own name, or that of his child or ward, may apply therefor to the circuit court of the county in which he resides, or judge thereof in vacation, by petition setting forth that he has been a bona fide resident of such county for at least one year prior to the filing of the petition, the cause for which the change of name is sought, and the new name desired; and previous to the filing of such petition such person shall cause to be published a notice of the time and place that such application will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE COURTS.

Section

8. Same—service of summons.

§49-5-8. Same—Service of summons.

1 A person named in the petition shall be made a defendant and shall be notified of the proceedings by personal service of summons, which shall require the person to appear with the child at the time and place set for the proceedings. If the defendant cannot be found, service may be by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 6. GENERAL RECEIVERS.

Section


1 Whenever it shall appear to any circuit court that any fund in its charge and in the hands of its general receiver, for a period of at least twenty years, will, in all probability never be claimed by anyone entitled thereto, the court may order such fund applied to any loss of or shrinkage in the investments of such general receiver due to economic condition, and may release such general receiver from any further liability on account of such fund so in his hands.

But before entering any such order, the court shall cause a notice of such intention to be given by the clerk of said court by publication thereof as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county. If no claimant shall appear and establish a right to said fund within one year from the date of the last publication thereof, the court may take said facts to have been fully established, and shall so apply said fund.
CHAPTER 54. EMINENT DOMAIN.

ARTICLE 2. PROCEDURE.

Section

3. Notice; riparian owner affected by taking of water.

§54-2-3. Notice; riparian owner affected by taking of water.

1 Of such application ten days' notice shall be served
2 on the owners, claimants and persons holding liens,
3 whose interests the applicant seeks to condemn, and
4 the notice may be given either before the petition is
5 presented or afterwards. But where the owners of the
6 real estate proposed to be taken or the persons hold-
7 ing such liens or conflicting claims, or any of them, are
8 nonresidents of the state or their whereabouts is un-
9 known, or they are unknown to the applicant, or there
10 be any persons made parties defendant by the general
11 description of parties unknown as provided in section
12 two of this article, the notice as to them, instead of be-
13 ing thus served, may be given by advertisement contain-
14 ing (by reference to a plat filed for the purpose in the
15 office of the clerk of the circuit court or otherwise) a
16 specific description of the property in which they are
17 interested that is proposed to be taken, and stating the
18 purpose to which it is intended to be appropriated, and
19 the time and place at which a hearing will be asked
20 upon the application, which advertisement shall be pub-
21 lished as a Class II legal advertisement in compliance
22 with the provisions of article three, chapter fifty-nine
23 of this code, and the publication area for such publica-
24 tion shall be the county.

25 Where water is to be taken as authorized in section
26 ten, article one of this chapter, notice to riparian owners
27 having lands below the point at which the water is
28 proposed to be taken, and likely to be affected thereby,
29 shall be given by publishing the same as a Class II
30 legal advertisement in compliance with the provisions
31 of article three, chapter fifty-nine of this code, and the
32 publication area for such publication shall be the county.
33 Any such riparian owner may come into court or be-
34 fore the judge of such court in vacation, on the return
35 day of the notice and publication, make himself a party
36 to the proceedings and have his rights passed upon by
the commissioner and his damage, if any, ascertained, allowed and paid as in this chapter provided for the taking of lands.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALES.

ARTICLE 12. JUDICIAL SALES.

Section
2. Notice of sale; contents; publication.

§55-12-2. Notice of sale; contents; publication.
1 Whenever a court shall decree the sale of real estate, if it appear to the court that such real estate is of the value of five hundred dollars or more, it shall prescribe in the decree that such sale shall be advertised in a newspaper by the commissioner or person appointed to make the sale. It shall always be advertised as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the real estate to be sold is situate. In the advertisement the commissioner shall state the time, terms and place of sale, together with a description of the property to be sold: Provided, however, That nothing herein shall be construed to limit the power of the court to direct sales of lands to be advertised in newspapers where the value may be less than five hundred dollars.

CHAPTER 56. PLEADING AND PRACTICE.

Article
2. Notices and Motions.
3. Writs, Process and Order of Publication.
7. Procedure on Orders of Reference.
8. Abatement, Revival, Discontinuance, Reinstatement of Suits; Substitution of Parties.

ARTICLE 2. NOTICES AND MOTIONS.

Section
2. Service by publication.

§56-2-2. Service by publication.
1 Any such notice to a person not residing in this state may be served by the publication thereof as a Class II legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
in which the suit or action is pending.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

Section
24. Contents of order of publication; publishing.

§56-3-24. Contents of order of publication; publishing.
1 Every order of publication shall give the style of the
2 suit, state briefly its object, and require the defendants
3 against whom it is entered, or the unknown parties,
4 to appear within one month after the date of the first
5 publication thereof and do what is necessary to protect
6 their interests. It shall be published as a Class II legal
7 advertisement in compliance with the provisions of article
8 three, chapter fifty-nine of this code, and the publica-
9 tion area for such publication shall be the county in
10 which the order is made or directed. The newspaper
11 shall be designated by the party directing such order
12 or his attorney, but if no paper be so designated, then
13 in such paper as the court may direct, or if the court
14 make no direction, then as the clerk of the court may
15 prescribe. It shall be deemed to have been published
16 on the date of the second publication thereof.

§56-3-28. Requisites of publication in supreme court of appeals.
1 Such order of publication shall be entered by the clerk
2 in a suitable book kept by him for the purpose and signed
3 by him, and a certified copy of such order shall be pub-
4 lished as a Class II legal advertisement in compliance
5 with the provisions of article three, chapter fifty-nine
6 of this code. Both the newspaper and the publication
7 area shall be designated in the order of publication.
8 When it shall appear that such order of publication has
9 been duly published as aforesaid, the court may proceed
10 to hear and decide such cause in the same manner as
11 if such parties had been personally served with process:
12 Provided, however, That the order of publication shall
13 have been executed, as aforesaid, at least ten days be-
14 fore the day on which any such cause may be called for
15 hearing.
ARTICLE 7. PROCEDURE ON ORDERS OF REFERENCE.

Section
3. Notice by commissioner.

§56-7-3. Notice by commissioner.

1 The court ordering an account to be taken may direct that the time and place of taking the same be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The newspaper shall be designated by the party at whose instance such publication is made or his attorney, and if no newspaper be so designated, then the court shall designate the newspaper. Such publication shall be equivalent to personal service on the parties or any of them. In any case where all persons whose interests may be affected by the proceedings before a commissioner are known, it shall be sufficient that, in lieu of such publication of the notice as aforesaid, such persons, or their counsel (or one of their counsel, if there be more than one), be served with such notice in the manner provided by section one, article two of this chapter.

ARTICLE 8. ABATEMENT, REVIVAL, DISCONTINUANCE, REINSTATEMENT OF SUITS; SUBSTITUTION OF PARTIES.

Section
13. Further proceedings after reinstatement of case.


1 All causes in which orders of dismissal have been made, or orders of nonsuit entered, which orders have been set aside and causes reinstated, shall remain upon the docket and be proceeded with in the same manner as if the order had never been made. But no such cause shall be brought to trial, or proceeded in, until the defendant therein shall have had at least twenty days' personal notice in writing, or, if he be a nonresident, by publication that such cause has been reinstated on the docket as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the action is pending.
CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

Section

1. Definitions and general provisions.
2. Classification of legal advertisement; designation of newspapers; frequency of publication; posting; manner of publishing.
3. Rates for legal advertisement; computation; filing affidavits with secretary of state.
4. Proof of publication and posting.
5. Mandamus to compel publication.
6. Political advertisements.
7. Criminal and civil penalties.
8. Construction of article; repeal; subsequent legislation.

§59-3-1. Definitions and general provisions.

1 (a) As used in this article, elsewhere in this code or in any other provision of law:
2 (1) “Legal advertisement” means any notice, advertisement, statement, information or other matter required by law or court to be published.
3 (2) “Publication area” means the area or areas for which a legal advertisement is required by law or court to be made.
4 (3) “Once a week for two successive weeks” means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication.
5 (4) “Once a week for three successive weeks” means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication and with at least an interval of six full days within such period between the date of the second publication and the date of the third publication.
6 (5) “Publication date” means the date on which a qualified newspaper is first placed in circulation.
7 (6) “General circulation” means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of in-
terest to the general public in the area in which it circu-
lates, but also a newspaper meeting said other qualifica-
tions, the actual circulation of which throughout the pub-
lication area is large enough to give basis for a reason-
able belief that publication of a legal advertisement
therein will give effective notice to the residents of the
publication area.

(b) Wherever the term "qualified newspaper" or
"qualified newspapers" is used in this article, or the term
"newspaper" or "newspapers" is used elsewhere in this
code or in any other provision of law in connection with
a legal advertisement as herein defined, the terms shall
be taken to mean only a newspaper or newspapers, as the
case may be, published (unless otherwise expressly pro-
vided) in the state of West Virginia, and which meet the
following qualifications:

(1) Any such newspaper must be of regular issue and
must have a bona fide, general circulation in the publi-
cation area. A newspaper shall be deemed to be of reg-
ular issue if it is published regularly, as frequently as
once a week, for at least fifty weeks during the calendar
year as prescribed by its mailing permit, and has been
so published for at least one year immediately preceding
the date on which the legal advertisement is delivered
to the newspaper for publication. A newspaper shall be
deemed to be of bona fide, general circulation in the pub-
lication area if it meets the definition of "general circu-
lation" as defined above and is circulated to the general
public at a definite price or consideration.

(2) Any such newspaper must bear a title or name,
consist of not less than four pages without a cover, and
be a newspaper to which the general public resorts for
passing events of a political, religious, commercial and
social nature, and for current happenings, announcements,
miscellaneous reading matters, advertisements, and other
notices.

(c) Notwithstanding any other provision of this code
or law to the contrary, a qualified newspaper shall for all
purposes be considered to be published where it is first
placed in circulation.
§59-3-2. Classification of legal advertisement; designation of newspapers; frequency of publication; posting; manner of publishing.

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks, and a Class III legal advertisement shall be published once a week for three successive weeks, in a qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication
area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together in continuous columns on one page of the newspaper publishing same under a general heading styled “Legal Advertisements,” unless the number or size of such legal advertisements requires the use of more than one page, in which event such legal advertisements shall be published in continuous columns on as many pages as necessary under the same heading as above required.

§59-3-3. Rates for legal advertisement; computation; filing affidavits with secretary of state.

(a) The rates which a publisher or proprietor of a qualified newspaper in West Virginia may charge and receive for a single or first publication of any legal advertisement set solid shall depend upon the bona fide circulation of such newspaper, as follows:

(1) Four cents per word if the qualified newspaper has a bona fide circulation of ten thousand or less; or

(2) Five cents per word if the qualified newspaper has a bona fide circulation of more than ten thousand but less than forty thousand; or
(3) Five and three-fourths cents per word if the qualified newspaper has a bona fide circulation of forty thousand or more.

(b) In computing the number of words in a legal advertisement, not set solid, the basis shall be upon the size of type in which legal advertising is set by the qualified newspaper making the publication, and shall be computed at the legal rate as though the matter was solid type, that is to say, on the basis of eighty-four words to the single column inch in six point type, and fifty-four words to the single column inch in eight point type, and any other size type in proportion.

(c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section, and the cost of the second and each subsequent publication shall be sixty per cent of the cost of the first publication computed as aforesaid.

(d) In determining the cost of a legal advertisement which is to appear within the same calendar week in two qualified newspapers published in the same county by the use of the same composition and press facilities in the county, the cost shall be the cost, computed as specified in subsections (a) and (b) of this section, for publication of the legal advertisement in the qualified newspaper with the highest bona fide circulation and forty per cent of the cost, computed as specified in subsections (a) and (b) of this section for publication of the legal advertisement in the other qualified newspaper.

(e) The rates provided for in this section may be charged on and after the first day of July, one thousand nine hundred sixty-seven. Between the effective date of this act and the said first day of July, one thousand nine hundred sixty-seven, the rates for publishing legal advertisements shall be those in effect immediately prior to the effective date of this act. The average bona fide circulation stated by each qualified newspaper in the statement filed by such newspaper with the United States post office department in October, one thousand nine hundred sixty-six, shall control the rate circulation classification of such qualified newspaper for the period from the first day of
July, one thousand nine hundred sixty-seven, until the first day of July, one thousand nine hundred sixty-eight. On or before the first day of March, one thousand nine hundred sixty-eight, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing fiscal year shall file with the secretary of state an affidavit stating the average bona fide circulation of such newspaper during the preceding calendar year, and sufficient facts shall be set forth in the affidavit to show whether such newspaper is a qualified newspaper. The average bona fide circulation stated in such affidavit by each qualified newspaper shall control the rate circulation classification of such qualified newspaper for the ensuing fiscal year, beginning on the first day of July, one thousand nine hundred sixty-eight. The publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing fiscal year shall file an affidavit as aforesaid on or before the first day of March of each succeeding year, and such affidavit shall control the rate circulation classification of such newspaper, if it is a qualified newspaper, for the ensuing fiscal year. Any qualified newspaper for which the required affidavit is not filed on or before the first day of March of any calendar year after the year one thousand nine hundred sixty-seven shall be conclusively presumed to have for the ensuing fiscal year a bona fide circulation of less than four thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the secretary of state as aforesaid, such publisher or proprietor shall notify the clerk of the county court and the board of education of the county in which such qualified newspaper is published of the circulation classification of such qualified newspaper and of the applicable rate for publishing legal advertisements in such qualified newspaper during the ensuing fiscal year. If the qualified newspaper is published in a municipality, the publisher or proprietor shall at the same time also furnish the same notification to the clerk or recorder of such municipality.

§59-3-4. Proof of publication and posting.

1 (a) Any qualified newspaper publishing a legal advertisement incident to any type of judicial proceed-
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3  ing or any provision in a deed of trust or contract, or
4  incident to any other case if required by the responsible
5  party placing the legal advertisement for publication,
6  shall make and furnish under oath, an affidavit of publica-
7  tion of each legal advertisement so published, show-
8  ing the number of times it was published in such quali-
9  fied newspaper, the dates of the publications thereof,
10  and the cost of such publications. When posting of
11  any legal advertisement is required in addition to publi-
12  cation thereof in a qualified newspaper, such posting
13  shall be done by the publisher or proprietor of the quali-
14  fied newspaper in which the legal advertisement was
15  published, and in such cases the affidavit of publication
16  shall state when and where the legal advertisement
17  was posted. In any case where any legal advertisement
18  is not required to be published in a qualified newspaper
19  but is required to be posted, an affidavit of the type
20  provided for herein with respect to posting shall be
21  made by the party who would have been responsible
22  for causing the legal advertisement to be published in
23  a qualified newspaper had the same been required.
24  (b) The affidavit of the publisher or proprietor of a
25  qualified newspaper as aforesaid, together with a copy
26  of the legal advertisement as published, shall constitute
27  prima facie evidence that the legal advertisement was
28  published or published and posted as stated in the affi-
29  davit.

§59-3-5. Mandamus to compel publication.
1  Any citizen, taxpayer, or the publisher or proprietor
2  of any qualified newspaper entitled by law to have any
3  legal advertisement published in his qualified news-
4  paper, which any county court or tribunal created in
5  lieu thereof, board of education, governing body of
6  any municipal corporation, or public officer, shall fail
7  or refuse to make, may have a writ of mandamus to
8  compel such publication, if a qualified newspaper is
9  willing to accept the legal advertisement for publica-
10  tion at the rates prescribed in section three of this article.

§59-3-6. Political advertisements.
1  In no case involving the publication of paid adver-
tisements for candidates for political office shall the rate charged by any publisher or proprietor of any newspaper be more than the average rate received by him from private patrons for similar advertising composed of reading matter or photographs and requiring the same amount of space.

§59-3-7. Criminal and civil penalties.

(a) Any person who publishes a legal advertisement and who knowingly refused to file with the secretary of state the affidavit for the fiscal year in which the legal advertisement was published, as required by the provisions of section three of this article, or to make and furnish the affidavit required by the provisions of section four of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

(b) Any person who shall knowingly file a false affidavit required by the provisions of this article shall be guilty of false swearing, and, upon conviction thereof, shall be punished as provided for that offense.

(c) Any qualified newspaper which shall knowingly charge any rates in excess of those specified in section three of this article, and any newspaper which shall knowingly charge any rates in excess of those specified in section six of this article, as the case may be, shall be liable to the person damaged thereby for treble damages.

§59-3-8. Construction of article; repeal; subsequent legislation.

This article is intended to standardize and make uniform certain areas of the law relating to newspapers, qualified newspapers, legal advertisements and publication of a newspaper or qualified newspaper, and to this end all other provisions in this code or elsewhere in law pertaining to such subjects shall be construed so as to conform to and be consistent with the pertinent provisions of this article. As to those provisions in this code or elsewhere in law which are so inconsistent with the provisions of this article as to preclude
such construction, such other provisions, whether gen-
eral or specific in character, are hereby repealed to the
extent of such inconsistency. No subsequent legisla-
tion shall be held to supersede or modify the provisions
of this article except to the extent that such legisla-
tion shall do so specifically and expressly. The provisions
of this act shall not affect the publication and/or posting
of any legal advertisements commenced, in process or
completed prior to the effective date of this act.


1 If any provision of this act or the application thereof
to any person or circumstance is held unconstitutional or
invalid, such unconstitutionality or invalidity shall not
affect other provisions or applications of the act, and to
this end, the provisions of this act are declared to be
severable.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC
LIQUORS.

Article

4. Licenses.
5. Local Option Elections.

ARTICLE 4. LICENSES.

Section

10. Notice of application for license.

§60-4-10. Notice of application for license.

1 A person who desires to apply for a license author-
ized by the provisions of this chapter shall, not more than
thirty nor less than ten days before the filing of formal
application, give notice of his intention. He shall give
notice by posting a statement of his intention in such
form as the commission may require at the front door
or principal entrance of the place where the business is
to be conducted. He shall also publish notice, in such
form as the commission may require, as a Class I legal
advertisement in compliance with the provisions of ar-
ticle three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the county in
which he intends to do business: Provided, however, That
retail druggists desiring to sell alcoholic liquors on pre-
scriptions shall not be subject to the provisions of this
section: *Provided further,* That such retail druggists shall
file formal application in writing with the commission and
shall pay the license fee.

**ARTICLE 5. LOCAL OPTION ELECTIONS.**

Section 4. Notice of election; when held; election officers.

§60-5-4. **Notice of election; when held; election officers.**

1 The county court or governing body of the munici-
2 pality shall give notice of the special "local option election"
3 by publication thereof as a Class II-0 legal advertisement
4 in compliance with the provisions of article three, chap-
5 ter fifty-nine of this code, and the publication area for
6 such publication shall be the area in which the election
7 is to be held. Such notice shall be so published within
8 fourteen consecutive days next preceding the election.
9 The election shall be held not more than ninety nor less
10 than sixty days from the filing of the petition. The reg-
11 ular election officers of the county or municipal corpora-
12 tion shall open the polls and conduct the election in the
13 same manner provided for general elections.

**ARTICLE 6. MISCELLANEOUS PROVISIONS.**

Section 21. Court procedure as to contraband and forfeited articles.

§60-6-21. **Court procedure as to contraband and forfeited articles.**

1 Proceedings for confiscation of articles, conveyances
2 or vehicles declared contraband and forfeited to the state
3 under section twenty shall be had in the circuit or in-
4 ferior court having criminal jurisdiction, either in vaca-
5 tion or term time, in the county where such articles,
6 conveyances or vehicles were seized, and the procedure
7 shall be as follows:
8 (1) When such articles, conveyances or vehicles have
9 been seized under or without a warrant provided for in
10 section eighteen of this article, by an officer charged with
11 the enforcement of this chapter, the officer shall take
possession of such article, conveyance or vehicle and deliver the same and the alcoholic liquors so seized to the sheriff of the county in which such seizure was made, taking his receipt therefor in duplicate.

(2) The officer making such seizure shall forthwith report in writing of such seizure to the prosecuting attorney of the county in which such seizure was made and to the commission.

(3) Within not less than ten days nor more than sixty days after receiving notice of any such seizure, the prosecuting attorney for the county shall file, in the name of the state, a petition against the seized property, in the clerk's office of the circuit court of the county, returnable to the circuit court or inferior court having criminal jurisdiction, which petition shall be filed by the clerk without fee and may be heard by said court or judge thereof in vacation.

(4) Such petition shall allege the seizure, and set forth in general terms, the grounds of forfeiture of the seized property, and shall pray that the same be forfeited to the state and the proceeds disposed of according to law, and that all persons concerned or interested may appear and show cause why said property should not be forfeited to the state.

(5) The owner of and all persons in any manner then indebted or liable for the purchase price of said property, and any person having a lien thereon, if they be known to the prosecuting attorney, shall be made parties defendant thereto, and shall be served with the notice issued by the clerk of such court, hereinafter provided for in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on said petition, if they be residents of this state, and, if they be unknown or nonresidents, or cannot with reasonable diligence be found in this state, they shall be deemed sufficiently served by publication of said notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be said county.
(6) Any person claiming to be the owner of such seized property, or to hold a lien thereon or have an interest therein, may appear at any time before final judgment of the trial court, and be made a party defendant to the petition so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim or interest.

(7) If the court or judge thereof in vacation shall find that illegally acquired alcoholic liquors or alcoholic liquors being illegally transported in amounts in excess of one gallon, were not found in such conveyance or vehicle at the time of the seizure thereof, the judgment of the court shall be to entirely relieve said property from forfeiture, and no costs shall be taxed against such claimant.

(8) If the court or judge thereof in vacation trying the issue shall find or if it be admitted that said conveyance or vehicle at the time of the seizure contained illegally acquired liquor or that alcoholic liquors were being illegally transported therein, nevertheless:

(a) If it shall appear to the satisfaction of the court that such claimant is the bona fide owner and was such owner at the time of such seizure and that he was ignorant of such illegal use thereof and the illegal use was without his connivance or consent, expressed or implied, the court shall relieve said conveyance or vehicle from forfeiture and restore it to such claimant and no cost shall be taxed against such claimant,

(b) If it shall appear to the satisfaction of the court that such claimant is the holder of a bona fide lien against the property and was the holder of such lien at the time of such seizure and that he was ignorant of such illegal use thereof, or the use so made of such conveyance or vehicle was without his connivance or consent, expressed or implied, and that the claimant has perfected his lien, the court shall,

(1) If the lien so established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor upon the payment of storage and cost,
(2) If the lien is less than the value of the conveyance or vehicle, the lienor may have said conveyance or vehicle delivered to him upon payment of the difference in amount as determined in such proceedings; but should the lienor not demand delivery as aforesaid, an order shall be made for the sale of said property by the sheriff of the county, in the manner prescribed by law for sale of personal property under execution, out of the proceeds of which sale shall be paid, first, the storage, if any, second, the cost, third, the lien, and the residue, if any, shall be paid to the commission.

(9) If, however, no valid lien or claim is established against the seized property upon the trial of the petition, or, if it shall be determined that the owner thereof was himself using the same at the time of the seizure or that such illegal use was with his knowledge or consent, expressed or implied, the said property shall be completely forfeited to the state and turned over to the commission in accordance with the provisions of this chapter.

(10) In every case, the alcoholic liquors so seized shall be deemed contraband and forfeited to the state as heretofore provided.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article

7. Dangerous Weapons.
10. Crimes Against Public Policy.

ARTICLE 7. DANGEROUS WEAPONS.

Section

2. License to carry weapons; how obtained.

§61-7-2. License to carry weapons; how obtained.

Any person desiring to obtain a state license to carry any such weapon as is mentioned in the first section of this article, within one or more counties in this state, shall first publish a notice setting forth his name, residence and occupation, and that on a certain day he will apply to the circuit court of his county for such state license. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county in which such person resides. Such notice shall be published at least ten days before such application is made. After the publication of such notice and at the time stated in such notice, upon application to such court, it may grant such license to such person, in the following manner, to wit:

The applicant shall file with such court his application in writing, duly verified, which application shall show:

(a) That such applicant is a citizen of the United States of America;

(b) That the applicant has been a bona fide resident of this state for at least one year next prior to the date of such application, and of the county sixty days next prior thereto;

(c) That the applicant is over twenty-one years of age; that he is a person of good moral character, of temperate habits, not addicted to intoxication, and has not been convicted of a felony or of any offense involving the use on his part of such weapon in an unlawful manner, and shall prove to the satisfaction of the court that he is gainfully employed in a lawful occupation and has been so engaged for a period of five years next preceding the date of his application;

(d) The purpose or purposes for which the applicant desires to carry such weapon, the necessity therefor, and the county or counties in which such license is desired to be effective.

Upon the hearing of such application the court shall hear evidence upon all matters stated in such application and upon any other matter deemed pertinent by the court, and if such court be satisfied from the proof that there is good reason and cause for such person to carry such weapon, and all of the other conditions of this article be complied with, the court, or the judge thereof in vacation, may grant such license for such purposes, and no other, as such court, or the judge in vacation, may set out in the license (and the word "court" as used in this article shall include the circuit judge thereof, acting either in term or vacation); but, before such license shall be effective
such person shall pay to the sheriff, and the court shall so certify in its order granting the license, the sum of twenty dollars, and shall also file a bond with the clerk of such court, in the penalty of three thousand five hundred dollars, with good security, signed by a responsible person or persons, or by some surety company, authorized to do business in this state, conditioned that such applicant will not carry such weapon except in accordance with his application and as authorized by the court, and that he will pay all costs and damages accruing to any person by the accidental discharge or improper, negligent or illegal use of such weapon or weapons. Any such license granted shall be good for one year, unless sooner revoked, as hereinafter provided, and be coextensive with the county in which granted, and such other county or counties as the court shall designate in the order granting such license; except that upon a proper showing the court granting such license to any person regularly employed as a security guard may, in its discretion, in the order granting such license extend the period of the validity of such license for a period not to exceed four years, under such terms and conditions as the court deems proper; except that regularly appointed deputy sheriffs having license shall be permitted to carry such revolver or other weapons at any place, within the state, while in the performance of their duties as such deputy sheriffs; and except that any such license granted to regularly appointed railway police shall be coextensive with the state. All license fees collected hereunder shall be paid by the sheriff and accounted for to the auditor as other license taxes are collected and paid, and the state tax commissioner shall prepare all suitable forms for licenses, bonds and certificates showing that such license has been granted and shall do anything else in the premises to protect the state and see to the enforcement of this section.

The clerk of the circuit court shall, immediately after license is granted as aforesaid, furnish the superintendent of the department of public safety a certified copy of the order of the court granting such license, for which service the clerk shall be paid a fee of two dollars which shall
be taxed as cost in the proceeding. It shall be the duty of the clerk of each circuit court to furnish to the superintendent of the department of public safety, at any time so required, a certified list of all such licenses issued in his county.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

Section
28. Same—local option election; petition; election procedure; form of ballot; effect of such election.

§61-10-28. Same—Local option election; petition; election procedure; form of ballot; effect of such election.

The county court of any county is hereby authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of section twenty-five of this article shall continue in effect in said county.

A petition for such local option election shall be in the form hereinafter specified and shall be signed by qualified voters residing within said county equal to at least ten per cent of the persons qualified to vote within said county at the last general election. Said petition may be in any number of counterparts and shall be sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION
RESPECTING WORK, LABOR OR BUSINESS ON SUNDAY IN .........................
COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in ..................... County, West Virginia, and is duly qualified to vote in said county under the laws of the state, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition said county court to call and hold a local option election upon the following question:

Shall the provisions of section 25, article 10, chapter 61 of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect in ..................... County, West Virginia?
Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county court shall enter an order calling a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. Said county court shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding said election.

Each person qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The ballots in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county court which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the same are applicable. The county court shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the Sunday Closing Law continue in effect in County of West Virginia?

□ Yes    □ No

(Place a cross mark in the square opposite your choice.)"
option election vote no on the foregoing question, the provisions of section twenty-five, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall no longer continue in effect in said county.

CHAPTER 106
(House Bill No. 940—By Mr. Myles)

[Passed March 9, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, and to amend and reenact section six, article eight, chapter fifty-one of said code, all relating to distribution of the acts of the Legislature.

Be it enacted by the Legislature of West Virginia:

That article one, chapter 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 nineteen, and that section six, article eight, chapter fifty-one of said code, be amended and reenacted to read as follows:

Chapter
4. The Legislature.
51. Courts and Their Officers.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS.

Section

§4-1-19. Distribution of acts of the Legislature.

1 Free distribution of the acts and resolutions of each session of the Legislature, and other matter directed by
law to be published therewith, shall be made as follows
by the clerk of the house of delegates: One copy to the
judge of each court in this state; one copy each to the
judge, clerk and district attorney of every United States
district court of this state; one copy to every prosecuting
attorney, sheriff, assessor, county superintendent of free
schools, president of the county court, circuit clerk,
county clerk and justices of the peace; five copies to the
governor; six copies to the attorney general; two copies
each to the secretary of state, auditor, state superintend-
et of free schools, treasurer and commissioner of agri-
culture; four copies to the public service commission;
one copy to each executive department head, requesting
the same; ten copies to the clerk of the senate, one for
his own use, and the others to be kept in his office for
the use of the senate; ten copies to each member of the
Legislature, one for his own use and others for distribu-
tion; ten copies to the college of law of West Virginia
University; one copy to each public institution of the
state; three copies to the librarian of Congress, one for
the library and one for each house of Congress; one copy
to each senator and representative in Congress from this
state; one copy to each county law library; and one copy
to each college and university in the state. The clerk
shall retain ten copies in his own office, one for his own
use and the others to be kept in his office for the use of
the house.

All of the copies named in this section shall be sent by
mail, express or otherwise as the clerk may deem best.
The acts to which officers of a county may be entitled
shall be forwarded to the clerk of the county court
thereof and shall be delivered by him to the officers en-
titled to receive the same. Upon receipt of such acts by
him, the clerk of the county court shall forward his
receipt therefor to the clerk of the house of delegates
specifying the number received, and he shall require
each person receiving a copy of such acts from him to sign
a receipt therefor in a book to be kept by him for that
purpose. The remaining copies of the acts shall be in the
custody of the division of purchases, department of
finance and administration, and be sold and disposed of
as provided in section thirty-one, article three, chapter five-a of this code.

The clerk may cause a copy of such acts to be furnished to any officer, board, commission, institution or tribunal not named herein.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 8. STATE LAW LIBRARIES.

Section 6. Exchange of acts of the Legislature for acts of the legislatures of other states; distribution.

§51-8-6. Exchange of acts of the Legislature for acts of the legislatures of other states; distribution.

The librarian shall arrange as far as possible with each of the other states for the exchange of two copies of the acts of the West Virginia Legislature for acts of the legislature of each state, one of which copies received from each state shall be deposited in the state law library at Charleston, one copy in the library of the college of law of West Virginia University, and the other copies if any, so received from any other state, to be disposed of as the supreme court of appeals shall direct.

The division of purchases, department of finance and administration, upon requisition of the librarian, shall, without cost, furnish such librarian with sufficient copies of the acts to make the exchanges provided for by this section.

CHAPTER 107

(Com. Sub. for House Bill No. 625—By Mr. Speaker, Mr. White, and Mr. Cann)

[Passed March 8, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated
section one-a, relating to the recordation of certificates of redemption.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter thirty-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 one-a, to read as follows:

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

Section 1a. Recordation of certificates of redemption.

§38-10-1a. Recordation of certificates of redemption.

1 A certificate of redemption issued and executed under the provisions of section seven thousand four hundred twenty-five of the Internal Revenue Code of one thousand nine hundred fifty-four, enacted by the Congress of the United States (section one hundred nine of The Federal Tax Lien Act of 1966) may be recorded in the office of the clerk of the county court of the county in which the real estate being redeemed is situate. Such certificate shall be recorded in the deed books and indexed in the name of the person from whom the real estate is redeemed, as the grantor, and in the name of the United States of America, as the grantee.

CHAPTER 108

(House Bill No. 986—By Mr. Speaker, Mr. White, and Mrs. Withrow)

(Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.)

AN ACT to amend and reenact section seven, article one-a, and section five, article three, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of community services of the department of mental health; reimbursing sponsoring groups by patient or responsible relative for
mental health services, and transportation for mentally ill persons.

Be it enacted by the Legislature of West Virginia:

That section seven, article one-a, and section five, article three, 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:

Article
1A. Department of Mental Health.
3. Mental Hygiene Commissions.

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

Section
7. Division of community services; powers and duties of supervisor.

§27-1A-7. Division of community services; powers and duties of supervisor.

There shall be a division of community services in the department of mental health. This division shall administer all funds made available to the state of West Virginia and any political subdivision thereof under the national mental health act, and all other funds made available for use by this division. The director shall establish standards and criteria for reimbursing sponsoring groups for a portion of the cost of local mental health services which they may provide.

The supervisor of this division shall also have the following powers and duties:

1. To establish standards for and supervise the operation of community mental health clinics for adults and children and to develop new community facilities and community service programs for the overall improvement of the regional mental health facilities.

2. To develop a comprehensive and practical program of mental health education of the public, especially at the local level.

3. To work with county mental hygiene commissions and circuit courts.

4. To determine and approve schedules of reasonable cost for reimbursement by the patient or responsible relative for mental health services rendered.
25    5. To perform any other duties assigned to the division by the director of the department.

ARTICLE 3. MENTAL HYGIENE COMMISSIONS.

Section 5. Transportation for mentally ill persons.

§27-3-5. Transportation for mentally ill persons.

1 Whenever an individual is to be hospitalized under the provisions of article four or article five of this chapter, the clerk of the county court of the county of which such individual is a resident shall, upon the written request under oath of a person having a proper interest in the individual's hospitalization, permit such person to arrange for the individual's transportation to the hospital by such means as may be suitable for his mental condition. Should no such transportation be available, the clerk may arrange for such, and if the mentally ill person is without financial means to pay for such transportation, the cost thereof, not to exceed the amount prescribed by the county court of the county of which such individual is a resident, may be paid out of the county treasury.

CHAPTER 109

(Senate Bill No. 25—By Mr. McCourt)

[Passed March 1, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to maintenance of mentally ill or mentally retarded patients in state mental hospitals.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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:
ARTICLE 8. MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.

Section 1. Maintenance of patients; reimbursement.

§27-8-1. Maintenance of patients; reimbursement.

1. The cost of the maintenance of patients admitted to the state hospitals shall be paid out of funds appropriated for the respective state hospitals, but the state hospitals, through the director of mental health, shall have a right of reimbursement for all or any part of such maintenance from each patient or from the committee or guardian of the estate of the patient, or the estate of the patient if deceased, or if that be insufficient, then from the patient's husband or wife, or if the patient be an emancipated child, the father and mother, or any of them. If such a relative so liable does not reside in this state and has no estate or debts due him within the state by means of which the liability can be enforced against him, the other relatives shall be liable as provided by this section. In exercising this right of reimbursement, the director of mental health may, whenever it is deemed just and expedient to do so, exonerate any person chargeable with such maintenance from the payment thereof in whole or in part, if the director finds that such person is unable to pay or that payment would work an undue hardship on him or on those dependent upon him.

2. There shall be no discrimination on the part of the state hospital as to food, care, protection, treatment or rehabilitation, between patients who pay for their maintenance and those who are unable to do so.

3. It shall be the responsibility of the director of mental health to determine the ability of the patient or of his relatives to pay for his maintenance: Provided, That any such determination shall be in writing and shall be considered an "order" under the provisions of chapter twenty-nine-a of the code of West Virginia, as amended: Provided further, That any such determination shall be subject to review upon application of any such patient, relative or personal representative in the manner pro-
AN ACT to amend and reenact sections five and twenty-one, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, thirteen, thirty-seven, thirty-eight, thirty-nine, fifty and sixty-one, article two of said chapter twenty-two; to amend and reenact section five, article six of said chapter twenty-two; to further amend article one of said chapter twenty-two by adding thereto two new sections, designated sections seven-a and seven-b; and to further amend article two of said chapter twenty-two by adding thereto three new sections, designated sections seven-a, sixty-one-a and sixty-one-b, all relating to coal mine safety and the West Virginia department of mines.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-one, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, four, five, thirteen, thirty-seven, thirty-eight, thirty-nine, fifty and sixty-one, article two of said chapter twenty-two be amended and reenacted; that section five, article six of said chapter twenty-two be amended and reenacted; that article one of said chapter twenty-two be further amended by adding thereto two new sections, designated sections seven-a and seven-b; and that article two of said chapter twenty-two be further amended by adding thereto three new sections, designated sections seven-a, sixty-one-a and sixty-one-b, all to read as follows:
Article

1. Administration; Enforcement.
2. Coal Mines.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

Section
5. Same—eligibility; salary.
7a. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.
7b. Mine inspectors—may be appointed to fill vacancy in department for unexpired term; permanent tenure benefits not affected.

§22-1-5. Same—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 sixteen thousand dollars per year, and traveling expenses, which shall be paid out of the state treasury upon requisition on the state auditor, properly certified by the director of the department of mines.

§22-1-7a. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

The department shall employ five or more mine safety instructors. To be eligible for employment as a mine safety instructor the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-five nor more than sixty years of age, and of good character, reputation and temperate habits; and (2) a person who has had at least five years' experience in first aid and
mine rescue work and who has had practical experience
with dangerous gases found in coal mines, and who has
a practical knowledge of mines, mining methods, mine
ventilation, sound safety practices and applicable mining
laws.

In order to qualify for appointment as a mine safety
instructor an eligible applicant shall submit to a written
and oral examination given by the mine inspectors' 
examining board. The examination shall relate to the 
duties to be performed by a safety instructor and may, 
subject to the approval of the mine inspectors' examining 
board, be prepared by the director of West Virginia de-
partment of mines.

If the board finds after investigation and examination 
that the applicant (1) is eligible for appointment and (2) 
has passed all oral and written examinations with a grade 
of at least eighty per cent, the board shall add such ap-
plicant's name and grade to a register of qualified eligible 
candidates and certify its action to the director of the 
department of mines. The director may then appoint one 
of the candidates from the three having the highest 
grade.

The salary for a mine safety instructor shall be not 
less than sixty-five hundred dollars nor more than 
seventy-two hundred dollars per year and shall be fixed 
by the director of the department of mines, who shall 
take into consideration ability, performance of duty, and 
experience. No reimbursement for traveling expenses 
shall be made except on an itemized accounting for such 
expenses submitted by the instructor, who shall verify 
upon oath that such expenses were actually incurred in 
the discharge of his official duties.

Mine safety instructors serving as such on the effective 
date of this section may continue to serve for a probation-
ary period not exceeding one year and, if eligible, may 
qualify for permanent appointment during such proba-
tionary period in accordance with the provisions of this 
section. Mine safety instructors, before entering upon the 
discharge of their duties, shall take and subscribe to the 
oath and shall execute a bond in the same penal sum, with 
surety approved by the director of the department of
49 mining, all as is required by this article in the case of
50 mine inspectors.
51 Except as expressly provided in this section to the con-
52 trary, all provisions of this article relating to the eligibil-
53 ity, qualification, appointment, tenure and removal of
54 mine inspectors shall be applicable to mine safety in-
55 structors.

§22-1-7b. Mine inspectors—May be appointed to fill vacancy
in department for unexpired term; permanent tenure
benefits not affected.

Notwithstanding any other provisions of law, if a
2 vacancy occurs in any appointive position within the
3 department of mines any mine inspector having per-
4 manent tenure, if qualified, may be appointed to fill the
5 unexpired portion of the term of such appointive position
6 without forfeiting any of the benefits which have
7 accrued to him because of his permanent tenure as a
8 mine inspector.


It shall be the duty of any mine operator employing
2 fifty or more employees to have available for mine rescue
3 work a trained mine rescue team, the members of which
4 shall work in the general area of the mine. In the event
5 of any fire, explosion or recovery operations in or about
6 any mine, the director of the department of mines is here-
7 by authorized to call and assign any state mine rescue
8 team for the protection of employees and the preservation
9 of property. The director also may assign mine rescue
10 and recovery work to inspectors, instructors or other
11 qualified employees of the department of mines as he may
12 deem desirable.

ARTICLE 2. COAL MINES.

Section
1. Definitions.
4. Fans.
5. Ventilation of mines in general.
7a. Movement of mining equipment.
13. Instruction of employees; annual examination of persons using flame
safety lamps; records of examination.
37. Haulage roads and equipment; shelter holes; prohibited practices;
signals; inspection.
38. Transportation of men.
39. Electricity; general provisions.
50. Procurement of dust-tight electrical equipment; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.
61. Communication with outlets; safe roadways for emergencies; hoisting equipment at shaft outlets; escapeways; limitation of section.
61a. Coal storage bins; recovery tunnels; coal storage piles.
61b. Thermal coal dryers and plants.

§22-2-1. Definitions.

For the purpose of this article:

(1) The term "abandoned workings" shall mean excavations, either caved or sealed, that are deserted and in which further mining is not intended, and open workings which are ventilated and not inspected regularly.

(2) The term "approved" shall mean in strict compliance with mining law or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(3) The term "armored cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

(4) The term "assistant mine foreman" shall mean a person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(5) The term "borehole cable" shall mean a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mines.

(6) The term "branch circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power line.

(7) The term "cable" shall mean a stranded conductor (single conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

(8) The term "circuit breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(9) The term "delta connected" shall mean a power system in which the windings of transformers or a.c. generators are connected to form a triangular phase re-
33 lationship, and with the phase conductors connected to
each point of the triangle.
35 (10) The term “drift” shall mean a horizontal or ap-
36 proximately horizontal opening through strata or in a
37 coal seam and used for the same purposes as a shaft.
38 (11) The term “excavations and workings” shall mean
any or all parts of a mine excavated or being excavated,
including shafts, slopes, drifts, tunnels, entries, rooms and
working places, whether abandoned or in use.
42 (12) The term “effectively grounded” is an expression
which means grounded through a grounding connection
of sufficiently low impedance (inherent or intentionally
added or both) so that fault grounds which may occur
cannot build up voltages in excess of limits established
for apparatus, circuits, or systems so grounded.
(13) The term “face equipment” shall mean mobile
or portable mining machinery having electric motors or
accessory equipment normally installed or operated inby
the last open crosscut in an entry or room.
(14) The term “fire boss” shall mean any person desig-
nated to examine a mine for gas and other dangers. Such
person shall have the qualifications required by this
article.
(15) The term “flame-resistant cable, portable” shall
mean a portable flame-resistant cable that has passed
the flame tests of the federal bureau of mines.
(16) The term “gassy mine” shall mean any mine in
which methane has been ignited, or has been detected
with a permissible flame safety lamp, or by laboratory
analysis of an air sample collected in active workings,
in a perceptible air current, taken not less than twelve
inches from the roof, face and rib, in an amount of
twenty-five hundredths per cent or more.
(17) The term “grounded (earthed)” shall mean that
the system, circuit, or apparatus referred to is provided
with a ground.
(18) The term “ground or grounding conductor (min-
ing)” (also referred to as a safety ground conductor,
safety ground, and frame ground) shall mean a metallic
conductor used to connect the metal frame or enclosure
of an equipment, device or wiring system, with a mine track or other effective grounding medium.

(19) The term "high voltage" shall mean voltage having a nominal value greater than six hundred fifty volts between any two ungrounded conductors of the power system.

(20) The term "interested persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers, and state mine inspectors.

(21) The term "lightning arrester" shall mean a protective device for limiting surge voltages on equipment by discharging or bypassing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(22) The term "mechanical working section" shall mean an area of a mine (1) in which coal is loaded mechanically, (2) which is comprised of a number of working places that are generally contiguous and (3) which is of such size to permit necessary supervision during the shift operation, including pre-shift and on-shift examinations and tests required by law.

(23) The term "mine" shall include the shafts, slopes, drifts or inclines connected with excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine and the surface structures or equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(24) The term "mine foreman" shall mean the person charged with the responsibility of the general supervision of the underground workings of a mine and the persons employed therein. He shall hold a certificate of competency for such position issued to him by the department of mines after taking an examination held by the department of mines.

(25) The term "mine power center or distribution center" shall mean a combined transformer and distri-
bution unit complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(26) The term “neutral point” shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in a wye-connected a.c. power system.

(27) The term “neutral (derived)” shall mean a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally un-grounded delta power system.

(28) The term “nongassy mine” shall mean any coal mine which is not classified as gassy.

(29) The term “operator” shall mean any firm, corporation, partnership, or individual operating any coal mine or part thereof.

(30) The term “permissible” shall mean any equipment, device, or explosive, that has been approved as permissible by the United States bureau of mines, and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by said bureau.

(31) The term “portable (trailing) cable” shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(32) The term “shaft” shall mean a vertical opening through the strata that is or may be used for purposes of ventilation, drainage and the hoisting and transportation of men and material, in connection with the mining of coal.

(33) The term “shot firer” shall mean any competent person having had at least three years’ practical experience in coal mines; who has a knowledge of ventilation, mine roof and timbering; and who has demonstrated knowledge of mine gases and the use of a flame safety lamp, by examination given him by the mine foreman.

(34) The term “slope” shall mean a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.
The term “superintendent” shall mean the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

The term “supervisor” shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

The term “wye-connected” shall mean a power system connection in which one end of each phase winding of transformers or a.c. generators are connected together to form a neutral point, and the other ends of the windings are connected to the phase conductors. A neutral conductor may or may not be connected to the neutral point, and the neutral may or may not be grounded.

The term “zig-zag transformer (grounding transformer)” shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

§22-2-4. Fans.

The ventilation of mines, the systems for which extend for more than two hundred feet underground, and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director of the department of mines. In case of accident to a ventilating fan or its machinery whereby the ventilation of the mine is seriously interrupted, immediate action shall be taken by the mine operator or his management personnel, in a gassy mine, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If the ventilation is restored in a reasonable time, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified or competent person and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in a reasonable time, all underground em-
ployees shall be removed from the mine or the affected areas. In mines classified as nongassy, when the ventilation is seriously interrupted by fan stoppage or failure, immediate action shall be taken by the mine management to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If the ventilation is restored within a reasonable time, the face regions and other places in the affected areas shall be reexamined by a certified or other competent person, and if found in safe condition, work may be resumed. If ventilation is not restored within a reasonable time, all underground employees shall be removed from the mine or affected areas. If the ventilation is not restored within thirty minutes in any mine the men shall be removed from the mine or affected areas: Provided, That in mines liberating gas in large quantities the men shall be removed from the affected area unless the ventilation has been restored in fifteen minutes.

All main fans installed after the effective date of this article, shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over, a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak-wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges, or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a competent person and a record kept of the same in a book prescribed for this purpose, or by adequate facilities provided to permanently record the performance of the main fan and to give warning of an interruption to a fan. Auxiliary blower or exhaust fans may be used to ventilate shaft-and-slope-sinking operations and their underground connections, rock tunnels being driven between
coal beds or through faults and wants, or in the driving
of single entries or rooms by mining equipment in use at
the time of the acquisition of the mine by the operator or
prior to the effective date of this article, or equipment
which may hereafter be developed through technological
progress: Provided, That they are powered by permissible
driving units when installed underground, operated con-
tinuously while any work is being performed in the area
being ventilated, and so placed that recirculation of the
air is not possible. The inby end of the tubing, line curtain
or other device shall be kept sufficiently close to the face
to dilute, render harmless and carry away all dangerous
gases.

In the event of a fire or explosion in any coal mine the
ventilating fan or fans shall not intentionally be started,
stopped, speed increased or decreased or the direction of
the air current changed without the approval of the gen-
eral mine foreman and, if he is not immediately available,
a representative of the state department of mines. A duly
authorized representative of the employees should be con-
sulted if practical under the circumstances.

§22-2-5. 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 all mines 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 thou-
sand 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, That the quan-
tity 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 deliver-
ed to the intake of the pillar line. The air current shall
under any conditions have a sufficient volume and velocity
to reduce and carry away smoke from blasting and any
flammable or harmful gases. All active underground work-
ing places in a mine shall be ventilated by a current of
air containing not less than nineteen and five-tenths per
cent of oxygen, not more than one per cent of carbon
dioxide, and no harmful quantities of other noxious or
poisonous gases.

Each mechanical working section newly developed in
virgin coal hereafter shall be ventilated by a separate
split of air: Provided, That areas already under develop-
ment and in areas where physical conditions prevent
compliance with this provision the director of the depart-
ment of mines may grant temporary relief from com-
pliance until such time as physical conditions make com-
pliance possible. The quantity of air reaching the last
crosscut shall not be less than six thousand cubic feet of
air per minute and shall under any conditions have a
sufficient volume and velocity to reduce and carry away
smoke and flammable or harmful gases from each work-
ing face in the section.

As working places advance, crosscuts for air shall be
made not more than eighty feet apart. Where necessary
to render harmless and carry away noxious or flammable
gases, line brattice or other approved methods of ventila-
tion shall be used so as to properly ventilate the face. All
crosscuts between the main intake and return airways not
required for passage of air and equipment shall be closed
with stoppings substantially built with incombustible or
fire-resistive material so as to keep working places well
vented: Provided, That in mines where it becomes neces-
sary to provide larger pillars for adequate roof support,
working places shall not be driven more than two hun-
dred feet without providing a connection that will allow
the free flow of air currents. In such cases a minimum of
twelve thousand cubic feet of air a minute shall be de-
livered to the last open crosscut and as much more as is
necessary to dilute and render harmless and carry away
flammable and noxious gases.

In special instances for the construction of sidetracks,
haulageways, airways, or openings in shaft bottom or
slope bottom layout where the size and strength of pillars
is important, the director of the department of mines may
issue a permit approving greater distances. The permit
shall specify the conditions under which such places may
be driven.
In gassy mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after the effective date of this article.

If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return so long as a minimum of twelve thousand cubic feet of air per minute is delivered to the intake of the pillar line.

Not more than sixty persons shall be permitted to work in the same air current: Provided, That a larger number, not exceeding eighty persons, may be allowed by the director of the department of mines where it is impracticable to comply with the foregoing requirements.

No operator or mine foreman shall permit any person to work where he is unable to maintain the quantity and quality of the air current as heretofore required: Provided, That such provisions shall not prohibit the employment of men to make places of employment safe.

The ventilation of any mine shall be so arranged by means of airlocks, overcasts, or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a gassy mine they shall be erected in pairs so as to provide a ventilated airlock, unless the doors are operated mechanically: Provided, That such provisions shall not apply to doors in or between panel or room entries. In mines not classified as gassy, single doors may be used, provided such doors are closed promptly after men or equipment have passed through them.

Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

Where practicable, a crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

Rooms, entries, airways, or other working places shall
not be driven in advance of air currents. Such provisions shall not prohibit, as the room, entry or aircourse advances, the "necking" of any place for a distance not exceeding that actually required for the installation of mining equipment in use at this location: Provided, That such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

§22-2-7a. Movement of mining equipment.

Mining equipment being transported or trammed under ground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. To avoid accidental contact where clearance vertically and horizontally is less than ten inches from any power line or other obstruction, face equipment being transported or trammed shall be reduced by the removal of such parts and assemblies as may be necessary to maintain necessary clearance.

§22-2-13. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.

It shall be the duty of the mine foreman, or the assistant mine foreman, of every coal mine in this state, to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work in such mine, and be furnished a copy of the mining laws and rules of such mine. Every inexperienced person so employed shall work under the direction of the mine foreman, his assistant, or such other experienced worker as may be designated by the mine foreman or assistant, until he is familiar with the danger incident to his work.

Persons whose duties require them to use a flame safety lamp and other approved methane detectors shall be examined at least annually as to their competence by a certified man and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the department of mines.
§22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

Haulage roads on entries developed after the effective date of this article shall have a continuous unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

On the trolley wire or "tight" side, there shall be at least six inches of clearance from the farthest projection of any moving equipment. On haulage roads developed after the effective date of this article, where conditions permit there shall be a clearance of twelve inches maintained on the tight or wire side, but in no instance shall the clearance be less than six inches.

The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other materials: Provided, That not more than twenty-four inches need be kept free of such obstructions.

Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors.

Shelter holes shall be provided along haulage entries driven after the effective date of this article where locomotive, rope or animal haulage is used. Such shelter holes shall be spaced not more than one hundred feet apart. Except where the trolley wire is six feet six inches or more above the roadbed or guarded effectively at the shelter holes, they shall be on the side of the entry opposite the trolley wire.

Shelter holes made after the effective date of this article shall be at least five feet in depth, not more than four feet
in width, and as high as the traveling space. Room necks
and crosscuts may be used as shelter holes even though
their width exceeds four feet.

Shelter holes shall be kept clear of refuse and other
obstructions.

Shelter holes shall be provided at switch throws, and
manually operated permanent doors, except where more
than six feet of clearance is maintained, and at room
switches.

No steam locomotive shall be used in mines where men
are actually employed in the extraction of coal, but this
shall not prevent operation of a steam locomotive through
any tunnel haulway or part of a mine that is not in actual
operation and producing coal.

Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any
other compound shall not be used in a coal mine unless
such equipment has been approved by the United States
bureau of mines for underground use in coal mines and
only then when this equipment is maintained in com-
pliance with the requirements of the approved schedule.

Locomotives, mine cars, supply cars, shuttle cars and all
other haulage equipment shall be maintained in a safe
operating condition. Each locomotive shall be equipped
with a suitable lifting jack and handle. An audible warn-
ing device and headlights shall be provided on each loco-
motive and each shuttle car. All other mobile equipment,
using the face areas of the mine, purchased after the effec-
tive date of this article, shall be provided with a conspicu-
ous light or other effective method, so as to reduce the
possibility of collision.

No persons other than those necessary to operate a trip
or car shall ride on any loaded car or on the outside of
any car.

The pushing of trips, except for switching purposes, is
prohibited on main haulage roads: Provided, That this
does not prohibit the use of a pusher locomotive to assist
the locomotive pulling a trip. Motormen and trip riders
shall use care in handling locomotives and cars. It shall
be their duty to see that there is a conspicuous light on
the front and rear of each trip or train of cars when in motion: Provided, That trip lights need not be used on cars being shifted to and from loading machines, on cars being handled at loading heads during gathering operations at working faces or on trips being pulled by animals. No persons shall ride on locomotives or loaded cars unless granted permission by the mine foreman.

No motorman, trip rider or brakeman shall get on or off cars, trips, or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail or open or close a door.

Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over eighty feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he shall face the loading machine.

A system of signals, methods or devices shall be used to provide protection for trips, locomotives and other equipment coming out onto tracks used by other equipment. Where a dispatcher is employed to control trips, traffic under his jurisdiction shall move only at his direction. Motormen shall inspect locomotives and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead unless such locomotive is coupled to the trip ahead.

§22-2-38. Transportation of men.

Man trips shall be pulled (unless self-propelled) at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour, except where special substantially covered man-trip cars are used. Each man trip shall be under the charge of a certified person or other competent person designated by
a mine foreman or assistant mine foreman. It shall be
operated independently of any loaded trip of coal or other
heavy material, but may transport tools, small machine
parts and supplies. When mine cars are used for man trips
on steep grades, a locomotive shall be used on each end of
the trip.

Cars on the man trip shall not be overloaded, and suffi-
cient cars in good mechanical condition shall be provided.
Where “drop-bottom” cars are used, special safety pre-
cautions shall be taken.

No person shall ride under the trolley wire unless suit-
ably covered man cars are used.

Men shall not load or unload before the cars in which
they are to ride, or are riding, come to a full stop. Men
shall proceed in an orderly manner to and from man trips.

When belts are used for transporting men, a minimum
clearance of eighteen inches shall be maintained between
the belt and the roof or crossbars, projecting equipment,
cap pieces, overhead cables, wiring and other objects.
Where the height of the coal seam permits, the clearance
shall not be less than twenty-four inches.

Unless a greater speed is allowed by special permission
from the director of the department of mines, in which
event the conditions, limitations and rules imposed in con-
nection with the grant of such permission shall be ob-
served, the belt speed shall not exceed two hundred fifty
feet per minute where the minimum overhead clearance
is eighteen inches, or three hundred feet per minute where
the minimum overhead clearance is twenty-four inches,
while men are loading, unloading, or being transported.

A signaling system or method shall be provided for stop-
ning the belt and men shall ride not less than six feet
apart.

An assistant mine foreman or some other person desig-
nated by the mine foreman shall supervise the loading
and unloading of belts and man trips. Where men are re-
quired to regularly cross over belts, adequate and safe
facilities shall be provided.

Adequate clearance and proper illumination shall be
provided where men board or leave conveyor belts.
Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

Underground transformers purchased after the effective date of this article, shall be air cooled or cooled with non-inflammable liquid or inert gas.

Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or explosion occurs, and shall be of fireproof construction.

Transformers shall be provided with adequate overload protection.

Portable or semiportable battery charging units shall be operated on a separate split of air: Provided, That such units may be operated on intake air if a minimum of fifteen thousand cubic feet per minute is circulating for one tray of batteries and five thousand cubic feet per minute additional for each tray added. The rate of charging by such units shall not be less than four hours to fully charge a tray of batteries.

Battery charging stations, motor generator sets, rotary converters and oil filled transformers and switches, used underground shall be housed in fireproof buildings ventilated by a separate split of air direct to the main return (rectifiers excepted).

All power wires and cables entering a mine shall be provided with lightning arrestors at points of entry.

“Danger—high voltage” signs shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.
Circuit breakers or other overload devices shall be provided to protect power circuits.

Insulating platforms of wood, rubber, or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

All power wires and cables in hoisting shafts, slopes and power boreholes shall be properly insulated, provided with lightning arrestors, substantially installed and well maintained.

All power wires, except training cables, especially designed cable used as electrical conductors to underground rectifier or transformer stations, portable power cables or bare or insulated ground and return wires, shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

Trolley and feeder wires shall be installed as follows:
Where installed on permanent haulage, after the effective date of this article, they shall be: (1) At least six inches outside the track gauge line; (2) provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines; and (3) kept taut and not permitted to touch the roof, rib, or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

Trolley or bare feeder cables shall be guarded adequately where it is necessary for men to pass or work under them regularly unless the wires are more than six and one-half feet above the top of the rail. They shall also be guarded adequately on both sides of doors, at all stations designated for the loading and unloading of man trips, and at sandboxes.

After the effective date of this article, in new underground installations of electric face equipment in new mines the difference in potential between any two points in the electrical circuits, or between any point in the electrical circuits and the ground, shall not exceed six hundred and fifty volts. No provision of this section shall prohibit the use of higher voltages of alternating current on
service lines to rectifiers, converters, transformers or
switches connected thereto located in areas out by the
immediate face regions: Provided, That electrically face-
operated equipment used in underground mines may be
operated at higher voltages if the conductor in the trailing
cable is surrounded by a flexible grounded metallic sheath,
ground current is limited by acceptable methods, and the
ground circuit is continuously monitored in a method ap-
proved by the director of the department of mines.

In a gassy mine, trolley, feeder wires, mine power cen-
ters, rectifiers and distribution centers shall not extend
beyond the last open crosscut and shall be kept at least
one hundred and fifty feet from open pillar workings.
Trolley wires and feeder wires shall be anchored securely,
insulated, and properly identified at their ends. Metallic
frames, casings, and other enclosures of stationary electric
equipment that can become "alive" through failure of ins-
ulation or by contact with energized parts shall be
grounded effectively.

Metal frames, supporting structures and enclosures of
substations or switching station apparatus shall be
grounded effectively.

Lightning arrestors suitable for the voltage of the sys-
tem shall be installed on each ungrounded conductor for
each exposed feeder circuit entering the mine.

Capacitors used for power factor correction shall be
nonflammable liquid filled. Suitable drain off resistors or
other means to protect workmen against electric shock
following removal of power shall be provided.

Where a.c. to d.c. conversion equipment is used to sup-
ply direct current for shuttle cars or other face equipment,
adequate electrical protection shall be provided on either
the alternating current side and/or the direct current side
of the conversion equipment.

Where both a.c. and d.c. equipment is operating in the
same mine the grounding systems shall not be intercon-
ected.

The use of "jumpers," as a supplement for feeder or
trolley lines, are permitted if they are installed in the
same manner as the feeder or trolley line and are of ade-
quate capacity.

All cables shall be of the approved type and trailing
cables shall be flame resistant.

Power circuits servicing alternating current face equip-
ment shall include a neutral grounding circuit, either di-
rect or derived, the inby end of which shall be connected
only to the equipment machine frame.

Each individual alternating current power circuit (trail-
ing cable) furnishing power to mining equipment shall be
protected from short circuits by means of a circuit breaker
which will open all three phases of the circuit simul-
taneously.

Where electric motors are operating inside of any coal
mine they shall be provided with correct overload pro-
tection.

All unattended underground permanent belt conveyor
drives shall be provided with an automatic spray system
or its equivalent.

All unattended underground loading points where elec-
tric driven hydraulic systems are used shall utilize a fire-
proof oil or emulsion, unless the electrical wiring and hy-
draulic systems are separated.

When direct current power cables enter a mine by way
of a borehole, the bottom or area around the borehole
shall be adequately fireproofed.

Before major electrical changes are made to permissible
equipment for use in a gassy mine, they shall be approved
by the director of the department of mines.

Where installed after the effective date of this section,
high-voltage lines or cables entering a mine shall have
circuit breakers or a similar approved protective device.

Diodes or similar devices may be used as an equivalent
frame grounding device.

When two or more trailing cables junction to the same
power car or transformer, means shall be provided to
eliminate the possibility of cross-connecting or connecting
to the wrong size breaker.
All power transformers shall be provided with adequate over-load protection. A visual and suitable means of disconnecting the primary line of the transformers shall be provided.

In new installations made after the effective date of this section, lightning arrestors shall be connected to a low resistance grounding medium on the surface which shall be separated from system and equipment grounds by a distance of not less than fifty feet.

At locations where cables cross regular haulage or travelways, or where equipment must pass, unless protected by sufficient height, the cables shall be installed in a trench in the roof, protected by some mechanical means, or buried at least twelve inches below combustible material and adequately protected from crushing by the weight of equipment passing over it.

Underground high-voltage main feeder cables shall extend to high-voltage distribution centers with breakers or disconnect switches supplying the branch circuits. Disconnecting devices shall be incorporated to provide visual evidence that the circuit is deenergized when the switches are opened.

Permanent high-voltage cables shall be installed only in well maintained and accessible passageways of the mine and when installed in haulageways shall be supported on hangers and/or messenger wire supported from the roof and/or buried. Extra lengths may be stored in a workman-like manner, vertically on suitable supports, or horizontally in a protected location.

Circuit breakers and disconnecting switches on high-voltage circuits underground shall be adequately marked for identification and location. Where work is to be done on these circuits or equipment, a positive method shall be provided for removing the power in a manner to prevent it from returning while the men are working.

Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.
§22-2-50. Procurement of dust-tight electrical equipment; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonably dust-tight housings or enclosures. Open type motors, switches or controls in use at the effective date of this article in tipples and cleaning plants in unusually dusty locations may be continued in use until such dust-tight equipment can be procured, or until they can be provided with reasonably dust-tight housings or enclosures.

Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations. Where coal is dumped at or near air intake openings, reasonable provisions shall be made to prevent dust from entering the mine.

Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary. Welding shall not be done in dusty atmospheres and dusty locations shall be well cleaned, and fire-fighting apparatus shall be readily available during welding. Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are excepted from such requirement.

Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and ice and maintained in good repair. Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickeners shall wear a safety harness adequately se-
37 cured, unless walkways or other suitable safety devices
38 are provided.

§22-2-61. Communication with outlets; safe roadways for
39 emergencies; hoisting equipment at shaft outlets;
40 escapeways; limitation of section.

No operator or mine foreman of any coal mine shall
2 employ any person to work in such mine, or permit any
3 persons to be in the mine for the purpose of working
4 therein, unless they are in communication with at least
5 two openings, or outlets, to each seam, separated by nat-
6 ural strata, such openings to be not less than three hun-
7 dred feet apart, if the mine be worked by shaft; if the
8 mine be worked by shaft and slope, such openings shall
9 be separated by one hundred feet of natural strata; and
10 not less than fifty feet apart at the outlets, if worked by
11 slope or drift; but this requirement of a distance of
12 three hundred feet between openings or outlets to shaft
13 mines shall not apply where such openings or outlets have
14 been made prior to the effective date of this article. To
15 each of the outlets there shall be provided from the
16 interior of the mine a safe and available roadway, prop-
17 erly drained, which shall at all times, while the mine is
18 in operation, be kept free from all obstructions that might
19 prevent travel thereon in case of an emergency. If either
20 of the outlets be by shaft, it shall be fitted with safe
21 and available appliances, such as stairs or hoisting ma-
22 chinery, which shall at all times when men are under-
23 ground be kept in order and ready for immediate use,
24 whereby persons employed in the mine may readily
25 escape in case of accident.

26 There shall be at least two separate and distinct travel-
27 able passageways, one of which may be the haulageway,
28 to be designated as escapeways from each working sec-
29 tion to the surface of every mine. Adequate direction
30 signs shall be posted, escapeways shall be inspected and
31 traveled at least once every two weeks by a certified fore-
32 man fire boss or other competent person, and a written
33 report thereon shall be kept on the surface.

34 This section shall not apply to any mine work while
35 work is being prosecuted with reasonable diligence in
making communications between outlets, necessary repairs, or removing obstructions, so long as not more than twenty persons are employed at any one time in the mine; neither shall it apply to any mine, or part of a mine, in which a second outlet has been rendered unavailable by reason of the final robbing of pillars, preparatory to abandonment, so long as not more than twenty persons are employed therein at any one time; but before a limited number of men are so permitted to work, approval of the necessity therefor shall be obtained from the department of mines.

§22-2-61a. Coal storage bins; recovery tunnels; coal storage piles.

Coal storage bins hereafter constructed with vertical sides fifty feet or over in height shall be provided with ventilators and/or louvers to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

A competent person shall test for methane with a methane detector, prior to and during cutting and welding operations inside or underneath a coal storage bin.

Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.

Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.

Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.

An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in
diameter and, where inclined, a ladder shall be provided
to extend the full length of the escapeway to facilitate
emergency exit.

Extreme caution shall be exercised by all employees
required to work at or near coal storage piles during
coal recovery operations to avoid injury by coal slides
or by being in or drawn into a chute.

§22-2-61b. Thermal coal dryers and plants.

Thermal coal dryer plants shall be hereafter constructed,
maintained and operated in compliance with the follow-
ing provisions:

Good housekeeping shall be practiced in and around
thermal dryer plants.

Adequate fire-fighting facilities shall be provided on all
floors.

When welding and cutting operations are to be per-
formed in a dryer structure, the area shall be wetted
down thoroughly and adequate fire-fighting apparatus
shall be readily available during the operation.

Only qualified persons shall be permitted to operate
dryers; however, this provision shall not prohibit qualified
persons from training other persons to become qualified
operators.

Dryer control panels shall be provided with audible and
visible alarm devices; such devices should be adjusted to
function at somewhat less than maximum dryer tempera-
ture.

A bypass or relief stack equipped with an automatic-
cally operated damper shall be provided for bypassing
gases from the heating units to the outside atmosphere
during emergency or normal shutdown operations.

Thermal coal dryers hereafter installed shall not be
enclosed, except that roofs may be used. Whenever it is
deemed necessary to enclose thermal dryers, such equip-
ment shall be in a fireproof structure.

Dryer installations and discharge stacks shall be pro-
tected with adequate explosion release vents that open to
the outside atmosphere.
Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated temperatures, will automatically divert the hot inlet gases into a bypass stack thereby bypassing the drying chamber and, at the same time, will stop the fuel being supplied to the air heater.

All dryers, conveyors and other fine coal transporting machines shall be constructed as dust tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

Dryer controls, valves, and mechanical equipment shall be frequently inspected and no dryer shall be operated with defective mechanical equipment.

The gauges of temperature control instruments shall be of the recording type.

Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

Adequate illumination shall be provided.

Dryers shall not be operated beyond their rated evaporation capacity.

Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding start-ups.
70 Thermal coal dryers previously installed in a tipple or cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

75 When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer system bins or any other dusty areas, permissible cap lamps shall be used for illumination.

ARTICLE 6. CERTIFICATION OF COAL MINERS.

Section 5. Examination to be practical; certificates not transferable; how certificates to be issued.

§22-6-5. Examination to be practical; certificates not transferable; how certificates to be issued.

All examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of bituminous coal with reasonable safety to himself and his fellow employees. No applicant shall be certified as qualified or competent who (1) has had less than six months' practical experience as a miner or as a miner apprentice, or (2) lacks a sound knowledge of first aid. Evidence of satisfactory completion of a course of instruction in first aid offered by the West Virginia department of mines, the federal bureau of mines or by such other sponsor as the director may approve, may be received as proof of competence in first aid without further examination.

During this six-months' period the applicant shall complete a course in the fundamentals of first aid and in general mining practices offered by the West Virginia department of mines or by such other sponsor as the director may approve.

Applicants shall be examined under oath and inspectors shall have power to administer oaths to all applicants and witnesses.
If the inspector examining the applicant finds the applicant qualified and competent to be a coal miner, he shall issue to the applicant a certificate of qualification and competency in such form as shall be prescribed by the director, which shall entitle the holder thereof to be employed and work as a coal miner in any mine in this state.

Certificates shall not be transferable and an attempt to transfer a certificate shall be deemed a violation of this article.

CHAPTER 111

(House Bill No. 564—By Mr. Steptoe and Mr. Payne)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three, chapter seventeen-b of said code by adding thereto a new section, designated section eleven, all relating to the amount of a grant of public assistance and payment thereof; providing for certification to the commissioner of motor vehicles of all cases of grants made to blind persons, and providing for revocation of operators' and chauffeurs' licenses upon such certification.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three, chapter seventeen-b of said code be amended by adding thereto a new section, designated section eleven, all to read as follows:

Chapter

9. Public Assistance and Relief.
17B. Motor Vehicle Operators' and Chauffeurs' Licenses.
CHAPTER 9. PUBLIC ASSISTANCE AND RELIEF.

ARTICLE 5. PUBLIC ASSISTANCE AND MEDICAL SERVICES TO THE MEDICALLY INDIGENT.

Section

12. Amount and payment of grant; notification to commissioner of motor vehicles of grants made to blind persons.

§9-5-12. Amount and payment of grant; notification to commissioner of motor vehicles of grants made to blind persons.

1 (a) When the state department approves an application for public assistance it shall fix the amount of the monthly grant in accordance with its established standard of need and the funds available for the purpose. Public assistance shall be paid monthly and out of funds appropriated for the purpose of this article upon requisition of the commissioner by means of a warrant signed by the auditor and treasurer.

9 (b) After the first day of July, one thousand nine hundred sixty-seven, it shall be the duty of the commissioner of welfare to certify in writing to the commissioner of motor vehicles the name and address of each blind person over the age of sixteen years for whom an application for public assistance is approved by the state department of welfare, within ten days after such approval. On or before the first day of August, one thousand nine hundred sixty-seven, it shall be the duty of the commissioner of welfare to certify in writing to the commissioner of motor vehicles the names and addresses of all blind persons over the age of sixteen years receiving public assistance on said first day of July, one thousand nine hundred sixty-seven.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

Section

11. Mandatory revocation of license of certain blind persons.

§17B-3-11. Mandatory revocation of license of certain blind persons.

1 The department shall forthwith revoke the license of any operator or chauffeur upon receipt of certification by the
Chapter 112

(House Bill No. 733—By Mr. Seibert)

[Passed February 18, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vehicles which are exempt from registration and certificate of title provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

Section

2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

1. Every motor vehicle, trailer, semitrailer, and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:

5. (1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

11. (2) Any implement of husbandry whether of a type
12 otherwise subject to registration hereunder or not which
13 is only incidentally operated or moved upon a highway;
14 (3) Any vehicle which is propelled exclusively by
electric power obtained from overhead trolley wires
though not operated upon rails;
17 (4) Any vehicle of a type subject to registration
owned by the government of the United States;
19 (5) Any wrecked or disabled vehicle which is being
towed by a licensed wrecker or dealer on the public
highways of this state.

Editor's note. This section was twice amended by this session of the
Legislature. Chapter 113 (H.B. 730) was passed subsequent to the act
embraced in this Chapter. Note that subdivision (5) is not included in
the act passed last.

CHAPTER 113
(House Bill No. 730—By Mr. Shiflet)

(Passed March 3, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section one, article one, chapter
seventeen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to amend and
reenact section two, article three of said chapter, relating
to implements of husbandry and exceptions to motor
vehicle registration and certificate of title provisions.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Words and Phrases Defined.
3. Original and Renewal of Registration; Issuance of Certificates of
Title.

ARTICLE 1. WORDS AND PHRASES DEFINED.

Section
1. Definitions.
§17A-l-1. Definitions.

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this article:

(a) Vehicle.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor vehicle.—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle.—Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) School bus.—Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) Bus.—Every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) Truck tractor.—Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(g) Farm tractor.—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(h) Road tractor.—Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(i) Truck.—Every motor vehicle designed, used, or maintained primarily for the transportation of property.
(j) **Trailer.**—Every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(k) **Semitrailer.**—Every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(l) **Pole trailer.**—Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) **Specially constructed vehicles.**—Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(n) **Reconstructed vehicle.**—Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(o) **Essential parts.**—All integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(p) **Foreign vehicle.**—Every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) **Implement of husbandry.**—Every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his
agricultural operations, including but not limited to trucks used for spraying trees and plants: Provided, That said vehicle shall not be let for hire at any time.

(r) Special mobile equipment.—Every vehicle not designed or used for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, concrete mixers, and farm tractors, when farm tractors cannot be classified as an implement of husbandry as defined in subdivision (q) of this section. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subdivision.

(s) Pneumatic tire.—Every tire in which compressed air is designed to support the load.

(t) Solid tire.—Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(u) Metal tire.—Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(v) Commissioner.—The commissioner of motor vehicles of this state.

(w) Department.—The department of motor vehicles of this state acting directly or through its duly authorized officers and agents.

(x) Person.—Every natural person, firm, copartner-

ship, association, or corporation.

(y) Owner.—A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(z) Nonresident.—Every person who is not a resident of this state.
(aa) Dealer.—Every person primarily engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state which meets the requirements set out in sections one and two, article seven of this chapter, except an insurance company, a finance company or other type of lending or financing agency, including banking institutions, or any other person coming into possession of a vehicle as an incident to such person’s regular business who shall sell such vehicle, or who shall sell such vehicle under any contractual rights such persons may have with respect thereto, shall not be a dealer hereunder: Provided, That a person who engages exclusively in the wrecking or dismantling of vehicles for junk or for resale of the parts of such vehicles and who comes into possession of a vehicle for the purpose of wrecking or dismantling same as hereinabove stated shall not be a dealer hereunder.

(bb) Transporter.—Every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(cc) Manufacturer.—Every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at an established place of business in this state.

(dd) Established place of business.—The place actually occupied either continuously or at regular periods by a dealer or manufacturer where his books and records are kept and a large share of his business is transacted.

(ee) Street or highway.—The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Editor’s note. This section (§17A-1-1) was reenacted by S. B. 60, Chapter 114 of this volume. See page 788.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

Section 2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.
§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

1 Every motor vehicle, trailer, semitrailer, and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

11 (2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner thereof and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the state road commissioner from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points shall not exceed fifteen miles, or for the purpose of taking it or other fixtures thereto attached, to and from a repair shop for repairs. The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinbefore described or to any farm trailer owned by the owner or lessee of the farm on which such trailer is used, when such trailer is used by the owner thereof for the purpose of moving farm produce and livestock from such farm along a public highway for a distance not to exceed ten miles to a storage house or packing plant, when such use is a seasonal operation.

The exemptions contained in this section shall also apply to farm machinery and tractors: Provided further, That such machinery and tractors may use the highways in going from one tract of land to another tract of land...
regardless of whether such land be owned by the same
or different persons.

Any vehicle exempted hereunder from the require-
ments of annual registration certificate and license plates
and fees therefor shall not be permitted to use the high-
ways as above provided between sunset and sunrise.

Any vehicle used as an implement of husbandry exempt
hereunder must have the words "farm use" affixed to
both sides of the implement in ten inch letters;

(3) Any vehicle which is propelled exclusively by
electric power obtained from overhead trolley wires
though not operated upon rails;

(4) No certificate of title need be obtained for any
vehicle of a type subject to registration owned by the
government of the United States.

Editor's note. See note to Chapter 112.

CHAPTER 114

(Com. Sub. for Senate Bill No. 60—By Mr. Moreland)

[Passed March 11, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to repeal articles six and seven, chapter seventeen-a
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, and to enact in lieu thereof new
articles six and seven; to repeal section six, article nine of
said chapter and to enact in lieu thereof a new section six;
to repeal section six, article ten of said chapter; and to
amend and reenact section one, article one, section five,
article three, section three, article four, section seven,
article nine, and section one, article twelve, all of said
chapter; said new article six providing for the annual
licensing of new motor vehicle dealers, used motor vehicle
dealers, house trailer dealers, trailer dealers, motorcycle
dealers, used parts dealers and wreckers or dismantlers of
motor vehicles, requiring certain dealers to furnish and
maintain a bond, requiring public liability insurance,
specifying various fees, relating to dealer special plates,
their expiration and use, relating to the operation of motor
vehicles by dealers under special permits, providing for
the issuance, use and suspension of temporary registration
plates or markers, specifying the grounds for the suspen­sion or revocation of a license certificate to engage in the
business of new motor vehicle dealer, used motor vehicle
dealer, house trailer dealer, trailer dealer, motorcycle
dealer, used parts dealer, or wrecker or dismantler or of
a dealer special plate or plates, establishing the procedures
to be followed when a license certificate is refused,
suspended or revoked, the right to issue temporary
registration plates or markers is suspended or a dealer
special plate or plates are suspended, creating the license
certificate appeal board, authorizing appeals from any re­fusal, suspension or revocation to be taken to such board,
authorizing the board to issue subpoenas and subpoenas
duces tecum for the purpose of conducting any appeal
hearing, authorizing the board to take original action under
certain specified circumstances, authorizing judicial review
of any final order of the board, relating to injunctive relief
and judicial review of any judgment with respect thereto,
providing expressly for the application of the administra­tive procedures act, authorizing inspections to determine
compliance with or violations of said article, providing for
criminal offenses and penalties, and providing rules of
construction; said new article seven providing for the
issuance of special stickers for the movement of vehicles,
motor vehicles and house trailers and specifying fees and
various restrictions with respect thereto; said new section
six, article nine of said chapter seventeen-a providing that
references to said section shall henceforth be read, con­strued and understood to mean section eighteen of said
article six; said repealed section six, article ten of said
chapter seventeen-a relating to the fees to be paid by
dealers and wreckers or dismantlers and the special plates
issued to certain dealers; said section one, article one of
said chapter seventeen-a relating to the definition of certain
terms used in said chapter; said section five, article three
of said chapter seventeen-a relating to the registration and
titling of specially constructed, reconstructed or foreign
vehicles or vehicles purchased outside this state; said sec­tion three, article four of said chapter seventeen-a relating
to the duty of the transferee of a vehicle to register and title the same; said section seven, article nine of said chapter seventeen-a relating to the surrender of the evidences of registration, title, permit or license, together with any dealer special plates, upon the cancellation, suspension or revocation thereof, the securing of possession of same where necessary by the department of public safety, and the fees which may be charged incident to the obtaining of such possession; and said section one, article twelve of said chapter seventeen-a relating to severability.

Be it enacted by the Legislature of West Virginia:

That articles six and seven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and new articles six and seven be enacted in lieu thereof; that section six, article nine of said chapter be repealed, and a new section six be enacted in lieu thereof; that section six, article ten of said chapter be repealed; and that section one, article one, section five, article three, section three, article four, section seven, article nine, and section one, article twelve, all of said chapter seventeen-a, be amended and reenacted, to read as follows:

**Article**

1. Words and Phrases Defined.
2. Original and Renewal of Registration; Issuance of Certificates of Title.
3. Transfers of Title or Interest.
4. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers; Etc.
5. Special Stickers.
6. Offenses Against Registration Laws and Suspension or Revocation of Registration.
7. Severability and Effect of Chapter.

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**Section**

1. Definitions.

**§17A-1-1. Definitions.**

Except as otherwise provided in this chapter the following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this article:

(a) **Vehicle.**—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
(b) **Motor vehicle.**—Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) **Motorcycle.**—Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) **School bus.**—Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) **Bus.**—Every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) **Truck tractor.**—Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(g) **Farm tractor.**—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(h) **Road tractor.**—Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(i) **Truck.**—Every motor vehicle designed, used, or maintained primarily for the transportation of property.

(j) **Trailer.**—Every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(k) **Semitrailer.**—Every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
(l) **Pole trailer.**—Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) **Specially constructed vehicles.**—Every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(n) **Reconstructed vehicle.**—Every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(o) **Essential parts.**—All integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(p) **Foreign vehicle.**—Every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) **Implement of husbandry.**—Every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to, trucks used for spraying trees and plants: Provided, That said vehicle shall not be let for hire at any time.

(r) **Special mobile equipment.**—Every vehicle not designed or used for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, concrete mixers, and farm tractors, when farm tractors cannot be classified as an implement of husbandry as defined in subdivision (q) of this section. The foregoing enumeration
shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subdivision.

(s) **Pneumatic tire.**—Every tire in which compressed air is designed to support the load.

t) **Solid tire.**—Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(u) **Metal tire.**—Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(v) **Commissioner.**—The commissioner of motor vehicles of this state.

(w) **Department.**—The department of motor vehicles of this state acting directly or through its duly authorized officers and agents.

(x) **Person.**—Every natural person, firm, copartnership, association, or corporation.

(y) **Owner.**—A person who holds the legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(z) **Nonresident.**—Every person who is not a resident of this state.

(aa) **Dealer or dealers.**—A general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, or motorcycle dealer, as defined in section one, article six of this chapter, or all of such dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) **Registered dealer or registered dealers.**—A general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, or motorcycle dealer.
dealer, house trailer dealer, trailer dealer, or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) Licensed dealer or licensed dealers.—A general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(dd) Transporter.—Every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(ee) Manufacturer.—Every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by such manufacturer where his books and records are kept and a large share of his business is transacted.

(ff) Street or highway.—The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(gg) Code.—The code of West Virginia, one thousand nine hundred thirty-one, as amended.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-5. Application for specially constructed, reconstructed or foreign vehicles or new vehicles purchased outside this state.

(a) In the event the vehicle to be registered is specially constructed, reconstructed, or a foreign vehicle, such fact shall be stated in the application and with reference to every foreign vehicle which has been registered heretofore outside of this state the owner shall surrender to the department all registration plates, registration cards,
and certificates of title or other evidence of such foreign
registration as may be in his possession or under his
control except as provided in subsection (b) hereof.

(b) Where in the course of interstate operation of a
vehicle registered in another state it is desirable to retain
registration of said vehicle in such other state, such
applicant need not surrender but shall submit for inspec-
tion said evidences of such foreign registration and the
department upon a proper showing shall register said
vehicle in this state but shall not issue a certificate of title
for such vehicle.

c) In the event application for registration and cer-
tificate of title is made for a new vehicle purchased from
a dealer outside this state, a certificate of title shall not
be issued for such vehicle nor shall such vehicle be regis-
tered by the department unless and until such application
shall be accompanied by a certificate of title or a manu-
ufacturer's certificate of origin, or if the state of purchase
does not require a certificate of title such application shall
be accompanied by a manufacturer's certificate of origin,
accompanied by evidence that such seller is a bona fide
dealer of the state in which such vehicle was purchased.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-3. New owner must secure registration and certificate
of title.

The transferee before operating or permitting the oper-
ation of such vehicle upon a highway shall apply for and
obtain the registration thereof, as upon an original regis-
tration, except as otherwise permitted in sections thirteen
and fifteen, article six, or by any other provisions of this
chapter: Provided, That such transferee may operate
such vehicle under the registration of its previous owner
for a period of not more than ten days as provided in
section one, article three of this chapter.

A transferee shall at the same time present the certifi-
cate of title endorsed and assigned as herein before pro-
vided to the department and make application for and
obtain a new certificate of title for such vehicle, except
Section 14 as otherwise permitted in sections four and five of this article.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS; ETC.

Part I. Definitions; Legislative Findings and Public Policy.

§17A-6-1. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

1. "New motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new motor vehicles, or new and used motor vehicles, of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

2. "Used motor vehicle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling used motor vehicles of a type required to be registered under the provisions of this chapter, except, for the purposes of this article only, motorcycles.

3. "House trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used house trailers, or new and/or used house trailers and trailers.

4. "Trailer dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used trailers.
(5) "Motorcycle dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling new and/or used motorcycles.

(6) "Used parts dealer" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of selling any used appliance, accessory, member, portion or other part of any vehicle.

(7) "Wrecker or dismantler" means every person (other than his agents and employees, if any, while acting within the scope of their authority or employment), engaged in, or who holds himself out to the public to be engaged in, the business in this state of dealing in wrecked or damaged motor vehicles or motor vehicle parts for the purpose of selling the parts thereof or scrap therefrom.

(8) "New motor vehicles" means all motor vehicles, except motorcycles and used motor vehicles, of a type required to be registered under the provisions of this chapter.

(9) "Used motor vehicles" means all motor vehicles, except motorcycles, of a type required to be registered under the provisions of this chapter which have been sold and operated, or which have been registered or titled, in this or any other state or jurisdiction.

(10) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers, but shall not include camping, vacation and travel trailers.

(11) "Trailers" means all types of trailers other than house trailers, and shall include, but not be limited to, pole trailers, and semitrailers.

(12) "Sales instrument" means any document resulting from the sale of a vehicle, which shall include, but not be limited to, a bill of sale, invoice, conditional sales contract, chattel mortgage, chattel trust deed, security agreement or similar document.

(13) "Sell," "sale" or "selling" shall, in addition to the
ordinary definitions of such terms, include offering for
sale, soliciting sales of, negotiating for the sale of, dis-
playing for sale, or advertising for sale, any vehicle,
whether at retail, wholesale or at auction. “Selling” shall,
in addition to the ordinary definition of that term, also
include buying and exchanging.

(14) “Applicant” means any person making application
for an original or renewal license certificate under the
provisions of this article.

(15) “Licensee” means any person holding any license
certificate issued under the provisions of this article.

(16) “Predecessor” means the former owner or owners
or operator or operators of any new motor vehicle dealer
business or used motor vehicle dealer business.

(17) “Established place of business” shall, in the case
of a new motor vehicle dealer, mean a permanent loca-
tion, not a temporary stand or other temporary quarters,
owned or leased by the licensee or applicant and actually
occupied or to be occupied by him, as the case may be,
which is or is to be used exclusively for the purpose of
selling new motor vehicles or new and used motor ve-
hicles, which shall have space under roof for the dis-
play of at least one new motor vehicle and facilities and
space therewith for the servicing and repair of at least
one motor vehicle, which servicing and repair facilities
and space shall be adequate and suitable to carry out
servicing and to make repairs necessary to keep and carry
out all representations, warranties and agreements made
or to be made by such dealer with respect to motor vehi-
100 cles sold by him, which shall be easily accessible to the
public, which shall conform to all applicable laws of the
102 state of West Virginia and the ordinances of the munici-
103 pality in which it is located, if any, which shall display
thereon at least one permanent sign, clearly visible from
105 the principal public street or highway nearest said loca-
tion and clearly stating the business which is or shall be
107 conducted thereat, and which shall have adequate facili-
ties to keep, maintain and preserve records, papers and
documents necessary to carry on such business and to
make the same available to inspection by the commissioner
at all reasonable times: Provided, however, That the requirement of exclusive use shall be met even though (i) some new and any used motor vehicles sold or to be sold by such dealer are sold or are to be sold at a different location or locations not meeting the definition of an established place of business of a new motor vehicle dealer, if each such location is or is to be served by other facilities and space of such dealer for the servicing and repair of at least one motor vehicle, adequate and suitable as aforesaid, and each such location used for the sale of some new and any used motor vehicles otherwise meets the definition of an established place of business of a used motor vehicle dealer; (ii) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (iii) farm machinery is sold thereat; and (iv) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(18) "Farm machinery" means all machines and tools used in the production, harvesting or care of farm products.

(19) "Established place of business" shall, in the case of a used motor vehicle dealer, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which is or is to be used exclusively for the purpose of selling used motor vehicles, which shall have facilities and space therewith for the servicing and repair of at least one motor vehicle, which servicing and repair facilities and space shall be adequate and suitable to carry out servicing and to make repairs necessary to keep and carry out all representations, warranties and agreements made or to be made by such dealer with respect to used motor vehicles sold by him, which shall be easily accessible to the public, shall conform to all applicable laws of the state of West Virginia, and the ordinances of the
municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times: Provided, That if a used motor vehicle dealer has entered into a written agreement or agreements with a person or persons owning or operating a servicing and repair facility or facilities adequate and suitable as aforesaid, the effect of which agreement or agreements is to provide such servicing and repair services and space in like manner as if said servicing and repair facilities and space were located in or on said dealer's place of business, then, so long as such an agreement or agreements are in effect, it shall not be necessary for such dealer to maintain such servicing and repair facilities and space at his place of business in order for such place of business to be an established place of business as herein defined: Provided, however, That the requirement of exclusive use shall be met even though (i) house trailers, trailers and/or motorcycles are sold or are to be sold thereat, if, subject to the provisions of section five of this article, a separate license certificate is obtained for each such type of vehicle business, which license certificate remains unexpired, unsuspended and unrevoked; (ii) farm machinery is sold thereat; and (iii) accessory, gasoline and oil, or storage departments are maintained thereat, if such departments are operated for the purpose of furthering and assisting in the licensed business or businesses.

(20) "Established place of business" shall, in the case of a house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, mean a permanent location, not a temporary stand or other temporary quarters, owned or leased by the licensee or applicant and actually occupied or to be occupied by him, as the case may be, which shall be easily accessible to the public, which shall conform to all applicable laws of the
state of West Virginia and the ordinances of the municipality in which it is located, if any, which shall display thereon at least one permanent sign, clearly visible from the principal public street or highway nearest said location and clearly stating the business which is or shall be conducted thereat, and which shall have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on such business and to make the same available to inspection by the commissioner at all reasonable times.

(b) Under no circumstances whatever shall the terms “new motor vehicle dealer,” “used motor vehicle dealer,” “house trailer dealer,” “trailer dealer,” “motorcycle dealer,” “used parts dealer” or “wrecker or dismantler” be construed or applied under this article in such a way as to include a banking institution, insurance company, finance company, or other lending or financial institution, or other person, the state or any agency or political subdivision thereof, or any municipality, who or which owns or shall come in possession or ownership of, or acquire contract rights, or security interests in or to, any vehicle or vehicles or any part thereof and shall sell such vehicle or vehicles or any part thereof for purposes other than engaging in and holding himself or itself out to the public to be engaged in the business of selling vehicles or any part thereof.

(c) It is recognized that throughout this code the term “trailer” or “trailers” is used to include, among other types of trailers, house trailers. It is also recognized that throughout this code the term “trailer” or “trailers” is seldom used to include semitrailers or pole trailers. However, for the purposes of this article only, the term “trailers” shall have the meaning ascribed to it in subsection (a) of this section.

§17A-6-2. Legislative findings and declaration of public policy.

The Legislature hereby determines and finds that in the past some few persons engaged in the business of selling new or used motor vehicles, house trailers, trailers, motorcycles, or used motor vehicle parts, and in the business of wrecking or dismantling motor vehicles, have not had
the necessary qualifications, staff, equipment or facilities
to adequately serve the public; that some few persons
engaged in said businesses have made false and deceptive
claims and advertisements to the public and have engaged
in fraud and other illegal conduct; that certain citizens of
this state have sustained financial losses as a result
thereof; and that in some of said cases there has been no
adequate means to prevent said conduct or protect the
interests of the citizens of West Virginia. It is, therefore,
declared to be the public policy of this state that the busi-
ness of new motor vehicle dealer, used motor vehicle
dealer, house trailer dealer, trailer dealer, motorcycle
dealer, used parts dealer, or wrecker or dismantler,
affects the general welfare of this state and its citi-
zens; that persons without the necessary qualifications,
staff, equipment or facilities to adequately serve the pub-
lic, and persons not of good character or who have or are
likely to attempt to misrepresent their product or engage
in fraudulent or other illegal conduct should not engage
in such businesses; and that such evils may best be pre-
vented and the interests of the public best served by re-
quiring persons in such businesses to meet the qualifica-
tions set forth in this article and to be licensed by the
commissioner of motor vehicles as provided in this
article.


Section

3. License certificate required; engaging in more than one business;
established place of business required; existing licenses.
4. Application for license certificate; insurance; bonds; investigation;
information confidential.
5. License certificate exemption.
6. Refusal or issuance of license certificate; license certificate not
transferable.
7. When application to be made; expiration of license certificate;
renewal.
8. Form and display of license certificate or certified copy thereof;
obtaining certified copy of license certificate; bond.
9. Changes in business; action required; applications for and issuance
of certificates; fees.
§17A-6-3. License certificate required; engaging in more than one business; established place of business required; existing licenses.

(a) No person shall engage or represent or advertise that he is engaged or intends to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, in this state, unless and until he shall first obtain a license certificate therefor as provided in this article, which license certificate remains unexpired, unsuspended and unrevoked. Any person desiring to engage in more than one such business must, subject to the provisions of section five of this article, apply for and obtain a separate license certificate for each such business.

(b) Except for the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer, each place of business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer and wrecker or dismantler, must be an established place of business as defined for such business in said section one.

(c) Any license certificate and special plates issued by the commissioner under the former provisions of article six or article seven or section six, article ten of this chapter, and which have not been cancelled, suspended or revoked prior to the effective date of this article shall be governed by the provisions of this article and shall remain valid until their expiration, unless such license certificate is sooner suspended or revoked in accordance with the provisions of this article.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on such form as may be prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do
business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use of such vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each such vehicle, as follows: Ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, such application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;
(2) If the applicant be an individual, the full name and address of the applicant and any trade-name under which he will engage in said business;
(3) If the applicant be a copartnership, the full name and address of each partner therein, the name of the copartnership, its post-office address and any trade name under which it will engage in said business;
(4) If the applicant be a corporation, its name, the state of its incorporation, its post-office address and the full name and address of each officer and director thereof;
(5) The location of each place in this state at which the applicant will engage in said business and whether the same is owned or leased by the applicant;
(6) Whether the applicant, any partner, officer or director thereof has previously engaged in said business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;
(7) Whether the applicant, any partner, officer, director or employer thereof has previously applied for a
license certificate under the provisions of this article or a
similar license certificate in this or any other state, and if
so, whether such license certificate was issued or refused,
and, if issued, whether it was ever suspended or revoked;
(8) A statement of previous general business experi-
ence and past history of the applicant; and
(9) Such other information as the commissioner may
reasonably require which may include information re-
ating to any contracts, agreements or understandings
between the applicant and other persons respecting the
transaction of said business, and any criminal record of
the applicant if an individual, or of each partner if a
copartnership, or of each officer and director, if a corpora-
tion.
(c) In the case of an application for a license certificate
to engage in the business of new motor vehicle dealer,
such application shall, in addition to the matters outlined
in subsection (b) of this section disclose:
(1) The make or makes of new motor vehicles which
the applicant will offer for sale in this state during the
ensuing fiscal year; and
(2) The exact number of new motor vehicles, if any,
sold at retail in this state by such applicant or his prede-
cessor, if any, during the preceding fiscal year, and if no
new motor vehicles were sold at retail in this state by
such applicant or his predecessor, if any, during the pre-
ceding fiscal year, the number of new motor vehicles the
applicant reasonably expects to sell at retail in this state
during the ensuing fiscal year.
(d) In the case of an application for a license certificate
to engage in the business of used motor vehicle dealer,
such application shall in addition to the matters outlined
in subsection (b) of this section, disclose the exact num-
ber of used motor vehicles, if any, sold at retail in this
state by such applicant or his predecessor, if any, during
the preceding fiscal year, and if no used motor vehicles
were sold at retail in this state by such applicant or his
predecessor, if any, during the preceding fiscal year, the
number of used motor vehicles the applicant reasonably
expects to sell at retail in this state during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, such application shall disclose such information as the commissioner may reasonably require.

(f) Such application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be, and in the case of an application for a license certificate to engage in the business of a new motor vehicle dealer, used motor vehicle dealer, or house trailer dealer, such application must be accompanied by a bond of the applicant in the penal sum of two thousand dollars, in such form as may be prescribed by the commissioner, conditioned that the applicant will not in the conduct of his business practice any fraud which, or make any fraudulent representation which, shall cause a financial loss to any purchaser, seller, or financial institution or agency, or the state of West Virginia, with a corporate surety thereon authorized to do business in this state, which bond shall be effective as of the date on which the license certificate sought is issued.

(g) Upon receipt of any such fully completed application, together with any bond required as aforesaid, the certificate of insurance as aforesaid and the appropriate fee as hereinafter provided in section ten of this article, the commissioner may conduct such investigation as he deems necessary to determine the accuracy of any statements contained in such application and the existence of any other facts which he deems relevant in considering such application. To facilitate such investigation, the commissioner may withhold issuance or refusal of the license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the provisions of this article and any information submitted therewith shall be confidential for the use of the department and the license certificate appeal board created in section twenty of this article. No person shall divulge any information contained in any such application or any
§17A-6-5. License certificate exemption.

Any new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer or motorcycle dealer receiving a vehicle in trade of a type other than that he is licensed to sell hereunder may sell such vehicle without obtaining a license certificate to engage in the business of selling vehicles of such type and without being considered to be a dealer in vehicles of such type.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

(a) Upon the basis of the application and all other information before him, the commissioner shall make and enter an order denying the application for a license certificate and refusing the license certificate sought, which denial and refusal shall be final and conclusive unless an appeal is taken in accordance with the provisions of section twenty-one of this article, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a copartnership, or the officers and directors, if a corporation):

1. Has failed to furnish the required bond;
2. Has failed to furnish the required certificate of insurance;
3. Has knowingly made false statement of a material fact in his application;
4. Has habitually defaulted on financial obligations;
5. Has been convicted of a felony within five years immediately preceding receipt of the application by the commissioner;
6. So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state;
7. Does not or will not have and/or maintain at each place of business [subject to the qualification contained in subdivision (17), subsection (a), section one of this
article with respect to a new motor vehicle dealer] an
established place of business as defined for the business
in question in said section one;
(8) Has been guilty of any fraudulent act in connection
with the business of new motor vehicle dealer, used motor
vehicle dealer, house trailer dealer, trailer dealer, motor-
cycle dealer, used parts dealer, or wrecker or dismantler;
or
(9) Has done any act or has failed or refused to per-
form any duty for which the license certificate sought
could be suspended or revoked were it then issued and
outstanding.
Otherwise, the commissioner shall issue to the applicant
the appropriate license certificate which shall entitle the
licensee to engage in the business of new motor vehicle
dealer, used motor vehicle dealer, house trailer dealer,
trailer dealer, motorcycle dealer, used parts dealer, or
wrecker or dismantler, as the case may be, during the
period, unless sooner suspended or revoked, for which the
license certificate is issued.
(b) A license certificate issued in accordance with the
provisions of this article shall not be transferable.
§17A-6-7. When application to be made; expiration of license
certificate; renewal.
(a) Every person licensed under the former provisions
of article seven of this chapter shall make application for
a license certificate under the provisions of this article at
least thirty days before expiration of his license granted in
accordance with said article seven.
(b) Every license granted under the former provisions
of article seven of this chapter shall, unless sooner sus-
pended or revoked, expire on June thirtieth, one thousand
nine hundred sixty-eight, and every license certificate
issued in accordance with the provisions of this article
shall, unless sooner suspended or revoked, expire on June
thirtieth next following the issuance thereof.
(c) A license certificate may be renewed each year in
the same manner, for the same fee as prescribed in section
ten of this article and upon the same basis as an original
license certificate is issued under section six of this article. All applications for the renewal of any license certificate shall be filed with the commissioner at least thirty days before the expiration thereof.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

(a) The commissioner shall prescribe the form of license certificate for each type of business required to be licensed under the provisions of this article, and each such license certificate shall have printed thereon the seal of the department and such other information as the commissioner may prescribe, and shall show as to any licensee the location of each place of business of such licensee. The license certificates for each type of business shall show the year for which issued and shall be serially numbered. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his licensed business at more than one location, he shall, upon application therefor, obtain from the commissioner for each such place of business one certified copy of his license certificate. A fee of one dollar shall be paid for each such certified copy. Each licensee shall keep his license certificate or certified copy thereof conspicuously posted at each place of business.

(c) A licensee shall keep the bond and liability insurance required by section four of this article in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have the right to cancel such bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

(d) In the event of the loss or destruction of a license certificate or a certified copy thereof, the licensee shall immediately make application for a certified copy of the license certificate. A fee of one dollar shall be required for any such certified copy.
§17A-6-9. Changes in business; action required; applications for and issuance of certificates; fees.

Every new motor vehicle dealer, used motor vehicle dealer and house trailer dealer shall notify the commissioner within sixty days from and after the date on which any of the following changes in the business occur:

(1) A change of the location of any place of business;
(2) A change of the name or trade name under which the licensee engages or will engage in the business;
(3) The death of the licensee or any partner or partners thereof;
(4) A change in any partners, officers or directors;
(5) A change in ownership of the business;
(6) A change in the type of legal entity by and through which the licensee engages or will engage in the business;
(7) The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

When any change specified in subdivisions (1), (2), (3), (4), (5) and/or (6) occurs, an application for a new license certificate shall immediately be filed with the commissioner: Provided, That when a subdivision (3), (4) and/or (5) change is involved, an application for a new license certificate need not be filed during the balance of the license year if the change results from death and a member of the family of such deceased person succeeds to his interest in the business. Thereupon, a new license certificate shall be issued incorporating the changes specified in said subdivisions (1), (2), (3), (4), (5) and/or (6) and reflecting any new licensee occasioned thereby, if there is then no reason for refusing said license certificate as specified in section six of this article. No new license certificate shall be required for any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, receiver or master, appointed pursuant to law, who shall take charge of or operate such business for the purpose of winding up the affairs of such business or protecting the interests of the creditors of such business. No
additional fee for the balance of the license year shall be required for the issuance of any new license certificate issued as a result of any change specified in this section.

**Part III. Fees and Dealer Special Plates Generally.**

**Section**

10. Fee required for license certificate; dealer special plates.
11. Expiration of special plates.
13. Use of special plates; records to be maintained by dealer.
15. Temporary registration plates or markers.

**§17A-6-10. Fee required for license certificate; dealer special plates.**

(a) The annual fee required for a license certificate to engage in the business of new motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer’s special plate which shall be known as a Class D special plate. Up to nine additional Class D special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commission for such purpose and the payment of a fee of five dollars for each additional Class D special plate. Any such licensee who obtains a total of ten Class D special plates as aforesaid shall be entitled to receive additional Class D special plates on a formula basis, that is, one additional Class D special plate per twenty new motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commission for such purpose and the payment of a fee of five dollars for each such additional Class D special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D special plate per twenty new motor vehicles which such licensee estimates
on his application for his license certificate he will sell at
retail in this state during said ensuing fiscal year. Any
such licensee may obtain Class D special plates in addition
to the ten plates authorized above and any authorized on
a formula basis, but the cost of each such Class D special
plate shall be thirty dollars.

(b) The annual fee required for a license certificate to
engage in the business of used motor vehicle dealer shall
be one hundred dollars. This fee shall also entitle such
licensee to one dealer’s special plate which shall be known
as a Class D-U/C special plate. Up to four additional
Class D-U/C special plates shall be issued to any such
licensee upon application therefor on a form prescribed
by the commissioner for such purpose and the payment
of a fee of five dollars for each additional Class D-U/C
special plate. Any such licensee who obtains a total of
five Class D-U/C special plates as aforesaid shall be en-
titled to receive additional Class D-U/C special plates on
a formula basis, that is, one additional Class D-U/C special
plate per thirty used motor vehicles sold at retail in this
state by such licensee or his predecessor during the pre-
ceding fiscal year, upon application therefor on a form
prescribed by the commissioner for such purpose and the
payment of a fee of five dollars for each such additional
Class D-U/C special plate: Provided, however, That in
the case of a licensee who did not own or operate such
business during such preceding fiscal year and who has no
predecessor who owned or operated such business during
the preceding fiscal year, additional Class D-U/C special
plates shall be issued, for the ensuing fiscal year only, on
a formula basis of one additional Class D-U/C special
plate per thirty used motor vehicles which such licensee
estimates on his application for his license certificate he
will sell at retail in this state during said ensuing fiscal
year. Any such licensee may obtain Class D-U/C special
plates in addition to the five plates authorized above and
any authorized on a formula basis, but the cost of each
such Class D-U/C special plate shall be thirty dollars.

(c) The annual fee required for a license certificate to
engage in the business of house trailer dealer or trailer
dealer, as the case may be, shall be twenty-five dollars.
This fee shall also entitle such licensee to four dealer's special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-T/R special plate.

(d) The annual fee required for a license certificate to engage in the business of motorcycle dealer shall be ten dollars. This fee shall also entitle such licensee to two dealer's special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any such dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class F special plate.

(e) The annual fee required for a license certificate to engage in the business of used parts dealer, or wrecker or dismantler, as the case may be, shall be fifteen dollars.

(f) All of the special plates provided for in this section shall be of such form and design and contain such other distinguishing marks or characteristics as the commissioner may prescribe.

§17A-6-11. Expiration of special plates.

Every special plate or plates issued hereunder shall expire at midnight on June thirtieth next following the issuance thereof. A new plate or plates for the ensuing fiscal year may be obtained as specified in section ten of this article.

§17A-6-12. Operation of vehicles under special plates.

A dealer holding an unexpired, unsuspended and unrevoked license certificate and owning a vehicle or vehicles of the type he is licensed to sell hereunder and which are otherwise required to be registered under this chapter may operate or move the same upon the streets and highways without registering each such vehicle upon condition that any such vehicle display thereon a special plate issued to such dealer as provided in this article.
§17A-6-13. Use of special plates; records to be maintained by dealer.

(a) The Class D special plates and the Class D-U/C special plates herein authorized may be used for any purpose on any motor vehicle owned by the dealer to whom issued and which is being operated with his knowledge and consent and not otherwise: Provided, That under no circumstances whatever shall a Class D special plate or Class D-U/C special plate be used on any work or service vehicle owned by a dealer, on any vehicle owned by a dealer and offered for hire or lease, or on any vehicle which has been sold by a dealer to a customer.

(b) Under no circumstances whatever shall a Class D-T/R special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any house trailer or other trailer owned by a dealer and offered for hire or lease, or on any house trailer or other trailer which has been sold by a dealer to a customer: Provided, however, That notwithstanding such sale or any provision of this code to the contrary, a Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the house trailer dealer’s established place of business to a place designated by such customer.

(c) Under no circumstances whatever shall a Class F special plate be used for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways, or on a motorcycle owned by a dealer and offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

(d) Every dealer entitled to and issued a special plate or plates under the provisions of this article shall keep a written record of the salesman, mechanic, employee, agent, officer, or other person, to whom a special plate or plates have been assigned by such dealer. Every such record shall be open to inspection by the commissioner or his representatives or any law-enforcement officer.
§17A-6-14. Operation of motor vehicles by certain dealers under special permits.

The commissioner is hereby authorized to grant, in his discretion, special permits to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of such dealer, or from such place of business to a place of business of another such dealer. Each special permit shall be good only for one trip, and such permit shall not be used by any such dealer in lieu of any registration card or plate required by this chapter.

§17A-6-15. Temporary registration plates or markers.

(a) In order to permit a vehicle which is sold to a purchaser by a dealer to be operated on the streets and highways pending receipt of the annual registration plate from the department for such vehicle, the commissioner may, subject to the limitations and conditions hereinafter set forth, deliver temporary vehicle registration plates or markers to dealers who in turn may, subject to the limitations and conditions hereinafter set forth, issue the same to purchasers of vehicles, but such purchasers must comply with the pertinent provisions of this section.

(b) Application by a dealer to the commissioner for such temporary registration plates or markers shall be made on the form prescribed and furnished by the commissioner for such purpose and shall be accompanied by a fee of one dollar for each such temporary registration plate or marker. No refund or credit of fees paid by dealers to the commissioner for temporary registration plates or markers shall be allowed, except that in the event the commissioner discontinues the issuance of such temporary plates or markers, dealers returning temporary registration plates or markers to the commissioner may petition for and be entitled to a refund or a credit thereof. No temporary registration plates or markers shall be delivered by the commissioner to any dealer in house trailers only, and no such temporary plates or markers shall be issued for or used on any house trailer for any purpose.
(c) Every dealer who has made application for and received temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, a record of all temporary registration plates or markers issued by him, and a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers which the commissioner may require. Each such record shall be kept for a period of at least three years from the date of the making thereof. Every dealer who issues a temporary registration plate or marker shall, within three days after he issues such plate or marker, send to the department a copy of the temporary registration plate or marker certificate properly executed by such dealer and the purchaser. No temporary registration plates or markers may be delivered to any dealer until such dealer has fully accounted to the commissioner for the temporary registration plates or markers last delivered to such dealer, by showing the number issued to purchasers by such dealer and any on hand.

(d) A dealer shall not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bona fide purchaser of the vehicle to be registered; nor shall a dealer issue a temporary registration plate or marker to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary registration plate or marker to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the department to exchange such annual registration plate of a different class in accordance with the provisions of section one, article four of this chapter; nor shall a dealer lend to anyone, or use on any vehicle which he may own, a temporary registration plate or marker. It shall be unlawful for any dealer to issue any temporary registration plate or marker knowingly containing any misstatement of fact, or knowingly to insert any false information upon the face thereof.

(e) Every dealer who issues temporary registration plates or markers shall affix or insert clearly and indelibly
on the face of each temporary registration plate or marker
the date of issuance and expiration thereof, and the make
and motor or serial number of the vehicle for which
issued.
(f) If the commissioner finds that the provisions of
this section or his directions are not being complied with
by a dealer, he may suspend the right of such dealer to
issue temporary registration plates or markers.
(g) Every person who is issued a temporary regis-
tration plate or marker shall execute and send an
application for an annual registration plate to the
department, previous to or not later than fifteen days
from the day on which the temporary registration plate
or marker is issued to such purchaser.
(h) Every person to whom a temporary registration
plate or marker has been issued shall permanently destroy
such temporary registration plate or marker immediately
upon receiving the annual registration plate for such
vehicle from the department: Provided, That if the an-
nual registration plate is not received within twenty
days of the issuance of the temporary registration plate
or marker, the owner shall, notwithstanding the fact
that the annual registration plate has not been received,
immediately and permanently destroy the temporary
registration plate or marker: Provided, however, That
not more than one temporary registration plate or marker
shall be issued to the same bona fide purchaser for the
same vehicle.
(i) A temporary registration plate or marker shall
expire and become void upon the receipt of the annual
registration plate from the department or upon the re-
escission of the contract to purchase the vehicle in question,
or upon the expiration of twenty days from the date of
issuance, depending upon whichever event shall first
occur.

Part IV. General Records Required.

Section
16. Records must be kept and maintained.
17. Sales instrument; full disclosure required.
§17A-6-16. Records must be kept and maintained.

(a) In addition to all other records herein required to be kept and maintained, each licensee shall keep and maintain a record in such form and for such period of time as may be prescribed by the commissioner of:

(1) Every vehicle which is bought, sold, or exchanged by such licensee or received or accepted by such licensee for sale or exchange;

(2) Every used vehicle body or chassis which is sold or otherwise disposed of; and

(3) Every vehicle which is bought or otherwise acquired and wrecked or dismantled by such licensee.

(b) Every such record shall state the name and address of the person from whom such vehicle was purchased or acquired and the date thereof, the name and address of the person to whom any such vehicle, vehicle body, or chassis was sold or otherwise disposed of, the date thereof, and a description of every such vehicle, body or chassis by name and identifying numbers sufficient to identify the same.

(c) Every licensee shall also keep and maintain such other records as the commissioner may require by reasonable rules and regulations authorized in section nine, article two of this chapter and promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§17A-6-17. Sales instrument; full disclosure required.

Every vehicle sale at retail shall be evidenced by a sales instrument in writing which shall contain all of the agreements between the buyer and the seller, which shall be signed by the buyer and seller or a representative of either party, and a copy of which shall be delivered to the buyer before such sale becomes final. Such instrument shall contain the following information, so far as applicable:

(1) Name of the seller;

(2) Name of the buyer;

(3) Make, year and model of the vehicle;
(4) Cash sale price;
(5) Cash paid down by the buyer;
(6) Amount credited to buyer for any trade-in;
(7) Provisions as to whether the seller or buyer is to pay off the indebtedness, if any, on the trade-in;
(8) Description of the trade-in;
(9) Amount of the time differential charge (if not a cash sale so far as the dealer is concerned);
(10) Amount charged by seller for insurance and the type of coverage afforded; if any insurance does not include coverage for bodily injury and/or property damage caused to others, the sales instrument shall expressly so state; and
(11) Net balance due from buyer and the terms of payment (if not a cash sale so far as the dealer is concerned). A copy of such sales instrument shall be kept and maintained among the records of the seller as provided in section sixteen of this article.

Part V. Suspension or Revocation of License Certificates; Surrender of Plates, Etc.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license certificate; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the department, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved. The commissioner may
suspend or revoke a license certificate or suspend a special
dealer plate or plates if the commissioner finds that the
licensee:

(1) Has failed or refused to comply with the laws of
this state relating to the registration and titling of vehicles
and the giving of notices of transfers, the provisions and
requirements of this article, or any reasonable rules and
regulations authorized in section nine, article two of this
chapter and promulgated, to implement the provisions of
this article, by the commissioner in accordance with the
provisions of article three, chapter twenty-nine-a of this
code;

(2) Has given any check in the payment of any fee
required under the provisions of this chapter which is
dishonored;

(3) In the case of a dealer, has knowingly made or per-
mitted any unlawful use of any dealer special plate or
plates issued to him; or

(4) In the case of a dealer, has a dealer special plate
or plates to which he is not lawfully entitled.

The commissioner shall suspend or revoke a license cer-
tificate if the commissioner finds that the licensee:

(1) Has knowingly made false statement of a material
fact in his application for the license certificate then issued
and outstanding;

(2) Has habitually defaulted on financial obligations;

(3) Does not have and/or maintain at each place of
business [subject to the qualification contained in sub-
division (17), subsection (a), section one of this article
with respect to a new motor vehicle dealer] an established
place of business as defined for the business in question in
said section one;

(4) Has been guilty of any fraudulent act in connec-
tion with the business of new motor vehicle dealer, used
motor vehicle dealer, house trailer dealer, trailer dealer,
motorcycle dealer, used parts dealer or wrecker or dis-
mantler;

(5) Has defrauded or is attempting to defraud any
buyer or any other person, to the damage of the buyer or
such other person, in the conduct of the licensee’s business;

(6) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(7) Has committed fraud in the registration of a vehicle;

(8) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(9) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(10) Has wilfully failed or refused to perform any legally binding written agreement with any buyer;

(11) Has made a fraudulent sale or purchase;

(12) Has failed or refused to assign, reassign or transfer a proper certificate of title; or

(13) Has a license certificate to which he is not lawfully entitled.

The commissioner shall also suspend or revoke the license certificate of a licensee if he finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to such licensee were he then applying for the same.

(b) Whenever a licensee fails or refuses to keep the bond or liability insurance required by section four of this article in full force and effect, the license certificate of such licensee shall automatically be suspended unless and until a bond or certificate of insurance as required by said section four is furnished to the commissioner, in which event the suspension shall be vacated.

(c) Suspensions hereunder shall continue until the cause therefor has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate, which application shall be processed in the same manner and the license certificate
sustain or revoke a license certificate or suspend a special dealer plate or plates if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules and regulations authorized in section nine, article two of this chapter and promulgated, to implement the provisions of this article, by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(2) Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him; or

(4) In the case of a dealer, has a dealer special plate or plates to which he is not lawfully entitled.

The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee:

(1) Has knowingly made false statement of a material fact in his application for the license certificate then issued and outstanding;

(2) Has habitually defaulted on financial obligations;

(3) Does not have and/or maintain at each place of business [subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer] an established place of business as defined for the business in question in said section one;

(4) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer or wrecker or dismantler;

(5) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or
such other person, in the conduct of the licensee's business;

(6) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(7) Has committed fraud in the registration of a vehicle;

(8) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(9) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(10) Has wilfully failed or refused to perform any legally binding written agreement with any buyer;

(11) Has made a fraudulent sale or purchase;

(12) Has failed or refused to assign, reassign or transfer a proper certificate of title; or

(13) Has a license certificate to which he is not lawfully entitled.

The commissioner shall also suspend or revoke the license certificate of a licensee if he finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to such licensee were he then applying for the same.

(b) Whenever a licensee fails or refuses to keep the bond or liability insurance required by section four of this article in full force and effect, the license certificate of such licensee shall automatically be suspended unless and until a bond or certificate of insurance as required by said section four is furnished to the commissioner, in which event the suspension shall be vacated.

(c) Suspensions hereunder shall continue until the cause therefor has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate, which application shall be processed in the same manner and the license certificate
issued or refused on the same grounds as any other ap-
lication for a license certificate is processed, considered
and passed upon, except that any previous suspension and
the revocation may be given such weight in deciding
whether to issue or refuse such license certificate as is
meet and proper under all of the circumstances.

§17A-6-19. Notice of refusal, or suspension or revocation, of
license certificate or of suspension of right to issue tem-
porary registration plates or markers or of suspension
of a dealer special plate or plates; relinquishing license
certificate, dealer special plate or plates and temporary
plates or markers.

(a) Whenever the commissioner shall refuse to issue a
license certificate, or shall suspend or revoke a license
certificate, or shall suspend the right of a dealer to issue
temporary plates or markers under the provisions of
section fifteen of this article, or shall suspend a dealer
special plate or plates, he shall make and enter an
order to that effect and shall cause a copy of such order
to be served in person or by certified mail, return receipt
requested, on the applicant or licensee, as the case may be.

(b) Whenever a license certificate is suspended or re-
voked, the commissioner shall in the order of suspension
or revocation direct the licensee to return to the depart-
ment his license certificate and any special dealer plates
and temporary registration plates or markers issued in
conjunction with the issuance of such license certificate
or such business, which temporary registration plates or
markers are still in the licensee’s possession. Whenever
the right of a dealer to issue temporary registration plates
or markers is suspended or a dealer special plate or plates
are suspended as aforesaid, the commissioner shall in the
order of suspension direct the licensee to return to the
department all temporary registration plates or markers
issued in conjunction with such business and still in the
licensee’s possession or such dealer special plate or plates.
It shall be the duty of the licensee to comply with any
such order following expiration of the period provided in
section twenty-one of this article for an appeal to the
license certificate appeal board (created in section twenty
29 of this article) without an appeal to such board having
30 been timely perfected, and immediately if a license certifi-
31 cate were suspended in accordance with the provisions of
32 subsection (b), section eighteen of this article. Whenever
33 a licensee shall fail or refuse to comply with any such
34 order as herein specified, the commissioner shall proceed
35 as provided in section seven, article nine of this chapter.

**Part VI. License Certificate Appeal Board Created; Right
to Appeal Hearing; Original Action by Board.**

Section

20. Creation of license certificate appeal board; general provisions
related thereto.

21. Appeals to board.

22. Original action by board; matters confidential.

§17A-6-20. Creation of license certificate appeal board; general
provisions related thereto.

(a) There is hereby created a license certificate appeal
board (hereinafter in this article referred to as the board)
which shall be composed of five members who shall be
appointed by the governor by and with the advice and
consent of the senate. At least three of said members
shall have been engaged in this state in the motor ve-
hicle business for a period of at least five years imme-
diately preceding the date of their appointment. No
more than three members shall be members of the same
political party.

(b) The members of the board shall be appointed for
overlapping terms of five years, except that the original
appointments of said members shall be for five, four,
three, two and one years, respectively. Any member
whose term expires may be reappointed by the governor.
Members of the board shall, before performing any duty,
take and subscribe to the oath required by section five,
article four of the constitution of this state. Members
shall serve at the will and pleasure of the governor. Any
vacancy shall be filled by appointment of the governor
for the unexpired term of the member whose office shall
be vacant. Any vacancy occurring in the office of a mem-
ber of the board shall be filled by appointment within
sixty days after such vacancy occurs.
(c) The board shall elect a chairman who shall serve at the will and pleasure of the board. A majority of the members of said board shall constitute a quorum. Meetings shall be held at the call of the chairman or upon the written request of three members at such time and place as is designated in such call or request. Until otherwise provided by law, members shall serve without compensation or reimbursed expenses whatever. The board shall make and keep accurate records of all of its proceedings and make certificates thereof or therefrom as may be required by law. The commissioner shall furnish the board with reasonable assistance, office space, secretarial help and supplies when needed, within the limits of available funds. The board is hereby authorized to promulgate rules and regulations, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in such board by the provisions of this article.

§17A-6-21. Appeals to board.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section nineteen of this article may appeal to the board for an order vacating or modifying such order or for such order as the commissioner should have entered. The person so appealing shall be known as the appellant and the commissioner shall be known as the appellee.

(b) An appeal shall be perfected by filing a notice of appeal with the board and with the commissioner within thirty days after the date upon which the appellant received the copy of such order. Said notice of appeal shall be in such form and contain such information as may be prescribed by the board, but in all cases shall contain a description of any order appealed from and the grounds for said appeal. The filing of the notice of appeal shall operate to automatically stay or suspend execution of any order which is the subject matter of said appeal, except for an order suspending a license certificate in accordance with the provisions of subsection (b),
section eighteen of this article. The appellant shall give
security for the costs of said appeal in such form and
amount as the commissioner may reasonably prescribe.
If the appellant does not substantially prevail on such
appeal, such costs shall be assessed against him by the
board and may be collected by an action at law or other
proper remedy.

(c) Within ten days after receipt of his copy of said
notice of appeal, the commissioner shall prepare and
certify to the board the complete record of the proceed-
ings out of which the appeal arises, including, but not
limited to, all documents and correspondence in the com-
missioner's file relating to the matter in question. The
board shall hear the appeal de novo and evidence may be
offered on behalf of the appellant and appellee.

(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing on appeal and the administrative pro-
cedures in connection with and following such hearing,
with like effect as if the provisions of said article five were
set forth in extenso in this subsection.

(e) Any such appeal hearing shall be conducted by a
quorum of the board. For the purpose of conducting any
such appeal hearing, any member of the board shall have
the power and authority to issue subpoenas and subpoenas
duces tecum in the name of the board, in accordance with
the provisions of section one, article five, chapter twenty-
ine-a of this code. All subpoenas and subpoenas duces
tecum shall be issued and served within the time and for
the fees and shall be enforced, as specified in section one,
article five of said chapter twenty-nine-a, and all of the
said section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of an appeal
hearing hereunder.

(f) Upon receipt of said record from the commissioner,
the board shall set a hearing date which shall be not less
than ten nor more than twenty days thereafter unless
there is a postponement or continuance. The board may
postpone or continue any hearing on its own motion, or
for good cause shown upon the application of the appellant
or appellee. The appellant and the appellee shall be given notice of said hearing in person or by certified mail, return receipt requested. Any such hearing shall be held in Charleston, Kanawha county, West Virginia, unless another place is specified by the board. At any such hearing the appellant may represent himself or be represented by any attorney at law admitted to practice before any circuit court of this state and the appellee shall be represented by the attorney general, or his assistants, in accordance with the provisions of section twenty, article two of this chapter. The board may direct the appellant and the appellee to produce evidence on any point considered by the board to be relevant and material.

(g) After such hearing and consideration of all of the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the commissioner, or shall make and enter such order as the commissioner should have entered. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and his attorney of record, if any, and upon the appellee, in person or by certified mail, return receipt requested.

(h) The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section twenty-three of this article.

§17A-6-22. Original action by board; matters confidential.

In the event the commissioner shall receive a sworn complaint in writing alleging a violation of any of the provisions of this chapter by a licensee, and the commissioner does not within thirty days thereafter make and enter an order with respect thereto, the complainant may file a sworn complaint with the board. Upon receipt of any such sworn complaint, the board may investigate the matter, and hold a hearing with respect thereto and decide the matter with like effect as if the commissioner had made and entered an order and the licensee had appealed such order to the board. Any complaint and any investi-
gation shall be kept in strictest confidence by the board, the commissioner, the department, the licensee, the complainant and all other persons, unless and until the commissioner or board suspends or revokes the license certificate of the licensee involved.

**Part VII. Judicial Review.**

Section 23. Judicial review.

§17A-6-23. Judicial review.

(a) Any person or the commissioner adversely affected by a final order made and entered by the board is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation and in accordance with the provisions of section twenty, article two of this chapter. The board or commissioner, with the written approval of the attorney general, may employ special counsel to represent the board or commissioner in a particular proceeding.

**Part VIII. Actions for Injunctive Relief.**

Section 24. Actions to enjoin violations; injunctive relief.

§17A-6-24. Actions to enjoin violations; injunctive relief.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any
provision of this article or any final order of the commis-

sioner or board, the commissioner may apply in the name

of the state, to the circuit court of the county in which the

violation or violations or any part thereof has occurred,

is occurring or is about to occur, or the judge thereof in

vacation, for an injunction against such person and any

other persons who have been, are or are about to be, in-

volved in, or in any way participating in, any practices,

acts or omissions, so in violation, enjoining such person

or persons from any such violation or violations. Such

application may be made and prosecuted to conclusion

whether or not any such violation or violations have re-
sulted or shall result in prosecution or conviction under

the provisions of article eleven of this chapter.

(b) Upon application by the commissioner, the circuit

courts of this state may by mandatory or prohibitory in-
junction compel compliance with the provisions of this
article and all final orders of the commissioner or board.
The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.

(c) The judgment of the circuit court upon any appli-
cation permitted by the provisions of this section shall
be final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be
sought in the manner and within the time provided by
law for appeals from circuit courts in other civil cases.

(d) The commissioner shall be represented in all such
proceedings by the attorney general or his assistants and
in such proceedings in the circuit courts by the prose-
cutting attorneys of the several counties as well, all with-
out additional compensation and in accordance with the
provisions of said section twenty, article two of this
chapter. With the written approval of the attorney gen-
eral, the commissioner may employ special counsel to
represent him in any such proceeding.

Part IX. Inspections; Violations and Penalties.

Section
25. Inspections; violations and penalties.

§17A-6-25. Inspections; violations and penalties.

(a) The commissioner and all law-enforcement offi-
cers of the state, acting at the commissioner's request, are hereby authorized to inspect the place of business, vehicles and pertinent records, documents and papers of any person required to be licensed under the provisions of this article to the extent deemed reasonably necessary to determine compliance with and violations of this article. For the purpose of making any such inspection, the commissioner and such law-enforcement officers are authorized, at reasonable times, to enter in and upon any such place of business and any other public garage or enclosure where vehicles are sold, stored, hired or repaired.

(b) Any person who shall violate any provision of this article or any final order of the commissioner or board hereunder shall be guilty of a misdemeanor, and the provisions of article eleven of this chapter governing violations of this chapter generally shall be fully applicable thereto.

Part X. Construction.

Section 26. Construction.


(a) The provisions of this article shall be liberally construed so as to effectuate its purposes.

(b) All of the provisions of this chapter expressly stated to be applicable throughout such chapter shall be as fully applicable to this act as if they were set forth in extenso herein.

ARTICLE 7. SPECIAL STICKERS.

Section 1. Operation of vehicles by financial institution or wrecker under special stickers; application and fees; expiration.

2. Operation of motor vehicles by dealer or other persons under special stickers; application and fees; expiration.

3. Operation of house trailer under special sticker; application and fees; expiration.

§17A-7-1. Operation of vehicles by financial institution or wrecker under special stickers; application and fees; expiration.

The commissioner may upon application therefor on a form prescribed by him issue to a banking institution,
insurance company, finance company, or other type of
lending or financial institution, or a person engaged
exclusively in wrecking or dismantling vehicles, a paper
sticker or decal to be affixed to the left side of the rear
window of a motor vehicle or at a place on any other type
vehicle as designated by the commissioner. Such sticker
or decal shall be of a size to be designated by the commis-
sioner and shall be serially numbered and shall have
provision thereon to indicate the date of issuance thereof.
A fee of one dollar per sticker shall be charged by the
department to the applicant therefor. Such sticker or
decal shall be valid for the operation of a vehicle, whether
under its own power or while being towed, one time only
over the streets or highways of this state, and upon being
once affixed to a vehicle shall become invalid for subse-
quent use on that or any other vehicle.

§17A-7-2. Operation of motor vehicles by dealer or other per-
sons under special stickers; application and fees; expira-
tion.

A member of the department of public safety may at
any detachment office, upon application therefor on a form
prescribed by the commissioner, issue to a licensed dealer
or any other person other than those specified in section
one of this article, a paper sticker or decal to be affixed to
the left side of the rear window of a motor vehicle. Such
sticker or decal shall be of a size to be designated by the
commissioner and shall be serially numbered and shall
have provision thereon to indicate the date of issuance
thereof. A fee of one dollar per sticker shall be charged
and shall be deposited in the state road fund. Such sticker
or decal shall be valid for forty-eight hours after its is-
suance for the operation of a motor vehicle, whether under
its own power or while being towed, one time only over
the streets or highways of this state, and upon being once
affixed to a motor vehicle shall become invalid for subse-
quent use on that or any other vehicle.

§17A-7-3. Operation of house trailer under special sticker;
apPLICATION AND FEES; EXPIRATION.

Upon application therefor on a form prescribed by him
the commissioner may issue to the owner of a house trailer a special one-movement sticker of such design and content, as may be prescribed by him: Provided, That such special sticker shall not be issued to any house trailer or trailer dealer. Such sticker shall be valid for the movement of a house trailer one time only over the streets and highways of this state, and no more than one such sticker may be issued for the same house trailer while owned by the same person. A fee of two dollars shall be received by the department for each such special sticker.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

Section 6. References elsewhere to this section shall be read, construed and understood to mean section eighteen, article six.

7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; wilful failure or refusal to surrender.

§17A-9-6. References elsewhere to this section shall be read, construed and understood to mean section eighteen, article six.

Wherever in this code or elsewhere in law reference is made to this section, such reference shall henceforth be read, construed and understood to mean section eighteen, article six of this chapter.

§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; wilful failure or refusal to surrender.

Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit, or any license certificate or dealer special plates issued under the provisions of article six of this chapter, is cancelled, suspended or revoked as authorized in this chapter, the owner, holder or other person in possession of such evidences shall, except as otherwise provided in said article six, immediately return the evidences of the registration, title, permit or license so cancelled, suspended, or revoked, together with any dealer special plates relating to any such license certificate, or any
dealer special plate or plates if such alone be suspended, to the department. If any person shall wilfully fail or refuse to return to the department the evidences of the registration, title, permit or license so cancelled, suspended, or revoked, or any dealer special plates, when obligated so to do as aforesaid, the commissioner shall forthwith notify the superintendent of the department of public safety who shall, as soon as possible, secure possession thereof and return same to the department. Said superintendent of the department of public safety shall make a report in writing to the commissioner, within two weeks after being so notified by the commissioner, as to the result of his efforts to secure the possession and return of such evidences of registration, title, permit or license, or any dealer special plates. For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate, or dealer special plate, which the owner, holder or other person in possession thereof shall have wilfully failed or refused, as aforesaid, to return to the department within ten days from the time that such cancellation, suspension or revocation becomes effective, and which shall have been certified to the superintendent of the department of public safety as aforesaid, the owner or holder shall, before the same may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of ten dollars, which fee shall be collected by the department of motor vehicles, paid into the state treasury and credited to the general fund to be appropriated to the department of public safety for application in the enforcement of the road laws. Only one fee shall be collected on each such reinstatement for each vehicle to which any such cancellation, suspension or revocation relates.

ARTICLE 12. SEVERABILITY AND EFFECT OF CHAPTER.

Section

1. Severability.

§17A-12-1. Severability.

If any part or parts of this chapter shall be held to be unconstitutional or invalid such unconstitutionality or
invalidity shall not affect the constitutionality or validity
of the remaining part or parts of this chapter. The Leg-
islature hereby declares that it would have passed the
remaining part or parts of this chapter if it had known
that such part or parts thereof would be declared un-
constitutional or invalid.

CHAPTER 115
(Senate Bill No. 31—By Mr. Moreland)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, 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 eight, making it unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race on any public street or highway in this state; defining "speed race"; providing criminal offenses and penalties; providing for the mandatory revocation of an operator's or chauffeur's license or nonresident's privilege to drive upon conviction for engaging in or aiding or abetting any speed race; and pertaining to the circumstances under which a new operator's or chauffeur's license or nonresident's privilege to drive may be obtained following such revocation.

Be it enacted by the Legislature of West Virginia:

That article six, 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 eight, to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.

Section

8. Racing on streets and highways prohibited; legislative findings; penalties; mandatory revocation of licenses.

§17C-6-8. Racing on streets and highways prohibited; legislative findings; penalties; mandatory revocation of licenses.
The Legislature hereby determines and finds that the racing of motor vehicles on the public streets and highways of this state, whether within or in excess of the lawful speed limit (much of which racing is commonly referred to as "drag racing"), is extremely dangerous to life, limb and property, and that such racing is an ever increasing problem. It is, therefore, hereby declared to be the public policy of this state to prohibit all forms of such racing on the public streets and highways, and to provide criminal penalties for, and require the revocation of the operator’s or chauffeur’s license or nonresident’s privilege to drive, of those persons who are convicted of engaging in or aiding or abetting such racing.

(a) It shall be unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state. For the purposes of this subdivision, "speed race" means:

(1) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or

(2) The operation of a motor vehicle in speed acceleration competition against time; or

(3) The operation of a motor vehicle in speed competition with another motor vehicle or motor vehicles where the speed exceeds the lawful speed limit.

(b) Any person who violates the provisions of subdivision (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than fifty dollars nor more than one hundred dollars, and for a second offense by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not less than six days nor more than sixty days, or by both such fine and imprisonment, and for a third and each subsequent offense by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for not less than sixty days nor more than four months, or by both such fine and imprisonment. For the purposes of this section, a forfeiture of bail or collateral deposited...
to secure such person's appearance in court, which forfeiture has not been vacated, shall be equivalent to a final conviction. If at the time of any violation of the provisions of subdivision (a) of this section by any person as an operator of a motor vehicle, such person was not entitled to operate a motor vehicle in this state because his operator's or chauffeur's license, or privilege to drive in this state if such person be a nonresident, had earlier been suspended or revoked, then in addition to the offense, penalties and mandatory revocation provided for in this section, the provisions of section three, article four, chapter seventeen-b of this code shall be applicable.

(c) Whenever a person is convicted for a violation of the provisions of subdivision (a) of this section, which conviction has become final, the commissioner of motor vehicles shall in addition to the penalties hereinbefore provided, forthwith:

(1) For a first offense, revoke the operator's or chauffeur's license of such person, or such person's privilege to drive in this state if he be a nonresident, for a period of six months;

(2) For a second offense occurring within a two-year period, revoke the operator's or chauffeur's license of such person, or such person's privilege to drive in this state if he be a nonresident, for a period of two years; or

(3) For a third or any subsequent offense occurring within a five-year period, revoke the operator's or chauffeur's license of such person, or such person's privilege to drive in this state if he be a nonresident, for a period of five years.

Whenever a person is convicted as aforesaid for a second, third or subsequent offense which occurred while such person's operator's or chauffeur's license, or privilege to drive in this state if he be a nonresident, was revoked pursuant to the provisions of this subdivision, the period or periods of mandatory revocation for such second, third or subsequent offense shall be cumulative and shall run consecutively. If a person's junior or probationary operator's license is revoked in accordance with the provisions
81 of this subdivision, such person may not apply for a regu-
82 lar operator’s or chauffeur’s license until he reaches
83 eighteen years of age or until the period of revocation
84 has elapsed, whichever event shall last occur. Notwith-
85 standing the provisions of section eight, article three,
86 chapter seventeen-b of this code, any person whose oper-
87 ator’s or chauffeur’s license, or privilege to drive in this
88 state if he be a nonresident, is revoked, under the pro-
89 visions of this subdivision, may, following the period or
90 periods of revocation, immediately apply for and obtain
91 a new operator’s or chauffeur’s license or nonresident’s
92 privilege to drive, as the case may be, if and only if the
93 commissioner of motor vehicles is satisfied, after investi-
94 gation of the character, habits and driving ability of such
95 person, that it will be safe to permit such person to drive
96 a motor vehicle on the public streets and highways. Any
97 period of revocation imposed under the provisions of this
98 subdivision shall be computed from the date of such revo-
99 cation.

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CHAPTER 116

(Senate Bill No. 236—By Mr. McKown)

[Passed March 11, 1967; in effect July 1, 1967. 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 buses.

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:

ARTICLE 12. SPECIAL STOPS REQUIRED.

Section
7. Overtaking and passing school bus; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.
§17C-12-7. Overtaking and passing school bus; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.

(a) The driver of a vehicle on any street or highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus flashing warning signal lights, as referred to in section eight of this article, and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words “school bus” in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating “school bus” shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency, or individual, shall have all flashing warning lights removed; all lettering removed or permanently obscured; and such bus shall be painted a color other than chrome yellow before sale or transfer is made except when sold or transferred for the transportation of school children.

(c) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.
AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the length of school buses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

Section

4. Height and length of vehicles and loads.

§17C-17-4. Height and length of vehicles and loads.

1 (a) No vehicle including any load thereon shall exceed a height of twelve feet six inches, except as provided in section eleven-b of this article, and except that vehicles used as automobile transports including any load thereon shall not exceed a height of thirteen feet six inches, but the owners of such automobile transports shall be responsible to the state road commissioner for any damage to bridges or other road structures and to municipalities and utility companies for any damage to wires, traffic devices or other structures, and to any person suffering property damage when any such damage is proximately caused by the height of such vehicle or vehicles and load being in excess of twelve feet six inches.

14 (b) No motor vehicle including any load thereon shall exceed a length of thirty-five feet extreme overall dimension, inclusive of front and rear bumpers, except that any bus, truck or trackless trolley coach equipped with three axles or any school bus with two axles shall
not exceed an overall length, inclusive of front and rear
bumpers, of forty feet.

(c) No combination of vehicles coupled together shall
consist of more than two units and no such combination
of vehicles including any load thereon shall have an
overall length, inclusive of front and rear bumpers, in
excess of fifty feet, except as provided in section eleven-b
of this article, and except as otherwise provided in re-
spect to the use of a pole trailer as authorized in section
two of this article: Provided, however, That the limitation
that no combination of vehicles coupled together
shall consist of more than two units shall not apply to
a combination of vehicles coupled together by a saddle
mount device used to transport motor vehicles in a drive-
away service when no more than two saddle mounts are
used: And provided further, That equipment used in
said combination meets the requirements of the safety
regulations of the interstate commerce commission.

CHAPTER 118

(Senate Bill No. 62—By Mr. Barnett)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section nine, article seventeen,
chapter seventeen-c of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
amount of allowable gross weights for vehicles, combina-
tion of vehicles and loads.

Be it enacted by the Legislature of West Virginia:

That section nine, 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

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway such vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted in this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight of this article, the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

<table>
<thead>
<tr>
<th>Distance in feet between the extremes of any group of two or more consecutive axles</th>
<th>Maximum load in pounds carried on any group of two or more consecutive axles</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2 Axles</td>
</tr>
<tr>
<td>4</td>
<td>32,000</td>
</tr>
<tr>
<td>5</td>
<td>32,000</td>
</tr>
<tr>
<td>6</td>
<td>32,000</td>
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<td>7</td>
<td>32,000</td>
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<tr>
<td>8</td>
<td>32,610</td>
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<tr>
<td>9</td>
<td>33,580</td>
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<tr>
<td>10</td>
<td>34,550</td>
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<tr>
<td>11</td>
<td>35,510</td>
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<td>12</td>
<td>36,000</td>
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<td>22</td>
<td></td>
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<tr>
<td>23</td>
<td></td>
</tr>
</tbody>
</table>
### Table: Vehicle Load Limits

| Distance in feet between the extremes of any group of two or more consecutive axles | Maximum load in pounds carried on any group of two or more consecutive axles |
|---|---|---|---|---|---|
| 24 | 2 Axles | 52,500 | 53,000 | 53,500 | 54,000 |
| | 3 Axles | 61,600 | 62,000 | 62,400 | 62,800 |
| | 4 Axles | 63,720 | 64,150 | 64,580 | 65,010 |
| | 5 Axles | 66,400 | 67,000 | 67,600 | 68,200 |
| | 6 Axles |  |  |  |  |
| 25 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 26 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 27 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 28 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 29 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 30 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 31 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 32 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 33 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 34 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 35 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 36 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 37 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 38 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 39 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 40 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 41 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 42 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 43 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 44 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |
| 45 | 2 Axles |  |  |  |  |
| | 3 Axles |  |  |  |  |
| | 4 Axles |  |  |  |  |
| | 5 Axles |  |  |  |  |
| | 6 Axles |  |  |  |  |

Provided, That no vehicle or combination of vehicles shall have a gross weight, including the load, in excess of sixty thousand eight hundred pounds, except as otherwise provided in this article.

### CHAPTER 119

(Senate Bill No. 55—By Mr. Barnett)

[Passed March 2, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article seventeen, chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to violation of the motor vehicle weight laws and the imposition of penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section fourteen, 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

§17C-17-14. Penalties for violation of weight laws; impounding vehicles.

Any owner, lessee or borrower of a vehicle or combination of vehicles who operates or permits to be operated on any highway such vehicle or combination of vehicles with any axle load in excess of that permitted by section eight of this article, plus a tolerance of five per cent, or with a total gross weight with load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section nine or eleven-a of this article, plus a tolerance of five per cent, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine scheduled in proportion to the amount of pounds in excess of the registered weight, plus a tolerance of five per cent or in excess of allowable weights for single axle, plus a tolerance of five per cent, or in excess of allowable weights for groups of two or more consecutive axles, plus a tolerance of five per cent, in accordance with the schedule in words and figures as follows:

Pounds in excess of registered weight, plus a tolerance of five per cent, or in excess of allowable weights for single axle, plus a tolerance of five per cent, or in excess of allowable weights for groups of two or more consecutive axles, plus a tolerance of five per cent. | Amount of Fine
--- | ---
1 to 4,000 | $20.00
4,001 to 5,000 | $25.00
5,001 to 6,000 | $60.00
6,001 to 7,000 | $70.00
7,001 to 8,000 | $80.00
In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment of any such fine and costs assessed for such violation, or shall have been acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicles: Provided, That if the owner of such vehicle is a resident of or has a
69 principal place of business located in this state, and said
70 vehicle has been duly licensed in the state, then said
71 vehicle shall not be impounded but the arresting officer
72 shall deliver to the driver a written notice stating such
73 violation; the place, date and time; the license number of
74 said vehicle; the title number and name and address of
75 the owner; the driver's name, address, and the number
76 of his operator's or chauffeur's card or permit; and the
77 court, place, date and time for hearing, which shall be
78 within five days of such violation (Saturdays, Sundays
79 and holidays, excluded). A copy of such notice shall
80 within forty-eight hours be mailed to the owner of said
81 vehicle. Upon the failure by such owner or his or its
82 agent to appear at the designated place and time, or upon
83 failure to pay the fine and costs assessed for such viola-
84 tion, unless such owner shall have been acquitted of such
85 charge, the court shall order a bond or the impounding of
86 said vehicle as provided in this section.

CHAPTER 120
(Senate Bill No. 396—By Mr. Carrigan)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section eight, article two, chap-
ter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the change
of boundaries of cities, towns or villages.

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:

ARTICLE 2. CREATION, ALTERATION, DISSOLUTION AND POW-
ERS OF MUNICIPAL CORPORATIONS.

Section
8. Change of boundary of city, town or village.
§8-2-8. Change of boundary of city, town or village.

Five per cent or more of the freeholders residing in any city, town or village desiring to change the corporate limits thereof, may file their petition in writing with the council thereof, setting forth the change proposed in the metes and bounds of such corporation, and asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied by an accurate survey showing the territory embraced within the new boundaries. The council, upon bond in penalty prescribed by the council with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters residing in such city, town or village to be taken upon the proposed change at a time and place therein to be named in the order, not less than twenty nor more than thirty days from the date thereof, and if it be proposed to include any additional territory within such corporate limits, the council shall, at the same time, order a vote of all the qualified voters residing in such additional territory, and of all persons, firms or corporations owning any freehold interest in any real property situate within the territory, whether they reside therein or not, to be taken upon the question on the same day, at some convenient place on or near such additional territory: Provided, That the additional territory to be included shall conform to the requirements of section one of this article, and the determination that the additional territory does so conform shall be reviewable by the circuit court on certiorari to the council. The election shall be held, superintended and conducted, and the result thereof ascertained, certified and returned, in the same manner and by the same persons as elections for city, town or village officers. The ballots cast on such question shall have written or printed on them the words:

☐ For change of corporate limits
☐ Against change of corporate limits

If a majority of all the votes so cast within such corporation be in favor of the proposed change, and no ad-
ditional territory is proposed to be included therein, the corporate limits of such city, town or village shall thereafter be as proposed by such petition. But, if additional territory is proposed to be included in such corporate limits, such change shall not take effect unless a majority of all the votes cast by persons eligible to vote in such additional territory shall also be cast in favor of such change. Any firm or corporation may vote by its manager, president, or executive officer duly designated in writing by such firm or corporation.

The governing body of a municipality may by ordinance provide for the annexation of additional territory without ordering a vote on the question if (1) sixty per cent of the qualified voters residing in such additional territory file with the governing body their petition to be annexed, and (2) sixty per cent of all persons (who are sui juris), firms and corporations owning any freehold interest in any real property situate within such territory, whether they reside or have a place of business therein or not, file with the governing body their petition to be annexed: Provided, That the additional territory shall conform to the requirements of section one of this article, and the determination that the additional territory does so conform or that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court on certiorari to the council. A qualified voter also owning a freehold interest in any real property situate within such territory may join in either the voters' petition of the territory or the freeholders' petition of such territory, but he shall not sign more than one petition. It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners from the territory. In determining the total number of eligible petitioners, a qualified voter of the territory who also owns a freehold interest in any real property situate within the territory shall be counted as one person only.

When an election is held in any city, town or village respecting a change in the boundary thereof, another such election relating to the same territory or any part thereof shall not be held for a period of one year.
The provisions of this and the following section shall provide the exclusive procedure for effecting a change in the boundary of every city, town or village except municipalities which have adopted a home rule charter under the provisions of chapter eight-a of the code: Provided, however, That any city, town or village, otherwise authorized by said chapter eight-a or by special charter may utilize the procedures respecting minor boundary adjustments set forth in section twenty-five, article six of said chapter eight-a.

CHAPTER 121

(House Bill No. 909—By Mr. Boiarzsky and Mr. Grewe)

[Passed February 22, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-a, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the levy, imposition and collection of a tax by municipal corporations on the purchases of intoxicating liquors within a municipality, and providing an exception.

Be it enacted by the Legislature of West Virginia:

That section thirteen-a, 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:

ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPAL CORPORATIONS, COUNCILS OR OFFICERS.

Section 13a. Tax on purchases of intoxicating liquors in municipalities.

§8-4-13a. Tax on purchases of intoxicating liquors in municipalities.

1 The governing authority of every municipal corporation, whether operating under a general, special or home
rule charter, may levy and collect a tax upon all purchases of intoxicating liquors from the alcohol beverage control commissioner within a municipality: Provided, That such municipality shall have no authority to levy or collect any such tax, on the intoxicating liquors sold by or purchased from holders of a license issued under the provisions of article seven, chapter sixty of this code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase. The tax shall not exceed three per cent of the purchase price.

Any ordinance imposing the tax authorized by this section shall be certified by the mayor or other chief officer of the municipality to the West Virginia alcohol beverage control commissioner. The commissioner by appropriate rules and regulations shall provide for the collection of such tax and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

CHAPTER 122
(Com. Sub. for House Bill No. 791—By Mrs. Paul and Mr. Bobbitt)

[Passed March 10, 1967; in effect 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 twenty-nine, authorizing and empowering municipalities to make application for, receive and accept grants from the federal government, or any agency thereof, for, on behalf of and for use by certain nonstock, nonprofit corporations, subject to certain provisions and limitations.
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 twenty-nine, to read as follows:

ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPAL CORPORATIONS, COUNCILS OR OFFICERS.

Section 29. Power to secure federal grants for certain nonprofit organizations.

§8-4-29. Power to secure federal grants for certain nonprofit organizations.

1 (a) Any municipality in this state, however created, whether operating under a legislative charter, home rule charter, or general law only, and notwithstanding any statutory or charter provisions to the contrary, is, subject to the provisions and limitations set forth in subsections (b) and (c) of this section, hereby authorized and empowered to make application for, receive and accept grants from the federal government, or any agency thereof, for, on behalf of and for use by a nonstock, nonprofit corporation organized under the provisions of chapter thirty-one of this code for charitable, patriotic or philanthropic or other public purposes and operating within the corporate limits of said municipality. The Legislature hereby finds that the support of such nonstock, nonprofit corporations is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

19 (b) No federal funds received by a municipality under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body.

26 (c) Under no circumstances whatever shall any action taken by any municipality under the authority of this section give rise to or create any indebtedness on the
29 part of such municipality, the governing body of such
30 municipality, any member thereof or any municipal offi-
31 cial or employee.

CHAPTER 123

(Senate Bill No. 249—By Mr. Kaufman and Mr. Poffenbarger)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article four-a, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated sec­
 tion twenty-eight, authorizing and empowering two or
more municipalities to consolidate functions with respect
to the financing, acquisition, construction, reconstruction,
establishment, equipment, extension, enlargement, im­
provement, betterment, renovation, custody, operation and
maintenance of municipal public works.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. MUNICIPAL PUBLIC WORKS; BONDS.

Section

28. Consolidation of municipal functions with respect to public works.

§8-4A-28. Consolidation of municipal functions with respect
to public works.

(a) At the time of enactment of the original provisions
2 of this article, the Legislature found and declared that
3 municipal public works, as defined herein, are necessary
4 for the public health, safety and welfare. The Legislature
5 does hereby further find and declare that the consolida-
6 tion, wherever possible, of municipal functions with re-
7 spect to such public works by two or more municipalities
will result in substantial economies in the operation of municipal government and will thus further promote the public health, safety and welfare. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) Any two or more municipalities in this state, however created, whether operating under a legislative charter, home rule charter or general law only, whether located in the same county or different counties, and notwithstanding any statutory or charter provisions to the contrary, are hereby authorized and empowered to provide, by ordinance or proper resolution of each municipality, for the joint financing, acquisition, construction, reconstruction, establishment, equipment, extension, enlargement, improvement, betterment, renovation, custody, operation and maintenance of any municipal public works. A certified copy of each such ordinance or proper resolution shall be filed in the office of the clerk of the county court of the county or counties in which the municipalities are located and in the office of the state tax commissioner. Such financing, acquisition, construction, reconstruction, establishment, equipment, extension, enlargement, improvement, betterment, renovation, custody, operation and maintenance shall be under the supervision and control of a board composed of an equal number of members appointed by the governing body of each participating municipality, and such board shall have and may exercise all of the authority and power vested by the provisions of this article in the "board" of a single municipality, as the term "board" is defined in section three of this article: Provided, That any contract or agreement relating to the financing, acquisition, construction, reconstruction, establishment, equipment, extension, enlargement, improvement, betterment or renovation of any such works, and any trust indenture with respect thereto shall be approved by the governing body of each participating municipality.

(c) The other provisions of this article were enacted without regard to the possible consolidation of municipal functions and consequently such other provisions speak in terms of a single municipality. In applying such other
provisions to two or more municipalities desiring to operate or operating under the provisions of this section, the following principles and requirements shall be applicable and controlling:

(1) The authority and power vested by the other provisions of this article in a single municipality or the municipal authorities of a single municipality shall be exercised only by the participating municipalities or the participating municipal authorities acting in concert;

(2) In acquiring all necessary lands, right of ways and property by gift, grant, purchase, condemnation or otherwise, the participating municipalities shall act jointly;

(3) Title to all property shall be taken jointly in the names of the participating municipalities;

(4) All revenue bonds shall be issued by each participating municipality in such amounts as shall be prescribed by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amounts of such bonds, and such amounts may be the same with respect to each municipality, or they may be different, taking into account the population of each participating municipality served by such public works or any other relevant factor or factors;

(5) The just and equitable rates or charges required by the provisions of section seventeen of this article shall be established by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amount of such rates or charges, and such rates or charges may be the same with respect to each municipality, or they may be different, taking into account the population of each participating municipality served by such public works or any other relevant factor or factors; and

(6) Any requirements, limitations and restrictions applicable to a single municipality under the other provisions of this article shall govern each participating municipality.

(d) If any provision of this section is held to be invalid, such invalidity shall not affect other provisions of the
section, and to this end the provisions of this section are declared to be severable.

CHAPTER 124

(House Bill No. 621—By Mr. Lohr and Miss Tsapis)

[Passed March 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the removal, discharge, suspension, reduction in rank or pay, reduction in numbers and reinstatement of the members of a municipal police department, and providing that such members may be suspended for certain limited periods without any right to a hearing or review.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five-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:

ARTICLE 5A. CIVIL SERVICE FOR POLICE DEPARTMENTS.

Section 13. Removal, discharge, suspension, reduction in rank or number of members of police department.

§8–5A–13. Removal, discharge, suspension, reduction in rank or number of members of police department.

1 (a) No member of any police department within the terms of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as herein-after provided in section twenty; further, no such employee shall be removed, discharged, suspended or reduced except as provided in this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term “suspension” shall mean...
only (1) a suspension in excess of ten days or (2) a sus-
pension in any calendar year which when added to any
previous suspension or suspensions within the same cal-
endar year results in a total period of suspension in ex-
cess of ten days within such same calendar year, and
for the purpose of the remainder of this subsection and
said subsections (b) and (c), a person shall not be con-
sidered to be suspended or sought to be suspended un-
less his suspension meets the foregoing definition of said
term. In every case of such removal, discharge, suspen-
sion or reduction, a copy of the statement of reasons there-
for and of the written answer thereto, if the person sought
to be removed, discharged, suspended or reduced desires
to file such written answer, shall be furnished to the civil
service commission and entered upon its records. If the
person sought to be removed, discharged, suspended or
reduced shall demand it, the civil service commission
shall grant him a public hearing, which hearing shall be
held within a period of ten days from the filing of the
charges in writing and the written answer thereto. At
such hearing the burden shall be upon the removing,
discharging, suspending or reducing officer, hereinafter
in this section referred to as "removing officer," to justify
his action and in the event the removing officer fails to
justify his action before the civil service commission,
then the person removed, discharged, suspended or re-
duced shall be reinstated with full pay, forthwith and
without any additional order, for the entire period dur-
ing which he may have been prevented from performing
his usual employment, and no charges shall be officially
recorded against his record. A written record of all testi-
mony taken at such hearing shall be kept and preserved
by the civil service commission, which record shall be
sealed and not be open to public inspection, if no appeal
be taken from the action of the commission.
(b) In event that the civil service commission shall sus-
tain the action of the removing officer the person removed,
discharged, suspended or reduced shall have an imme-
diate right of appeal to the circuit court of the county
wherein the city or municipality is situated. Said appeal
shall be taken within ninety days from the entry by the
53 civil service commission of its final order; upon such an
54 appeal being taken and docketed with the clerk of the
55 circuit court of said county, the circuit court shall pro-
56 ceed to hear the appeal upon the original record taken
57 therein and no additional proof shall be permitted to be
58 introduced. The circuit court's decision shall be final,
59 saving to the employee, however, the right to petition
60 the supreme court of appeals for a review of the circuit
61 court's decision.
62 (c) The removing officer and the person sought to be
63 removed, discharged, suspended or reduced shall at all
64 times, both before the civil service commission and upon
65 appeal, be given the right to employ counsel to repre-
66 sent them: Provided, however, That if for reasons of
67 economy or other reasons it shall be deemed necessary
68 by any city or municipality to reduce the number of
69 paid members of any police department then said munic-
70 ipality shall follow the procedure set forth in subsection
71 (d) of this section.
72 (d) The reduction in members of the said police de-
73 partment of said city or municipality shall be effected
74 by suspending the last man or men, including proba-
75 tioners, that have been appointed to said police depart-
76 ment. Such removal shall be accomplished by suspending
77 the number desired in the inverse order of their appoint-
78 ment: Provided, however, That in event the said police
79 department shall again be increased in numbers to the
80 strength existing prior to such reduction of members the
81 said policemen suspended under the terms of this article
82 shall be reinstated in the inverse order of their suspen-
83 sion before any new appointment to said police depart-
84 ment shall be made.

CHAPTER 125

(House Bill No. 681—By Miss Tsapis and Mr. Seibert)

(Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.)

AN ACT to amend and reenact section twenty, article six,
chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment upon retirement without disability; payments for retirement at sixty-five; payments for permanent disability; credit for military service.

Be it enacted by the Legislature of West Virginia:

That section twenty, article six, 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 6. FIRE DEPARTMENT AND FIRE COMPANIES; FIREMEN’S AND POLICEMEN’S PENSION OR RELIEF FUNDS.

Section 20. Payments upon retirement without disability; payments for retirement at sixty-five; payments for permanent disability; credit for military service.

§8-6-20. Payments upon retirement without disability; payments for retirement at sixty-five; payments for permanent disability; credit for military service.

1 Any member of a municipal fire department or police department who is entitled to benefits of said fund, and who has been in the service of such department for twenty years, may upon written application to the board of trustees, be retired from all service from such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of an annual pension commencing upon his retirement or upon his reaching the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to fifty per cent of such member’s average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest compensation while a member of the department, or an amount of one hundred fifty dollars per month, whichever shall be greater; and any member of such department who is entitled to benefits of said fund and who has been in the service of such department for more than twenty years at the time of his retirement, as herein provided, shall in addition to the aforesaid pension authorized to be paid upon
retirement after twenty years of service and reaching
the age of fifty years, receive an additional sum per
month during the remainder of his life, equal to one
per cent of such average monthly salary for each year of
the first five additional years served with the department
in excess of the said twenty years, but any member of
such department whose service has been interrupted
by duty with the armed forces of the United States as
hereinafter provided, shall be eligible for retirement
benefits immediately upon retirement, regardless of his
age, if he shall otherwise be eligible for such benefits.

Any member of a municipal fire or police department,
on reaching the age of sixty-five years shall be retired
in the manner herein provided: Each member of the fire
and police department shall, at the request of the board
of trustees, furnish said board of trustees with a birth
certificate or other satisfactory proof of his date of birth,
at the time of his appointment to the fire or police de-
partment. When a member of the fire or police depart-
ment shall have reached the age of sixty-five years,
the said board of trustees shall notify the mayor or other
chief executive officer of the municipal corporation,
within thirty days of such member’s sixty-fifth birthday;
and the mayor or other chief executive officer shall cause
such sixty-five-year-old member of the fire or police de-
partment to be retired within a period of not more than
thirty additional days. It shall be the duty of each member
of the fire or police department who is a member at the
time this article becomes effective to furnish the said
necessary proof of his date of birth to the said board of
trustees within a reasonable length of time, said length
of time to be determined by the said board of trustees;
and then the board of trustees and the mayor or other
chief executive officer of the municipal corporation shall
proceed to act in the manner herein provided, and shall
cause all members of the fire or police department who
are over the age of sixty-five years to be retired in not
less than sixty days from the date this article becomes
effective. The amount of pension such members shall re-
ceive shall depend upon their length of service as herein
provided. Such member need not have served twenty
years to be eligible to receive the pension hereinabove described.

The sum to be paid to each permanently disabled member shall be equal to fifty per cent of the salary being received by such member, at the time he is so disabled, or the sum of one hundred fifty dollars per month, whichever shall be greater: Provided, however, That any member who is permanently disabled, after having served twenty years in such department, and, who has attained the age of fifty years, shall be entitled to such sum as shall equal fifty per cent of such member's average salary during the five fiscal years, not necessarily consecutive, in which he received his highest compensation while a member of the department, and also the additional sum per month equal to one per cent of such average monthly salary for each year of the first five years served in excess of said twenty years, or a total amount of one hundred fifty dollars per month, whichever shall be greater.

Absence from the service because of sickness or injury shall not be construed as time out of service.

Any member of any fire or police department covered by this article who has been required to or shall at any future time be required to enter the armed forces of the United States by a conscription, by reason of being a member of some reserve unit of the armed forces, or a member of the West Virginia national guard, or who enlists in one of the armed services of the United States during hostilities, and upon his receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from date of discharge, and is accepted by the pension board doctors as being mentally and physically capable of performing his required duties as a member of such fire or police department, shall be given credit for continuous service in said fire or police department, and his pension rights shall be governed as herein provided.

No member of the fire or police department shall be required to pay the monthly assessment as now required
Any member or former member of a fire or police department, who at the time this section takes effect is receiving any pension, payment or benefit from the firemen's or policemen's pension or relief funds, shall continue to receive a pension, payment or benefit, in the amount of one hundred fifty dollars per month.

AN ACT to amend and reenact section thirteen, article six-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the removal, discharge, suspension, reduction in rank or pay, reduction in numbers and reinstatement of the members of a municipal fire department, and providing that such members may be suspended for certain limited periods without any right to a hearing or review.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article six-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:

ARTICLE 6A. PAID FIRE DEPARTMENTS.

13. Removal, discharge, suspension or reduction in rank or pay; reduction in number of members.

§8-6A-13. Removal, discharge, suspension or reduction in rank or pay; reduction in number of members.

1 (a) No member of any fire department within the terms of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause,
which shall not be religious or political, except as hereinafter provided in section seventeen; further, no such employee shall be removed, discharged, suspended or reduced except as provided in this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term “suspension” shall mean only (1) a suspension in excess of fifteen days or (2) a suspension in any calendar year which when added to any previous suspension or suspensions within the same calendar year results in a total period of suspension in excess of fifteen days within such same calendar year, and for the purpose of the remainder of this subsection and said subsections (b) and (c), a person shall not be considered to be suspended or sought to be suspended unless his suspension meets the foregoing definition of said term. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the person sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the person sought to be removed, discharged, suspended or reduced shall demand it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing and the written answer thereto. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as “removing officer,” to justify his action, and in the event the removing officer fails to justify his action before the civil service commission, then the person removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the civil service commission, which record shall
be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In event that the civil service commission shall sustain the action of the removing officer the person removed, discharged, suspended or reduced, shall have an immediate right of appeal to the circuit court of the county wherein the city or municipality is situated. Said appeal shall be taken within ninety days from the entry by the civil service commission of its final order; upon such an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record taken therein and no additional proof shall be permitted to be introduced. The circuit court’s decision shall be final, saving to the employee, however, the right to petition the supreme court of appeals for a review of the circuit court’s decision.

(c) The removing officer and the person sought to be removed, discharged, suspended or reduced shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them: Provided, however, That if for reasons of economy or other reasons it shall be deemed necessary by any city or municipality to reduce the number of paid members of any fire department then said municipality shall follow the procedure set forth in subsection (d) of this section.

(d) The reduction in members of the said fire department of said city or municipality shall be effected by suspending the last man or men, including probationers, that have been appointed to said fire department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, however, That in event the said fire department shall again be increased in numbers to the strength existing prior to such reduction of members the said firemen suspended under the terms of this article shall be reinstated in the inverse order of their suspension before any new appointment to said fire department shall be made.
AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, authorizing counties and municipalities to make appropriations to certain nonstock, nonprofit corporations for public purposes, subject to certain specified limitations.

Be it enacted by the Legislature of West Virginia:

That chapter 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 seventeen, to read as follows:

ARTICLE 17. CONTRIBUTIONS TO NONSTock, NONPROFIT CORPORATIONS FOR PUBLIC PURPOSES.

Section 1. Legislative findings; authority of counties and municipalities to make appropriations; limitations and restrictions.

§8-17-1. Legislative findings; authority of counties and municipalities to make appropriations; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

9 (b) When a nonstock, nonprofit corporation, chartered under the laws of this state, (1) is organized for the construction, maintenance or operation of museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science, and provides in its charter that its buildings or facilities, or a designated portion
thereof, shall be devoted to the use by the public for all
purposes set forth in such charter without regard to race,
religion, national origin or economic circumstance,
and free from charge except such as is necessary to pro-
vide the means to keep the buildings, facilities and
grounds in proper condition and repair, and to pay the
cost of insurance, care, management, operations, teach-
ing, and attendants, so that the general public may have
the benefit of such establishment for the uses set forth
in such corporation's charter at as little expense as possi-
bile, (2) provides in its charter that no member, trus-
tee, or member of the board of directors (by whatever
name the same may be called), of the corporation shall
receive any compensation, gain or profit from such cor-
poration, and (3) is operated in compliance with such
charter provisions as aforesaid, then the county court of
the county in which such nonstock, nonprofit corporation
is operating and the municipality (however created,
whether operating under a legislative charter, home rule
charter, or general law only, and notwithstanding any
statutory or municipal charter provisions to the contrary)
in which such corporation is operating, if any, may ap-
propriate funds subject to the provisions and limitations
set forth in subsections (c) and (d) of this section, to
such nonstock, nonprofit corporation, for such public pur-
poses: Provided, That such funds may be expended and
otherwise utilized only within the county, or municipal-
ity, as the case may be, making the appropriation thereof.
In every such case, the county court or governing body
of any such municipality and such corporation may agree
for the appointment of additional members to the board
of directors of such corporation by such county court or
governing body, either as regular members or in an
ex officio capacity.
(c) No funds appropriated by a county court or mu-
icipality under the authority of this section shall be
disbursed by any such nonstock, nonprofit corporation
unless and until the expenditure thereof has been ap-
proved by the county court or the governing body of
such municipality, as the case may be, which made such
appropriation, and such corporation shall upon demand
at any time make a full and complete accounting of all such funds to such county court or governing body, as the case may be, and shall in every event without demand make to such county court or governing body an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by any county court or municipality under the authority of this section give rise to or create any indebtedness on the part of the county, such county court or municipality, the governing body of such municipality, any member of the county court or such governing body or any county or municipal official or employee.

(e) If any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of this section, and to this end the provisions of this section are declared to be severable.

CHAPTER 128

(Senate Bill No. 397—By Mr. Carrigan)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, relating to the change of boundaries of cities subject to said chapter eight-a.

Be it enacted by the Legislature of West Virginia:

That article six, chapter eight-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-six, to read as follows:

ARTICLE 6. CONSOLIDATION.

Section

26. Alternate method for annexation of additional territory.
§8A-6-26. Alternate method for annexation of additional territory.

The governing body of a municipality may by ordinance provide for the annexation of additional territory without ordering a vote on the question if (1) sixty per cent of the qualified voters residing in such additional territory file with the governing body their petition to be annexed, and (2) sixty per cent of all persons (who are sui juris), firms and corporations owning any freehold interest in any real property situate within such territory, whether they reside or have a place of business therein or not, file with the governing body their petition to be annexed: Provided, That the additional territory shall conform to the requirements of section one, article two, chapter eight of this code, and the determination that the additional territory does so conform or that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court on certiorari to the council. A qualified voter also owning a freehold interest in any real property situate within such territory may join in either the voters' petition of the territory or the freeholders' petition of such territory, but he shall not sign more than one petition. It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners from the territory. In determining the total number of eligible petitioners, a qualified voter of the territory who also owns a freehold interest in any real property situate within the territory shall be counted as one person only.

CHAPTER 129

(House Bill No. 786—By Mr. Ours and Mr. Hawse)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 5. Unlawful methods of hunting and fishing.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it shall be unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

3 (2) Dig out, cut out, or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

4 (3) Make use of, or take advantage of, any artificial light in hunting for, or taking any wild animals or wild birds, except that artificial lights such as are ordinarily carried in the hand or on the person may be used for the purpose of taking raccoon, opossum or skunk; or to throw or cast the rays of a spotlight, headlight, or other artificial light, from any vehicle, on any animal or game bird, or attempt to do so, while having in his or their possession or under their control, or in any vehicle or conveyance in which they may be traveling, a cased or uncased firearm or other implement whereby any wild animal or wild bird could be killed, even though such animal be not shot at, injured or killed. The provisions of this subdivision shall not apply if it shall be proven that the headlights of a motor vehicle while traveling on a highway in the usual way, cast a light upon such animal, on or adjacent to such highway, and there was no attempt or intent to locate such animal;

5 (4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne convey-
30 ance, an automobile, or other land conveyance, or from
31 a motor-driven water conveyance, except as may be
32 authorized 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,
36 trap or snare or like device of any kind, any wild turkey,
37 ruffed 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
40 possession such nest or eggs unless authorized to do so
41 under regulations or under a permit by the director;
42 (8) Except as provided in section six of this article,
carry an uncased or loaded gun in any of the woods of
43 this state except during the open firearms hunting sea-
44 son for game animals and nonmigratory game birds
45 within any county of the state, unless he has in his pos-
46 session a permit in writing issued to him by the director:
47 Provided, however, That this section shall not prohibit
48 hunting or taking of unprotected species of wild animals
49 and wild birds and migratory game birds, during the
50 open season, in the open fields, open water and open
51 marshes of the state;
52 (9) Except as provided in section six of this article,
carry an uncased or loaded gun after the hour of five
53 o'clock, antemeridian on Sunday in any woods or on any
54 highway, railroad right of way, public road, field or
55 stream of this state, except at a regularly used rifle, pistol,
56 skeet, target or trap shooting ground or range and noth-
57 ing contained in section eighteen, article eight, chapter
58 sixty-one of the code shall prohibit the use of a gun by
59 a licensed hunter before the hour of five o'clock antemer-
60 idian on Sunday;
61 (10) To have in his possession a loaded firearm or a
62 firearm from the magazine of which all shells and car-
63 tridges have not been removed, in or on any vehicle or
64 conveyance, or its attachments, within the state, except
65 as may otherwise be provided by law or regulation.
66 Except as hereinafter provided, between five o'clock post-
67 meridian of one day and seven o'clock antemeridian,
eastern standard 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 after the hour of five o'clock antemeridian on
Sunday any wild animals or wild birds: Provided, how-
ever, That traps previously and legally set may be tended
after the hour of five o'clock antemeridian 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 hunt-
ing or fishing paraphernalia which cannot be used law-
fully in this state for hunting or fishing, and any con-
servation 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 de-
struction;

(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 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 season, or to fish for, catch, take or kill any fish,
amphibian or aquatic life which is protected by the
provisions of this chapter or regulations of the director,
or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, trans-
port, possess or use any migratory game or nongame
birds included in the terms of conventions between the
United States and Great Britain and between the United
States and United Mexican States for the protection of
migratory birds and game mammals concluded, respec-
tively, August sixteen, one thousand nine hundred six-
ten, and February seven, one thousand nine hundred
thirty-six, except during the time and in the manner and
numbers prescribed by the Federal Migratory Bird
Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living
or dead, any wild bird, other than a game bird; or ex-
pose for sale, or transport within or without the state
any such bird, except as aforesaid. No part of the plum-
age, skin or body of any protected bird shall be sold or
had in possession for sale, except mounted or stuffed
plumage, skin, bodies or heads of such birds legally
taken and stuffed or mounted, irrespective of whether
such bird was captured within or without this state, ex-
cept the English or European sparrow (Passer domes-
ticus), starling (sturnus vulgaris), sharp-shinned hawk
(Accipiter striatus), Cooper's Hawk (Accipiter cooperii),
goshawk (Accipiter gentilis), crow (Corvus brachyrhyn-
chos) and cowbird (Molothrus ater), which shall not be
protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosives or poisonous
mixture placed in any waters of the state for the purpose
of killing or taking fish. Any person violating the provi-
sions of this subdivision shall be guilty of a felony, and,
upon conviction thereof, shall be imprisoned for not less
than six months nor more than three years, and, in the
discretion of the court, may be fined not more than five
hundred dollars;
(21) Have both a bow and a gun in the fields or woods at the same time;
(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;
(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;
(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;
(25) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;
(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any game animal or game bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, however, That dogs may be trained on game animals and game birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided further, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such game animals and game birds, whereby game animals or game birds could be taken or killed; and
(27) Conduct or participate in a field trial, water race or wild hunt hereafter referred to as trial: Provided, however, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request.
CHAPTER 130

(Senate Bill No. 134—By Mr. Gainer)

[Passed February 13, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the trapping of beaver.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 20. Trapping beaver.


No person shall at any time:

1. Set or maintain more than the number of beaver traps, or groups of beaver traps, established as the season limit in any one year by the director;

2. Set any traps for beaver within fifteen feet of the water line on the structure of any beaver house;

3. Have in his possession an untagged beaver hide, or part thereof, within the period beginning thirty days after the end of the open season and ending with the first day of the next succeeding open season for beavers; and

4. Destroy, disturb, or in any manner interfere with dams, houses or burrows of beavers while trapping for or attempting to trap for beavers.

If any person shall unintentionally trap and kill more beavers than fixed by regulations as the season bag limit, he shall, within twenty-four hours thereafter, deliver said beaver or beavers to a conservation officer.
AN ACT to amend and reenact section twenty-one, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reporting and tagging of beaver pelts legally taken.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 20-2-21. Reporting beaver pelts taken; tags.

Each trapper holding a resident state-wide hunting and trapping license or a resident state-wide hunting, trapping and fishing license shall present beaver pelts legally taken to a game checking station or representative of the department within thirty days after the close of a legal season. A tag provided by the department shall be affixed to each beaver pelt or skin and remain attached to the skin until such pelt or skin has been processed into commercial fur.

CHAPTER 132

(Senate Bill No. 138—By Mr. Gainer)

[Passed February 13, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to those authorities authorized to issue licenses under the game and fish law, the duties and responsibilities of such authorities, and certain fees.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 32. Issuance of licenses; duplicate licenses.

§20-2-32. 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 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.

CHAPTER 133

(House Bill No. 627—By Mr. Edgar)

[Passed March 4, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating
to persons who may hunt, fish or trap without a license or permit so to do, and requiring any resident sixty-five years of age or older to carry on his person at all times while hunting, trapping or fishing a card issued by the director of natural resources stating his name, address and date of birth.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 28. When licenses or permits not required.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories shall not be required to obtain licenses or permits as indicated:

2 (a) Bona fide resident landowners or their resident children, or bona fide resident tenants of such land, may hunt, trap or fish on their own land during open seasons in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the said resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of said resident at all times while he is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years
of age or older shall not be required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing, carry on his person a card issued by the director stating his name, address and date of birth.

(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac river without obtaining licenses to do so, but such hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, that the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac river from the Maryland banks of said river to licensed residents of West Virginia, without requiring said residents to obtain Maryland hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio river or from the West Virginia banks of said river without obtaining licenses to do so, but such hunting or fishing shall be confined to fish and waterfowl of the river proper and not on its tributaries: Provided, that the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of said river to licensed residents of West Virginia without requiring said residents to obtain Ohio hunting and fishing licenses. In the event the state of Ohio accords this privilege to residents of West Virginia, such Ohio residents will not be required to obtain the license provided for by section forty-two of this article.

CHAPTER 134

(Senate Bill No. 136—By Mr. Gainer)

[Passed February 13, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-six, article two,
chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring the carrying of licenses issued under the game and fish law, prohibiting the use of any such license by any person other than the one to whom issued, and prohibiting the transfer of any such license to another person.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 36. When license to be carried; using license of another; transferring license to another.

§20-2-36. When license to be carried; using license of another; transferring license to another.

Except as otherwise provided by law, no person shall hunt, take, pursue, trap for, kill, catch or chase for sport any wild animal or wild bird; or fish for, take, kill or catch any fish or amphibians of any kind whatsoever in this state unless he shall have on his person a valid license issued to him.

It shall be unlawful for any person to use at any time any license other than those legally issued to him, or transfer a license to another person.

CHAPTER 135

(Senate Bill No. 129—By Mr. Gainer)

[Passed February 13, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to class A resident state-wide hunting and trapping licenses.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 39. Class A resident state-wide hunting and trapping license.


A class A license shall be a resident state-wide hunting and trapping license and shall entitle the licensee to hunt and trap all legal species of game in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States who are residents of this state. The fee therefor shall be three dollars.

CHAPTER 136

(Senate Bill No. 139—By Mr. Gainer)

[Passed February 13, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section forty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to class B resident state-wide fishing licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section 40. Class B resident state-wide fishing license.

§20-2-40. Class B resident state-wide fishing license.

A class B license shall be a resident state-wide fishing license and shall entitle the licensee to fish for all legal
3 fish in all counties of the state, except as prohibited by 
4 rules or regulations of the director. It shall be issued only 
5 to citizens of the United States, and unnaturalized persons 
6 possessing the permit mentioned in section twenty-nine 
7 of this article, who are residents of this state. The fee 
8 therefor shall be three dollars.

CHAPTER 137
(Senate Bill No. 135—By Mr. Gainer)

[Passed February 13, 1967; 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 sec­
section forty-a, relating to the authorization of class AB com­
bination state-wide hunting, trapping and fishing license 
for a fee of five dollars.

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-a, to 
read as follows:

ARTICLE 2. GAME AND FISH.

Section

40a. Class AB combination resident state-wide hunting, trapping and 
fishing license.

§20-2-40a. Class AB combination resident state-wide hunting, 
trapping and fishing license.

A class AB combination license shall be a resident state-
2 wide hunting, trapping and fishing license and shall 
3 entitle the licensee to hunt and trap for all legal species 
4 of game and fish for all legal species of fish in all counties 
5 of the state, except as prohibited by rules or regulations 
6 of the director. It shall be issued only to citizens of the 
7 United States who are residents of this state. The fee 
8 therefor shall be five dollars.
AN ACT to amend and reenact section forty-one, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, extending the authority to issue courtesy state-wide hunting and fishing licenses to nonresident outdoor writers and other nonresidents engaged in promoting an interest in the natural resources of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

Section
41. Class C courtesy state-wide hunting and fishing license.

§20-2-41. Class C courtesy state-wide hunting and fishing license.

A class C license shall be a courtesy hunting and fishing license and shall entitle the licensee to hunt and fish in all counties of this state. It shall be issued by the director upon application made to him and without fee to:

(1) Members and agents of the United States fish and wildlife service;
(2) Members of state commissions of other states extending similar courtesies;
(3) Diplomatic and consular representatives of foreign countries;
(4) Persons engaged in scientific research;
(5) Nonresident outdoor writers and other nonresidents engaged in promoting an interest in the natural resources of the state.

Not more than one hundred courtesy licenses shall be issued in one year.
CHAPTER 139
(Senate Bill No. 140—By Mr. Gainer)

[Passed February 13, 1967; in effect January 1, 1968. Approved by the Governor.]

AN ACT to repeal section forty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to class H resident state-wide beaver trapping license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. GAME AND FISH.
§1. Repealing statute providing for a state-wide beaver trapping license.

Section forty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 140
(Senate Bill No. 9—By Mr. Barnett and Mr. Moreland)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of proceeds and receipts from national forests.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

Section
17. Disposition of proceeds of national forests.
§20-3-17. Disposition of proceeds of national forests.

Receipts from any national forest, paid to the state or its proper officers pursuant to directions of acts of Congress, shall be allocated by the auditor to each county which has acreage located in such national forest, in the proportion which the acreage in such county bears to the total acreage of such national forest in this state. Eighty per cent of the funds so allocated to any county shall be paid to the board of education of the county to be expended by the board for the benefit of the public schools of the county. Twenty per cent of the funds so allocated to any county shall be paid to the state road commission to be expended for feeder and state local service road purposes in that county.

Notwithstanding any contrary provisions of former law, any sheriff or county court of any county having charge or custody of any unexpended national forest proceeds, received under allocations made pursuant to former provisions of law, shall pay over eighty per cent of such unexpended balance to the county board of education, and twenty per cent thereof to the state road commission, for expenditure as provided herein.

CHAPTER 141
(Senate Bill No. 10—By Mr. Carson, Mr. President, and Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of flood control, navigation and allied funds received from the federal government.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. FORESTS AND WILDLIFE AREAS.

Section

18. Disposition of flood control, navigation and allied funds from the federal government.

§20-3-18. Disposition of flood control, navigation and allied funds from the federal government.

Receipts from the treasurer of the United States, paid to the state or its proper officers pursuant to direction of an act of Congress relating to disposition of funds received on account of the leasing of lands for flood control, navigation and allied purposes, shall be allocated by the state auditor to each county in accordance with the method of allocation specified by the federal government. The state auditor shall transfer to the road commission fifty per cent of the funds so allocated to each county for the purpose of maintenance of feeder and state local service roads in the area or areas of the county in which such flooded lands are located. Fifty per cent of the funds so allocated to any county in which such lands are located shall be paid by the state auditor to the board of education of that county to be expended by the board for the benefit of the public schools of the county.

CHAPTER 142

(House Bill No. 855—By Mr. Edgar and Mr. Bowman)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, relating to approving and ratifying the Middle Atlantic Interstate Forest Fire Protection Compact; authorizing the governor, on behalf of the state of West Virginia, to enter into such compact; providing for the administration of the compact and prescribing the powers and duties of the state forester with respect thereto.
Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

Section
25. Governor's authority to execute.
26. When and how compact becomes operative.
27. Compact administration.
28. Compact committee powers and duties; cooperation therewith.
29. Other powers supplementary.

PART III. MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

§20-3-25. Governor’s authority to execute.

1 The governor of West Virginia, on behalf of this state,
2 is hereby authorized to execute a compact in substantially
3 the following form, with any one or more of the states
4 of Delaware, Maryland, New Jersey, Pennsylvania and
5 Virginia, and the Legislature hereby signifies in advance
6 its approval and ratification of such compact:

MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I.

1 The purpose of this compact is to promote effective
2 prevention and control of forest fires in the middle
3 Atlantic region of the United States by the development
4 of integrated forest fire plans, by the maintenance of
5 adequate forest fire fighting services by the member
6 states, and by providing for mutual aid in fighting forest
7 fires among the compacting states of the region and with
8 states which are party to other regional forest fire pro-
9 tection compacts or agreements.

Article II.

1 This compact shall become operative immediately as
2 to those states ratifying it whenever any two or more
3 of the states of Delaware, Maryland, New Jersey, Penn-
4 sylvania, Virginia and West Virginia which are contigu-
Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.
No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: Provided, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other costs or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state: Provided, That nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

For the purposes of this compact the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures
for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

Article VI.

Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest fire fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

Article VII.

The compact administrators may request the United States forest service to act as the primary research and coordinating agency of the middle Atlantic interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States forest service may attend meetings of the compact administrators.

Article VIII.

The provisions of articles four and five of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as be-
4 tween any state party to this compact and any other
5 state which is party to a regional forest fire protection
6 compact in another region: **Provided,** That the legisla-
7 ture of such other state shall have given its assent to
8 such mutual aid provisions of this compact.

**Article IX.**

1 This compact shall continue in force and remain bind-
2 ing on each state ratifying it until the legislature or
3 the governor of such state takes action to withdraw
4 therefrom. Such action shall not be effective until six
5 months after notice thereof has been sent by the chief
6 executive of the state desiring to withdraw to the chief
7 executives of all states then parties to the compact.

§20-3-26. When and how compact becomes operative.

1 When the governor shall have executed said compact
2 on behalf of this state and shall have caused a veri-
3 fied copy thereof to be filed with the secretary of state
4 and when said compact shall have been ratified by one
5 or more of the states named in section twenty-five of
6 this article, then said compact shall become operative
7 and effective as between this state and such other state
8 or states. The governor is hereby authorized and di-
9 rected to take such action as may be necessary to com-
10 plete the exchange of official documents as between this
11 state or any other state ratifying said compact.

§20-3-27. Compact administration.

1 In pursuance of article two of said compact, the
2 director of the department of natural resources of the
3 state of West Virginia may appoint the state forester
4 and the assistant state forester in charge of forest fire
5 control to represent the state of West Virginia on the
6 compact committee.

§20-3-28. Compact committee powers and duties; cooperation
   therewith.

1 There is hereby granted to the members of the compact
2 committee appointed by the director and under the
3 general supervision of the director, all the powers pro-
4 vided for in the said compact. All officers of the state
of West Virginia are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to the carrying out of said compact. All officers, bureaus, departments and persons of and in the state government or administration of the state of West Virginia are hereby authorized and directed at convenient times and upon request of the duly appointed members of the compact committee, to furnish information and data relating to the purpose of said compact possessed by them or any of them to said members of the compact committee. They are further authorized to aid said compact committee members by loan of personnel, equipment, or other means in carrying out the purposes of said compact.

§20-3-29. Other powers supplementary.

1 Any powers herein granted to the state forester shall be regarded as in aid of and supplemental to, and in no case a limitation upon, any of the powers vested in said director by other laws of the state of West Virginia or by the laws of the state of Delaware, Maryland, New Jersey, Pennsylvania and Virginia, or by the Congress or the terms of said compact.

CHAPTER 143

(Com. Sub. for House Bill No. 575—By Mr. Speaker, Mr. White, and Mr. Edgar)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, and to amend and reenact sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter, relating to water resources, the water pollution control act, and
to a statement of the purpose of the act, definitions of terms used in the act, the general powers and duties of the chief of the division of water resources and the water resources board with respect to water pollution, requirements for permits for specified activities, applications for and forms of permits, permit fees, procedures concerning permits, the transfer of permits, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service of orders, duty to proceed with remedial action upon receipt of permit, progress reports, finances and funds, appeals to and review procedures before the water resources board, circuit courts and the supreme court of appeals, actions to abate nuisances, injunctive relief, violations, and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That article five, 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 one-a, and that sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter, be amended and reenacted to read as follows:

Article
5. Water Resources.
5A. Water Pollution Control Act.

ARTICLE 5. WATER RESOURCES.

Section
1a. Declaration of policy.

§20-5-1a. Declaration of policy.

1 It is declared to be the public policy of this state that
2 the water resources of this state with respect to the
3 quantity thereof shall be available for reasonable use
4 by all of the citizens of this state; and that such use
5 shall be subject to the provisions of article five-a of this
6 chapter.

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

Section
1. Declaration of policy.
2. Definitions.
3. General powers and duties of chief of division and board with respect to water pollution.
§5. When permits required.

§7. Procedure concerning permits required under article; transfer of permits.

§10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

§12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

§15. Appeal to water resources board.


§17. Actions to abate nuisances; injunctive relief.

§19. Violations; criminal penalties.

§20-SA-1. Declaration of policy.

It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the attraction, development, maintenance and expansion of agriculture, mining, manufacturing and other business and industry.


Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Director" shall mean the director of the department of natural resources;

(b) "Board" shall mean the state water resources board;

(c) "Chief" shall mean the chief of the division of water resources of the department of natural resources;

(d) "Person," "persons" or "applicant" shall mean any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency; political subdivision; county court; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;
(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses;

(f) "Pollution" shall mean the discharge or deposit, directly or indirectly, of sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational or other legitimate uses;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade or business, or from the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage, or other wastes, as hereinafter defined, shall also be
considered “industrial wastes” within the meaning of this article;
(i) “Other wastes” shall mean garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;
(j) “Establishment” shall mean an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, and each and every industry or plant or works in the operation of which industrial wastes, or other wastes are produced;
(k) “Sewer system” shall mean pipelines or conduits, pumping stations, and force mains, and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes, or other wastes to a point of disposal or treatment;
(l) “Treatment works” shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes, or other wastes and/or for the purpose of regulating or controlling the quality and rate of flow thereof;
(m) “Disposal system” shall mean a system for disposing of sewage, industrial wastes, or other wastes, and shall be construed to include sewer systems and treatment works;
(n) “Outlet” shall mean the terminus of a sewer system or the point of emergence of any water-carried sewage, industrial wastes, or other wastes, or the effluent therefrom, into any of the waters of this state;
“Activity” or “activities” shall mean any activity or activities for which a permit is required by the provisions of section five of this article; and "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§20-5A-3. General powers and duties of chief of division and board with respect to water pollution.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state: Provided, That the department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(2) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of the same waters, for the control and reduction of pollution;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto,
all as may be deemed advisable and necessary to carry
out the purposes of this article;
(4) To study and investigate all problems concern-
ing water flow, water pollution and the control and
reduction of such pollution, and to make reports and
recommendations with respect thereto;
(5) To collect and disseminate information relating
to water pollution and the control and reduction there-
of;
(6) To develop a public education and promotion
program to aid and assist in publicizing the need and
securing support for pollution control and abatement;
(7) To sample ground and surface water with suffi-
cient frequency to ascertain the standards of purity
or quality from time to time of the waters of the
state;
(8) To develop programs for the control and re-
duction of the pollution of the waters of the state;
(9) To exercise general supervision over the admin-
istration and enforcement of the provisions of this article,
and all orders issued pursuant to the provisions of this
article; and
(10) In cooperation with the college of engineering
at West Virginia University, to conduct studies, scienc-
ific or other investigations, research, experiments and
demonstrations in an effort to discover economical and
practical methods for the elimination, disposal, control
and treatment of sewage, industrial wastes, and other
wastes, and the control and reduction of water pollution,
and to this end, the chief may cooperate with any public
or private agency and receive therefrom, on behalf of
the state, and for deposit in the state treasury, any
moneys which such agency may contribute as its part
of the expenses thereof, and all gifts, donations or con-
tributions received as aforesaid shall be expended by
the chief according to the requirements or directions of
the donor or contributor without the necessity of an
appropriation therefor, except that an accounting thereof
shall be made in the fiscal reports of the department.
(b) In addition to all other powers and duties of the
water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To cooperate with any interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to the control and reduction of water pollution; and

(2) To promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) The board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rule or regulation promulgated by the board, and with the terms and conditions of any permit issued in accordance with the provisions of section seven of this article. In order to make such investigations, inspections and inquiries, the board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for their own safety and for any damage to the property entered. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such inspections, investigations and inquiries, the board or
the chief may apply to the circuit court of the county in
which such property is located, or to the judge thereof
in vacation, for an order permitting such entrance and
the making of such inspections, investigations and in-
quiries; and jurisdiction is hereby conferred upon such
court to enter such order upon a showing that the relief
asked is necessary for the proper enforcement of this
article: Provided, however, That a dwelling occupied
for residential purposes shall not be entered without a
search warrant.
(e) The board is hereby authorized and empowered
to investigate and ascertain the need and factual bases for
the establishment of public service districts as a means
of controlling and reducing pollution from unincorporated
communities and areas of the state, and to present re-
ports and recommendations thereon to the county court
or courts of the areas concerned, together with a re-
quest that such county court or courts create a public
service district, or districts, as therein shown to be needed
and required and as provided in article thirteen-a, chap-
ter sixteen of this code.

§20-5A-5. When permits required.

(a) It shall be unlawful for any person, until the
department's permit therefor has been granted, to:
(1) Allow sewage, industrial wastes, or other wastes,
or the effluent therefrom, produced by or emanating
from an establishment to flow into the waters of this
state;
(2) Make, cause or permit to be made any outlet,
or substantially enlarge or add to the load of any exist-
ing outlet, for the discharge of sewage, industrial wastes,
or other wastes, or the effluent therefrom, into the waters
of this state;
(3) Acquire, construct, install or operate a disposal
system for the direct or indirect discharge or deposit
of sewage, industrial wastes, or other wastes or the efflu-
ent therefrom, into the waters of this state; or
(4) Substantially extend, modify or add to a new
or existing disposal system for the direct or indirect
discharge or deposit of sewage, industrial wastes, or other wastes or the effluent therefrom, into the waters of this state.

(b) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all of such outlets.

(c) Unless such permit was obtained and remains in full force and effect, it shall also be unlawful for any person to operate or use any such outlet, or to operate or use such disposal system, or to operate or use such extension or modification of, or addition to, such new or existing disposal system.

§20-5A-7. Procedure concerning permits required under article; transfer of permits.

(a) The director of the division of sanitary engineering shall promptly make his determination concerning the health aspects of any proposed activity relating solely to sewage. If the plans and specifications of the proposed activity are in accord with all reasonable requirements of the department of health, the director of the division of sanitary engineering shall approve the application and issue the department of health's certificate or permit therefor. If the application is approved, the director of the division of sanitary engineering shall promptly forward his department's certificate or permit, together with the application and the information and data submitted therewith, to the division of water resources for the action of the chief thereof. Any denial of the application by the director of the division of sanitary engineering shall be governed by the provisions of chapter sixteen of this code and not by the provisions of this article.

(b) The chief and his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied.

(c) The department's permit shall be issued upon
such reasonable terms and conditions as the chief may
direct if (1) the certificate or permit of the depart-
ment of health was issued (in those cases where the
director of the division of sanitary engineering was re-
quired to act as aforesaid) and/or (2) the application,
together with all supporting information and data and
other evidence, establishes that any and all discharges
or deposits of sewage, industrial wastes, or other wastes
or the effluent therefrom resulting from such proposed
activity will be treated and the quality and rate of
flow thereof regulated or controlled to the fullest extent
technically feasible in view of modern technology and
scientific methods for the treatment, regulation or con-
trol of sewage, industrial wastes, or other wastes, or
the effluent therefrom.

(d) An application for a permit incident to remedial
action in accordance with the provisions of section
eleven of this article shall be processed and decided
as any other application for a permit to acquire, con-
struct, install or operate a disposal system, or to ex-
tend, modify or add to a new or existing disposal
system.

(e) An application for any such permit shall be
acted upon by the chief (and by the director of the
division of sanitary engineering of the state depart-
ment of health in those cases in which such director
is by this section required to act) and the department's
permit (and the certificate or permit of the department
of health where the proposed activity relates solely
to sewage) delivered or mailed, or a copy of any order
of the chief denying any such application mailed as
hereinafter specified, as the case may be, to the appli-
cant by the chief within forty-five days after the date
upon which such complete application was received from
the applicant by the division of sanitary engineering
or within thirty days after the date upon which such
complete application was received from the applicant
by the division of water resources. Every effort shall
be made by the division of sanitary engineering and
the division of water resources to expedite all applica-
tions.
(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) Upon the sale of property which includes an activity for which the department's permit was granted, the permit shall be transferable to the new owner, but the transfer shall not become effective until it is made in the records of the division of water resources.

§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

If the chief, on the basis of investigations, inspections and inquiries, determines that any person is causing the pollution of any of the waters of the state, or does on occasions cause pollution by not regulating and controlling the quality and rate of flow of sewage, industrial wastes, or other wastes or the effluent therefrom, or otherwise, and that the same should be controlled or reduced, considering existing permits, the amount and effect of such pollution, the technical feasibility of controlling or reducing such pollution, the health and welfare of the public and other present and future uses of the waters in question, he shall make and enter an order directing such person in the alternative to either (1) stop or prevent such discharges or deposits of sewage, industrial wastes, or other wastes or the effluent...
therefrom determined to be causing such pollution, or
(2) take remedial action by acquiring, constructing or
installing, and using and operating a new disposal sys-
tem, or extending, modifying or adding to an existing
disposal system so as to control or reduce such pollu-
tion, by treating and/or regulating or controlling the
quality and rate of flow of any and all discharges or
deposits of sewage, industrial waste, or other wastes or
the effluent therefrom to the fullest extent technically
feasible in view of modern technology and scientific
methods for the treatment, regulation or control of sew-
age, industrial wastes, or other wastes or the effluent therefrom and with regard for the rights and interests
of all persons concerned: Provided, That, if the chief
shall find that such person has been convicted of two
or more prior violations of the provisions of this ar-
ticle, the chief shall make and enter an order directing
such person to stop or prevent such discharges or de-
posits of sewage, industrial wastes or other wastes or
the effluent therefrom determined to be causing such pol-
lution. The chief shall fix a reasonable time in such
order by which any and all such discharges or deposits
must stop or be prevented or any such remedial action
must be completed. Such order shall also direct such
person to apply forthwith for a permit in accordance
with the provisions of sections five, six and seven of
this article.

The chief shall cause a copy of any such order to be
served by registered or certified mail or by a conserva-
tion officer or other law-enforcement officer upon such
person. The chief shall also cause a notice to be served
with the copy of such order, which notice shall advise
such person of his right to appeal to the board by filing
a notice of appeal, on the form prescribed by the board
for such purpose, with the board, in accordance with
the provisions of section fifteen of this article.

In the sole discretion of the chief, he may postpone
issuing any such order if he feels such pollution can
best be controlled or reduced by cooperative efforts with
the person or persons responsible therefor.
§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

1 When such person elects to comply with such final order by taking remedial action, such person shall immediately after receipt of such permit, take or begin appropriate steps or proceedings to carry out such remedial action. In any such case it shall be the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, upon receipt of such permit by such individual, partnership, municipal corporation, private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately after such receipt. The chief may require progress reports, at such time intervals as he deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association, or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, by appropriate ordinance or resolution shall constitute failure to take or begin appropriate steps or proceedings to comply with such order. If such person be a municipal corporation, the cost of all such remedial action as may be necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, any direct general obligation bond issue to be subject to the ap-
proval of the state sinking fund commission and the attorney general of the state of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such final order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof: Provided, That the provisions of section six of the abovementioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty per cent or more of the owners of real estate shall require a four-fifths vote of the governing body for the issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with a final order made and entered under the authority of this article, and such objections and submission of written protest shall not be authorized, nor shall the same, if made or had, operate to justify or excuse failure to comply with such final order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a “sanitary fund,” and shall be
used for no other purpose than for carrying out such final order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the board. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof.

§20-5A-15. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the time required by section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after the date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from: Provided, That if it appears to the director or the board that an unjust hardship to the appellant will result from the
execution of the chief’s order pending determination of
the appeal, the director or the board may grant a sus-
pension of such order and fix its terms. The notice of
appeal shall set forth the order or terms and conditions
complained of and the grounds upon which the appeal is
based. A copy of the notice of appeal shall be filed by the
board with the chief within three days after the notice of
appeal is filed with the board.

(c) Within seven days after receipt of his copy of the
notice of appeal, the chief shall prepare and certify to
the board a complete record of the proceedings out of
which the appeal arises including all documents and
correspondence in the chief’s file relating to the matter
in question. With the consent of the board and upon
such terms and conditions as the board may prescribe,
any persons affected by any such activity or by such
alleged pollution may by petition intervene as a party
appellant or appellee. The board shall hear the appeal
de novo, and evidence may be offered on behalf of the
appellant and appellee, and, with the consent of the
board, by any intervenors.

(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing on appeal authorized by this section
and the administrative procedures in connection with
and following such hearing, with like effect as if the pro-
visions of said article five were set forth in extenso in
this section, with the following modifications or excep-
tions:

(1) Unless the board directs otherwise, the appeal
hearing shall be held in the city of Charleston, Kanas-
wha county, West Virginia; and

(2) In accordance with the provisions of section one,
article five of said chapter twenty-nine-a, all of the testi-
mony at any such hearing shall be recorded by steno-
graphic notes and characters or by mechanical means.
Such reported testimony shall in every appeal hearing
under this article be transcribed.

(e) Any such appeal hearing shall be conducted by
a quorum of the board, but the parties may by stipula-
tion agree to take evidence before a hearing examiner employed by the board. Upon request of any party to the appeal, the evidence taken before a hearing examiner shall be taken in the county in which the activity is proposed to take place, or in which the activity is situate or would be situate upon completion thereof, or in which the pollution is alleged to have occurred or to be taking place, as the case may be. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(g) After such hearing and consideration of all of the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into
consideration not only the factors which the chief was authorized to consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


(a) Any person or the chief adversely affected by a final order made and entered by the board after such appeal hearing, held in accordance with the provisions of section fifteen of this article, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of the county in which any activity or activities are proposed to take place;

(2) As to cases involving an order revoking or suspending a permit and directing any and all work on
any such activity to stop or suspending such work, or
directing all discharges or deposits of sewage, indus-
trial wastes, or other wastes or the effluent therefrom
resulting from any such activity to stop or suspending
such discharges or deposits, or directing that affirmative
action be taken to correct alleged and specified deficien-
cies concerning any such activity, the petition shall be
filed, within the time specified in said section four, in
the circuit court of the county in which any such activity
or activities are situate or would be situate upon com-
pletion thereof; and
(3) As to cases involving an order directing that
any and all discharges or deposits of sewage, industrial
wastes, or other wastes or the effluent therefrom de-
termined to be causing pollution be stopped or prevented
or else that remedial action be taken, the petition shall
be filed, within the time specified in said section four, in
the circuit court of the county in which the pollution
is alleged to have occurred or to be taking place.
(b) The judgment of the circuit court shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals, in accordance with the pro-
visions of section one, article six, chapter twenty-nine-a
of this code, except that notwithstanding the provisions
of said section one the petition seeking such review must
be filed with said supreme court of appeals within
ninety days from the date of entry of the judgment of
the circuit court.
(c) Legal counsel and services for the chief in all
appeal proceedings in the circuit courts and in the su-
preme court of appeals of this state shall be provided
by the attorney general or his assistants and in appeal
proceedings in the circuit courts by the prosecuting
attorneys of the several counties as well, all without
additional compensation, or the board or chief, with the
written approval of the attorney general may employ
special counsel to represent the board or chief in a par-
ticular proceeding.
§20-5A-17. Actions to abate nuisances; injunctive relief.
1 Whether any violation of the provisions of this arti-
cle or the rules and regulations of the board, or any
final order of the chief or the board shall result in
prosecution or conviction or not, any such violation shall
be deemed a nuisance which may be abated upon appli-
cation by the chief to the circuit court of the county
in which such nuisance or any part thereof shall exist,
or to the judge thereof in vacation. Upon application
by the chief, the circuit courts of this state may by
mandatory or prohibitive injunction compel compliance
with the provisions of this article, the rules and regula-
tions of the board, or all final orders of such chief or
board. Any application for an injunction to compel
compliance with any final order of the chief or board
shall be made to the circuit court of the county in which
the activity to which the order relates is proposed to
take place, or in which the activity to which the order
relates is situate or would be situate upon completion
thereof, or in which the pollution to which the order
relates is alleged to have occurred or to be taking place,
as the case may be, or to the judge thereof in vacation.
Upon application by the chief to the circuit court of
the county in which a municipal corporation is located,
or in which any person resides or does business, or to
the judge thereof in vacation, such court may by in-
junction require the performance of any duty imposed
upon such municipal corporation or persons by the
provisions of this article. The court may issue a tem-
porary injunction in any case pending a decision on
the merits of any application filed.

In cases of aggravated pollution where irreparable
damage will result from any delay incident to the ad-
ministrative procedures set forth in this article, the
chief, with the consent of the director, may forthwith
apply to the circuit court of the county in which the
pollution is taking place for a temporary injunction.
Such court may issue a temporary injunction pending
final disposition of the case by the chief or the board, in
the event an appeal is taken to the board.
The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section shall be
final unless reversed, vacated or modified on appeal to
the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

The chief shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation.


Any person who fails or refuses to discharge any duty imposed upon him by this article or by any rules and regulations of the board, or by any final order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than two hundred dollars nor more than five hundred dollars, and for a third and each subsequent offense by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for a period not to exceed six months, or in the discretion of the court by both such fine and imprisonment. Each day upon which such failure continues shall constitute a separate offense.

CHAPTER 144

(Senate Bill No. 334—By Mr. Carson, Mr. President)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section eight-a, relating to the appointment of voluntary water quality monitors.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 eight-a, to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

Section 8a. Voluntary water quality monitors; appointment; duties; compensation.

§20-5A-8a. Voluntary water quality monitors; appointment; duties; compensation.

The chief is hereby authorized to appoint voluntary water quality monitors to serve at the will and pleasure of the chief. All such monitors appointed pursuant hereto shall be twenty-one years of age or over and shall be bona fide residents of this state.

Such monitors are authorized to take water samples of the waters of this state at such times and at such places as the chief shall direct and to forward such water samples to the chief for analysis.

The chief is authorized to provide such monitors with such sampling materials and equipment as he deems necessary: Provided, That such equipment and materials shall at all times remain the property of the state and shall be immediately returned to the chief upon his direction.

Such monitors shall not be construed to be employees of this state for any purpose except that the chief is hereby authorized to pay such monitors a fee not to exceed fifty cents for each sample properly taken and forwarded to him as hereinabove provided.

The chief shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.
Upon a showing that any water sample as herein provided was taken in conformity with standard and recognized procedures, such sample shall be admissible in any court of this state for the purpose of enforcing the provisions of this article.

CHAPTER 145

(Com. Sub. for Senate Bill No. 61—By Mr. Carson, Mr. President, and Mr. Gainer)

[Passed March 9, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface mining; and to repeal article six, chapter twenty of said code and to enact in lieu thereof a new article six, relating to surface mining and the reclamation of surface-mined lands in West Virginia; providing for the regulation of surface mining; providing penalties; and authorizing under certain circumstances the recovery of treble damages for property damage resulting from surface mining.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article six, chapter twenty of said code, be repealed and a new article six enacted in lieu thereof to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

Section
1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.
2. Definitions.
3. Division of reclamation; duties and functions; selections, duties and compensation.
4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications.
5. Duties of surface-mining reclamation inspectors.
6. Reclamation commission; duties, functions and compensation.
7. Prospecting permit; bond.
8. Permit required; applications; issuance and renewals; fees and use of proceeds.
10. Alternative plans; time.
11. Limitations.
12. Time in which reclamation shall be done.
13. Method of regrading surface-mined areas.
14. Obligations of the operator.
15. Completion of planting; inspection and evaluation.
17. Special reclamation fee.
18. Exception as to highway construction projects from reclamation requirements.
19. Existing permits and performance bonds.
20. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.
22. Leasing of lands owned by the state for the surface mining of coal therefrom.
23. Participation with federal government and other governmental agencies.
26. Adjudications, findings, etc., to be by written order; contents; notice.
27. Reclamation board of review.
28. Appeals to board; hearing; record; findings and orders of board.
29. Appeal from order of board.
30. Offenses; penalties; prosecutions; treble damages.
31. Effective date of article.
32. Severability of provisions.

§20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section twenty-one of this article, the department of natural resources is hereby vested with jurisdiction over all aspects of surface mining and with jurisdiction and control over land, water and soil aspects pertaining to surface-mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby.

The Legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes
soil erosion, pyritic shales and materials, landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and slides, destroys the value of some lands for agricultural purposes and some lands for recreational purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, and destroys or impairs the health, safety, welfare and property rights of the citizens of West Virginia, where proper reclamation is not practiced.

The Legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of the surface mining of minerals, primarily in topographical and geological conditions, and by reason thereof, it is necessary to provide the most effective, beneficial and equitable solution to the problems involved.

The Legislature further finds that authority should be vested in the director of the department of natural resources to administer and enforce the provisions of this article.

The director of the department of natural resources and the director of the department of mines shall cooperate with respect to departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article. The director of natural resources may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. He may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining. The department of mines and all departments, schools and colleges of West Virginia University shall cooperate fully with the division of reclamation of the department of natural resources in administering and enforcing the provisions of this article.

No public officer or employee in the department of natural resources, the department of mines, or the office of attorney general, having any responsibility or duty either directly or of a supervisory nature with respect to the ad-
ministration or enforcement of this article shall (1) en-
gage in surface mining as a sole proprietor or as a partner
or (2) be an officer, director, stockholder, owner or part
owner of any corporation or other business entity en-
gaged in surface mining or (3) be employed as an at-
torney, agent or in any other capacity by any person, part-
nership, firm, association, trust or corporation engaged in
surface mining. Any violation of this paragraph by any
such public officer or employee shall constitute grounds
for his removal from office or dismissal from his employ-
ment, as the case may be.

§20-6-2. Definitions.

Unless the context in which used clearly requires a
different meaning as used in this article:
(a) "Surface mining" shall mean all industrial ac-
tivity for the recovery of minerals, except those activ-
ities subject to the provisions of articles one, two, four,
five and seven, chapter twenty-two of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, and subject to such exception, shall include
plant and equipment used in processing said minerals;
(b) "Surface mine" shall mean all areas surface
mined or being surface mined, as well as adjacent areas
ancillary to the operation, together with preparation and
processing plants, storage areas and haulageways: Pro-
vided, That mines subject to the provisions of articles one,
two, four, five and seven, chapter twenty-two of said code,
are not "surface mines" within this definition;
(c) "Disturbed land" or "land disturbed" shall mean
(1) the area from which the overburden has been re-
moved in surface-mining operations, (2) the area covered
by the spoil, and (3) any areas used in surface-mining
operations which by virtue of their use are susceptible to
excessive erosion including all lands disturbed by the con-
struction or improvement of haulageways;
(d) "Minerals" as used in this article shall mean coal,
clay, manganese and iron ore;
(e) "Director" shall mean the director of natural re-
sources or his authorized agents;
(f) "Operator" shall mean any individual, partnership, firm, association, trust or corporation who or which is granted a permit to engage in any activity covered by this article; and

(g) "Person" shall mean any individual, partnership, firm, association, trust or corporation.

§20-6-3. Division of reclamation; duties and functions; selections, duties and compensation.

There is hereby created within the department of natural resources a division of reclamation, and the director of natural resources shall appoint and fix the compensation of the head of said division who shall be known as the chief of the division of reclamation. Said chief shall have graduated from an accredited four-year college or university with a degree in the field of engineering, agriculture, forestry or related resource field, and shall have four years of full-time paid employment in some phase of natural resources management, two years of which must have been in a supervisory or administrative capacity.

Except as otherwise provided in this article, the division shall administer all of the laws of this state relating to surface mining and subject to the approval of the director of natural resources shall exercise all of the powers and perform all of the duties by law vested in and imposed upon said director in relation to said operations. The division of reclamation shall have within its jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of 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. 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, and the division shall
33 cooperate with other offices and divisions of the depart-
34 ment.

§20-6-4. Surface-mining reclamation supervisors and inspec-
tors; appointment and qualifications.

The director shall determine the number of surface-
mining reclamation supervisors and inspectors needed to
carry out the purposes of this article and appoint them as
such. All such appointees shall be qualified civil service
employees, but no person shall be eligible for such ap-
pointment until he has served in a probationary status
for a period of one year to the satisfaction of the director
of natural resources: Provided, That the provisions of this
section shall not affect the status of persons employed on
the effective date of this article as reclamation inspectors
under the former provisions of this article, if such persons
are qualified civil service employees.

§20-6-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make
all necessary surveys and inspections of surface-mining
operations, shall administer and enforce all surface-min-
ing laws, rules and regulations, and shall perform such
other duties and services as may be prescribed by the
director of the department of natural resources. Such
inspectors shall give particular attention to the condi-
tions of each permit to insure compliance therewith. The
director shall cause inspections to be made of each surface-
mining operation in this state by a surface-mining recla-
mation inspector at least once every thirty days. Said in-
spector shall note all violations of law thereat and report
the same to the director in writing, furnishing a copy of
said report to the operator concerned.

§20-6-6. Reclamation commission; duties, functions and com-
pensation.

There is hereby created and established in the depart-
ment of natural resources a reclamation commission
which shall be composed of the director of natural re-
sources, serving as chairman, the chief of the division of
reclamation, and the director of the department of mines.
The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for their expenses incurred in performing their functions. The commission shall meet upon the call of any member. The director, if he deem such action necessary, may request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and appoint one or more assistant attorneys general, to serve at the will and pleasure of the attorney general, and such assistant or assistants shall be paid out of any funds made available for that purpose by the Legislature to the department of natural resources.

The commission shall have authority to:

(a) Promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article;

(b) Make investigations or inspections necessary to insure compliance with the provisions of this article;

(c) Conduct hearings under provisions of this article or rules and regulations adopted by the commission and for the purpose of any investigation or hearing, hereunder, the commission or any member thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

(e) Order, through the director, a cease and desist order of any operation that is started without a permit as required by law;

(f) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies; and

(g) Review orders and decisions of the director.
§20-6-7. Prospecting permit; bond.

It shall hereafter be unlawful for any person to use excavating equipment in an area not covered by a surface-mine permit for the purpose of removing the overburden to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a prospecting permit shall be made in writing on forms prescribed by the director of natural resources and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A United States geological survey topographic map showing by proper markings the crop line and the name, where known, of the seam or seams to be prospected;

(2) a reclamation plan for the proposed disturbed areas as required for holders of surface-mining permits in section nine of this article; and (3) a bond, or cash or collateral securities or certificates of the same type, form and amount and in the same manner as provided in section sixteen of this article in the amount of one hundred fifty dollars per acre for the total estimated disturbed acreage. If such bond is used it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to reclamation of the disturbed acreage.

The prospecting permit and the bond accompanying said permit shall be released by the director in the same manner as surface-mining permits and bonds are released. In the event the holder of a prospecting permit desires to mine the area covered by the prospecting permit, the director shall permit such holder to convert the prospecting permit to a surface-mining permit, provided the holder of said permit shall comply with the provisions of this article as they relate to surface-mining permits.

§20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.

It shall hereafter be unlawful for any person to engage in surface mining without having first obtained from the department of natural resources a permit therefor as pro-
Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information:

1. The common name and geologic title, where applicable, of the mineral or minerals to be extracted;
2. Maps and plans as provided in section nine hereof;
3. The owner or owners of the surface of the land to be mined;
4. The owner or owners of the mineral to be mined;
5. The source of the operator’s legal right to enter and conduct operations on the land to be covered by the permit;
6. A reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit;
7. The permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral;
8. Whether any surface-mining permits are now held and the numbers thereof;
9. The names and post-office addresses of every officer, partner, director (or person performing a similar function), applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten per cent or more of any class of stock of the applicant: Provided, That if such list be so large as to cause undue inconvenience, the director may waive the requirement that such list be made a part of such application;
10. If known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and
11. The reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land. There shall be attached to the application a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state covering all surface-mining operations of the applicant in this state and afford-
ing personal injury and property damage protection in a total amount of not less than fifty thousand dollars.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said certificate of insurance, the director of natural resources may issue the permit applied for if the applicant has complied with all of the provisions of this article. If the director finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface- or strip-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, however, That no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the director of the department of natural resources to be adequate to reclaim the land covered by such forfeited bond.

The permit shall be valid for one year from its date of issue. Upon verified application, containing such information as the director may reasonably require, accompanied by such fees and bond as are required by this article, and a certificate of insurance as aforesaid, the director shall from year to year renew the permit, if the operation is in compliance with the provisions of this article.

The registration fee for permits for surface mining, whether by open cut, auger method or by highwall mechanical mining or modification thereof, shall be one hundred dollars. The annual renewal fee for permits for surface mining shall be fifty dollars payable on the anniversary date of said permit upon renewal.

The permit of any operator who fails to pay any fees provided for in this article shall be either suspended or revoked.
An operator who has been issued a surface-mining permit may use any of the usual methods of mining, including the auger method or highwall mechanical mining or any combination of mining methods defined as "surface mining" in section two of this article, unless otherwise provided by law. Any modifications of these methods shall also be under the director's jurisdiction.

All registration and renewal fees for surface mining shall be collected by the director and shall be deposited with the treasurer of the state of West Virginia to the credit of the surface reclamation fund.

§20-6-9. Preplanning plans.

Under the provisions of this article, and rules and regulations adopted by the commission, the operator shall prepare a complete reclamation plan for the area of land to be disturbed. Said reclamation plan shall include, but not necessarily be limited to, a proposed method of operation, grading, backfilling, soil preparation and planting and such other proposals as may be necessary to develop the complete reclamation plan contemplated by this article. In developing this complete reclamation plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable and he may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission
made after the hearing or without a hearing may appeal to the reclamation board of review.

The application for a permit shall be accompanied by two copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be so shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a land surveyor approved by the director;

(b) Identify the area to correspond with the application;

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the proposed disturbed area and the reputed owner or owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the director;

(e) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be disturbed, the crop line of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared, the north point and the quadrangle sketch and exact location of the operation; and

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the stream or tributaries receiving or to receive this discharge.

The director may, in the exercise of his sound discre-
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The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface-mining laws of this state." The certificate shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the department of natural resources shall be placed in an approved location near the operation. If operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources three copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a land surveyor approved by the director, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.
§20-6-10. Alternative plans; time.

An operator may propose alternative plans not calling for backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this article. Such plans shall be submitted to the director, and if such plans are approved by the director and complied with within such time limits as may be determined by him as being reasonable for carrying out such plans, the backfilling requirements of this article may be modified.

By regulations of the commission, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation: Provided, That the director may allow said equipment to be moved before said backfilling and grading is completed in order to prevent unreasonable hardship on the operator involved.

If the operator or other person desires to conduct deep mining upon the premises or use a deep-mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section nine of this article.

When the backfilling and grading have been completed and approved by the director, the director shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to one hundred dollars per acre, but not less than a total amount of one thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.

After the operation has been backfilled, graded and ap-
proved by the director, the operator shall prepare or
cause to be prepared a planting plan for the planting of
trees, shrubs, vines, grasses or legumes upon the area of
the land affected in order to provide a suitable vegetative
cover. The seed or plant mixtures, quantities, method of
planting, type and amount of lime or fertilizer, and any
other measures necessary to provide a suitable vegetative
cover shall be defined by the rules and regulations of the
commission. Such rules and regulations shall be promul-
gated, under the provisions of article three, chapter
twenty-nine-a of this code.

After the regrading has been approved by the director,
the planting called for by the preplan shall be carried out
in a manner so as to establish a satisfactory cover of trees,
shrubs, grasses, legumes or vines upon the disturbed area
covered by the planting plan within a reasonable period
of time. Such planting shall be done by the operator or
such operator may contract in writing with the soil con-
servation district for the district in which the operation
covered by such permit is located or with a private con-
tactor approved by the director to have such planting
done by such district or private contractor. When the
planting and revegetation is done by the operator accord-
ing to law and is approved by the director, that portion
of the bond then in effect shall be released. If any such
contract is entered into and such operator deposits with
such district or private contractor, as the case may be, a
sufficient amount of money for such planting, and re-
responsibility for the planting is assumed by such soil con-
servation district or private contractor, that portion of the
bond then in effect shall be released.

The purpose of this section is to require restoration of
land disturbed by surface mining to a desirable purpose
and use. The director may, in the exercise of his sound
discretion when not in conflict with such purpose, modify
such requirements to bring about a more desirable land
use, including but not limited to, industrial sites, sanitary
landfills, recreational areas, building sites, etc.: Provided,
That the person or agency making such modifications will
execute contracts, post bond or otherwise insure full com-
pliance with the provisions of this section in the event
such modified program is not carried to completion within a reasonable length of time.

§20-6-11. Limitations.

The Legislature finds that there are certain areas in the state of West Virginia which are impossible to reclaim either by natural growth or by technological activity and that if surface mining is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director to delete certain areas from all surface-mining operations.

No application for a permit shall be approved by the director if there is found on the basis of the information set forth in the application or from information available to the director and made available to the applicant that the requirements of this article or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of West Virginia with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the director may delete such part of the land described in the application upon which such overburden exists.
If the director finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he shall delete such areas from the permit application before it can be approved.

The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one-hundred-foot restriction aforesaid shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this state.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he may order immediate cessation of such operations and he shall take such other action or make such changes in the permit as he may deem necessary to avoid said described conditions.

§20-6-12. Time in which reclamation shall be done.

It shall be the duty of an operator to commence the reclamation of the area of land disturbed by his operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operation as defined by rules and regulations of the commission and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current.
§20-6-13. Method of regrading surface-mined areas.

On lands where the method of operation produces a bench, backfilling shall be required and performed as follows: All highwalls must be reduced or backfilled. Subject to the discretion of the director, the steepest slope of the reduced or backfilled highwall shall be no greater than forty-five degrees from the horizontal: Provided, That if the highwall is composed of materials of sufficient hardness as to ordinarily require blasting to displace, the commission, by rules and regulations, may modify the requirements of this section; the table portion of the restored area shall be a terrace with a slope toward the reduced highwall that will direct surface water toward the highwall in such a manner as to prevent water from flowing over the outer slope of the disturbed area; the restored area shall have a minimum depth of fill over the floor of the pit from which the coal has been removed sufficient to cover all materials determined by the director to be acid-producing, toxic or creating a fire hazard and to support vegetation, as may be prescribed by the director; there shall be no depressions to accumulate water, but lateral drainage ditches connecting to natural or constructed waterways shall be constructed whenever directed by the director; additional restoration work may be required by the director according to rules and regulations promulgated by the commission; and in addition to the backfilling and grading requirements above, the operator's method of operation on steep slopes may be regulated and controlled according to rules and regulations adopted by the commission. Such rules and regulations may limit bench widths, control the amount of overburden to be placed beyond the solid bench, prohibit any overburden from being placed beyond the solid bench on precipitous slopes as defined by the commission, or require any measure to accomplish the purpose of this article.

On lands where the method of operation does not produce a bench, complete backfilling shall be required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate all highwalls and spoil peaks. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches
or terraces as will control the water runoff on long uninterupted slopes. Additional restoration work may be required by the director, according to rules and regulations adopted by the commission.

§20-6-14. Obligations of the operator.

In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following: (1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover of such thickness as may be prescribed by the director or with a permanent water impoundment; (2) bury under adequate fill all toxic materials, roof coal, pyritic shale or materials determined by the director to be acid-producing, toxic or creating a fire hazard; (3) seal off, as directed by rules and regulations, any breakthrough of acid water caused by the operator; (4) impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters; and (5) remove or bury all metal, lumber, equipment and other refuse resulting from the operation.

No operator shall throw, dump or pile or permit the dumping, piling or throwing or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted or place any of the foregoing in such a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside of the area of land which is under permit and for which bond has been posted.

§20-6-15. Completion of planting; inspection and evaluation.

When the planting of an area is completed, the operator shall file or cause to be filed a planting report with the director on a form to be prescribed and furnished by the director, giving the following information: (1) Identification of the operation; (2) the type of planting or seeding, including mixtures and amounts; (3) the date...
of planting or seeding; (4) the area of land planted; and (5) such other relevant information as the director may require. All planting reports shall be certified by the operator, or by the party with which the operator contracted for such planting, as aforesaid.

If the director authorizes an operator to defer planting to provide vegetative cover for an area of land, he shall set the time within which such planting shall be carried out. If the operator has carried out on that area of land the method of operation, backfilling, and grading and the reclamation plans approved by the director other than the planting, the director shall release that portion of the bond filed by the operator and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to one hundred dollars per acre, to be retained until a satisfactory planting plan has been carried out, or until the remainder of such bond has been forfeited by the operator: Provided, That the bond shall not be reduced, because of the completion of the backfilling and grading requirements, below one thousand dollars. If the remainder of the bond is forfeited, it shall be expended by the director in a planting program for the area of land for which it was posted. If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the director for deposit in the reclamation fund a sufficient sum to cover the remaining reclamation costs for the area covered by the bond filed by him and such bond may then be released by the director.

§20-6-16. Performance bonds.

Each operator who shall make application for a permit under section eight of this article shall, at the time such permit is requested, furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article. The amount of the bond shall be not less than one hundred dollars for each acre or fraction thereof of the land to be disturbed: Provided, That the director shall have
the discretion to determine the amount per acre of the
bond that shall be required before a permit is issued,
such amount to be based upon the estimated reclamation
costs per acre, not to exceed a maximum of five hundred
dollars per acre or fraction thereof. The minimum
amount of bond furnished shall be three thousand
dollars. Such bond shall be executed by the operator and
a corporate surety licensed to do business in the state of
West Virginia: *Provided, however,* That in lieu of cor-
porate surety, the operator may elect to deposit with the
director cash, or collateral securities or certificates as
follows: Bonds of the United States or its possessions, of
the federal land banks, or of the home owners' loan cor-
poration; full faith and credit general obligation bonds of
the state of West Virginia, or other states, and of any
county, district or municipality of the state of West Vir-
ginia or other states; or certificates of deposit in a bank
in this state, which certificates shall be in favor of the
commission. The cash deposit or market value of such
securities or certificates shall be equal to or greater than
the sum of the bond. The director shall, upon receipt of
any such deposit of cash, securities or certificates, im-
mediately place the same with the treasurer of the state
of West Virginia whose duty it shall be to receive and
hold the same in the name of the state in trust for the
purposes for which such deposit is made. The operator
making the deposit shall be entitled from time to time to
receive from the state treasurer, upon the written order
of the director, the whole or any portion of any cash,
securities or certificates so deposited, upon depositing
with him in lieu thereof, cash or other securities or
certificates of the classes herein specified having value
equal to or greater than the sum of the bond.

It shall be unlawful for the owner or owners of surface
rights or the owner or owners of mineral rights to inter-
fere with the operator in the discharge of his obligations
to the state for the reclamation of lands disturbed by him.
If the owner or owners of the surface rights or the owner
or owners of the mineral rights desire another operator
or other operators to conduct mining operations on lands
disturbed by the operator furnishing bond hereunder, it
shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area. The director shall determine the amount of bond per acre required for other mining operations within the limitations of this section: Provided, however, that the minimum bond for this type of operation shall be five hundred dollars. The director shall take into consideration the character and nature of the overburden, the future use of the land and all costs of backfilling, grading and adequate reclamation, including planting, and shall determine the total bond required for other mining operations.

§20-6-17. Special reclamation fee.

In addition to the fees required by the provisions of section eight of this article, every applicant for a permit to surface mine coal shall, before said permit be issued, pay to the director a special reclamation fee of thirty dollars for each acre of land to be disturbed in the mining operation, with the exception of exempted roadways, storage areas and processing plants. The director shall in due course determine if the special reclamation fee for each acre of land disturbed has been paid by such operator. In the event that all said fees have not been paid, said operator shall pay said fee or fees, as above set forth. In the event that said operator shall have paid a fee or fees for more acres than actually disturbed, the director shall certify said overpayment to the treasurer who shall refund out of the special reclamation fund such overpayment.

The director shall deposit with the treasurer of the state of West Virginia, to the credit of the special reclamation fund, all special reclamation fees collected.

The special reclamation fund shall be administered by the director of the department of natural resources. The director shall cause to be prepared plans for the reclamation and rehabilitation of lands which are unreclaimed and for which bond is either not posted or is uncollectable
and shall prepare specifications for reclamation of said lands, and said director, as funds become available in the special reclamation fund, shall reclaim and rehabilitate said lands in accordance with said plans and specifications, and in so doing the director shall comply with the provisions of article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, in obtaining supplies, materials, equipment and contractual services deemed necessary by the director for the purposes of reclamation and rehabilitation of said lands.

Some of the special reclamation fees collected may be made available for the purchase of orphaned surface-mined lands, for the reclamation thereof, and for the engineering, administrative and research costs necessary to said reclamation, providing federal funds on a matching basis are made available for the purpose of reclaiming said orphaned surface-mined lands.

The director shall make an annual report to the governor and to the Legislature setting forth the number of acres reclaimed and rehabilitated through the use, in whole or in part, of the special reclamation fund provided for herein. Such report shall identify each such reclamation project, state the number of acres reclaimed thereby, and show the county wherein located, and shall make a detailed accounting of expenditures from the special reclamation fund.

§20-6-18. Exception as to highway construction projects from reclamation requirements.

Any provision of this article to the contrary notwithstanding, a person or operator shall not be subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal for borrow and fill material for grading in federal and state highway construction projects: Provided, That the provisions of the highway construction contract requires the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity.
§20-6-19. Existing permits and performance bonds.

Any operator holding a valid surface-mining permit under which tonnage has been produced within one year preceding the effective date of this article or any operator holding a valid surface-mining permit under which mining operations have not been commenced prior to the effective date of this article shall within one hundred twenty days after the effective date hereof convert such permit, and the bond or bonds posted therefor, to comply with the provisions of this article, as to all mining operations conducted and to be conducted after said effective date. The provisions of this section shall not be construed to require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of this article.

§20-6-20. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.

All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The director of the department of mines shall promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of said code, to protect the safety of those employed in and around surface mines, and the enforcement of all laws, and rules and regulations relating to the safety of those employed in and around surface mines is hereby vested in the department of mines.


The operator of every surface mine shall, on or before the end of each calendar month, file with the director of mines a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§20-6-22. Leasing of lands owned by the state for the surface mining of coal therefrom.

No land or interest in land owned by the state shall be leased, and no present lease shall be renewed by the state,
nor any agency of the state, for the purpose of conduct-
ing surface-mining operations thereon, unless said lease
or renewal shall have been first authorized by an act of
the Legislature.

§20-6-23. Participation with federal government and other
governmental agencies.

In the reclamation of land disturbed by surface mining
for which the department of natural resources has funds
available, the director may avail himself of any services
which may be provided by other state agencies or by
agencies of the federal government, and may compensate
them for such services. The director may also receive
any federal funds, state funds or any other funds for the
reclamation of land disturbed by surface mining. The
director may cause the reclamation work to be
done by his own employees or employees of other
governmental agencies or soil conservation districts, or
through contracts with qualified vendors. Such contracts
shall be awarded to the lowest responsible bidder upon
competitive bids after reasonable advertisement. The
director and any other agency and any contractor under
a contract with the department of natural resources shall
have the right of access to the land affected to carry out
such reclamation.

Any funds legally available to the director and any
public works program legally available (both funds and
services) may be expended and used to reclaim and re-
habilitate any lands that have been subjected to surface
mining that have not been reclaimed and rehabilitated
in accordance with standards set by the director and
which are not covered by bond to guarantee such recla-
mation.


The commission shall promulgate rules and regula-
tions, in accordance with the provisions of chapter twenty-
nine-a of said code, for the effective administration of this
article.

§20-6-25. Noncompliance.

If any of the requirements of this article or rules and
regulations promulgated pursuant thereto or the orders
of the director and the commission have not been com-
plied with within the time limits set by the director or
the commission or by this article, the director shall cause
a notice of noncompliance to be served upon the opera-
tor, which notice shall order the operation to cease, or
where found necessary, the director shall order the
suspension of a permit. A copy of such notice or order
shall be handed to the operator in person or served by
certified mail addressed to the operator at the permanent
address shown on the application for a permit. The notice
of noncompliance or order of suspension shall specify in
what respects the operator has failed to comply with this
article or the rules and regulations of the commission or
orders of the director and the commission. If the operator
has not reached an agreement with the director or has
not complied with the requirements set forth in the notice
of noncompliance or order of suspension within the time
limits set therein, the permit may be revoked by order of
the director and the performance bond shall then be
forfeited. If an agreement satisfactory to the director has
not been reached within thirty days after suspension of
any permit, any and all suspended permits shall then be
declared revoked and the performance bonds with respect
thereto forfeited.

When any bond is forfeited pursuant to the provisions
of this article, the director shall give notice to the at-
torney general who shall collect the forfeiture without
delay.

§20-6-26. Adjudications, findings, etc., to be by written order;
contents; notice.

Every adjudication, determination or finding by the
commission or director affecting the rights, duties or
privileges of any person subject to this article shall be
made by written order and shall contain a written find-
ing by the commission or director of the facts upon which
the adjudication, determination or finding is based.
Notice of the making of such order shall be given to the
person whose rights, duties or privileges are affected
thereby by mailing a true copy thereof to such person by
certified mail.
§20-6-27. Reclamation board of review.

There is hereby created a reclamation board of review consisting of five members to be appointed by the governor with the advice and consent of the senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years, respectively, as designated by the governor at the time of the appointment and except that any vacancy in the office of member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of coal surface-mine operators. One of the appointees to such board shall be a person, who, by reason of his previous training and experience, can be classed as one learned and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in water conservation problems. Not more than three members shall be members of the same political party.

The board may designate an employee of the reclamation division to act as its secretary. Such secretary shall perform such duties as the board prescribes.

Three members shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings.

Each member shall be paid as compensation for his work as such member, from funds appropriated for such
purposes, twenty-five dollars per day when actually en-

gaged in the performance of his work as a member and

when engaged in travel necessary in connection with such

work. In addition to such compensation each member

shall be reimbursed for all traveling, hotel and other ex-
penses necessarily incurred in the performance of his

work as a member.

Annually, one member shall be elected as chairman and

another member shall be elected as vice chairman. Such

officers shall serve for terms of one year.

The governor may remove any member of the board

from office for inefficiency, neglect of duty, malfeasance,

misfeasance or nonfeasance, after delivering to such

member the charges against him in writing, together with

at least ten days' written notice of the time and place at

which the governor will publicly hear such member,

either in person or by counsel, in defense of the charges

against him, and affording such member such hearing.

If such member is removed from office, the governor shall

file in the office of the secretary of state a complete state-

ment of the charges made against such member and a

complete report of the proceedings thereon. In such case

the action of the governor removing such member from

office shall be final.

§20-6-28. Appeals to board; hearing; record; findings and

orders of board.

Any person claiming to be aggrieved or adversely

affected by any rule and regulation or order of the recla-

mation commission or order of the director or by their

or his failure to enter an order may appeal to the recla-

mation board of review for an order vacating or modify-

ing such rule and regulation or order, or for such order

as the commission or director should have entered.

The person so appealing to the board shall be known

as the appellant and the commission and/or director shall

be known as the appellee or appellees. The appellant and

appellee or appellees shall be deemed to be parties to

the appeal.

Such appeal shall be in writing and shall set forth the

rule and regulation, order or omission complained of and
the grounds upon which the appeal is based. Where the
appellant claims to be aggrieved or adversely affected by
an order, such appeal shall be filed with the board within
thirty days after the date upon which the appellant re-
ceived notice by certified mail of the making of the order
complained of. Where the appellant claims to be ag-
grieved or adversely affected by any rule and regulation
or omission, such appeal may be filed with the board at
any time. A notice of the filing of such appeal shall be
filed with the commission and director within three days
after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal,
the commission or director shall prepare and certify to the
board a complete record of the proceedings of the reclama-
tion commission or director out of which the appeal arises,
including all documents and correspondence relating to
the matter. The expense of preparing the record shall be
taxed as a part of the costs of the appeal.

Upon the filing of such appeal, the board shall fix the
time and place at which the hearing on the appeal will be
held, which hearing shall be held within twenty days after
the notice of appeal is filed, and shall give the appellant
and the commission and director at least ten days' writ-
ten notice thereof by certified mail. The board may post-
pone or continue any hearing upon its own motion or upon
application of the appellant or of the commission or direc-
tor.

The filing of an appeal provided for in this section shall
not stay execution of the order appealed from.

The board shall hear the appeal de novo, and any party
to the appeal may submit evidence.

For the purpose of conducting a hearing on an appeal,
the board may require the attendance of witnesses and
the production of books, records and papers, and it may,
and at the request of any party it shall, issue subpoenas
for witnesses or subpoenas duces tecum to compel the
production of any books, records or papers, directed to
the sheriff of the county where such witnesses, books,
records or papers are found, which subpoenas and sub-
poenas duces tecum shall be served and returned in the
same manner as subpoenas and subpoenas duces tecum in
civil litigation are served and returned. The fees and
allowances for mileage of sheriffs and witnesses shall be
the same as those permitted in civil litigation in trial
courts. Such fees and mileage expenses incurred at the
request of the appellant shall be paid in advance by the
appellant, and the remainder of such fees and expenses
shall be paid out of funds appropriated for the expenses
of the division of reclamation.

In case of disobedience or neglect of any subpoena or
subpoena duces tecum served on any person, or the re-
fusal of any witness to testify to any matter regarding
which he may be lawfully interrogated, the circuit court
of the county in which such disobedience, neglect or
refusal occurs, or any judge thereof in vacation, on appli-
cation of the board or any member thereof, shall compel
obedience by attachment proceedings for contempt as
in the case of disobedience of the requirements of a sub-
poena or subpoena duces tecum issued from such court
or a refusal to testify therein. Witnesses at such hearings
shall testify under oath, and any member of the board
may administer oaths or affirmations to persons who so
testify.

At the request of any party to the appeal, a stenographic
record of the testimony and other evidence submitted
shall be taken by an official court shorthand reporter at
the expense of the party making the request therefor.
Such record shall include all of the testimony and other
evidence and the rulings on the admissibility of evidence,
but any party may at the time object to the admission
of any evidence and except to the rulings of the board
thereon, and if the board refuses to admit evidence the
party offering same may make a proffer thereof, and
such proffer shall be made a part of the record of such
hearing.

If upon completion of the hearing the board finds that
the rule and regulation or order appealed from was law-
ful and reasonable, it shall make a written order affirming
the rule and regulation or order appealed from; if the
board finds that such rule and regulation or order was
unreasonable or unlawful, it shall make a written order
vacating or modifying the rule and regulation or order
appealed from; and if the board finds that the commission or director has unreasonably or unlawfully failed to enter an order, it shall enter such order as it finds the commission or director should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by certified mail.

The order of the board shall be final unless vacated upon judicial review thereof.

§20-6-29. Appeal from order of board.

Any party adversely affected by an order of the reclamation board of review, other than an order affirming, modifying, or vacating a rule and regulation of the commission, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha county or the circuit court of the county in which the surface-mining operation to which the order relates is or was conducted or is or was proposed to be conducted. Any party adversely affected by an order of the reclamation board of review, which order affirms, modifies or vacates a rule and regulation of the commission, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha county or the circuit court of the county in which the surface-mining operation to which the rule and regulation in question relates is or was conducted or is or was proposed to be conducted. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee or appellees. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal on questions of law, questions of fact or questions of law and fact effective.
The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of the proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which was submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the case or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued.

The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any order of the reclamation board of review which is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or which is determined by the court to involve a clearly unwarranted exercise of discretion. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

§20-6-30. Offenses; penalties; prosecutions; treble damages.

(a) Any person who shall conduct any surface-mining operation, or any part thereof, without a permit or with-
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3 out having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit, or who shall falsely represent any material fact in an application for a permit or in an application for the renewal of a permit, or who wilfully violates any provision of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation constitutes a separate offense. It shall be the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The director shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any penalties provided by law, any operator who directly causes damage to the property of others as a result of surface mining shall be liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such surface mining was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages shall be recoverable in an action at law in any court of competent jurisdiction. The director shall require, in addition to any other bonds and insurance required by other provisions of this article, that any person engaged in the business of surface mining shall file with the director a certificate of
insurance, or other security, in an amount of not less than
fourteen thousand dollars, to cover possible damage to property
for which a recovery may be sought under the provisions
of this subsection.

§20-6-31. Effective date of article.

This article shall become effective on July first, one
thousand nine hundred sixty-seven. Irrespective of the
date of issuance of a permit, all operators shall immedi-
ately conform to any statutes enacted or rules and regula-
tions adopted on the effective date of such statute or rule
and regulation. The provisions of this section shall not
be construed to require the regrading or replanting of any
area on which such work was satisfactorily performed
prior to the effective date of the statute or rule and regu-
lation.

§20-6-32. Severability of provisions.

If any of the provisions of this article shall be held to
be invalid or unconstitutional, such invalidity or uncon-
stitutionality shall not affect other provisions of the
article, and to this end, the provisions of this article are
declared to be severable.

CHAPTER 146

(House Bill No. 1031—By Mr. Bowman and Mr. Edgar)

[Passed March 6, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to penalty
for violations under subsection three, section five, article
two of chapter twenty.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:
ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

Section

9. Violations of chapter generally; penalties.

§20-7-9. Violations of chapter generally; penalties.

1 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:

Provided, however, That any person violating subdivision three, section five, article two of this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned for not less than ten days nor more than one hundred days.

CHAPTER 147

(Com. Sub. for Senate Bill No. 182—By Mr. Gainer)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal sections thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article seven, chapter twenty of said code, by adding thereto thirteen new sections, designated sections eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eight-
Be it enacted by the Legislature of West Virginia:

That sections thirteen through twenty-five, all of article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article seven of said code be amended by adding thereto thirteen new sections, designated sections eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, all to read as follows:

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

§20-7-11. Motorboats and other terms defined.

As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of
customs of the United States government or any federal agency successor thereto, nor to a vessel powered by a motor of five horsepower or less; and

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the director on forms approved by him. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of five dollars. All such fees shall be deposited in the state treasury to the credit of the state general fund. Upon receipt of the application in approved form, the director shall enter the same upon the records of his office and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the director in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.
(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the ninety-day reciprocity period provided for in section fourteen of this article. Such recordation shall be in the manner and pursuant to procedure required for the award of a number under subdivision (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form with fee shall be filed with the director and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the commission shall be in conformity there-with.

(e) The director may designate as issuing agent the clerk of any county court and such other persons in each county as he deems advantageous to provide for the issuance of certificates of number in accordance with the provisions of this article. For services rendered in issuing such certificates, and collecting and paying over such numbering fees, each issuing agent, other than a state or county official, shall charge and retain an additional fee of twenty-five cents from the person obtaining the certificate of number. Every such issuing agent, unless already under bond with the director as an agent for the collection of its moneys, shall file a bond with the director, payable to the state of West Virginia, in an amount to be fixed by the director at not more than one thousand dollars, before the supply of certificates of number is delivered to him, conditioned upon the faithful performance of his obligation to issue certificates only in conformance with the provisions of this article and the regulations...
of the director. Each issuing agent, on the first day of each month, shall remit to the director all moneys collected for the director during the preceding month, and shall accompany his remittance with a report showing the name of the county, the names and addresses of the persons paying the same, and the date of receipt thereof.

(f) All records of the director made or kept pursuant to this section shall be public records.

(g) Such license shall be valid only until the last day of the fiscal year in which the same is issued. If at the end of such year ownership has remained unchanged, such owner shall, upon application and payment of a fee of two dollars, be granted a renewal of such certificate of number for an additional one-year period.

(h) The owner shall furnish the director notice of the transfer of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section, or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify the director within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the director with his new address. The director may provide in his rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this article shall be painted, attached or otherwise displayed on either side of the bow of such motorboat.

(k) It shall be the duty of the director on or before
August thirty-first of each year, commencing with the year one thousand nine hundred sixty-seven, to forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the same or other boats registered with the director under the provisions of this article. In furnishing this information to each county assessor, the director shall include in his report such information as is made available to him in the reports and registrations he receives as to make, model, value and cost price of such vessels and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: Provided, That the director need not furnish such information to the assessor if the cost price of such vessel does not exceed two hundred dollars or the cost of the motor does not exceed one hundred seventy-five dollars. In order to deal equitably with overlapping license periods, the director may issue a six months' license from the period January, one thousand nine hundred sixty-eight through June, one thousand nine hundred sixty-eight. This six months' license is to be issued to avoid the necessity of motorboat owners who have purchased their licenses from January thirtieth, one thousand nine hundred sixty-eight, losing a six months' period of license entitlement.

(l) No person shall operate an unlicensed motorboat upon any waters of this state without first acquiring such certificate of number or license as required by law.

§20-7-13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.

(a) Motorboats subject to the provisions of this article shall be divided into four classes as follows:

Class A. Less than sixteen feet in length;
Class 1. Sixteen feet or over and less than twenty-six feet in length;
Class 2. Twenty-six feet or over and less than forty feet in length;
Class 3. Forty feet or over.

(b) Classes 1, 2 and 3 motorboats in all weathers from
sunset to sunrise shall carry and exhibit the following lights when under way, and during such time no other lights which may be mistaken for those prescribed shall be exhibited.

(1) Every motorboat of Class 1 shall carry the following lights:

First. A bright white light aft to show all around the horizon;

Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(2) Every motorboat of Classes 2 and 3 shall carry the following lights:

First. A bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side;

Second. A bright white light aft to show all around the horizon and higher than the white light forward;

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

(3) Motorboats of Class 1 when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Motorboats of Classes 2 and 3 when so propelled, shall carry the colored side lights, suitably screened, but not the white lights, prescribed by this section. Motorboats of all classes, when
so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(4) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile. The word "visible" in this subdivision, when applied to lights, shall mean visible on a dark night with clear atmosphere.

(5) When propelled by sail and machinery any motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

(c) Any vessel may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, one thousand nine hundred forty-eight, federal act of October eleven, one thousand nine hundred fifty-one, as amended, in lieu of the lights required by subsection (b) of this section.

(d) Every motorboat of Class 1, 2 or 3 shall be provided with an efficient whistle or other sound-producing mechanical appliance.

(e) Every motorboat of Class 2 or 3 shall be provided with an efficient bell.

(f) Every motorboat shall carry at least one life preserver, or life belt, or ring buoy, or other device of the sort prescribed by regulations of the commission for each person on board, so placed as to be readily accessible: Provided, That every motorboat carrying passengers for hire shall carry so placed to be readily accessible at least one life preserver of the sort prescribed by the regulations of the director for each person on board.

(g) Every motorboat shall be provided with such number, size and type of fire extinguishers, capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the director, which fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

(h) The provisions of subsections (d), (e) and (g)
90 of this section shall not apply to motorboats while com-
91 peting in any race conducted pursuant to section twenty
92 of this article, or, if such boats be designed and intended
93 solely for racing while engaged in such navigation as is
94 incidental to the tuning up of the boats and engines for
95 the race.
96 (i) Every motorboat shall have the carburetor or
97 carburetors of every engine therein (except outboard
98 motors) using gasoline as fuel, equipped with such effi-
99 cient flame arrestor, backfire trap, or other similar device
100 as may be prescribed by regulations of the director.
101 (j) Every such motorboat and every such vessel, ex-
102 cept open boats using as fuel any liquid of a volatile
103 nature, shall be provided with such means as may be pre-
104 scribed by the regulations of the director for properly
105 and efficiently ventilating the bilges of the engine and
106 fuel tank compartments so as to remove any explosive
107 or inflammable gases.
108 (k) The director is hereby authorized to make rules
109 and regulations modifying the equipment requirements
110 contained in this section to the extent necessary to keep
111 these requirements in conformity with the provisions of
112 the federal navigation laws or with the navigation rules
113 promulgated by the United States coast guard.
114 (l) The director is hereby authorized to establish and
115 maintain, for the operation of vessels on the waters of
116 this state, pilot rules in conformity with the pilot rules
117 contained in the federal navigation laws or the naviga-
118 tion rules promulgated by the United States coast guard.
119 (m) No person shall operate or give permission for
120 the operation of a vessel which is not equipped as re-
121 quired by this section or modification thereof.
§20-7-14. Motorboats exempt from numbering.

A motorboat shall not be required to be numbered
2 under this article if it is:
3 (1) Already covered by a number in full force and
4 effect which has been awarded to it pursuant to federal
5 law or a federally approved numbering system of an-
6 other state: Provided, That such boat shall not have been
within this state for a period in excess of ninety con-
secutive days;
(2) A motorboat from a country other than the United
States temporarily using the waters of this state;
(3) Motorboats used exclusively for racing while par-
ticipating in races, and the preparation therefor, which
have been authorized pursuant to the provisions of sec-
tion twenty of this article.

§20-7-15. Dealers’ and manufacturers’ certificate of number;
applications and fees.

Dealers’ and manufacturers’ certificate of number, con-
taining the word “manufacturer” or “dealer,” as appro-
priate, may be used in connection with the operation of
any motorboat in the possession of such dealer or manu-
facturer, when the boat is being used for demonstrative
purposes. Application for a dealer’s or manufacturer’s
certificate of number shall be made upon a form pro-
vided by the director and shall contain such informa-
tion as may be required by the director. Upon receipt of
the application and upon payment of a fee of five dollars
for the initial certificate of number, and five dollars for
each additional certificate of number, the director shall
issue to the applicant a manufacturer’s or dealer’s cer-
tificate of number which shall contain the word “manu-
facturer” or “dealer” in lieu of a description of the boat.
The manufacturer or dealer may have the number
awarded to him printed upon or attached to a removable
sign or signs to be temporarily but firmly mounted upon
or attached to the boat being demonstrated, so long as the
display meets the requirements of the provisions of this
article and regulations issued hereunder.

§20-7-16. Boat liveries.

(a) The owner of a boat livery shall cause to be kept
a record of the name and address of the person or per-
sons hiring any vessel which is designed or permitted by
him to be operated as a motorboat, identification number
thereof, and the departure date and time, and the ex-
pected time of return. The record shall be preserved for
at least six months.
(b) Neither the owner of a boat livery, nor his agent or employee, shall permit any motorboat or any vessel designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section thirteen of this article and any rules and regulations made pursuant thereto.

§20-7-17. Motorboat muffling.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section twenty of this article, and for such motorboats while on trial runs during a period not to exceed seventy-two hours immediately preceding such regatta or race, and for such motorboats while competing in official trials for speed records during a period not to exceed seventy-two hours immediately following such regatta or race.

§20-7-18. Care in handling watercraft; prohibited operation; duty to render aid in collision, accident or casualty; reports.

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to
give his name, address and identification of his vessel in
writing to any person injured and to the owner of any
property damaged in the collision, accident or other
casualty.
(d) In the case of collision, accident or other casualty
involving a vessel, the operator thereof, if the collision,
accident or other casualty results in death or injury to
a person or damage to property in excess of one hundred
dollars, shall file with the director a full description of
the collision, accident or other casualty, including such
information as the director may, by regulation, require.
In accordance with any request duly made by an author-
ized official or agency of the United States, any infor-
mation compiled or otherwise available to the director pur-
suant to this subsection shall be transmitted to such
official or agency of the United States.


(a) No person shall operate a vessel on any waters
of this state towing a person or persons on water skis,
surfboard or similar device, nor shall any person engage
in water skiing, surfboarding or similar activity at any
time between the hours from one hour after sunset to
one hour before sunrise.
(b) The provisions of subsection (a) of this section
do not apply to a performer engaged in a professional
exhibition or a person or persons engaged in an activity
authorized under section twenty of this article.
(c) No person shall operate or manipulate any vessel,
tow rope or other device by which the direction or loca-
tion of water skis, surfboard or similar device may be
affected or controlled in such a way as to cause water
skis, surfboard or similar device, or any person thereon
to collide with or strike against any object or person.

§20-7-20. Regattas, races and exhibitions; applications and
permits.

(a) The department may authorize the holding of
regattas, motorboat or other boat races, marine parades,
tournaments or exhibitions on any waters of this state.
It shall adopt and may from time to time amend regu-
lations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof, shall, at least fifteen days prior thereto, file an application with the director for permission to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the director in writing.

(b) The provisions of this section shall not exempt any person from compliance with the applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

§20-7-21. Responsibility of owner, etc., for incapable operators of motorboats.

No person who is the owner of any motorboat, or has such in his charge or control, shall act or permit the same to be operated by any person who, by reason of any physical or mental disability, is incapable of operating such motorboat under all the prevailing circumstances.

§20-7-22. General rules and regulations for motorboating; special rules.

The director is hereby authorized and empowered to prescribe and to enforce:

(a) General rules and regulations to be observed in the operation or navigation of motorboats upon, over or through the waters of this state which he shall deem necessary for the public health or safety of persons or property on or in such waters, or for the preservation of all forms of useful aquatic life, particularly as to speed, running, lights, signals, courses, channels, right of ways, and the disposal of oil, gas, gasoline or other wastes from such boats;
(b) Special rules and regulations for such particular, artificial or natural areas of water, for further limiting, restricting or prohibiting the operation or navigation of motorboats thereon to protect the public health or to protect and preserve useful aquatic life.

§20-7-23. Local rules and regulations.

(a) The provisions of this article, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or regulations issued thereunder: Provided, That such ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this article, amendments thereto or regulations issued thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

(c) The director is hereby authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

CHAPTER 148

(House Bill No. 1016—By Mr. Myles)

[Passed March 3, 1967; in effect from passage. Approved by the Governor.]

AN ACT to authorize and empower the director of the depart-
ment of natural resources to transfer a certain parcel of land located at Hawk's Nest state park and owned by that department, to the town of Ansted for the installation of a sewage lift station as part of that town’s sewage disposal system.

Be it enacted by the Legislature of West Virginia:

Section
1. Director of department of natural resources authorized to transfer certain department-owned land to the town of Ansted.
2. Right of reversion to the department.

§1. Director of department of natural resources authorized to transfer certain department-owned land to the town of Ansted.

The director of the department of natural resources is hereby authorized and empowered to transfer to the town of Ansted a plot of land, owned by the department, measuring thirty feet by thirty feet, and located on the property of Hawk’s Nest state park for the installation of a sewage lift station which is a part of a sewage disposal system. The director is further authorized and empowered to transfer to the town of Ansted any necessary easements incident to the operation of the station. The exact location of the plot and easements upon the Hawk’s Nest state park ground is to be determined according to the plans and specifications of the sewer system and is subject to the approval of the director.

§2. Right of reversion to the department.

Be it further provided that should the land so conveyed ever cease to be used for a sewage lift station, it shall revert to the department of natural resources.

CHAPTER 149
(Senate Bill No. 242—By Mr. McCourt)

[Passed February 13, 1967; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three-b, article nine, chapter five of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the West Virginia New York world's fair pavilion fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. DEPARTMENT OF COMMERCE.
§1. Repealing act creating the West Virginia New York world's fair pavilion fund.
1 Section three-b, article nine, chapter five of the code
2 of West Virginia, one thousand nine hundred thirty-one,
3 as amended, is hereby repealed.

CHAPTER 150
(House Bill No. 688—By Mr. Buck and Mr. Powell)

[Passed March 2, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to court and county probation officers and assistants and increasing the salary of said officers and assistants.

Be it enacted by the Legislature of West Virginia:

That section five, 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:

ARTICLE 12. PROBATION AND PAROLE.
Section
5. Court and county probation officers and assistants.

§62-12-5. Court and county probation officers and assistants.
1 The judge of any court actively exercising jurisdiction
2 in criminal cases and having authority to place offenders
3 on probation is authorized to appoint a court or county
4 probation officer and a clerical assistant to serve during
5 the pleasure of the appointing judge, and in addition in
6 counties having a population of more than one hundred
7 fifty thousand, such judge is authorized to appoint an as-
8 sistant court or county probation officer: Provided, That
9 the appointing judge shall first obtain the approval of the
county court or the county courts in his judicial circuit of
the expenses to be incurred and the salary or salaries to be
paid the court or county probation officer and clerical as-
istants, which approval shall be discretionary with said
county court or courts and shall be required before any
appointment made hereunder becomes effective.

The appointment of a court or county probation officer,
assistant court or county probation officer and clerical
assistant shall be in writing and entered on the order book
of the court by the judge making such appointment and
a copy of said order of appointment shall be delivered to
the county court of the county in which said court or
county probation officer, assistant court or county pro-
bation officer and clerical assistant shall serve. The said
order of appointment shall state the monthly salary
fixed by said judge, to be paid the court or county proba-
tion officer, assistant court or county probation officer or
clerical assistant so appointed. A court or county proba-
tion officer shall receive for his services a monthly
salary of not less than three hundred nor more than six
hundred dollars per month; an assistant court or county
probation officer shall receive for his services a monthly
salary of not less than three hundred and not more than
five hundred dollars per month. A clerical assistant shall
receive for his services a salary not to exceed three hun-
dred dollars per month. The county court shall make pro-
visions for payment and pay monthly the salary of the
court or county probation officer, assistant court or county
probation officer and clerical assistant as designated in
the order of appointment.

The county court shall provide adequate office space,
equipment and supplies for the court or county probation
officer, assistant court or county probation officer and
clerical assistant, to be approved by the appointing judge.
The county court shall reimburse a court or county pro-
bation officer and an assistant court or county probation
officer for all expenses actually and necessarily incurred
in line of duty in the field.

No judge shall appoint any court or county probation
officer, assistant court or county probation officer or cler-
cal assistant who is related to him either by consanguinity
or affinity.
A judge of a circuit court whose circuit comprises more than one county, having authority to appoint a court or county probation officer, may appoint a court or county probation officer and a clerical assistant in each county of such circuit, or may appoint the same person as a court or county probation officer and also the same person as a clerical assistant in two or more of such counties.

When a judge has appointed a court or county probation officer and a clerical assistant to serve in a judicial circuit including more than one county, the salary and expenses of such appointees shall be contributed by each county sharing in the services of such appointees in the proportion agreed upon by such counties, if they agree, otherwise in the proportion of the populations in the counties derived from the last United States census.

In lieu of, or in addition to, the court or county probation officers, assistant court or county probation officers and clerical assistants provided for in this section, the judge may avail himself of the services of state probation and parole officers; and any such services which may be provided to the court or judge by said state probation and parole officers, shall be rendered at no additional cost to any court or judge so using them. The board of probation and parole may assist any court or county probation officer, upon request, with information relative to procedure, printed forms, and technique applicable to probation methods.

Nothing contained in this section shall in any manner alter, modify, affect or supersede the appointment, tenure or salary of any probation officer appointed by any court under any special act of the Legislature heretofore or hereafter enacted.

CHAPTER 151

(House Bill No. 899—By Mr. Watson)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four-a and twelve, article four, chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four-b and four-c, relating to the practice of dentistry by dental corporations in the state of West Virginia; providing powers and duties of the board of dental examiners and the secretary of state; the means of incorporation; providing limitations, penalties and a severability clause and authorizing said practice of dentistry under a corporate name.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

Section
4a. Powers and duties of board.
4b. Registration of dental corporations.
4c. Practice of dentistry by dental corporations; limitations; dentist-patient relationship not affected; biennial registration; penalty; severability.
12. Practice of dentistry under trade name or firm name.

§30-4-4a. Powers and duties of board.

1 The West Virginia board of dental examiners shall examine all qualified applicants for license to practice dentistry or dental hygiene, and it shall license all such applicants who are qualified under applicable statutes and who pass the examinations that may be required by statute or by any legally adopted rule or regulation. The board shall examine all applications filed in accordance with the provisions of section four-b of this article and shall issue certificates of authorization to all applicants legally entitled to receive the same, such certificates to be signed by the chairman and secretary of the board.

13 The said board shall have the power to make such examination of all applicants appearing before it for any type of license as may be necessary to determine that
The applicant is qualified. The board shall also have authority to license dental corporations authorized under the provisions of and subject to the limitations of this article, to practice dentistry through duly licensed dentists. The said board shall also have the power to revoke or suspend any license issued by it, for cause, after having given the person whose license is sought to be revoked or suspended, an opportunity to be heard in the manner provided by section eight, article one, chapter thirty of this code. It shall have the power to reinstate any license revoked or suspended by it.

The said board is authorized and empowered to hold and conduct hearings and investigations on the issuance, suspension, revocation, or reinstatement of licenses and on charges of unauthorized practice of dentistry or dental hygiene.

The board, acting by and through its members, employees, and agents, is further authorized and empowered, at any time during customary office hours, to enter into the office or place of business of any dental laboratory, licensed dentist, dental corporation or other dental practitioner of this state, and to obtain access to, make inspection of, and request information regarding any work authorization which such dental laboratory, licensed dentist, dental corporation or other dental practitioner is required under the provisions of section two-a of this article, to retain therein, and is further authorized and empowered to inspect any items of dental technological work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental prosthesis then in the place of business of, or upon the premises occupied by, such dental laboratory for making, production, reproduction, construction, repair, alteration, or restoration, and to request any information which it, its members, employees, or agents deem to be pertinent relating to any such dental technological work and any such dental prosthesis. For the purpose of this paragraph the definition of terms contained in subsection A of section two-a of this article is made expressly applicable.
56 The said board shall have the power to hire, fix the
57 compensation of, and discharge such employees as are
58 necessary for the performance of the powers and duties
59 vested in the said board by law and to expend such sums
60 as said board may deem necessary to maintain an office
61 and to carry out and enforce the provisions of this article.

§30-4-4b. Registration of dental corporations.

1 When any one or more dentists duly licensed to prac-
2 tice dentistry in the state of West Virginia wish to form
3 a dental corporation, such dentist or dentists shall file a
4 written application with the board of dental examiners,
5 on a form prescribed by the board, and shall furnish proof
6 satisfactory to the board that the signer is such a duly
7 licensed dentist, or if there be more than one that all of
8 the signers of such application are such duly licensed
9 dentists. A fee of twenty-five dollars shall accompany
10 each such application, no part of which shall be return-
11 able.
12 If the board finds that the signer is a duly licensed
13 dentist, or if there be more than one that all of the sign-
14 ers of such application are such duly licensed dentists,
15 the board shall notify the secretary of state that a cer-
16 tificate of authorization has been issued to the individual
17 or individuals signing such application, to form a dental
18 corporation.
19 When the secretary of state receives notification from
20 the board of dental examiners that a person or persons
21 have been issued a certificate of authorization, he shall
22 attach such authorization to the agreement of incorpor-
23 ation and upon compliance by the corporation with the
24 applicable provisions of chapter thirty-one of this code,
25 shall notify the incorporators that such corporation,
26 through a duly licensed dentist or dentists, may engage
27 in the practice of dentistry.

§30-4-4c. Practice of dentistry by dental corporations; limita-
1 tions; dentist-patient relationship not affected; biennial registration; penalty; severability.

1 (1) A dental corporation may practice dentistry only
2 through an individual dentist or dentists duly licensed
to practice dentistry in the state of West Virginia, but such dentist or dentists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the dentist-patient relationship nor is it meant or intended to change in any way the personal character of the dentist-patient relationship. A corporation holding such certificate of authorization shall register biennially, on or before the thirtieth day of June, on a form prescribed by the board of dental examiners and shall pay an annual registration fee of fifty dollars.

(2) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board of dental examiners that any of its shareholders is no longer a duly licensed dentist, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed dentist: Provided, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

(3) No corporation shall practice dentistry, or any of its branches, or hold itself out as being capable of doing so, without a certificate from the board of dental examiners, nor shall any corporation practice dentistry, or any of its branches, or hold itself out as being capable of doing so, after its certificate has been revoked, or if suspended, during the term of such suspension. A certificate signed by the secretary of the board of dental examiners to which is affixed the official seal of the board to the effect that it appears from the records of the board that no such cer-
44 tificate to practice dentistry or any of its branches in
45 the state has been issued to any such corporation speci-
46 fied therein or that such certificate has been revoked or
47 suspended shall be admissible in evidence in all courts
48 of this state and shall be prima facie evidence of the
49 facts stated therein.
50 (4) Any officer, shareholder or employee of such cor-
51 poration who participates in a violation of any pro-
52 vision of this section shall be guilty of a misdemeanor,
53 and, upon conviction, shall be fined not exceeding one
54 thousand dollars.
55 (5) If any provision of section four-b or four-c of
56 this article be held to be invalid, such invalidity shall not
57 affect the other provisions of said sections, and to this end
58 the provisions of said sections are severable.

§30-4-12. Practice of dentistry under trade name or firm name.

1 No person shall practice, or offer or undertake to prac-
2 tice, dentistry under any firm name or trade name, or
3 under any name other than his own true name: Provided,
4 That nothing herein contained shall prohibit the practice
5 of dentistry by a partnership under a firm name contain-
6 ing nothing but the surname of every member of such
7 partnership, or by a duly licensed dental corporation.

CHAPTER 152

(House Bill No. 609—By Mr. Holliday and Mrs. Withrow)

[Passed March 10, 1967; in effect July 1, 1967. Became a law without the
approval of the Governor.]

AN ACT to amend and reenact article seven-a, chapter thirty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to practical nurses.

Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter thirty of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:
ARTICLE 7A. PRACTICAL NURSES.

Section
1. Definitions.
2. Use of title "licensed practical nurse"; who may practice.
3. Qualifications of applicants for license.
4. Application for license or registration; examination fee.
5. Board of examiners; powers; duties.
6. Examination and licensure of practical nurses; present practitioners.
7. Renewal or reinstatement of license.
8. Schools of practical nursing.
9. Construction of article; acts not prohibited.
10. Disciplinary proceedings; grounds for discipline.
11. Prohibited acts; penalties.
12. Severability.

§30-7A-1. Definitions.

(a) The term "practical nursing" means the performance for compensation of selected nursing acts in the care of the ill, injured or infirm under the direction of a registered professional nurse or a licensed physician or a licensed dentist, and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing.

(b) The term "practical nurse" means a person who has met all the requirements for licensure as a practical nurse and who engages in practical nursing as hereinabove defined.

(c) The term "board" as used in this article, shall mean the board of examiners for licensed practical nurses as set forth in section five of this article.

§30-7A-2. Use of title "Licensed Practical Nurse"; who may practice.

Any person who is qualified to serve as a practical nurse under the provisions of this article shall be known as a licensed practical nurse or otherwise known as a L.P.N. After the thirtieth day of June, one thousand nine hundred sixty-eight, no other person shall engage in practical nursing nor assume such title nor use such abbreviation or any other words, letters, figures, signs, or devices to indicate that the person using the same is a licensed practical nurse or a practical nurse: Provided, however, That any person holding a valid license to practice practical nursing in this state as of the effective
§30-7A-3. Qualifications of applicants for license.

1 Except as otherwise provided in section six of this article, any person desiring to obtain a license to practice practical nursing shall submit to the board satisfactory evidence that he or she: (a) Is of good moral character; (b) has acquired at least a tenth grade education or its equivalent; (c) has completed a course of study in an accredited school for practical nurses as defined by the board and holds a diploma therefrom; and (d) has completed such other general educational requirements as may be prescribed by the board.

§30-7A-4. Application for license or registration; examination fee.

1 The provisions of section six, article one, chapter thirty of the code shall apply to this article, except that an applicant for license as a practical nurse shall pay such fee as the board shall prescribe.

§30-7A-5. Board of examiners; powers; duties.

1 The governor shall appoint, by and with the advice and consent of the senate, seven citizens of the state of West Virginia who shall constitute the "West Virginia State Board of Examiners for Licensed Practical Nurses" and they shall be charged with the duty of administering the provisions of this article. Of the seven members so appointed two shall be licensed practical nurses, one of whom shall be a graduate of an approved school of practical nursing, and both of whom shall have had not less than five years' experience as licensed practical nurses, two shall be registered professional nurses, at least one of whom shall be experienced in practical nurse education; one shall be a doctor of medicine; one shall be a hospital administrator actively engaged as such in this state and one shall be a vocational educator. Such appointments shall be for terms of five years each, except that in the initial appointments, one licensed practical nurse and one registered professional nurse shall be appointed for a term of five years, one licensed practical nurse and one
registered professional nurse shall be appointed for a term of four years, the doctor of medicine shall be appointed for a term of three years, the hospital administrator shall be appointed for a term of two years and the vocational educator shall be appointed for a term of one year. The practical nurses so to be appointed, initially and subsequently, shall be selected by the governor from a list to be submitted to him by the Licensed Practical Nurses' Association of West Virginia, Inc., which list shall contain the names of at least two licensed practical nurses for each board member so to be appointed, who shall have been licensed by examination and who shall have not less than five years' experience as a licensed practical nurse. The doctor of medicine so appointed shall be selected by the governor from two nominations submitted to him by the West Virginia State Medical Association; each registered professional nurse so appointed shall be selected by the governor from two nominations submitted to him by the West Virginia Nurses Association, Inc.; the hospital administrator shall be appointed by the governor from two nominations submitted to him by the West Virginia Hospital Association; and the vocational educator shall be appointed by the governor from two nominations submitted to him by the state board of education. Any member of the board may be eligible for reappointment, but no member shall serve more than two successive terms. The board is hereby authorized to appoint and employ a qualified person to perform the duties of executive secretary and to act as educational advisor to the board. Such secretary shall act under the direction of the board. The board shall furnish the secretary a headquarters and shall provide such office equipment and clerical assistance as the duties of the office may require. The board shall have power to appoint such nurses, deputies, clerks, assistants, inspectors and employees as shall be necessary for the proper exercise of the powers and duties of the board. The compensation and expenses of the members of the board and its appointees and employees shall be paid out of such funds as are allocated to the board in its annual budget. The secretary shall keep the records of proceed-
ings of the board, and shall keep a registry of the names
and addresses of all practical nurses registered under this
article, which registry shall be a public record. Said
board shall hold not less than two regular meetings each
year and such additional meetings at such times and
places as the board may determine. The board is
authorized to adopt and, from time to time, to revise
such rules and regulations not inconsistent with this
article, as may be necessary to enable it to carry into
effect the provisions hereof. The board shall prescribe
curricula and standards for schools and courses prepar-
ing persons for licensure under this article. It shall
survey such schools and courses at such times as it may
deem necessary. It shall survey and accredit such
schools, clinical practice areas and courses as meet the
requirements of this article and of the board. It shall
examine, license and renew the license of duly qualified
applicants.

§30-7A-6. Examination and licensure of practical nurses;
present practitioners.

1 The applicant, except as hereinafter provided, shall be
required to pass a written examination in such subjects
as the board shall determine. Each written examination
may be supplemented by such oral or practical examina-
tion as the board may deem necessary. The board shall
determine the times and places for the examination.
Notices of examination shall be sent by mail to each
person known by the secretary to be an applicant for
an examination or registration at least thirty days pre-
vious to any such scheduled examination. Upon the ap-
plicant's successful completion of an appropriate exam-
ination as prescribed by the board and satisfaction of the
other requirements of this article, the board shall issue
to the applicant a license to practice practical nursing.
The board shall issue such license by endorsement to
any applicant who has been duly licensed or registered
as such, or to a person entitled to perform similar serv-
ices under a different title, in another state, territory or
foreign country if, in the opinion of the board, the ap-
plicant meets the other requirements for licensed prac-
tival nurses in this state. On or before the thirtieth day
of June, one thousand nine hundred sixty-eight, any prac-
tical nurse who exhibits proof, satisfactory to the board,
that he or she has been engaged in practical nursing in
this state for a period of three years and who satisfac-
torily completes an appropriate examination as prescribed
by the board shall be issued a license by waiver by said
board, which shall be so designated on its face.

Any person obtaining a license by waiver who has com-
pleted extension courses equal in theory to those for the
graduate practical nurses, as determined by the board,
may at any time thereafter take the examination pre-
scribed by the board for graduate practical nurses and
obtain a license without the designation of “waiver”
thereon.

§30-7A-7. Renewal or reinstatement of license.

1 The license of every person licensed under the pro-
visions of this article shall expire on the thirtieth day of
June, next following the date of license. In order for
such license to be renewed, the licensee shall comply
with such rules and regulations of the board as are ap-
licable to renewals. The renewal fee for all licenses
shall be five dollars, subject to change by the board.

Upon receipt of the renewal fee the board shall issue to
the licensee a certificate of renewal for the current year,
beginning July first and expiring June thirtieth of the
following year. Such certificate shall render the holder
thereof a legal practitioner for the period stated on the
certificate of renewal. Any licensee who allows his or
her license to lapse by failing to renew the license as
provided above may be reinstated by the board on sat-
isfactory explanation for such failure to renew his or
her license and on payment of a reinstatement fee of five
dollars, subject to change by the board, in addition to
the renewal fee hereinbefore set out. Any person prac-
ticing practical nursing during the time his or her license
has lapsed shall be considered an illegal practitioner and
shall be subject to the penalties provided for violation
of this article. A person licensed under the provisions
of this article desiring to retire from practice temporarily shall give written notice of such desire to the board. Upon receipt of such notice the board shall place the name of such person upon the nonpracticing list. While remaining on this list the person shall not be subject to the payment of any renewal fees and shall not practice as a licensed practical nurse in the state. When such person desires to resume practice, application for renewal of license and payment of the renewal fee for the current year shall be made to the board.

§30-7A-8. Schools of practical nursing.

The board shall prescribe curricula and standards for schools, clinical practice areas and courses preparing persons for licensure under this article; it shall provide for surveys of such schools, clinical practice areas and courses at such times as it may deem necessary. It shall accredit such schools, clinical practice areas and courses as meet the requirements of this article and of the board. An institution desiring to conduct a school of practical nursing to be accredited by the board as such shall file an application therefor with the board, together with the information required and such fee as may be prescribed by the board. It shall submit satisfactory evidence that: (1) It is prepared to give the course of instruction and practical experience in practical nursing as prescribed in the curricula adopted by the board; and (2) it is prepared to meet other standards established by this law and by the board.

A survey of the institution or institutions, with which the school is to be, or is, affiliated, shall be made by the executive secretary of the board. The executive secretary shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an accredited school of practical nursing are met, it shall approve the school as an accredited school of practical nursing. From time to time as deemed necessary by the board, it shall be the duty of the board, through its executive secretary, to survey all schools of practical nursing in the state. Written reports of such surveys shall be submitted to the board. If the board
determines that any accredited school of practical nurs-
ing is not maintaining the standards required by the
statutes and by the board, notice thereof in writing
specifying the defect or defects shall be immediately
given to the school. A school which fails to correct these
conditions to the satisfaction of the board within a rea-
sonable time shall be removed from the list of accredited
schools of practical nursing and shall be in violation of
this article. Nothing contained in this article shall in-
fringe upon the rights or power of the state board of ed-
ucation, or county boards of education to establish and
conduct a program of practical nurse education or other
health occupation so long as the prescribed curricula
meets the requirements of the board.

§30-7A-9. Construction of article; acts not prohibited.

The provisions of this article shall not be construed
as prohibiting:

(1) The care of a sick, disabled, injured, crippled
or infirm person by a member or members of such per-
son's family, or by close relatives, or by domestic servants,
housekeepers or household aides thereof, whether em-
ployed regularly or because of emergency circumstances
due to illness or other disabilities.

(2) The work and services of auxiliary hospital per-
sonnel, such as nursing aides, maids, orderlies, techni-
cians, volunteer workers and other like hospital em-
ployees.

(3) Practical nursing by students enrolled in ac-
ccredited schools for practical nursing incidental to their
course of study.

(4) Practice of nursing in this state by any legally
qualified practical nurse of another state or country for
a period not to exceed six months or whose engagement
requires such practical nurse to accompany and care
for a patient temporarily residing in this state during
the period of such engagement.

(5) Nursing services rendered by a graduate of an
approved school of practical nursing working under qual-
ified supervision during the period between completion
of his or her course of nursing education and notification
of the results of the first licensing examination following graduation. In cases of hardship and upon petition to the board, the board may grant an extension of such period to such graduate.

§30-7A-10. Disciplinary proceedings; grounds for discipline.

The board shall have the right to refuse to admit an applicant for the licensure examination for the herein-after stated reasons, and also the board shall have the power to revoke or suspend any license to practice practical nursing issued by the board in accordance with the provisions of this article, or to otherwise discipline a licensee upon satisfactory proof that the person: (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing; or (2) is convicted of a felony; or (3) is habitually intemperate or is addicted to the use of habit-forming drugs; or (4) is mentally incompetent; or (5) who practices or attempts to practice without a license or who wilfully or repeatedly violates any of the provisions of this article.


It shall be a misdemeanor for any person, firm, corporation or association of persons to: (1) Sell or fraudulently obtain or furnish any nursing diploma, license or record or aid or abet therein; or (2) practice practical nursing unless duly licensed to do so under the provisions of this article; or (3) use in connection with his or her name any designation tending to imply that he or she is a licensed practical nurse unless duly licensed so to practice under the provisions of this article; or (4) practice practical nursing during the time his or her license issued under the provisions of this article shall be suspended or revoked; or (5) conduct a school of practical nursing or a course for training of practical nurses unless the school or course has been accredited by the board; or (6) otherwise violate any provision of this article.

Any person convicted of any such misdemeanor shall be punishable by a fine of not less than twenty-five nor more than one hundred dollars.
§30-7A-12. Severability.

1 If any provision of this article or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the 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 153

(Senate Bill No. 109—By Mr. Miller and Mr. Sawyers)

[Passed February 24, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact sections three, seven and eight, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the profession and practice of optometry; the duties of the West Virginia board of optometry; providing for the promulgation of rules and regulations by the board; relating to the renewal fee; and providing that a violation of a rule or regulation governing the ethical practice of optometry promulgated by the board will permit the suspension or revocation of a certificate to practice said profession.

Be it enacted by the Legislature of West Virginia:

That sections three, seven and eight, 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:

ARTICLE 8. OPTOMETRISTS.

Section

3. Board of optometry; duties.
7. Annual renewal of registration.
8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

§30-8-3. Board of optometry; duties.

There shall be a state board of examiners in optometry, known as the “West Virginia Board of Optometry,” which
shall consist of five optometrists, who shall be appointed by the governor, by and with the advice and consent of the senate. Each member of the board, at the time of his appointment, shall have been a resident and a registered practicing optometrist of this state for a period of three years or more immediately preceding his appointment.

The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their successors have been appointed and have qualified. On or before the first day of July following the date on which this section takes effect, and annually thereafter, as their respective terms expire, the governor shall appoint their successors so that one year he shall appoint one member and in each of the two succeeding years he shall appoint two members, each for a term of three years commencing on the first day of July. Any member shall be eligible for reappointment.

The board shall make necessary rules and regulations, subject to the provisions of chapter twenty-nine-a of this code, which are not inconsistent with any other provision or section of this article:

(a) For the proper performance of its duties;
(b) To govern the ethical practice of optometry for the safety, protection and welfare of the public; and
(c) To govern the time, place and manner of conducting examinations in optometry, and the manner and form in which applicants for such examination shall be filed.

§30-8-7. Annual renewal of registration.

Every registered optometrist who desires to continue in active practice or service shall, annually, on or before the first day of August, of each year, renew his certificate of registration and pay an annual renewal fee of twenty dollars. Every certificate of registration which has not been renewed during the month of August in any one year shall expire on the first day of September of that year.

A registered optometrist whose certificate of registration has expired may have the same restored only upon payment of the required renewal fee. Any registered op-
§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

The board may either refuse to issue, or may refuse to renew, or may suspend or revoke any certificate of registration for any one, or any combination, of the following causes: Violation of a rule or regulation governing the ethical practice of optometry promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had; the obtaining of, or the attempt to obtain, a certificate of registration, or practice in the profession of optometry, or money, or any other thing of value, by fraudulent misrepresentation; gross malpractice; continued practice by a person knowingly having an infectious disease; habitual drunkenness, or addiction to the use of morphine, cocaine, or other habit-forming drugs; advertising, practicing, or attempting to practice under a name other than one’s own; advertising by means of knowingly false or deceptive statements. All advertising, whether by means of newspapers, or in any manner, whatsoever, of the following statements, or statements of similar import, that are “false and deceptive” within the meaning of this law, shall be prohibited. False and deceptive advertising shall include but not be limited to the following: (a) Advertising of complete glasses, that is to say, lenses and frames or mountings, at a stated price, either alone or in conjunction with professional services; (b) advertising “free examination of eyes,” or “free consultation,” or “free advice,” or words of similar import and meaning; (c) advertising frames or mountings for glasses, by advertisement which does not accurately describe the same in all its component parts (all such advertisements shall state clearly, in type equal in size to the price figures given, that such price does not include cost of lenses, or professional services in examining of eyes), and, (d) advertising a particular sum or sums of money required
as a "down" or cash payment, or any definite amount or amounts of future payments, or when the same shall be paid.

CHAPTER 154
(Com. Sub. for Senate Bill No. 223—By Mr. McKown)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact article ten, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of veterinarians, the regulation of veterinary medicine and to the West Virginia board of veterinary medicine; prescribing the powers and duties of such board; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. VETERINARIANS.

Section
1. Definitions.
2. License or permit required; exceptions.
3. West Virginia board of veterinary medicine; composition; qualifications, appointment and terms of members; vacancies; removal of members; compensation; organization and meetings; quorum; secretary-treasurer; records, etc., open to public; annual report; funds.
4. Powers of the board.
5. Status of persons previously licensed.
6. Application for license; qualifications; determination as to qualifications of applicants and action to be taken.
7. Examinations; issuance or denial of license.
8. License without examination.
10. License renewal.
11. Complaints.
12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.
14. Reinstatement or relicensing.
15. Actions to enjoin violations.
16. Penalties.
17. Severability.
§30-10-1. Definitions.

Unless the context in which used, clearly requires a different meaning, as used in this article:

(a) "Animal" or "animals" means any animal or animals other than man, wild or domestic, living or dead, and includes fowls and birds.

(b) "Veterinary medicine" or the "practice of veterinary medicine" means, as the case may be:

(1) For a fee or other compensation, to diagnose, treat, correct, change, relieve or prevent any disease, deformity, defect, injury, or other physical or mental condition, of any animal, or to prescribe for or to administer to any animal any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, or to render advice or any recommendation with respect to any of the foregoing;

(2) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (b) (1) above; or

(3) To use any title, words, abbreviation, or letters in a manner or under circumstances inducing or tending to induce the belief that the person using them is qualified to do any act described in subdivision (b) (1) above.

(c) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.

(d) "Licensed veterinarian" means a veterinarian who is validly and currently licensed to practice veterinary medicine in this state.

(e) "School of veterinary medicine" means any veterinary college or division of a university or college which offers the degree of doctor of veterinary medicine or its equivalent.

(f) "Person" means any individual, firm, partnership, association, joint venture, cooperative or corporation, or any other group or combination acting in concert, and whether acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor,
§30-10-2. License or permit required; exceptions.

No person may, for a fee or other compensation, practice veterinary medicine in this state without a license or a temporary permit issued by the board in accordance with the provisions of this article, which license or permit remains unexpired, unsuspended and unrevoked. This article shall, however, not be construed to prohibit:

(a) Any employee of the federal, state or local government from performing his official duties, as defined by his employing agency;

(b) Any person who is a regular student in a veterinary school from performing research assigned by his instructors, or from working under the direct supervision of a licensed veterinarian during a school vacation period;

(c) Any person from advising with respect to or performing acts which the board has prescribed as accepted livestock management practices;

(d) Any veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(e) The owner of an animal, the owner's employees, or persons assisting the owner without any fee or compensation, from caring for and treating such animal, except where the ownership of such animal was transferred for the purpose of circumventing the provisions of this article;

(f) Any member of the faculty of a veterinary school from performing his regular functions, or any person from lecturing, or giving instructions or demonstrations, at a veterinary school or in connection with a continuing education course or seminar;

(g) Any person from selling or applying any pesticide, insecticide, or herbicide;

(h) Any person from engaging in bona fide scientific
research which reasonably requires experimentation involving animals;

(i) Any person from engaging in bona fide scientific research in consultation with a licensed veterinarian in this state;

(j) The treatment or relief of any living animal in the case of an emergency or the disposal of the carcass of a dead animal; or

(k) Any person, with reference to domestic animals, from performing the simple operation of castrating, spaying, dehorning, or from the use of blackleg vaccine and hog cholera serum, or, in case the services of a licensed veterinarian cannot be had within a reasonable time or at a reasonable cost, from performing any of the services described in section one of this article as "Veterinary Medicine" or "Practice of Veterinary Medicine": Provided, however, That such person has been regularly performing such services for a period of not less than ten years.

§30-10-3. West Virginia board of veterinary medicine; composition; qualifications, appointment and terms of members; vacancies; removal of members; compensation; organization and meetings; quorums; secretary-treasurer; records, etc., open to public; annual report; funds.

The "West Virginia Veterinary Board," heretofore created, shall continue in existence but on and after the effective date of this article shall be known and designated as "The West Virginia Board of Veterinary Medicine," and shall consist of five members, not more than three of whom shall belong to the same political party to be appointed by the governor with the advice and consent of the senate. The three members of the board in office on the effective date of this article shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before July one, one thousand nine hundred sixty-seven, the governor shall appoint one member to serve until June thirty, one thousand nine hundred sixty-eight, and one member to serve until June thirty, one thousand nine hundred seventy, or until their
successors have been appointed and have qualified. As
the terms of the three members of the board in office
on the effective date of this article expire and as the terms
of the two members to be appointed by the governor on
or before July one, one thousand nine hundred sixty-
seven, expire, members shall be appointed for overlapping
terms of five years, so that one term expires each year,
or until their successors have been appointed and have
qualified. Any vacancy in the office of a member of the
board shall be filled by appointment by the governor for
the unexpired term of the member whose office shall be
vacant. No person shall be appointed to two consecutive
full terms, but a person appointed for a term of less
than five years may be appointed to succeed himself. The
governor may remove any member of the board for
neglect of duty or other sufficient cause.

No person shall be appointed to the board unless he be
a graduate of a veterinary school and a resident of this
state, and unless he shall have been licensed to practice
veterinary medicine in this state for at least three years
immediately preceding his appointment.

As compensation for his services on the board, each
member shall receive, out of the moneys collected here-
under, the sum of twenty-five dollars for each day or sub-
stantial portion thereof that he is engaged in the work of
the board. Each member shall also be entitled to be reim-
bursed, out of the moneys collected hereunder, for any
reasonable and necessary expenses actually incurred in
the discharge of his duties as a member of the board.

The board shall meet at least once each year, the time
and place of such meeting to be fixed by the board, and
at such annual meeting shall elect from its membership
a president, a secretary-treasurer and such other officers
as may be desired. Other meetings of the board may be
called by the president on such notice to the other mem-
bers as may be prescribed by the board. A majority of
the board shall constitute a quorum for the transaction
of the business of the board. All meetings of the board
shall be open and public, except that the board may meet
in closed session to prepare, approve, administer, or grade
examinations, to deliberate decisions to be reached on
disciplinary proceedings, or to review the qualifications of an applicant for a license.

It shall be the duty of the secretary-treasurer to carry on the correspondence of the board, keep permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for license, and keep a register of all persons currently licensed by the board. All board records, except as otherwise provided by law, shall be open to public inspection during regular office hours. The secretary-treasurer shall furnish to the board a fidelity surety bond in such sum and conditioned as the board may require, the cost of such bond to be paid by the board out of the moneys collected hereunder.

As soon as possible after the close of each fiscal year, the president and secretary-treasurer shall submit to the governor a report on the transactions of the board, including an accounting of all moneys received and disbursed.

All moneys received by the board shall be accepted by the secretary-treasurer and deposited by him with the treasurer of the state and credited by the treasurer to an account to be known as the "Board of Veterinary Medicine Fund." All expenses of the board shall be paid from such fund by voucher signed by the secretary-treasurer of the board, and no part of the state's general revenue fund shall be expended for this purpose.

§30-10-4. Powers of the board.

The board shall have the power to:

(a) Examine and determine the qualifications and fitness of any applicant for a license to practice veterinary medicine in this state;

(b) Issue, renew, deny, suspend or revoke licenses and temporary permits to practice veterinary medicine in this state or otherwise discipline licensed veterinarians consistent with the provisions of this article and reasonable rules and regulations promulgated by the board as specified in subdivision (i) of this section;

(c) Establish and publish annually a schedule of rea-
(d) Conduct investigations for the purpose of discovering violations of this article or grounds for disciplining licensed veterinarians;
(e) Hold hearings as specified in section twelve of this article;
(f) Employ such full-time or part-time professional, clerical or special personnel as may be necessary to effectuate the provisions of this article, and purchase or rent necessary office space, equipment and supplies;
(g) Appoint from its own membership one or more members to act as an official representative or representatives of the board at any meeting within or without this state where such representation is deemed desirable;
(h) Institute appropriate court proceedings for the enforcement of the provisions of this article or any reasonable rules and regulations of the board promulgated as specified in subdivision (i) of this section; and
(i) Promulgate, amend or repeal reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article, including rules and regulations establishing standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine, and are to be construed liberally to accomplish this objective.

§30-10-5. Status of persons previously licensed.

Any person holding a valid license to practice veterinary medicine in this state on the date this article becomes effective shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he complies with the provisions of this article, including annual renewal of his license to practice veterinary medicine, and his license is not suspended or revoked in accordance with the provisions of this article.
§30-10-6. Application for license; qualifications; determination as to qualifications of applicants and action to be taken.

Any resident of this state desiring a license to practice veterinary medicine in this state shall make written application therefor to the board. The application shall show that the applicant is (1) either a graduate of a school of veterinary medicine accredited by the American veterinary medical association or a graduate of a foreign veterinary school who holds a certificate of competence issued by the educational commission for foreign veterinary graduates, (2) twenty-one years of age or over, (3) a citizen of the United States or an applicant for citizenship, and (4) a person of good moral character, and shall contain such other information and proof as the board may require by reasonable rules and regulations promulgated as aforesaid. The application shall be accompanied by the appropriate fee specified in the fee schedule established and published by the board.

If the board determines that an applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for a license without examination under the provisions of section eight of this article, the board may forthwith grant him a license. If an applicant is found not qualified to take the examination or for a license without examination, the secretary-treasurer shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant found not qualified may demand a hearing on the question of his qualifications in accordance with the provisions of section twelve of this article. The application fee of any applicant found not qualified shall be returned to such applicant.

§30-10-7. Examinations; issuance or denial of license.

The board shall hold at least one examination during each year and may hold such additional examinations as are necessary. The secretary-treasurer shall give public notice of the time and place of each examination at least one hundred twenty days in advance of the date set for such examination. A person desiring to take an exami-
7 nation shall make application for a license at least sixty
8 days before the date of such examination.
9 Procedures concerning the preparation, administration
10 and grading of examinations shall be prescribed by the
11 board. Examinations shall be designed to test the examinee's knowledge of and proficiency in the subjects and
12 techniques commonly taught in veterinary schools. To
13 pass the examination, the examinee must demonstrate
14 scientific and practical knowledge sufficient to prove himself a competent person to practice veterinary medicine
15 in the judgment of the board. All examinees shall be
16 tested by a written examination, supplemented by such
17 oral interviews and practical demonstrations as the board
18 may deem necessary. The board may adopt and use the
19 examination prepared by the national board of veterinary
20 examiners.
21 The secretary-treasurer shall notify each examinee of
22 the result of his examination within forty-five days there-
23 after, and the board shall issue a license to each person
24 who passes the examination. The application for a license
25 by any person failing an examination shall be denied, but
26 such person shall be admitted to any subsequent exami-
27 nation upon payment of another application fee.

§30-10-8. License without examination.

(a) The board may issue a license without written
2 examination, and, subject to the provisions of subsection
3 (b) of this section, without any type of examination, to
4 a qualified applicant who is a resident of this state and
5 furnishes satisfactory proof that he is a graduate of a
6 veterinary school and who:
7 (1) Has for the five years next prior to filing his
8 application been a practicing veterinarian licensed in a
9 state, territory, or district of the United States whose
10 license requirements, at the time the applicant was first
11 licensed, were substantially equivalent to the require-
12 ments of this article; or
13 (2) Has within the three years next prior to filing
14 his application successfully completed an examination
15 conducted by the national board of veterinary examiners.
(b) In its discretion, the board may orally or practically examine any person qualifying for licensing under this section, and may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.


The board may issue without examination a temporary permit to practice veterinary medicine in this state:

(a) To a qualified applicant for license pending examination: Provided, That such temporary permit shall expire the day after the giving of notice of the results of the first examination held after the permit is issued; or

(b) To a nonresident veterinarian validly licensed in another state, territory, or district of the United States or a foreign country who pays the registration fee specified in the fee schedule established and published by the board. A temporary permit shall not be issued to a nonresident veterinarian for a period of more than sixty days, but may be renewed in the discretion of the board.

A temporary permit may be summarily revoked by majority vote of the board without a hearing.

§30-10-10. License renewal.

All licenses shall expire annually on December thirty-one of each year, but may be renewed upon payment of the renewal fee specified in the fee schedule established and published by the board. On December one of each year, the secretary-treasurer shall mail a notice to each licensed veterinarian advising such veterinarian that his license will expire on December thirty-one and shall provide him with a form for renewal thereof. The secretary-treasurer shall issue a certificate of renewal to all persons renewing their licenses under the provisions of this section.

Any person may renew an expired license within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed from and after the date of expiration, a license may not be renewed, but the former licensee must make
application for a new license and take and pass the license examination.
The board may by rules and regulations provide for the waiving of the renewal fee of a licensed veterinarian during the period when he is on active duty with any branch of the armed services or the public health service of the United States, not to exceed the longer of three years or the duration of a national emergency.

§30-10-11. Complaints.
Upon the filing with the board by any person of a verified written complaint against a licensed veterinarian, the board shall notify such veterinarian in writing of the filing of such complaint and shall proceed to hold a hearing thereon as specified in section twelve of this article.

§30-10-12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.
Whenever an application for a license is denied, the applicant therefor may file with the board, within thirty days after notification of such denial, a written demand for a hearing before the board, in which case a hearing shall be held not less than ten days nor more than twenty days after receipt by the board of such demand. Whenever a licensed veterinarian is notified by the board, in accordance with the provisions of section eleven of this article, that a complaint has been filed against him, a hearing with respect thereto shall be held by the board not less than twenty days nor more than thirty days after such notification to such licensee.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any such hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing, any member of the board shall have the power and authority to issue subpoenas and subpoenas duces tecum
in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

The board may postpone or continue any hearing on its own motion, or for good cause shown upon the application of the applicant or licensee, as the case may be. At any such hearing the applicant or licensee, as the case may be, shall have the right to be heard in person and by any attorney at law admitted to practice before any circuit court of this state.

After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. By a concurrence of four members, the board may suspend for a certain time or revoke the license of, or otherwise discipline, any licensed veterinarian for any of the following reasons:

(a) The employment of fraud, misrepresentation or deception in obtaining his license;

(b) An adjudication of insanity;

(c) Chronic inebriety or the habitual use of drugs;

(d) The use of advertising or solicitation which is false, misleading, or is otherwise deemed unprofessional under reasonable rules and regulations promulgated by the board as aforesaid;

(e) Conviction of a felony or other crime involving moral turpitude;

(f) Incompetence, gross negligence or other malpractice in the practice of veterinary medicine;

(g) Having professional association with or employing any person practicing veterinary medicine unlawfully;

(h) Fraud or dishonesty in the application or reporting of any test for disease in any animal or animals;
62 (i) Failure to keep veterinary premises and equipment in a clean and sanitary condition;
63 (j) Failure to report, as required by law, or making false report of, any contagious or infectious disease;
64 (k) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates;
65 (l) Cruelty to animals;
66 (m) Revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of any registration or license fee or fees; or
67 (n) Unprofessional conduct as defined in reasonable rules and regulations promulgated by the board as aforesaid.
68
69 The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served upon the applicant or licensee, as the case may be, and his attorney of record, if any.
70
71 The decision of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.


Any applicant or licensee, as the case may be, adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section twelve of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of
section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-10-14. Reinstatement or relicensing.

Any person whose license is suspended or revoked may in the discretion of the board be reinstated or re-licensed at any time without examination by majority vote of the board on written application made to the board showing cause justifying such reinstatement or relicensing.

§30-10-15. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article or any final decision of the board, the board may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section sixteen of this article.

Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article and all final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final
Unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation.

§30-10-16. Penalties.

Any person who shall in this state practice veterinary medicine without a currently valid license or temporary permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not more than ninety days, or both by such fine and imprisonment. Each act of such unlawful practice shall constitute a distinct and separate offense.

§30-10-17. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
Be it enacted by the Legislature of West Virginia:

That sections three and five, article five, 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 AND MEDICAL ASSISTANCE FOR THE AGED.

Section
3. Aged persons.

§9-5-3. Aged persons.

An aged person shall be eligible for public assistance who:

(1) Has attained the age of sixty-five years.

(2) Has resided in the state for at least one year immediately preceding application for public assistance.

(3) Has not made an assignment or transfer of property for the purpose of qualifying for assistance.

(4) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.


(a) A dependent child shall be eligible for public assistance who:

(1) Is under the age of eighteen years; or is under the age of twenty-one years and is a student regularly attending a school, college or university or regularly attending a course of vocational or technical training designed to equip such person for gainful employment.

(2) Is deprived of parental support or care by reason of the death, continued absence from home, unemployment, physical or mental incapacity of a parent, or by reason of any other cause as the laws of the federal government governing federal aid to dependent children may from time to time include: Provided, however, That such unemployed parent shall not have refused without good cause to accept employment, in which he is able to engage, which (1) is offered through public employment offices, or (2) is otherwise offered by an employer if the
offer is determined by the department of employment
security after notification by such employer to be a bona
fide offer of such employment: Provided further, That
such determination is not in conflict with “Department of
Health, Education, and Welfare of the United States”
regulations.

It is further provided that any aid under this plan to
which any child or relative might otherwise be entitled,
shall be denied for any month in which the parent of
such child receives unemployment compensation under
an unemployment compensation law of any state, includ-
ing West Virginia, or of the United States for any week
any part of which is included in such month.

(3) Is living with his father, mother, grandfather,
grandmother, brother, sister, stepfather, stepmother, step-
brother, stepsister, uncle, aunt, first cousin, nephew, niece
or any other relative as the laws of the federal govern-
ment governing federal aid to dependent children may
from time to time include, in a place of residence main-
tained by one or more of such relatives as his or their
own home, or is living in a foster family home in accord-
ance with the provisions of the laws of the federal gov-
ernment governing federal aid to dependent children.

(4) Has resided in the state for one year imme-
dately preceding application for public assistance; or, was
born within one year immediately preceding the applica-
tion of a mother who resided within the state for one year
immediately preceding such birth; or, was born within
one year immediately preceding the application, if the
parent or other relative with whom the child is living
has resided in the state for one year immediately pre-
ceding such birth.

(5) Is actually in need and has not sufficient in-
come or other resources to provide a subsistence com-
patible with decency and health.

(b) The relative of a dependent child shall be eligible
for public assistance for any month in which public as-
sistance is paid with respect to such child, who:

(1) Is the father, mother, grandfather, grand-
mother, brother, sister, stepfather, stepmother, step-
brother, stepsister, uncle, aunt, first cousin, nephew, niece or any other relative of the dependent child as the laws of the federal government governing federal aid to dependent children may from time to time include.

(2) Maintains himself, or together with any one or more of the other specified relatives, a place of residence as his or their own home, and is the person with whom a dependent child is living in such place of residence.

(3) Is actually in need and has not sufficient income or other resources to provide a subsistence compatible with decency and health.

CHAPTER 156

(House Bill No. 567—By Mr. Speaker, Mr. White)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of "industrial plant" within the industrial development bond act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. THE INDUSTRIAL DEVELOPMENT BOND ACT.

Section 3. Definitions.


1 The following terms, whenever used in this article, shall have the following meaning:

3 (a) The term "municipality" shall mean any incorporated town or city.
(b) The term “county court” shall mean the governmental body created by section twenty-two, article eight of the West Virginia constitution.

(c) The term “governmental body” shall mean the county court, the council of a town or city, or any other governing body in lieu thereof.

(d) The term “industrial plant” shall mean any site, structure, building, fixtures, machinery, equipment, and related facilities, including both real and personal property or any combination thereof which shall be suitable as a factory, mill, shop, processing, assembly, manufacturing, fabricating plant, or research and development facility; but not to include facilities designed for sale or distribution to the public of electricity, gas, water, telephone or other services commonly classified as “public utilities.”

CHAPTER 157

(Com. Sub. for Senate Bill No. 387—By Mr. Carson, Mr. President, and Mr. Bowling)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to and authorizing the several counties in this state to finance the acquisition of any real or personal property necessary for the acquisition, construction, equipment, improvement, maintenance and operation of a public airport with all usual and convenient appurtenances and facilities by the issuance of negotiable revenue bonds payable out of certain revenues derived from the operation of such airport and certain other revenues derived therefrom; to authorize the pledging of certain of such revenues to secure the payment of such revenue bonds and interest thereon; to authorize the execution of a mortgage or deed of trust conveying such airport in trust as further security for
payment of such bonds and interest thereon; to provide the manner of execution and delivery of such bonds; to provide the manner, form, time and place of payment of said bonds and interest; to provide for the redemption of such bonds; to provide for the refunding of such bonds; to provide for the sale of such bonds; to provide for exemption from taxation of such airports, the revenues derived therefrom, and the bonds and the interest thereon; to authorize the barring of airport appurtenances and facilities; to prohibit any county from making any tax levy as a contribution to the cost of such airport financing pursuant to said article; to provide that such revenue bonds shall not constitute an indebtedness of the county; to provide that such bonds shall be legal investments for financial institutions and insurance companies; to provide the purpose for which the proceeds of such bonds may be used; to provide that no approval by the voters shall be required prior to the issuance of such bonds and to exempt the public officials issuing said bonds from personal liability thereon.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen 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-d, to read as follows:

ARTICLE 2D. AIRPORT DEVELOPMENT BOND ACT.

Section
1. Short title.
2. Legislative finding.
3. Definitions.
4. Powers conferred on counties.
5. Bonds issued to finance airport.
7. Redemption of bonds.
8. Refunding bonds.
9. Use of proceeds from sale of bonds.
10. No contribution by county.
12. Exemption from taxation.
13. County court may lease appurtenances and facilities.
15. No notice, consent or publication required.
17. Public officials exempt from personal liability.
18. Prohibition of financial interest of public officials.

This article may be known as and may be cited as the "Airport Development Bond Act."

§13-2D-2. Legislative finding.

It is hereby determined and declared as a matter of legislative finding (a) that the development of airports is essential to the further social and economic growth of this state; (b) that the present and prospective health, happiness, safety, right of gainful employment and general welfare of the citizens of each of the counties of this state will be promoted by the establishment of airports as herein provided; and (c) that the means and measures herein authorized for the promotion of airports are as a matter of public policy, for the public purposes of the several counties and the state of West Virginia.


The following terms, whenever used in this article, shall have the following meaning:

(a) The term "county court" shall mean a governing body created pursuant to section twenty-two of article eight of the constitution of this state and any other governing body established in lieu thereof pursuant to section twenty-nine, article eight of the constitution of this state.

(b) The term "airport" shall mean all real and personal property necessary for the acquisition, construction, equipment, improvement, maintenance or operation of a public facility for the taking off and landing of airplanes, and all appurtenances and facilities usual and convenient in connection with such facility for the convenience and accommodation of the inhabitants of the county and the public generally, and shall include airports for the use of aircraft as described elsewhere in this code.


In addition to the powers which counties have with respect to airports pursuant to the other provisions of this code, each county, by and through its county court, shall have the following powers: (1) To issue revenue bonds for the purpose of defraying the cost or any part thereof,
of acquiring, by construction and purchase, or by either, an airport, or an addition, extension or improvement thereto, and to secure the payment of such bonds, all as hereinafter provided; and (2) to issue and deliver revenue bonds in exchange for an airport or a private facility for the taking off and landing of airplanes with appurtenant facilities and conveniences.


All bonds issued by a county court under the authority of this article shall be limited obligations of the county, the principal of and interest on which shall be payable out of the revenues derived from the operation of the airport for which the bonds are issued or any other revenue derived from such airport, less operating and maintenance costs and expenses. The bonds and interest coupons issued under the authority of this article shall never constitute evidence of indebtedness of the county issuing the same within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county issuing the same. Neither shall such bonds and interest thereon be a charge against the general credit or taxing powers of the county and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time, and from time to time may be in such form and denomination, may be of such tenor, must be negotiable but may be registered as to the principal thereof, may be payable in such amounts and at such time or times, may be payable at such place or places, may bear interest at such rate or rates not to exceed six per cent per annum, payable at such place or places and evidenced in such manner, and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the county court whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the county court at public or private sale and such sale shall be made at a price not lower than a price which, computed upon standard tables of bond values, will have a net return of not more than six per cent per annum to the purchaser upon
The bonds issued pursuant to this article by a county court shall be signed by the president of the county court and attested by the clerk of the county court under the seal of the court. The coupons attached thereto shall bear the facsimile signature of the president of the county court. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the airport, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement, mortgage, or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.


There is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an airport which is acquired, purchased, constructed, or built or improved with the proceeds of bonds authorized to be issued under this article, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the operation of the airport and any other revenue derived from such airport, less the operating and maintenance costs and expenses, and also be secured by a pledge of the proceeds of any sale thereof. In the discretion and at the option of the county court,
such revenue bonds may be secured by a trust indenture
by and between the county court and a corporate trustee,
which may be a trust company or bank having trust
powers, within or without the state of West Virginia. The
county court may authorize the issuance of such revenue
bonds by order or resolution. The order or resolution
authorizing the revenue bonds and fixing the details
thereof may provide that such trust indenture may con-
tain such provisions for the protection and enforcement
of the rights and remedies of the bondholders as may be
reasonable and proper, and not in violation of law, in-
cluding covenants setting forth the duties of the county
court in relation to the construction or acquisition of an
airport, or part thereof, or an addition thereto, and the
improvement, operation, repair, maintenance and insur-
ance thereof, and for the custody, safeguarding and app-
lication of all moneys, and may provide that the airport
shall be constructed and paid for under the supervision
and approval of the consulting engineers or architects
employed and designated by the county court and satis-
factory to the purchasers of the bonds, their successors,
assigns or nominees, who may require the security given
by any contractor and/or any depository of the proceeds
of the bonds or the revenues received from the operation
or sale of the airport to be satisfactory to such purchasers,
their successors, assigns or nominees, and/or be satisfac-
tory to the purchaser of the airport. Such indenture may
set forth the rights and remedies of the bondholders, the
county and/or such trustee and said indenture may pro-
vide for accelerating the maturity of the revenue bonds,
at the option of the bondholders upon default by the
county court issuing the same in the payment of the
principal of said bonds or the interest thereon. The county
court may also provide by order or resolution and in
such trust indenture for the payment of the proceeds
of the sale of the bonds and the revenues from the air-
port to such depository as it may determine for the
custody thereof and for the method of distribution there-
of, with such safeguards and restrictions as it may de-
terminate to be necessary or advisable for the protection
thereof and upon the filing of a certified copy of such
order or resolution, or of the indenture agreement for
record in the office of the clerk of the county court of
any county in which an airport is located the same shall
have the same effect as to notice as the recordation of a
deed of trust or other recordable instrument.

In lieu of the indenture agreement provided for here-
inabove the principal of and interest on said bonds may
be secured by a mortgage or deed of trust covering all
or any part of the airport from which the revenues so
pledged may be derived and the same may be secured by
an assignment or pledge of the revenue received from
the airport, less operating and maintenance costs and ex-

diges. The proceedings under which such bonds are au-

thorized to be issued, when such bonds are to be secured
by a mortgage or deed of trust, may contain the same
terms, conditions and provisions provided for herein when
an indenture agreement is entered into between the coun-
ty court and a trustee, and any such mortgage or deed of
trust may contain any agreements and provisions custom-
arily contained in instruments securing bonds, including,
without limiting the generality of the foregoing, provi-
sions respecting the fixing and collection of revenue for
any airport covered by such proceedings or mortgage, the
terms to be incorporated in the agreement with respect
to such airport, the maintenance and insurance of such
airport, the creation and maintenance of special funds
from the revenues received from such airport and the
rights and remedies available to the bondholders, the
county court or to the trustee under such mortgage or
deed of trust, in event of default, all as the county court
shall deem advisable and as shall not be in conflict
with the provisions of this article or any existing law:

Provided, That in making any such agreements or pro-
visions a county shall not have the power to obligate
itself by indenture, order, resolution, mortgage or deed
of trust, except with respect to the airport and the appli-
cation of the revenues therefrom, and shall not have the
power to incur a pecuniary liability or a charge upon its
general credit or against its taxing powers. The proceed-
ings authorizing any bonds hereunder and any indenture,
mortgage or deed of trust securing such bonds may pro-
vide that, in the event of default in payment of the
principal of or the interest on such bonds or in the per-
formance of any agreement contained in such proceed-
ings, indenture, mortgage or deed of trust, such payment
and performance may be enforced by the appointment
of a receiver in a civil action with power to charge and
collect revenue and to apply the revenues from the air-
port in accordance with such proceedings or the pro-
visions of such indenture, agreement, mortgage or deed
of trust. Any such mortgage or deed of trust may pro-
vide also that, in the event of default in such payment
or the violation of any agreement contained in the mort-
gage or deed of trust, the mortgage or deed of trust may
be foreclosed either by sale at public outcry or by pro-
ceedings in a civil action, and may provide that the holder
of any of the bonds secured thereby may become the
purchaser at any foreclosure sale, if the highest bidder
therefor. No breach of any such agreement shall impose
any pecuniary liability upon a county or any charge upon
its general credit or against its taxing powers.


Revenue bonds issued pursuant to this article may
contain a provision therein to the effect that they, or any
of them, may be called for redemption at any time prior
to maturity by the county court, and at such redemption
prices, or premiums, which terms shall be stated in the
bonds.


Any bonds issued hereunder and at any time outstand-
ing may at any time and from time to time be refunded
by a county by the issuance of its refunding bonds in
such amount as the county court may deem necessary to
refund the principal of the bonds so to be refunded, to-
gether with any unpaid interest thereon; to make any im-
provements or alterations to the airport; and to pay any
premiums and commissions necessary to be paid in con-
nection therewith. Any such refunding may be effected
whether the bonds to be refunded shall have then ma-
tured or shall thereafter mature, either by sale of the
refunding bonds and the application of the proceeds
thereof for the redemption of the bonds to be refunded
thereby, or by exchange of the refunding bonds for the
bonds to be refunded thereby: Provided, That the holders
of bonds so to be refunded shall not be compelled without
their consent to surrender their bonds for payment or
exchange prior to the date on which they are payable or,
if they are called for redemption, prior to the date on
which they are by their terms subject to redemption.
Any refunding bonds issued under the authority of this
article shall be payable from the revenues out of which
the bonds to be refunded thereby were payable, shall be
subject to the provisions contained in section five of this
article and shall be secured in accordance with the pro-
visions of section six of this article.


The proceeds from the sale of any bonds issued under
authority of this article shall be applied only for the
purpose for which the bonds were issued: Provided, That
any accrued interest and premium received in any such
sale shall be applied to the payment of the principal of
or the interest on the bonds sold: Provided, however,
That if for any reason any portion of such proceeds shall
not be needed for the purpose for which the bonds were
issued, then such unneeded portion of said proceeds shall
be applied to the payment of the principal of or the inter-
est on said bonds, or held in reserve for the payment
thereof. The cost of acquiring any airport shall be deemed
to include the following: The cost of acquiring any real
estate or personal property deemed necessary, the actual
cost of the construction of any part of the airport and
appurtenances and facilities which may be constructed,
including architects', engineers', financial or other con-
sultants', and legal fees; the purchase price of any part
of the airport and appurtenances and facilities that may
be acquired by purchase; all expenses incurred in connec-
tion with the authorization, sale and issuance of the bonds
to finance such acquisition; and the interest on such bonds
for a reasonable time prior to construction, during con-
struction, and for a period not exceeding twelve months
after completion of construction and any other cost and
expense necessary to the establishment and acquisition of
such airport and the financing thereof.

§13-2D-10. No contribution by county.

No county court shall have the power to pay out of its
general funds, or otherwise contribute, any of the cost of
acquiring or constructing an airport or its appurtenances
and facilities, which is to be financed out of the proceeds of
the sale of revenue bonds issued under the authority of
this article: Provided, That this provision shall not be con-
strued to prevent a county from paying for the acquisi-
tion of property for an airport or for the construction,
equipment, improvement, maintenance and operation of
any airport pursuant to other provisions of this code so
long as any such acquisition of property or the construc-
tion, equipment, improvement, maintenance and opera-
tion of such airport is not financed by the proceeds from
the sale of revenue bonds issued under the authority of
this article: Provided, however, That this provision shall
not be construed to prevent a county from accepting do-
nations of property to be used as a part of any such air-
port. The bonds issued pursuant to this article shall be
payable solely from the revenue derived from the airport,
less operating and maintenance cost and expenses, and
shall not constitute an indebtedness of the county within
the meaning of any constitutional provision and it shall
be plainly stated on the face of each bond that it has
been issued under the provisions of this article and that
it does not constitute an indebtedness of the county within
the meaning of the constitution of West Virginia.

No county court shall have the authority under this
article to levy any taxes for the purpose of paying any
part of the cost of acquiring an airport to be financed
under the provisions of this article. However, all neces-
sary preliminary expenses actually incurred by a county
court in the making of studies, surveys, taking options,
preliminary planning, and all other expenses necessary
to be paid prior to the issuance, sale and delivery of
the revenue bonds, may be paid by such county court
out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.


Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to article fourteen, chapter thirty-one of the code of West Virginia.


The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county court may acquire for an airport according to the provisions of this article shall be exempt from taxation by the state, or any county, municipality or other levying body, as public property, so long as the same is owned by such county.

§13-2D-13. County court may lease appurtenances and facilities.

County courts may lease all or any part of the appurtenances and facilities of airports, including but not limited to any space in the airport terminal building or hangars, or any other areas for automobile parking, or any other areas for restaurant, hotel or motel purposes, to any available lessee or lessees at such rentals and upon such terms and conditions as to the county courts shall seem proper. All such leases shall be for some purpose associated with airport activities.


Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as additional; and this article shall not be construed as requiring an election by the voters of a county prior to the issuance of bonds here-
under by such county, and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

§13-2D-15. No notice, consent or publication required.

No notice to or consent or approval by any other county court, other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article.


If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

§13-2D-17. Public officials exempt from personal liability.

No official or member of a county court shall be personally liable on any contract or obligation executed pursuant to the authority herein contained, nor shall the issuance of bonds hereunder be considered as misfeasance in office.


No member of a county court issuing revenue bonds under the provisions of this article shall have any financial interest, directly or indirectly, in an airport acquired or constructed pursuant to this article.

AN ACT to amend and reenact sections two, fourteen, fifteen, twenty, twenty-one, twenty-seven, twenty-nine and forty-
eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a contributing retirement system for persons in the employ of the state and affiliated subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, fifteen, twenty, twenty-one, twenty-seven, twenty-nine and forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES’ RETIREMENT ACT.

§5-10-2. 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;

(4) “Political subdivision” means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unity; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the
performance of a governmental function and whose jurisdic-
tion is coextensive with one or more counties, cities or
towns;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees' retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation in whole or in part is paid by the federal government: Provided, That members of the state Legislature, the clerk of the house of delegates, the clerk of the state senate and members of the legislative body of any political subdivision shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;

(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;
(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means the average of the highest annual compensation received by a member during any period of five consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated. If he has less than five years of credited service, his final average salary shall be the average of the annual rate of compensation received by him during his total years of credited service. Final average salary for members of the Legislature means their actual compensation serving as a member of the Legislature multiplied by four;

(16) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a member and credited to his individual account in the members' deposit fund, together with regular interest thereon;

(17) "Regular interest" means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

(18) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;
"Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

"Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

"Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt;

The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of fifteen years immediately preceding the date the political subdivision became a participating public employer be credited with prior service.

(b) The board of trustees may grant service credit to employees of boards of health, the clerk of the house of delegates and the clerk of the state senate who are participating members, for service previously credited by the state teachers' retirement system, and may require a transfer of the members' contributions to the retirement
system, and may also require a deposit, with interest, of any withdrawals of contributions.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county court or state auditor, may receive prior service credit for such time as served in such capacity.

§5-10-15. Military service credit.

In the event a member, who, while employed by a participating public employer, entered or enters the armed forces of the United States during any period of compulsory military service and reenters the employ of a participating public employer, such armed service rendered by him, not to exceed five years, shall be credited to him: Provided, That (1) his reemployment by a participating public employer occurs within a period of six months from and after the date of termination of such armed service actually required of him, and (2) he pays to the members' deposit fund the amount he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of service to be so credited a member, the board of trustees shall have final power to determine such period. During the period of such armed service and until his return to the employ of a participating public employer, his contributions to the retirement system shall be suspended and any balance remaining to his credit in the members' deposit fund shall be accumulated at regular interest: And provided further, That any member who, prior to July one, one thousand nine hundred sixty-one, while employed by a public employer who is now a participating public employer or while employed in a position covered under the teachers' retirement system, entered the armed forces of the United States during any period of compulsory military service and reentered the employ of a public employer, who is now a participating public employer, or reentered a position covered under the teachers' retirement system, such armed service rendered by him, not to exceed five years, shall be credited to him under the provisions of this section.
§5-10-20. Voluntary retirement.

Any member who has attained or attains age sixty years and has five or more years of credited service in force, at least one year of which he was a contributing member of the retirement system, may retire upon his written application filed with the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof he desires to be retired. Upon his retirement he shall receive an annuity provided for in section twenty-two hereof.

§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of credited service in force, of which at least three years are contributing service and who leaves the employ of a participating public employer prior to his attainment of age sixty years for any reason except his disability retirement or death, shall be entitled to an annuity computed according to section twenty-two hereof, as the said section was in force as of the date of his said separation from the employ of a participating public employer: Provided, That he does not withdraw his accumulated contributions from the members' deposit fund. His said annuity shall begin the first day of the calendar month next following the month in which his application for same is filed with the board of trustees on or after his attainment of age sixty-two years.

(b) Any member who qualifies for deferred retirement benefits in accordance with subsection (a) of this section, and has ten or more years of credited service in force and who has attained age fifty-five as of the date of his separation may, prior to the effective date of his retirement, but not thereafter, elect to receive the actuarial equivalent of his deferred retirement annuity as a reduced annuity commencing on the first day of any calendar month between his date of separation and his attainment of age sixty-two years and payable throughout his life.
§5-10-27. Nonduty death annuities.

(a) Any member who continues in the employ of a participating public employer on or after the date he acquires ten or more years of credited service, may at any time prior to the effective date of his retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he were then retiring from the employ of a participating public employer, elect option A provided for in section twenty-four hereof, and nominate a beneficiary whom the board finds to have been dependent upon the said member for at least fifty per cent of his financial support. Prior to the effective date of his retirement a member may revoke his said election of option A and nomination of beneficiary and he may again prior to his retirement elect the said option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the said member had retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) In the event any member continues in the employ of a participating public employer on or after the date he acquires ten or more years of credited service, and does not have an option A election in force as provided in subsection (a) of this section, and (1) dies while in the employ of a participating public employer, and (2) leaves a widow, or in the case of a female member leaves a widower whom the board of trustees finds to have been dependent upon the said female member for at least fifty per cent of his financial support, the said widow or widower, as the case may be, shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty years, (2) elected option A provided
for in section twenty-four hereof, and (3) nominated his
said widow or widower, as the case may be, as beneficiary.
(c) In the event any member continues in the employ
of a participating public employer on or after the date he
(1) acquires ten or more years of credited service, and
(2) dies without leaving surviving him a spouse, but
(3) leaves surviving him an infant child or children, and
(4) does not have a beneficiary nominated as provided
in subsection (a) of this section, said infant child or
children shall be entitled to an annuity to be calculated
as follows: The annuity reserve shall be calculated as
though said member had retired as of the date of his de-
cease and elected a straight life annuity, and the amount
of said annuity reserve shall be paid in equal monthly
installments to said member's infant child or children
until said child or children attain age twenty-one or
sooner marry or become emancipated; however, in no
event shall any child or children receive more than two
hundred fifty dollars per month each. The said annuity
payments shall be computed as of the date of the death
of the said member and the amount of said annuity shall
remain constant during the period of payment. The an-
annual amount of the annuities payable by this section shall
not exceed sixty per cent of said deceased member's final
average salary.

§5-10-29. Members' deposit fund; members' contributions.

(a) The members' deposit fund is hereby created. It
shall be the fund in which shall be accumulated, at
regular interest, the contributions deducted from the
compensations of members, and from which refunds of
accumulated contributions shall be paid and transfers
made as provided in this section.
(b) The contributions of a member to the retirement
system shall be three and five-tenths per cent of his an-
nual compensations. The said contributions shall be made
notwithstanding that the minimum salary or wages pro-
vided by law for any member shall be thereby changed.
Each member shall be deemed to consent and agree to
the deductions made and provided for herein. Payment
of a member's compensation less said deductions shall
be a full and complete discharge and acquittance of all
claims and demands whatsoever for services rendered
by him to a participating public employer, except as to
benefits provided by this article.

(c) The officer or officers responsible for making up
the payrolls for payroll units of the state government and
for each of the other participating public employers shall
cause the contributions, provided for in subsection (b)
above, to be deducted from the compensations of each
member in the employ of the participating public em-
ployer, on each and every payroll, for each and every
payroll period, from the date the member enters the re-
tirement system to the date his membership terminates.
When deducted, each of said amounts shall be paid by the
participating public employer to the retirement system;
said payments to be made in such manner and form, and
in such frequency, and shall be accompanied by such sup-
porting data, as the board of trustees shall from time to
time prescribe. When paid to the retirement system, each
of said amounts shall be credited to the members' deposit
fund account of the member from whose compensations
said contributions were deducted.

(d) In addition to the contributions deducted from the
compensations of a member, as heretofore provided, a
member shall deposit in the members' deposit fund, by a
single contribution or by an increased rate of contribution
as approved by the board of trustees, the amounts he may
have withdrawn therefrom and not repaid thereto,
together with regular interest from the date of with-
drawal to the date of repayment. In no case shall a mem-
ber be given credit for service rendered prior to the date
he withdrew his contributions or accumulated contribu-
tions, as the case may be, until he returns to the members'
deposit fund all amounts due the said fund by him.

(e) Upon the retirement of a member, or if a survivor
annuity becomes payable on account of his death, in
either event his accumulated contributions standing to
his credit in the members' deposit fund shall be trans-
ferred to the retirement reserve fund.

(f) In the event an employee's membership in the re-
tirement system terminates and no annuity becomes or
§5-10-48. Reemployment after retirement.

In the event a retirant becomes employed by a participating public employer, payment of his annuity shall be suspended during the period of his reemployment. Upon termination of such reemployment, payment of his annuity will be resumed without increase or decrease due to such reemployment, except that nothing herein to the contrary shall prohibit a retirant from accepting temporary employment for a participating employer so long as he shall not receive compensation in excess of eighteen hundred dollars per year.

CHAPTER 159

(Com. Sub. for House Bill No. 551—By Mr. Ours)

[Passed March 6, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to payment of jail fees to county courts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. DIVISION OF CORRECTION.

Section 6a. Payment of jail fees to county courts.

§62-13-6a. Payment of jail fees to county courts.

1 The commissioner of public institutions is hereby au-
2 thorized and directed to pay to the county court of any
3 county, jail fees incurred by escapees of any West Vir-
4 ginia forestry camp for boys when said escapees are
5 confined in said county jails. Said jail fee shall not ex-
6 ceed the sum of two dollars per diem per prisoner.

## CHAPTER 160

(Senate Bill No. 221—By Mr. Carson, Mr. President, and Mr. Carrigan)

[Passed March 6, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to authorize the state commissioner of public institutions to transfer to the department of natural resources the ownership and control of that certain parcel of land known as Grave Creek Mound or Moundsville Mound in Marshall County, West Virginia.

Be it enacted by the Legislature of West Virginia:

Section 1. Authority of commissioner of public institutions to transfer land to department of natural resources.

§1. Authority of commissioner of public institutions to transfer land to department of natural resources.

1 The state commissioner of public institutions is hereby
2 authorized to transfer to the department of natural re-
3 sources the ownership and control of that certain parcel of
4 land known as Grave Creek Mound or Moundsville Mound
5 in Marshall County, West Virginia. The department of
6 natural resources is hereby authorized and granted all of
7 the necessary power to effect the orderly transfer of the
8 control, supervision, management, preservation, restora-
9 tion, and maintenance of all said state property.
CHAPTER 161

(House Bill No. 1052—By Mr. Cann)

[Passed March 1, 1967; in effect from passage. Approved by the Governor.]

AN ACT to authorize the state commissioner of public institutions to lease two tracts of land described herein to the municipality of Salem, or any board or commission created by the governing body of the municipality of Salem.

Be it enacted by the Legislature of West Virginia:

Section

1. Authority of commissioner of public institutions to lease land.

§1. Authority of commissioner of public institutions to lease land.

1. The state commissioner of public institutions is hereby authorized to lease to the municipality of Salem, or any board or commission created by the governing body of the municipality of Salem, for recreational purposes, which said recreational purposes will be to the mutual advantage of the state and the city of Salem, two tracts of land titled in the state commissioner of public institutions, located in Tenmile District, Harrison County, West Virginia, which said two tracts of land consist of approximately 11.3 acres; the first tract, consisting of approximately one acre, is bounded on the west by Long Run Road; the southeast by the main line of the Chesapeake and Ohio Railroad (formerly the main line of the Baltimore and Ohio Railroad); and on the north by the Salem Fork of Tenmile Creek; the second tract of land consists of approximately 10.3 acres of land and is bounded on the north by U. S. Route 50; on the west by the Broadwater property line; on the south by a bluff, and by the Salem Fork of Tenmile Creek; and on the east by Long Run Road.
AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, establishing a state board of investments; specifying its membership, officers, duties, powers and functions; defining certain terms used in article; providing for the promulgation of rules and regulations and the services of consultants and experts; transferring to the board the duties of state agencies respecting investment of public funds; establishing the classes of securities in which funds may be invested for periods in excess of one year may be invested; establishing the classes of securities in which funds may be invested for periods of one year or less; imposing restrictions on the purchase, sale or exchange of securities; specifying certain duties of the state treasurer with respect to the collection of interest and principal of securities in his custody; authorizing boards, officials, agencies, etc., charged with the administration of funds to determine the part thereof available for investment and to direct board to realize on investment whenever necessary or expedient to use the funds invested; providing for a continuous post-audit and reports of the investment transactions of the board; declaring the provisions of this article to be controlling in the event of the inconsistency of provisions of any other law; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

Section
1. Purposes and objects; how article cited.
2. Definitions.
3. State board of investments established; body corporate; members.
4. Chairman and executive secretary; custodian of funds and securities; staff agency; bonds of board members.
5. Rules and regulations; consultant services and advice; costs; brokerage commission.
7. Transfer of duties of state agencies to board respecting investment of public funds; exceptions.
8. Legal status of agencies and boards continued.
9. Investments for periods in excess of one year.
10. Investments for short-term periods.
11. Purchase, sale or exchange of securities; restrictions.
13. Duties of state treasurer.
15. Reports of board.
17. Post-audit.

§12-6-1. Purposes and objects; how article cited.

This article, which may be cited as the "Investment of State Funds Law," is enacted to provide a centralization of the investment responsibility for state funds and to enlarge the classes of securities in which public funds may be invested.

§12-6-2. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term "board" shall mean the West Virginia state board of investments.

(b) The term "fund" or "funds" shall include the workmen's compensation fund; the state teachers' retirement system funds; the death, disability and retirement fund for members of the department of public safety; the public employees' retirement system funds; the judges' retirement fund; and any other public funds of this state which may lawfully be invested: Provided, That "fund" or "funds" shall not be construed to include (1) the "School Fund," established by section four, article twelve of the state's constitution and legislation adopted thereunder, or (2) the sinking funds which are administered and controlled by the state sinking fund commission.

(c) The term "securities" shall include all bonds, notes, debentures or other evidences of indebtedness.
§12-6-3. State board of investments established; body corporate; members.

There is hereby created and established a state board of investments, to be known as the "West Virginia State Board of Investments," and the same is hereby made a body corporate, and by that name the board may adopt and use a seal; contract and be contracted with; acquire and dispose of personal property; sue and be sued; and otherwise exercise all powers and functions necessary and germane to its public corporate existence and purposes. The board shall consist of the governor, state treasurer and state auditor.

§12-6-4. Chairman and executive secretary; custodian of funds and securities; staff agency; bonds of board members.

The governor shall be the chairman, and the state treasurer shall be the executive secretary of the board and the custodian of all funds, securities and assets designated or described in this article; and the office of the state treasurer shall act as staff agency for the board. Each member of the state board of investments shall give a separate and additional bond from a surety company qualified to do business within the state of West Virginia in the penalty of two hundred fifty thousand dollars for the faithful performance of his duties as a member of said board.

§12-6-5. Rules and regulations; consultant services and advice; costs; brokerage commission.

The board shall formulate and adopt rules and regulations for the protection of funds invested and obtain such consultant services and expert advice from a nationally recognized investment advisor or advisors as are necessary for the prudent and proper management and investment of said funds.

All costs for consultant services, expert advice, the bonds provided for in the preceding section, and other lawful costs shall be proper charges against and payable on a prorata basis from the earnings of the various funds subject to investment under the provisions of this article.
Any brokerage commission that may be paid shall follow specifically the generally accepted brokerage commission as set forth by the rules of fair practice of the national association of security dealers or a recognized national security exchange.

All expert advice and consultant opinions shall be reduced to writing and be always available for use in the continuous post-audit provided for in section seventeen hereof, and all such expert advice and consultant opinions shall be filed in the office of the state treasurer and made available for public inspection upon completion of the transaction.

§12-6-6. Legal opinions.

Prior to making any investment in the classes of securities specified in subdivisions (b), excluding direct general obligation securities of this state, (c), (d) and (e) of section nine of this article, and subdivision (c) of section ten of this article, the board shall require an original or certified copy of the written opinion of a nationally recognized bond attorney or attorneys certifying to the legality of such securities.

§12-6-7. Transfer of duties of state agencies to board respecting investment of public funds; exceptions.

All duties vested by law in any agency or board of the state relating to the investment or reinvestment of monies, and the purchase, sale or exchange of any investment or securities, of and for any funds, are hereby transferred to and shall be exercised and performed for such fund by the board: Provided, That neither this nor any other section of this article shall in any manner apply (1) to the "Board of the School Fund" and "School Fund" established by section four, article twelve of the state's constitution and legislation adopted thereunder, or (2) to the state sinking fund commission.

§12-6-8. Legal status of agencies and boards continued.

Except as otherwise provided in this article, every state agency or board shall continue to have all of the powers and shall exercise all of the functions and duties vested
in or imposed upon it by law, as to any fund, and shall
continue to be constituted as provided by existing law.

§12-6-9. Investments for periods in excess of one year.

Notwithstanding the restrictions which may otherwise
be provided by law as to the securities in which funds
may be invested, funds made available for investment
for periods in excess of one year may be invested by
the board, without the approval of any other state agency
or official other than as required in section six of this
article, in the following classes of securities, and not
otherwise:

(a) Securities of the United States or agency thereof,
or those guaranteed by, or for which the credit of the
United States or agency thereof is pledged for the pay-
ment of the principal and interest thereof.

(b) Direct general obligation securities of this state,
or any other state or territory of the United States, or
the District of Columbia, unconditionally guaranteed as to
the principal and interest by such other state or territory
of the United States, or the District of Columbia: Pro-
vided, That (1) such other state, territory, or the District
of Columbia has the power to levy taxes for the payment
of the principal and interest of such securities, and (2)
at the time of investment such other state, territory, or
the District of Columbia is not in default in the payment
of any part of the principal or interest owing by it upon
any part of its funded indebtedness.

(c) Securities issued by a federal land bank, or by a
federal intermediate credit bank, under the act of Con-
gress of July seventeen, one thousand nine hundred six-
teen, known as the “Federal Farm Loan Act,” as amended
or supplemented from time to time, or by the Federal
Home Loan Bank System, Federal National Mortgage As-
sociation, or banks for cooperatives.

(d) Securities issued, assumed or unconditionally guar-
anteed by the International Bank for Reconstruction and
Development, or Tennessee Valley Authority.

(e) Any fixed interest bond, note or debenture of any
corporation organized and operating within the United
States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation’s securities are listed on one or more of the national stock exchanges: Provided, however, That (1) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated “AA” or the equivalent thereof or better than “AA” or the equivalent thereof by at least two or more nationally recognized rating services, such as Standard and Poor’s, Dun & Bradstreet, or Moody’s.

§12-6-10. Investments for short-term periods.

Notwithstanding the restrictions which may otherwise be provided by law as to the securities in which funds may be invested, funds made available for investment for periods of one year or less may be invested by the board, without the approval of any other state agency or official other than the written opinion as required in section six of this article, in the following classes of securities and not otherwise:

(a) Certificates or other obligations of the United States or for which the full faith and credit of the United States is pledged, which mature on such dates as will make available such amount of cash as required.

(b) Obligations of the United States which are redeemable by the United States treasury at the owner’s option at fixed redemption values within one year from the date of such investment.

(c) Securities issued by any corporation which will meet the requirements of subdivision (e), section nine hereof and mature within one year.

§12-6-11. Purchase, sale or exchange of securities; restrictions.

The board shall not invest more than five per cent of each fund placed with it for investment in any bonds, notes or debentures of any one corporation meeting the
requirements of subdivision (e) of section nine of this article; nor shall the board invest more than thirty-five per cent of each fund placed with it for investment in bonds, notes or debentures of corporations meeting the requirements of subdivision (e) of section nine of this article.

Securities purchased or held under the provisions of this article may be sold or exchanged for other securities: Provided, That (1) no security shall be purchased, sold or exchanged without the concurrence of a majority of all members of the board, (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value, (3) no security shall be purchased, sold, or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto, (4) no security shall be received in exchange which does not comply with the requirements of section nine or ten of this article, and (5) the board shall not engage in any arbitrage practices.

§12-6-12. Exercise of judgment in making investments.

Any investment made under this article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

§12-6-13. Duties of state treasurer.

It shall be the duty of the state treasurer to collect the interest, or other income on, and the principal of such securities in his custody as said sums become due and payable, and to credit same when so collected, to the fund to which the investments belong. Whenever a given investment is owned by two or more funds, the income received shall be prorated in accordance with the ownership of the respective funds.
§12-6-14. Records of investments.

The board shall keep for each such fund for which investments are made a separate account, to be designated by name and number, in which shall be recorded the individual amounts and the totals of all investments belonging to such fund. Every receipt and collection or disbursement when received or made shall be immediately recorded to the account of the particular fund to which it belongs.

§12-6-15. Reports of board.

The board shall prepare quarterly a complete and full report of its operations and its investments and furnish a copy thereof to the governing authority of each fund, the president of the senate, speaker of the house, legislative auditor, and upon request to any legislative committee, any banking institution in this state, and any member of any news media, and such report shall be kept available for inspection by any citizen of this state.

§12-6-16. Making funds available for investment.

The board, commission, department, official or agency charged with the administration of any fund shall, consistent with other provisions of law, determine what part thereof is available for investment and shall, consistent with other provisions of law, have the authority to direct the board to collect, sell or otherwise realize upon any investment whenever it becomes necessary or expedient to use any of the funds invested.

§12-6-17. Post-audit.

There shall be a continuous post-audit conducted by the legislative auditor of the investment transactions of the board, and a copy of said post-audit for the preceding calendar year shall be furnished to each member of the Legislature upon its convening in January of each year.


If any provision of this article, or the applicability thereof to any person or circumstance, is held invalid, the remainder of this article and the applicability thereof
and of such provisions to other persons or circumstances shall not be affected thereby.

CHAPTER 163

(House Bill No. 700—By Mr. Speaker, Mr. White, by request)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article eight, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring agencies to obtain the written approval of the state records administrator before purchasing or acquiring any equipment or supplies used or to be used to store or preserve records of such agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

Section


§5-8-9. Duties of agency heads.

1 The head of each agency shall:

2 (a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.

3 (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

4 (c) Submit to the administrator, in accordance with the standards established by him, schedules proposing
the length of time each state record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. The head of each agency also shall submit lists of state records in his custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal value to warrant their further keeping for disposal in conformity with the requirements of section ten of this article.

(d) Cooperate with the administrator in the conduct of surveys made by him pursuant to the provisions of this article.

(e) Comply with the rules, regulations, standards and procedures issued by the administrator.

(f) First obtain the administrator's written approval before purchasing or acquiring any equipment or supplies used or to be used to store or preserve records of his agency. If such approval is obtained the agency will submit a requisition to the budget division together with a copy of the administrator's said approval.

CHAPTER 164

[Passed March 11, 1967; in effect July 1, 1967. 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 of the department of public safety and how constituted; to 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:
ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

Section 3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.

§15-2-3. Companies and platoons; 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. They shall be designated as companies “A,” “B,” “C” and “D.” Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, seven sergeants, not more than seventeen 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.

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 in-service training from time to time for all members of the department. The superintendent shall 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 nine thousand four hundred twenty dollars; the major shall receive an annual salary of eight thousand five hundred twenty dollars; captains shall each receive an annual salary of seven thousand six hundred twenty dollars; lieutenants shall each receive an annual salary of seven thousand two hundred dollars; the master sergeants and first sergeants shall each receive an annual salary of seven thousand seven hundred twenty dollars; sergeants shall each receive an annual salary of six thousand five hundred sixteen dollars; corporals shall each receive an an-
annual salary of six thousand two hundred sixteen dollars; and each newly enlisted trooper shall receive a salary of four hundred thirteen dollars during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each trooper shall receive, during the remainder of his first year’s service, a salary of four hundred sixty-three dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of five thousand six hundred seventy-six dollars; during the third year of his service each trooper shall receive an annual salary of five thousand seven hundred ninety-six dollars; and during the fourth and fifth years of his service and for each year thereafter each trooper shall receive an annual salary of five thousand nine hundred sixteen dollars. Each member of the department entitled thereto by the provisions hereof shall receive an increase in salary over that hereinbefore set forth in this section, for grade and rank, based on length of service, including that heretofore and hereafter served, with the department, as follows: For each five-year period of service with the department from the date of first enlistment, each member of the department shall receive a salary increase of one hundred twenty dollars per year to be effective during his next five years of service, which increases shall be successive and cumulative until a total of five such increases shall be received.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

Each member of the department of public safety, except the superintendent and civilian employees, shall, before entering upon the discharge of his duties, execute a bond with security in the sum of three thousand five hundred dollars payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the board of public works,
and the same shall be filed with the secretary of state and preserved in his office.

CHAPTER 165

(House Bill No. 830—By Mr. Moyers)

[Passed March 10, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, lease or encumbrance of the estate of infants, insane persons or convicts by summary proceedings; and providing that any notice or service required by the section to be made upon an infant under fourteen years of age shall be made by delivering a copy of such notice and petition to his resident guardian, and if there be no such guardian, to his mother or father if they be found, and if there be no such guardian and the mother and father cannot be found, upon a guardian ad litem.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter thirty-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. LANDS OF INFANTS, INSANE PERSONS OR CONVICTS, AND LANDS HELD IN TRUST.

Section

11. Summary proceedings for sale, lease or mortgage; petition; notice.

§37-1-11. Summary proceedings for sale, lease or mortgage; petition; notice.

1 In addition to the proceedings authorized by the second section of this article, the guardian of any minor, or the committee of any insane person or convict, if he deem that the interests of his ward or insane person or convict will be promoted by a sale, lease or mortgage of, or trust deed upon, his estate, or of any estate in which he with
others, infants or adults, is interested, whether the estate
of the minor, or insane person or convict, or of any of
the other persons interested, be absolute or limited, and
whether there be or be not limited thereon any other
estate, vested or contingent, may apply by petition, in a
summary way, to the circuit court, or to the judge
thereof in vacation, or to any court of concurrent juris-
diction with the circuit court, or to the judge thereof in
vacation, of the county in which the estate proposed to
be sold, leased or encumbered, or some part thereof may
be, describing all the estate, real and personal, belonging
to the minor, or insane person or convict and setting
forth plainly all the facts calculated to show the pro-
priety of the sale, lease, mortgage, or deed of trust. The
petition shall be verified by the oath of the plaintiff, and
all persons interested shall be made defendants, and ten
days' notice shall be given to such defendants before
such petition can be heard: Provided, That any notice
or service required by this section to be made upon any
infant under fourteen years of age shall be made by
delivering a copy of such notice and petition to his guard-
ian resident in this state; or, if there be no such guardian,
then either to his father or mother if they be found.
If there is no such guardian and if the father or mother
cannot be found, service of such notice and petition shall
be made upon a guardian ad litem appointed in the man-
ner provided by law.

CHAPTER 166
(Com. Sub. for Senate Bill No. 271—By Mr. Brotherton
and Mr. Hubbard)

[Passed March 9, 1967; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter forty-seven of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article eleven-b,
relating to the licensing and regulation of closing-out sales,
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 eleven-b, to read as follows:

ARTICLE 11B. CLOSING-OUT SALES, FIRE SALES AND DEFUNCT BUSINESS SALES.

Section 1. Legislative findings.
Section 2. Definitions.
Section 3. License required; exceptions.
Section 4. License application requirements.
Section 5. Investigation of application; grounds for denial.
Section 6. Duration of sale; license fee.
Section 7. Revocation of license; grounds.
Section 8. Notice of denial, refusal or revocation of license; judicial review thereof.
Section 9. Bond required.
Section 10. Branch stores and warehouses.
Section 11. Substitution, addition and commingling of goods voids license; change of time or place of sale; certain purchases prohibited.
Section 12. Copy of application, inventory and license to be posted; license to be referred to in advertisements.
Section 13. Opening of a similar business within one year of sale prohibited.
Section 14. Records.
Section 15. Penalties for violations.
Section 16. Severability.
Section 17. Effective date.

§47-11B-1. Legislative findings.

The Legislature hereby finds and declares that certain sales of goods, defined in this article as "closing-out sales," "sales of goods damaged by fire, smoke or water" or "defunct business sales" have heretofore often been advertised and conducted in such manner as to mislead and defraud the public or otherwise harm the public and that such sales should be licensed and regulated to prevent misrepresentation and fraud and to protect and promote the public welfare.

§47-11B-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) The term "closing-out sale" shall include but not be limited to all sales advertised, represented or held forth
under the designation of “quitting business,” “going out
of business,” “discontinuance of business,” “selling out,”
“liquidation,” “lost our lease,” “must vacate,” “forced
out,” “removal,” “branch-store discontinuance sale,”
“building coming down,” “end,” “final days,” “last days,”
“lease expires,” “we give up sale,” “we quit sale,” “ware-
house closing sale,” “reorganization sale” and any other
advertising or designation by any other expression or
characterization similar to any of the foregoing and giving
notice to the public that the sale will precede the aban-
donment of a business location.

(b) The term “sale of goods damaged by fire, smoke or
water” shall include but not be limited to all sales adver-
tised, represented or held forth under the designation of
“fire sale,” “smoke damage sale,” “water damage sale,”
“flood damage sale,” “insurance sale” and any other ad-
vertising or designation by any other expression or char-
acterization similar to any of the foregoing and giving
notice to the public that the goods, wares or merchandise
offered for sale have been damaged.

(c) The term “defunct business sale” shall include but
not be limited to all sales advertised, represented or held
forth under the designation of “adjuster’s sale,” “admin-
istrator’s sale,” “assignee’s sale,” “bankrupt sale,” “bank-
rupt stock sale,” “benefit of administrator’s sale,” “benefit
of creditor’s sale,” “benefit of trustee’s sale,” “creditor’s
committee sale,” “creditor’s sale,” “executor’s sale,” “in-
solvent sale,” “mortgage sale,” “receiver’s sale,” “trustee’s
sale” and any other advertising or designation by any
other expression or characterization similar to any of the
foregoing and conveying the same meaning or giving
notice to the public of a sale resulting from death, busi-
ness failure, or other adversity.

(d) “Unusual purchase or addition” shall mean any
purchase of goods, wares or merchandise during the
ninety days preceding the application for a license the
total value of which is at least twenty-five per cent greater
than purchases made by the applicant for a like ninety-
day period during any one of three years next immedi-
ately preceding the year in which the application is made
or his peak purchases for any ninety-day period if he has
been in business for less than three years.

(e) "Commissioner" shall mean the state commissioner of labor.

(f) "Person" shall mean any individual, partnership, association, firm or corporation or the plural thereof.

§47-11B-3. License required; exceptions.

It shall be unlawful for any person in this state to advertise or conduct any sale of any goods, wares or merchandise which is a "closing-out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale" unless a license is first obtained to conduct such a sale from the commissioner as provided in this article.

This article shall, however, not be construed to apply to or affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons who are required to file an accounting with a court of competent jurisdiction.

(3) Persons acting in accordance with their powers and duties as public officers such as sheriffs, constables and marshals.

(4) Any publisher or employee of a newspaper, magazine or any operator or employee of a radio or television broadcasting station who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading character or without knowledge that the provisions of this article are not being complied with.

(5) Persons conducting sales by and on behalf of licensed insurers.

§47-11B-4. License application requirements.

Any person desiring to conduct a sale regulated by this article shall make a written application under oath to the commissioner. Said application shall be accompanied by the approved bond specified in section nine of this article. If the application is for a "closing-out sale" or a "defunct business sale," it shall be filed at least ten days prior to
the date on which such sale is to commence. If the application is for a "sale of goods damaged by fire, smoke or water," it may be made at any time prior to the date on which such sale is to commence.

All applications for a licensed sale regulated by this article shall set forth and contain the following information:

(1) The name and address of the applicant who must be the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners, or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the state and the names and addresses of all the officers of the applicant.

(2) The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.

(3) The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.

(4) The date on which it is proposed to begin the sale.

(5) The nature of the occupancy where such sale is to be held whether by lease or otherwise and the effective date of termination of such occupancy.

(6) The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.

(7) A statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale.

(8) A statement that the business is to be terminated permanently or reopened at another location, the location of the premises at which the business is to be moved, if the applicant intends to resume the operation of the business upon the termination of the sale, and the name or designation under which such business is to be resumed.

(9) A full, complete, detailed and itemized inventory of the goods, wares and merchandise to be offered at such
sale as disclosed by applicant's records which inventory shall:

(i) Itemize the goods to be offered for sale and contain sufficient information concerning each item including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it.

(ii) List separately any goods to be offered for sale which were purchased and received during a ninety-day period immediately prior to the date of making application for the license.

(iii) The total retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the inventory used for applicant's most recent federal income tax return adjusted for sales and purchases.

(iv) If the application is for a license to conduct a "sale of goods damaged by fire, smoke or water" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application certified copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise.

(v) If the application is for a license to conduct a "defunct business sale" and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application certified copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for benefit of creditor, referee in bankruptcy or the personal representative of a decedent.

(10) A statement that no goods will be added to the inventory after the application is made.

(11) A statement that all goods included in such inventory have been purchased by the applicant for resale on bona fide orders without cancellation privileges and
that said inventory comprises no goods purchased on consignment.

(12) A statement that no merchandise listed in the inventory has been the subject of a licensed sale conducted within one year prior to the date of the application unless such merchandise was damaged by fire, smoke or water while in the possession of the applicant.

§47-11B-5. Investigation of application; grounds for denial.

Upon receipt of the application, the commissioner may in his discretion make or cause to be made an examination or order an investigation of the applicant and all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances are found by him to exist:

(1) That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least three months prior to the date of the application, or if the applicant be a partnership, corporation or association, controlling interest in the corporation or association was transferred within six months prior to the date of the application for a license hereunder except:

(i) Where the application is for a license for a "sale of goods damaged by fire, smoke or water" or a "defunct business sale" and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder.

(ii) Upon the death of a person doing business in this state, his heirs, distributees, devisees, legatees or their successors and assigns shall have the right to apply at any time for a license hereunder.

(iii) Where a business is required or compelled to be discontinued because the premises whereupon it is being conducted has been condemned, taken for purposes of urban renewal or development, or because the premises must be vacated because of legal or judicial proceedings.
(2) That in the case of a "closing-out sale" the applicant either as owner, partner, member of an association, or principal stockholder of a corporation was granted a prior license hereunder within one year preceding the date of the filing of the application.

(3) That the inventory contains goods, wares or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges.

(4) That the inventory contains goods, wares or merchandise purchased by the applicant on consignment except if the consigned goods, wares or merchandise have been damaged while in the consignee's possession.

(5) That the applicant except in the case of an application for a license to conduct a "sale of goods damaged by fire, smoke or water" or a "defunct business sale" either as owner, partner, officer of an association, or principal stockholder of a corporation was granted a prior license hereunder within one year preceding the date of the filing of the application at the particular location for which the license is sought or within one year prior to the date of filing of the application has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the license is sought was to be closed out or terminated.

(6) That the applicant has within one year, prior to the filing of the application, been convicted of a violation of this article.

(7) That the goods, wares or merchandise as described in the inventory were transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.

(8) That the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. For this purpose any unusual purchase or addition to the stock of such goods, wares and merchandise made within ninety days prior to the date of the filing of such application shall be pre-
sumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.

(9) That any representation made in the application is false.

§47-11B-6. Duration of sale; license fee.

A license to conduct a sale issued pursuant to this article shall be good for no more than a period of thirty consecutive calendar days and may be renewed for one consecutive period not exceeding thirty consecutive calendar days upon the affidavit of the applicant that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this article by purchase, acquisition on consignment, or otherwise. The application for renewal shall be made not more than ten days prior to the time of the expiration of the license and shall contain a new inventory of the goods remaining on hand at the time the application for renewal is made which new inventory shall be prepared and furnished in the same manner and form as the original inventory. The commissioner shall receive from the applicant for such license, upon the granting thereof, a fee of fifty dollars and upon the renewal thereof a fee of one hundred dollars. The applicant shall not be entitled to a refund of the fee paid if said application is refused, denied or revoked.

§47-11B-7. Revocation of license; grounds.

The commissioner may, on his own initiative, or shall, upon the written and verified complaint of any resident of this state, investigate any person licensed by him under the provisions of this article to determine if such person is violating or has violated this article. The commissioner shall immediately revoke such person's license if, after such investigation, he shall determine that:

(1) Any sale by the applicant is conducted in violation of any provision of this article,

(2) The applicant has made any material misstatement in his application for said license,

(3) The applicant has failed to include in the inventory
required by the provisions of this article the goods, wares or merchandise required to be contained in such inventory,

(4) The applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale any goods, wares or merchandise not described in the original application and inventory, or

(5) The applicant made or permitted to be made any false, misleading or deceptive statements in advertising said sale, whether written or oral, or in displaying, ticketing or pricing goods, wares or merchandise offered for sale.

§47-11B-8. Notice of denial, refusal or revocation of license; judicial review thereof.

Whenever the commissioner shall deny or refuse to issue a license or shall revoke any license, he shall make and enter an order to that effect and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or person licensed by him, as the case may be. Such order shall be accompanied by findings of fact and conclusions of law upon which such order was made and entered. Any person adversely affected by an order made and entered by the board is entitled to judicial review thereof. Such judicial review shall be in the circuit court for the county in which the sale is to be or is being conducted. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in a particular proceeding.

§47-11B-9. Bond required.

No license shall be issued unless the applicant files with the commissioner a bond with corporate surety pay-
able to the state of West Virginia conditioned upon the faithful observance of all the provisions of this article, the payment to any municipality or the state of all taxes due and owing or which may become due and the indemnifying of any purchaser at such sale who suffers any loss by reason of misrepresentation made in connection with such sale: Provided, That the aggregate liability of the surety for all breaches of the conditions of the bond shall in no event exceed the amount of said bond.

The amount of said bond shall be determined as follows: Five per cent of the first one hundred thousand dollars of the retail value of all the goods, wares and merchandise to be offered at such sale, two per cent of the next four hundred thousand dollars and one per cent of the balance. Said bond shall be approved as to form and sufficiency by the prosecuting attorney or his assistant of the county in which such sale is to be conducted.

§47-11B-10. Branch stores and warehouses.

If the applicant owns, conducts or operates more than one store or warehouse in connection with such store or warehouse specified in the application, the license issued will apply only to the one store or warehouse for which it was issued and no other store or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale, nor shall the licensed store or warehouse or any person advertise or represent that any other person, store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store or warehouse of a chain or group of stores or warehouses shall be conducted solely at the location of the store or warehouse for which the license was obtained and no goods, wares or merchandise shall be brought from any other store or warehouse and placed on sale at the store or warehouse licensed to conduct a sale hereunder.

§47-11B-11. Substitution, addition and commingling of goods voids license; change of time or place of sale; certain purchases prohibited.

(a) Any substitution for or addition to goods described in an inventory filed pursuant to this article or any
change in the time or place for a sale conducted pursuant to this article shall be unlawful and shall void any license issued to conduct a sale pursuant to this article and such license shall be revoked.

(b) In the case of a sale licensed under this article conducted by any person licensed under this article in addition to conducting a business or selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods to be sold at such sale shall be clearly and distinctly segregated, marked or identified and advertised, if at all, so that both on display and in advertising such goods may be readily distinguished from other stocks and their identity readily ascertained. Any commingling of such goods with other stocks of such person in such a manner as to cause the goods to lose their separate identity either on display or in advertising shall be unlawful.

§47-11B-12. Copy of application, inventory and license to be posted; license to be referred to in advertisements.

A copy of the application for a license to conduct a sale under this article, including a copy of the inventory filed therewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold so that the public may be informed of the facts relating to the goods before purchasing same. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration, and if applicable, the location where the business is to be resumed.

§47-11B-13. Opening of a similar business within one year of sale prohibited.

Opening of a business similar to the one for which the sale licensed pursuant to this article was conducted except the licensed “sale of goods damaged by fire, smoke or water” by the person, partner of a partnership, officer of an association, or principal stockholder of a corporation who or which conducted the sale upon the same premises within one year of the termination of the sale shall con-

(a) Suitable books and records concerning said sale shall be kept by the licensee for the duration of the licensed sale and one year thereafter and shall be open for inspection by the commissioner or his duly authorized representative.

(b) Upon the termination of a sale licensed hereunder the applicant shall within thirty days of such termination file a statement with the commissioner stating:

1. The total retail value of the goods, wares or merchandise not disposed of during the sale, and
2. The ultimate disposition thereof and if transferred to another, the name and address of the transferee.


Any person who shall violate any of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding thirty days. Each day any sale is conducted in violation of the provisions of this article shall constitute and be a separate violation of the provisions of this article.


If any part or parts of this article shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the constitutionality or validity of the remaining part or parts of this article. The Legislature hereby declares that it would have passed the remaining part or parts of this article if it had known that such part or parts would be declared unconstitutional or invalid.

§47-11B-17. Effective date.

This article shall become effective on the first day of July, one thousand nine hundred sixty-seven.
AN ACT to repeal article thirteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the cigarette sales act.

Be it enacted by the Legislature of West Virginia:

§1. Repealing cigarette sales act.

1. Article thirteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 168

(Senate Bill No. 7—By Mr. Carson, Mr. President, and Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections twenty-six and twenty-seven, article one, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of primary and secondary roads, and to amend and reenact section twenty-eight of said article one, relating to the definition of state and public roads.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS.

Section
28. State and public roads.

“State road” shall mean and include all roads classified and prescribed as either “expressway,” “trunkline,” “feeder,” or “state local service” roads. “Public roads” shall mean all other roads and bridges under the control of the county court or the governing body of a municipality.

CHAPTER 169

(Senate Bill No. 12—By Mr. Carson, Mr. President, and Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, duties and responsibilities of the state road commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. STATE ROAD COMMISSIONER.

Section

8 Powers, duties and responsibilities of commissioner.


In addition to all other duties, powers and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair and maintenance of state roads and highways;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways therein;
(3) Conduct investigations and experiments, hold hearings and public meetings and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in name of the commission, by lease, grant, right of eminent domain or other lawful means, all lands and interests and rights in lands necessary and required for roads, right of ways, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the state capitol of Virginia which may be deemed necessary or proper in ascertaining the location and legal status of public road right of ways located or established in what is now the state of West Virginia, which photostatic copies, when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three nor more than six days' duration, for instruction of his employees, which school shall be held in conjunction with West Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter into reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies and all other matters of interstate or national interest;

(9) Classify and reclassify, locate and relocate, expressway, trunkline, feeder, and state local service roads,
and designate by number the routes within the state road system;

(10) Create, extend or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway as may be found necessary and proper;

(11) Exercise jurisdiction, control, supervision and authority over local roads, outside the state road system, to the extent determined by him to be expedient and practicable;

(12) Discontinue, vacate and close any road or highway, or any part thereof, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing, or upon investigation initiated by the commissioner;

(13) Close any state road while under construction or repair and provide a temporary road during the time of such construction or repair;

(14) Adjust damages occasioned by construction, reconstruction or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road right of ways, bridges and approaches thereto and to fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right of way, to the cost of construction, reconstruction, improvement or maintenance;

(19) Acquire, establish, construct, maintain and operate, in the name of the commission, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under
(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any such municipality and upon such terms as may be agreeably arranged;

(22) Institute complaints before the public service commission or any other appropriate governmental agency relating to freight rates, car service and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies to enforce his orders, to compel compliance with requirements of law and to protect and preserve the state road and highway system or any part thereof;

(24) Make and promulgate rules and regulations for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him by law;

(25) Delegate powers and duties to his appointees and employees who shall act by and under his direction and be responsible to him for their acts;

(26) Designate and define such construction and maintenance districts within the state road system as may be found expedient and practicable;

(27) Contract for the construction, improvement and maintenance of the roads;

(28) Have authority to comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau or agency thereof relating to plans, surveys, construction, reconstruction, improvement and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;
(30) Establish a system of accounting covering and including all fiscal and financial matters of the commission;
(31) Have authority to establish and advance right of way acquisition revolving fund, a materials revolving fund and an equipment revolving fund;
(32) Enter into contracts and agreements with and to cooperate in programs of counties, municipalities and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance and supervision of highways, roads, streets and other travel ways when and to the extent determined by the commission to be expedient and practical;
(33) Report, as provided by law, to the governor and the Legislature;
(34) Purchase materials, supplies and equipment required for the state road program and system;
(35) Dispose of all obsolete and unusable and surplus supplies and materials, which cannot be used advantageously and beneficially by the commission in the state road program, by transfer thereof to other governmental agencies and institutions or by exchange, trade or sale thereof;
(36) Investigate road conditions, official conduct of commission personnel and fiscal and financial affairs of the commission and hold hearings and make findings thereon or on any other matters within the jurisdiction of the commission; and
(37) Establish road policies and administrative practices.

CHAPTER 170

(Senate Bill No. 2—By Mr. Barnett and Mr. Porter)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article two-a, chapter seventeen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the acquisition of real and personal property for state road purposes, and providing that the acquisition of any and all such property shall be a cost of highway construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. STATE ROAD COMMISSIONER.

Section 17. Acquisition of property for state road purposes; "state road purposes" defined.

§17-2A-17. Acquisition of property for state road purposes; "state road purposes" defined.

In addition to all other powers given and assigned to the commissioner in this chapter, the commissioner may acquire, either temporarily or permanently, in the name of the state road commission all real or personal property, public or private, or any interests or rights therein, including any easement, riparian right, or right of access, deemed by the commissioner to be necessary for present or presently foreseeable future state road purposes by gift, lease, grant, bequest, devise, agreement, purchase, exchange, right of eminent domain, or other lawful means. Such real property may be acquired in fee simple or in any lesser estate or interest therein, except in the case of a public road the right of way only shall be acquired. Acquisition of such personal property shall be subject to the provisions of sections thirteen and fifteen of this article. The acquisition of any and all such real and personal property is hereby declared to be a cost of highway construction. Nothing in this section shall be deemed to restrict or relinquish any right the state or any agency thereof now or hereafter possesses or may exercise by virtue of the police power or other lawful authority.

As used in this article, "state road purposes" shall include provision for, but shall not be limited to, the following:

(a) Constructing, establishing, laying out, widening, enlarging, extending, straightening, reconstructing, relo-
eating, grading, altering, improving, and maintaining state roads;

(b) Right of ways for state roads, including those needed for such roads within municipalities, such right of ways to be as wide as deemed necessary by the commission;

(c) Adequate drainage of state roads;

(d) Controlled-access facilities, as defined in section thirty-nine, article four of this chapter, including existing and vested rights of access, air, view and light, whether privately or publicly owned, and local service roads to controlled-access facilities;

(e) Broadcasting stations, weighing stations, shops, equipment sheds, office buildings, storage buildings and yards, snow fences, road maintenance or construction sites;

(f) Road-building material storage sites, quarry sites, gravel pits, sites for the acquisition or manufacture of road-building materials including borrow pits, stock pile sites, waste-material sites and access roads to any such sites or places;

(g) The culture and support of trees which benefit any state road by aiding in the maintenance and preservation of the road;

(h) Landscape and roadside development, and maintenance thereof, within any state road right of way, and the acquisition and maintenance of lands and interests in lands for the restoration, preservation and enhancement of places of scenic beauty, and other objects of attraction or scenic value adjacent to or near any state road, and the acquisition, development and maintenance of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary for the accommodation of the traveling public, within, adjacent to or near the right of way of any road within the state road system;

(i) Development and maintenance of parking places, auto camps, camp sites, roadside parks, historic roadside markers and sites, forest or timbered areas or other places of attraction and scenic value which are adjacent to or
near any state road and which in the judgment of the commissioner are necessary for the convenience of the public and will contribute to the general welfare and pleasure of the motoring public or road users;

(j) Maintenance of an unobstructed view of any portion of any state road in order to provide for the safety of the traveling public;

(k) Erection and maintenance of markers, warning signs and traffic signals;

(l) Construction and maintenance on state roads of sidewalks and highway illumination;

(m) Elimination or prevention of hazardous or undesirable points of entry to state roads from adjacent property;

(n) Acquisition of property, or any interest or right therein, for the purpose of exchanging it for other property, or any interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section: Provided, That such substitute property, or any interest or right therein, may be acquired by the commissioner by condemnation only if the following conditions are satisfied: (1) Money compensation would be substantially inadequate for the property, or interest or right therein, which the commissioner is authorized to acquire by the other provisions of this section, and (2) the commission has entered into a written agreement to exchange the substitute property, or the right or interest therein, for the property, or right or interest therein, which is needed for state road purposes, regardless of whether the person who has agreed to accept the exchange has the right to condemn the substitute property, or the right or interest therein;

(o) Acquisition of real property, not needed as such for a state road, for the purpose of moving and relocating thereon a building or other structure or appurtenance which is situated on a lot or tract of land all or a portion of which is needed for a state road and which, after relocation, will be suitable for the purpose for which it was used prior to its being relocated: Provided, however, That such additional real property may be acquired by the commissioner by condemnation only if the following con-
107
ditions are satisfied: (1) The building or other structure
108 or appurtenance is of substantial value, (2) the real prop-
109 erty on which it is to be relocated is not substantially im-
110 proved and is adjacent to or near the location from which
111 it is to be removed, (3) the owner of the real property
112 needed for the state road has entered into a written agree-
113 ment with the commission to accept in exchange the
114 additional property with the relocated building or struc-
115 ture or appurtenance thereon, (4) substantial savings in
116 expenditure of state road funds will result from con-
117 demning the additional property and relocating the build-
118 ing or structure or appurtenance rather than condemning
119 the lot or tract, or the portion thereof, on which the build-
120 ing or other structure or appurtenance may be located,
121 and (5) the real property with the relocated building or
122 structure or appurtenance thereon will be relatively equal
123 in value to the real property needed for the state road.

CHAPTER 171
(Senate Bill No. 1—By Mr. Carson, Mr. President, and
Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state road fund, payments into said fund and providing for the use of the money in said fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE ROAD FUND.
Section
1. What constitutes fund; payments into fund; use of money in fund.
§17-3-1. What constitutes fund; payments into fund; use of money in fund.

There shall be a state road fund, which shall consist of the proceeds of all state license taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees imposed upon all owners, chauffeurs, operators, and dealers in automobiles or other motor driven vehicles; all sums of money which may be donated to such fund; all proceeds derived from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the "Better Roads Amendment" to the constitution of this state, adopted in the month of November, one thousand nine hundred sixty-four, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the state road fund; all moneys and funds appropriated to it by the Legislature; and all moneys allotted or appropriated by the federal government to this state for road construction and maintenance pursuant to any act of the Congress of the United States; the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of all taxes or charges imposed upon and collected from any county, district or municipality for the benefit of such fund; the proceeds of all judgments, decrees or awards recovered and collected from any person, firm or corporation for damages done to, or sustained by, any of the state roads or parts thereof; all moneys recovered or received by reason of the violation of any contract respecting the building, construction or maintenance of any state road; all penalties and forfeitures imposed, recovered or received by reason thereof; and any and all other moneys and funds appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any statute and payable to such fund.

When any money is collected from any of the sources aforesaid, it shall be paid into the state treasury by the officer whose duty it is to collect and account for the same, and credited to the state road fund, and shall be used only for the purposes named in this chapter, that is to say: (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and set aside and
AN ACT to amend and reenact section six, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apportionment of the state road fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE ROAD FUND.

Section 6. Apportionment of state road fund for construction and reconstruction purposes; reserve fund; budget request; appropriation of funds.

§17-3-6. Apportionment of state road fund for construction and reconstruction purposes; reserve fund; budget request; appropriation of funds.

On or before the first day of January of each year the state road commissioner shall ascertain and determine the total amount of available funds for expenditure in the whole state for the construction and reconstruction of state roads for the succeeding fiscal year, and shall also submit such determination of available funds together with the proposed expenditure thereof as a part of his budget request for such succeeding fiscal year. Of the amount so ascertained the commissioner may set aside as a "reserve fund" not to exceed twenty per cent thereof, to be used and expended by him in his discretion in
making desirable connections or economizing in construction.

All moneys received from the federal government for road construction shall be expended as provided, or as may hereafter be provided by act of Congress.

If at the end of any annual period, any money in the reserve fund remains unexpended or unappropriated, it shall be placed in the general fund for reserve and distribution during the next annual period.

The remaining eighty per cent, or, if such reserve fund is not set aside, then all the funds shall be appropriated in the following order and preference:

(1) For the construction, reconstruction, and maintenance of expressway and trunkline roads, and to comply with the requirements for the receipt of aid from the federal government;

(2) For the maintenance of all feeder and state local service roads, as provided in section six-a of this article;

(3) For the construction and reconstruction of feeder and state local service roads as prescribed in section six-a of this article.

CHAPTER 173

(Senate Bill No. 6—By Mr. Carson, Mr. President, and Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allotment of funds for feeder and state local service roads.

Be it enacted by the Legislature of West Virginia:

That section six-a, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. STATE ROAD FUND.

Section 6a. Allotment of funds for feeder and state local service roads.

§17-3-6a. Allotment of funds for feeder and state local service roads.

On or before the first day of January of each year the state road commissioner shall ascertain and determine the total amount of available funds for expenditure in the whole state for the construction, reconstruction and maintenance of feeder and state local service roads during such annual period. Of the amount so ascertained the commissioner may set aside as a reserve fund not to exceed twenty per cent thereof, to be used and expended by him in his discretion in such manner as will best serve the interests of the state and the convenience of its inhabitants.

The remaining eighty per cent, or, if such reserve fund is not set aside, then all the funds shall be appropriated in the following order and preference:

(1) Maintenance funds.—To be allocated to the various counties on the basis of the mileage of various types of road surfaces:
   (a) Paved surfaces of all types, such as brick, cement, concrete, bituminous, etc.
   (b) Traffic-bound surfaces, such as slag, crushed stone, gravel, chert, red dog, shale, etc.
   (c) Unimproved earth roads; by applying certain weights or percentages, based on past experience, to the various types of road surfaces.

(2) Construction and reconstruction.—To be allocated to the various counties on the basis of the ratio of the unimproved mileage of feeder and state local service roads in the county to the total unimproved mileage of feeder and state local service roads in the state.

For the purposes of this section, the words “unimproved mileage” are defined and shall be construed to mean roads which are not passable for all-weather travel by motor vehicle.

All moneys received from the federal government for road construction or reconstruction shall be expended as
36 provided, or as may hereafter be provided by act of
37 Congress.

CHAPTER 174
(Senate Bill No. 15—By Mr. Carson, Mr. President)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-b, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to matching funds with counties for the construction, reconstruction, repair and maintenance of feeder and state local service roads.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE ROAD FUND.

Section

6b. Matching funds with counties for the construction, reconstruction, repair and maintenance of feeder and state local service roads.

§17-3-6b. Matching funds with counties for the construction, reconstruction, repair and maintenance of feeder and state local service roads.

When the state road commissioner determines that there are funds available for the purpose of participating, on a matching fund basis, with the county court of one or more counties for the construction, reconstruction, repair and maintenance of any feeder and state local service roads within said county or counties, he shall in his discretion determine the amount the county court must deposit or place in escrow for matching purposes before the state road commissioner will commit any funds to a proposed project.

Nothing in this section shall be construed to alter or change in any way the allotment of funds for feeder and
13 state local service roads as provided by section six-a of
14 this article: Provided, however, That the feeder and state
15 local service road fund of the county or counties partici-
16 pating under this section shall be charged with the amount
17 advanced by the state road commissioner.

CHAPTER 175
(Senate Bill No. 5—By Mr. Carson, Mr. President,
and Mr. Barnett)

[Passed February 25, 1967; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections one, two, three and thirty-two,
article four, chapter seventeen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; to
amend and reenact sections four, twenty-seven and twenty-
eight of said article four; and to further amend said article
four by adding thereto three new sections, designated sec-
tions one, two and three, all relating to providing for a
functional classification of the roads of the state road sys-
tem, defining the terms used in such classification, granting
the state road commissioner power to classify and re-
classify all roads in the state road system, directing the
state road commissioner to plan this state's part in pro-
posed interstate and international highways and granting
him permission to attend all meetings concerning the same
and providing for roads in municipalities.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and thirty-two, article four,
chapter seventeen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be repealed; that sections
four, twenty-seven and twenty-eight of said article four be
amended and reenacted; and that said article four be further
amended by adding thereto three new sections, designated sec-
tions one, two and three, all to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.
Section
1. Classification of state roads; control over state roads; control by
county courts of roads, bridges and landings.
2. Definitions of roads comprising state road system.

3. Classification of roads in state road system; reclassification.

4. Interstate and international highway planning.

27. Same—control of connecting part of state road system within municipalities.

28. Same—notice and laying of necessary pipes, etc., before reconstruction within municipality.

§17-4-1. Classification of state roads; control over state roads; control by county courts of roads, bridges and landings.

The state road system shall consist of roads functionally classified into four categories as follows: (1) Expressway; (2) trunkline; (3) feeder; (4) state local service. The authority and control over the state roads shall be vested in the state road commissioner.

The county courts shall retain the superintendence and administration of roads and bridges and landings that remain under their jurisdiction as provided in section one, article ten of this chapter.

§17-4-2. Definitions of roads comprising state road system.

The following meanings shall be ascribed to roads comprising the state road system which were designated as primary roads until the effective date of this section:

(a) “Expressway.”—Serves major intrastate and interstate travel, including federal interstate routes.

(b) “Trunkline.”—Serves major city to city travel.

The following meanings shall be ascribed to roads comprising the state road system which were designated as secondary roads until the effective date of this section:

(a) “Feeder.”—Serves community to community travel and/or collects and feeds traffic to the higher systems.

(b) “State Local Service.”—Localized arterial and spur roads which provide land access and socio-economic benefits to abutting properties.

§17-4-3. Classification of roads in state road system; reclassification.

All roads in the state road system shall be classified by the state road commissioner. Classification shall be according to functional level of service, either as expressway, trunkline, feeder, or state local service. The designation of a road as expressway, trunkline, feeder, or state local service...
§17-4-4. Interstate and international highway planning.

The commissioner shall consider and plan the state's part in any contemplated interstate or international system of roads and highways, and may attend meetings and conferences within and without the state for discussion and planning of programs relating thereto.

§17-4-27. Same—Control of connecting part of state road system within municipalities.

The state road commissioner shall exercise the same control over connecting parts of the state road system in municipalities, except the regulation of traffic, that he exercises over such system generally, but he shall assume no greater duty or obligation in the construction, reconstruction and maintenance of streets which are part of the state road system than he is required to assume in the case of state roads outside of municipalities. In order, however, to promote the safe and efficient utilization of such streets, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any municipality on any highway or street hereafter constructed with state or federal aid shall be subject to the approval of the state road commissioner.

§17-4-28. Same—Notice and laying of necessary pipes, etc., before reconstruction within municipality.

Before the state road commissioner shall construct, reconstruct, improve or repair a section of the state road system within a municipality he shall, where the road is an "expressway" or "trunkline," and he may, where said road is a "feeder" or "state local service" road, give the municipality a notice of such proposed construction, reconstruction, improvement, and repair, and shall likewise give notice to all public service companies and public utilities of such proposed work. Upon receipt of such notice, the municipality shall by ordinance compel all
abutting property owners to lay all necessary pipe and

to make necessary connections along, in, under, and

through the said section of said road before the construc-
tion, reconstruction, improvement, or repair is started.

All public service companies and public utilities receiving
notice from said state road commissioner shall also lay
all necessary pipe and make necessary connections along,
in, under, and through said section of said road before the
construction, reconstruction, improvement, or repair is
started.

Should any person, firm, association, or corporation, in-
cluding municipal corporation, fail or neglect to make all
such necessary repairs and connections within a reason-
able time after the enactment of such ordinance or the
service of notice on them by the state road commissioner,
then the said state road commissioner may lay such pipe
and make such connections and the cost and expenses of
laying such pipe and making such connections shall be
chargeable to the person, firm, association, or corporation
who shall have failed or refused to lay such pipe and make
such connections, and the state road commissioner shall
collect all of such necessary costs and expenses from the
person, firm, association, or corporation, who shall have
so failed, refused or neglected to perform such work, by
proper action in any court having jurisdiction thereof.

However, the cost and expenses shall not be chargeable
against any municipality to the extent that the same
would impose an indebtedness against any municipality
in excess of the amount allowed by law.

CHAPTER 176
(Senate Bill No. 3—By Mr. Barnett)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the state convict road force.

**Be it enacted by the Legislature of West Virginia:**

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

**ARTICLE 5. STATE CONVICT ROAD FORCE.**

Section 1. State convict road force; how used.

§17-5-1. State convict road force; how used.

All male persons convicted of felony and sentenced to imprisonment or confinement in the penitentiary by any court, or who may hereafter be sentenced for a felony, whether actually sentenced to labor or not, or so many thereof as may be required by the state road commissioner, shall, as incident to such sentence or confinement, constitute the state convict road force and as such may be employed under the supervision of the state road commissioner in building, surfacing and maintaining roads under the supervision of the state road commissioner, including all roads in the state road system, and in and about any quarries, gravel pits, sandbanks, crushers, brick kilns, or other plants and places operated by the state road commission for the manufacture and acquisition of materials for use in the construction, maintenance and repair of such roads.

**CHAPTER 177**

(House Bill No. 845—By Mr. Speaker, Mr. White)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twenty-two, relating to the licensing, regulation and control of outdoor advertising and the purchase or
condemnation of certain outdoor advertising signs, displays, devices, leaseholds, property rights and interests, including the right to use certain lands for the erection and maintenance of such signs, displays, or devices, and payments of the costs of removal of outdoor advertising signs, displays, or devices; providing for the issuance of licenses and permits; providing for the revocation of licenses and judicial review thereof and for denial or revocation of permits and judicial review thereof; and providing penalties.

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 repealed, and that a new article twenty-two be enacted in lieu thereof, to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

Section

1. Legislative finding.
2. Definitions.
3. Certain outdoor advertising prohibited; when removal required.
4. General restrictions as to outdoor advertising.
5. Payment of compensation upon removal of advertising signs, displays or devices.
6. Purchase or condemnation; powers of state road commissioner; payment to claimants.
7. Exceptions to prohibited signs; standards for excepted signs.
8. Exempted areas.
9. Signs, displays and devices providing information for the traveling public; location.
10. Special fund.
11. Enforcement of provisions by commissioner; rules and regulations.
12. Territory to which article applies; entries for examinations and surveys.
13. Licenses required; application; expiration; exceptions; revocations; judicial review.
15. Permit required for each sign, etc.; applications; refusal of permits; expiration and renewal; change of advertising copy; revocation; fee; judicial review.
16. Permit identification number for signs; fastening to sign.
17. Removal of signs, etc., after expiration or revocation of permit.
18. Removal, defacing, etc., signs lawfully within highway limits.
20. Disposition of fees.
21. Prohibited signs not to be allowed by other agencies, etc.
22. Penalties; signs in violation of article declared nuisance; abatement.
23. Availability of funds to compensate for required removal of signs, etc.
24. Effective date.
25. Separability.
§17-22-1. Legislative finding.

The Legislature hereby finds and declares: (a) That outdoor advertising is a legitimate, commercial use of private property adjacent to roads and highways; (b) that outdoor advertising is an integral part of the business and marketing function and an established segment of the national economy which serves to promote and protect private investments in commerce and industry; (c) that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to federal-aid interstate and primary highways should be regulated in order to protect the public investment in such highways, to promote the recreational value of public travel, to preserve natural beauty, and to promote the reasonable, orderly and effective display of such signs, displays and devices.

The Legislature further finds and declares that fiscal actualities reflect that the people of the state of West Virginia would suffer economically if the state failed to participate fully in the allocation and apportionment of federal-aid highway funds, more specifically that a reduction in federal-aid highway funds would necessitate increased local taxation to support and maintain the state road program and system, and that it is the intention of this bill, among other things, to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to federal-aid interstate and primary highways declared by the Congress of the United States, in Title 23, United States Code, and that the economic benefit resulting from full participation in the federal highway program would constitute a benefit to the community as a whole.


As used in this article:

The word "sign" shall mean any structure erected for advertising purposes upon which any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, may be placed, posted, painted, tacked, nailed, glued or otherwise fastened, affixed or displayed.
The word "display" shall mean any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, designed and intended to draw the attention of the public to any goods, merchandise, property, real or personal, business service, entertainment or amusement, produced, bought, sold, conducted, furnished, or dealt in by any person, which is placed, posted, painted, tacked, nailed, glued or otherwise affixed or fastened to any advertising sign or structure, or otherwise displayed outdoors.

The word "device" shall mean any card, cloth, paper, metal or wooden advertising emblem or sign of any kind or character, which is posted, stuck, glued, tacked, nailed, painted or otherwise fastened or affixed to or upon any fence, post, tree or thing other than an advertising sign or structure.

"Person" shall include an individual, partnership, association, or corporation.

§17-22-3. Certain outdoor advertising prohibited; when removal required.

Except as provided in this article, no outdoor advertising sign, display, or device shall be erected or maintained within six hundred and sixty feet of the nearest edge of and visible as to informative content from the right of way of any road within the state road system designated and classified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: Provided, however, That no outdoor advertising sign, display or device lawfully in existence adjacent to the federal-aid interstate or primary systems on September first, one thousand nine hundred sixty-five, which does not conform to the requirements of this article, shall be required to be removed until July first, one thousand nine hundred seventy: Provided further, That no other sign, display, or device lawfully erected which does not conform to the requirements of this article shall be required to be removed until the end of the fifth year after such sign, display or devices becomes nonconforming.
§17-22-4. General restrictions as to outdoor advertising.

1 The following restrictions shall apply to all advertising signs, displays, and devices erected and maintained adjacent to any roads within the state road system, including federal-aid interstate and primary roads.

2 (1) No advertising sign shall be erected or maintained which involves rapid motion or rotation of the structure or any part thereof;

3 (2) No advertising display or device shall use the word “stop” or “danger,” or present or imply the need or requirement of stopping, or the existence of danger;

4 (3) No advertising sign, display, or device shall be a copy or imitate a traffic sign or other official sign;

5 (4) No advertising display or device shall attempt or purport to direct traffic;

6 (5) No advertising sign shall contain lighting which is not shielded, and any lighting shall be of such low intensity as not to cause glare or impair the vision of the operator of any motor vehicle;

7 (6) No advertising display or device shall be illuminated by any rapid flashing, intermittent light or lights;

8 (7) No advertising display or device shall be painted, affixed or attached to any natural feature;

9 (8) No advertising sign, display, or device shall hinder the clear, unobstructed view of approaching or merging traffic, or obscure from view any traffic sign or other official sign;

10 (9) No advertising sign, display, or device shall be so located as to obscure the view of any connecting road or intersection;

11 (10) No advertising sign, display, or device shall be erected, outside of any municipality, within five hundred feet of any church, school, cemetery, public park, public reservation, public playground, or state or national forest, except markers for underground utility facilities.

§17-22-5. Payment of compensation upon removal of advertising signs, displays or devices.

1 Just and full compensation shall be paid upon the removal of any outdoor advertising signs, displays or de-
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3 services, required by the provisions of section three of this
4 article, which are (i) lawfully in existence at and upon
5 the effective date hereof or (ii) lawfully in existence
6 on or after the effective date hereof adjacent to any
7 highway which shall be designated or redesignated as
8 a part of the federal-aid interstate or primary systems
9 or (iii) lawfully erected after the effective date hereof.
10 Such compensation shall be paid for the following: (a)
11 The taking from the owner of such sign, display or de-
12 vice of all right, title and interest in and to the sign,
13 display or device and of the leasehold or other interest
14 if any, related thereto; and (b) the taking from the
15 owner of the real property on which the sign, display or
16 device is located, of the right to lease, erect and maintain
17 such signs, displays and devices thereon.

§17-22-6. Purchase or condemnation; powers of state road
commissioner; payment to claimants.

1 The state road commissioner is hereby authorized and
2 empowered to make acquisition of all of the property
3 rights and interest specified in section five of this article,
4 by purchase at private sale, or in the event he is unable
5 to do so, by proceeding in eminent domain. Upon any
6 such taking or acquisition pursuant to the provisions of
7 this article, just and full compensation for the sign and
8 leasehold interest shall be paid directly to the owner
9 thereof, and just and full compensation for the loss of
10 the right to erect and maintain signs shall be paid di-
11 rectly to the owner of the affected real property. In
12 any condemnation proceeding involving such taking or
13 acquisition by the state, the commissioners or jury shall
14 ascertain the compensation to which the owner of the
15 sign and leasehold interest is entitled, separate and
16 apart from the compensation to which the owner of the
17 real property is entitled, as provided and authorized in
18 chapter fifty-four, article two, section eighteen of this
19 code.

§17-22-7. Exceptions to prohibited signs; standards for ex-
cepted signs.

1 The provisions of section three of this article shall not
2 apply to the following: (a) Directional and other offi-
cial signs and notices required or authorized by law, includ-
ing but not limited to signs and notices pertaining to natural wonders, scenic and historical attractions, which such signs and notices shall conform to standards respecting lighting, size, number, spacing and such other appropriate requirements as may be designated and specified by the secretary of transportation of the United States: Provided, That the state road commissioner shall not establish any standards respecting lighting, size, number, spacing and other appropriate requirements which are stricter than such standards designated and specified by the secretary of transportation of the United States; (b) signs, displays, and devices advertising the sale or lease of property upon which they are located; and (c) signs, displays, and devices advertising activities conducted on the property on which they are located, including markers of underground utility facilities.

§17-22-8. Exempted areas.

In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this article, signs, displays, and devices, whose size, lighting and spacing shall be determined by agreement between the state road commissioner of West Virginia and the secretary of transportation of the United States, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right of way of federal-aid interstate or primary roads, within areas zoned industrial or commercial, or in unzoned commercial or industrial areas, as may be determined by agreement between the state road commissioner of West Virginia and the secretary of transportation of the United States: Provided, That any such agreement shall contain a definition of unzoned commercial or industrial areas which reflects existing conditions in this state, such as, without limiting the foregoing, existing land use, availability of land for urban development, topography, and accepted zoning practices now prevailing in this state. Any agreement between the state road commissioner and the secretary of transportation relating to size, lighting and spacing shall reflect cus-
tomary usage in this state. Any agreement between the
state road commissioner and the secretary of transporta-
tion defining unzoned commercial or industrial areas, or
relating to size, lighting and spacing, shall be no more
restrictive than necessary to secure to this state any
federal aid contingent upon compliance with federal
laws, or federal rules and regulations relating to outdoor
advertising, and shall be subject to amendment or rejec-
tion by the Legislature of West Virginia: Provided, how-
ever, That the terms of any such agreement shall be no
more restrictive than those included in any other similar
agreement made by the secretary of transportation and
other states: Provided further, That such agreement
shall provide for its modification and amendment in the
event and to the extent that the secretary of transporta-
tion and any other state shall thereafter agree to any
provisions which shall be less restrictive. The provisions
of this section shall not apply to signs, displays, and de-
vices referred to in clauses (b) and (c) of section seven
of this article.

§17-22-9. Signs, displays and devices providing information
for the traveling public; location.

Signs, displays and devices giving specific information
in the interest of the traveling public may be erected and
maintained, pursuant to agreement between the state
road commissioner and the secretary of transportation,
within the right of ways of highways within the federal-
aid interstate system, at appropriate distances from in-
terchanges on such interstate system.

§17-22-10. Special fund.

There is hereby created a special fund, to the credit
of which shall be paid such funds as from time to time
may be appropriated by the Legislature and all federal
funds allocated and distributed to the state of West Vir-
ginia in implementation of the provisions of Title 23,
United States Code, relating to outdoor advertising, to
be administered by the state road commissioner in the
enforcement and carrying out of the provisions of this
article.

1 It shall be the function and duty of the state road commissioner to administer and enforce the provisions of this article, and in the performance of his duties hereunder, he may assign to division engineers, and other employees in his department, such duties as he may deem proper. The commissioner is hereby authorized and empowered to promulgate rules and regulations implementing the provisions of this article, including rules and regulations permitting the state of West Virginia to comply with the provisions of Title 23, United States Code, relating to the payment of bonuses for the regulation of outdoor advertising adjacent to the interstate system, and the terms and provisions of any agreement heretofore entered into pursuant to law by and between the state road commissioner of West Virginia and the secretary of commerce of the United States relating to the payment of such bonuses, any provisions of this article to the contrary notwithstanding.

§17-22-12. Territory to which article applies; entries for examinations and surveys.

1 The territory under the jurisdiction of the commissioner for the purposes of this article shall include all of the state. The commissioner and all employees under his direction, in the performance of their functions and duties under the provisions of this article, may enter into and upon any land upon which advertising signs are standing or upon which displays or devices are exhibited and make such examinations and surveys as may be relevant.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

1 No person shall engage or continue in the business of outdoor advertising in this state without first obtaining a license therefor from the commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any outdoor advertising sign, display, or device in this state without first obtaining such a license from
the commissioner. The fee for such license, hereby imposed for revenue for the use of the state, shall be one hundred dollars per annum, payable annually in advance. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the commissioner and shall contain such pertinent information as the commissioner may require, and shall be accompanied by the annual fee. Licenses granted under this section shall expire on the thirtieth day of June of each year, and shall not be prorated. Applications for the renewal of licenses shall be made not less than thirty days prior to the date of expiration. Nothing in this section shall be construed to require any person to obtain a license who constructs, erects, operates, uses or maintains an outdoor advertising sign, display, or device solely on his own property.

The commissioner shall have authority, after thirty days' notice in writing to the licensee, to make and enter an order revoking any license granted by him upon repayment of a proportionate part of the license fee, in any case where he shall find that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless such licensee shall, before the expiration of said thirty days, correct such false or misleading information and comply with the provisions of this article. Such order shall be accompanied by findings of fact and conclusions of law upon which such order was made and entered. Any person adversely affected by an order made and entered by the commissioner is entitled to judicial review thereof. Such judicial review shall be in the circuit court for the county in which the owner of such sign has his principal place of business in this state, or in the circuit court of Kanawha county if all parties agree thereto. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants, and in appeal
proceedings in any circuit court by the prosecuting attor-
ney of the county as well, all without additional compen-
sation. The commissioner may employ special counsel
to represent the commissioner in a particular proceeding.

1 No such license as is provided for in section thirteen
2 of this article shall be granted to any person not resid-
ing in this state or to any person having his principal
3 place of business outside the state, or which is incor-
4 porated outside the state, until such person shall have
5 furnished and filed with the commissioner a bond pay-
able to the state, with surety approved by the commis-
6 sioner and in form approved by the attorney general,
7 in the sum of two thousand five hundred dollars, condi-
8 tioned that such licensee shall fulfill all the requirements
9 of law and observe and obey all requirements of this
10 article. Such bond shall remain in full force and effect
11 so long as any obligations of such license to the state
12 shall remain unsatisfied. All sums received from the for-
13 feiture of any bond or bonds required by this section
14 shall be deposited in the special fund created in section
15 ten of this article and such sums shall be administered as
16 provided by said section ten.

§17-22-15. Permit required for each sign, etc.; applications;
refusal of permits; expiration and renewal; change
of advertising copy; revocation; fee; judicial review.
1 (a) Except as in this article otherwise provided, no
2 person shall construct, erect, operate, use, maintain, or
3 cause or permit to be constructed, erected, operated, used
4 or maintained any advertising sign, display, or device
5 without first obtaining a permit therefor from the com-
6 missioner and paying the annual fee therefor, as herein
7 provided. The commissioner shall not issue such a per-
8 mit to any person who has not obtained the license pro-
9 vided for in section thirteen of this article.
10 (b) A separate application for a permit shall be made
11 for each separate advertising sign, display, or device, on
12 a form furnished by the commissioner, which application
13 shall be signed by the applicant or his representative
duly authorized in writing to act for him, and shall de-
scribe and set forth the size, shape and the nature of the
proposed advertising sign, display, or device, and its ac-
tual or proposed location with sufficient accuracy to en-
able the commissioner to locate and identify it. Every
application shall be accompanied by a fee of one dollar
for each advertising sign, display, or device, which fee
shall be retained by the commissioner if the permit is
issued. Each portion of an advertising sign upon which
a display is posted or exhibited shall constitute a sep-
ate advertising sign for purposes of this section. If the
permit is refused the commissioner shall make and enter
an order to that effect and shall cause a copy of such
order to be served on such applicant by certified mail,
return receipt requested, and shall refund one half the
fee to the applicant. Such order shall be accompanied
by findings of fact and conclusions of law upon which
such order was made and entered. Each application shall
be accompanied by an affidavit of the applicant or his
agent that the owner or other person in control or posses-
sion of the real property upon which such advertising
sign, display, or device is to be constructed, erected, oper-
ated, used or maintained, has consented thereto. Applica-
tion shall be made in like manner for a permit to operate,
use or maintain any existing advertising sign, display or
device. Permits issued hereunder shall expire on the
thirtieth day of June of each year, and shall not be pro-
rated, and may be renewed upon the payment of the
same fee required to be paid upon application for a per-
mit. No application shall be required for a renewal of
a permit.

(c) If more than one side of an advertising sign is
used for advertising, a fee for each such side shall be re-
quired. Advertisements sculptured in the round shall be
treated as using three sides.

(d) The holder of a permit shall, during the term
thereof, have the right to change the advertising copy
on the structure or sign for which it was issued without
payment of any additional fee.

(e) The commissioner shall have authority, after
thirty days' notice in writing to the permittee, to make
and enter an order revoking any permit issued by
him under this section upon repayment of a propor-
tionate part of the fee in any case where it shall appear
to the commissioner that the application for the permit
contains knowingly false or misleading information or
that the permittee has violated any of the provisions of
this article, unless such permittee shall, before the ex-
piration of said thirty days, correct such false or mislead-
ing information and comply with the provisions of this
article. Such order shall be accompanied by findings of
fact and conclusions of law upon which such order was
made and entered. If the construction, erection, opera-
tion, use or maintenance of any advertising sign, display,
or device for which a permit is issued by the commis-
sioner and the permit fee has been paid as above pro-
vided, shall be prevented by any zoning board, commis-
sion or other public agency which also has jurisdiction
over the proposed advertising sign, display, or device,
or its site, the fee for such advertising sign, display, or
device shall be returned by the commissioner and the
permit revoked. But one half the fee shall be deemed
to have accrued upon the erection of an advertising sign
or structure or the display of advertising material fol-
lowed by an inspection by the commissioner or his repre-
sentatives.

(f) Any person adversely affected by an order made and
entered by the commissioner refusing to grant or re-
voking a permit is entitled to judicial review thereof.
Such judicial review shall be (1) in the county in
which the person applying for the permit has his prin-
cipal place of business in this state, or (2) in the cir-
cuit court for the county in which the sign for which
the permit is sought is to be located, or (3) in the
circuit court of Kanawha county if all parties agree
thereto. The judgment of the circuit court shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals of West Virginia. Legal coun-
sel and services for the commissioner in appeal proceed-
ings in any circuit court and the supreme court of ap-
peals shall be provided by the attorney general or his
assistants, and in appeal proceedings in any circuit court
by the prosecuting attorney of the county as well, all
without additional compensation. The commissioner may
employ special counsel to represent the commissioner in
a particular proceeding.

§17-22-16. Permit identification number for signs; fastening to
sign.

Every permit issued by the commissioner shall be as-
signed a separate identification number, and it shall be
the duty of each permittee to fasten to each advertising
sign or device and each advertising display not posted
on an advertising sign a label or marker not larger
than two inches by six inches, which shall be furnished
by the commissioner, and on which shall be plainly vis-
ible the said permit number, the expiration date of the
permit, and the name of the permittee. The construc-
tion, erection, operation, use or maintenance of an out-
door advertising sign, display, or device without having
affixed thereto such a label or marker shall be prima
facie evidence that the same has been constructed or
erected and is being operated, used or maintained in
violation of the provisions of this article.

§17-22-17. Removal of signs, etc., after expiration or revocation
of permit.

All outdoor advertising signs, displays, or devices shall
be removed by the permittee within thirty days after
the date of the expiration or revocation of the permit
for the same. Any permittee failing to remove any such
advertising sign, display, or device within said thirty
days shall be deemed guilty of a misdemeanor. The pro-
visions of this section shall not apply to signs, displays
or devices required to be removed pursuant to the terms
and provisions of sections three, five, six and eight of
this article.

§17-22-18. Removal, defacing, etc., signs lawfully within high-
way limits.

Any person who willfully or maliciously displaces, re-
moves, destroys or injures a mile-board, milestone, dan-
ger-sign, signal, guide-sign, guidepost, highway sign, or
historical marker or any inscription thereon, lawfully
within or adjacent to a highway, or who in any manner paints, prints, places, puts or affixes any advertisement upon or to any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost, highway sign, historical marker, building or other subject lawfully within the limits of any highway, shall be guilty of a misdemeanor and shall be punished accordingly.


No person shall construct, erect, operate, use or maintain any outdoor advertising sign, display, or device without the permission of the owner or other person in lawful possession or control of the property on which such sign, display, or device is located.


All moneys received by the commissioner under the provisions of sections thirteen and fifteen of this article shall be paid by him into the special fund created in section ten of this article and such moneys shall be administered as provided in said section ten.

§17-22-21. Prohibited signs not to be allowed by other agencies, etc.

No zoning board or commission nor any other public officer or agency, shall permit any advertising sign, display, or device which is prohibited under the provisions of this article, nor shall the commissioner permit any advertising sign, display, or device which is prohibited by any other public board, officer or agency in the lawful exercise of its or their powers.

§17-22-22. Penalties; signs in violation of article declared nuisance; abatement.

Any person, violating any provision of this article, whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than
five hundred dollars; and such person shall be deemed
guilty of a separate offense for each month during any
portion of which any violation of this article is committed,
continued or permitted. The erection or maintenance
of any outdoor advertising sign, display, or device in vio-
lation of any provision of this article is hereby declared
to be a public nuisance, and in addition to other remedies
provided in this chapter, the state road commissioner or
the prosecuting attorney of the county in which such
sign, display, or device is located may apply to the cir-
cuit court, or other court of competent jurisdiction of the
county wherein such sign, display, or device is located,
for an injunction to abate such nuisance.
The provisions of this section shall not be deemed to
prevent the payment of just compensation for signs, dis-
plays or devices required to be removed under sections
three, five, six and eight of this article.

§17-22-23. Availability of funds to compensate for required
removal of signs, etc.

1 Notwithstanding any other provision of this article to
2 the contrary, no outdoor advertising sign, display or
device shall be removed under the provisions of sections
3 three, five, six or eight of this article unless at the time
4 of such removal there are sufficient funds in the special
5 fund created by section ten of this article to pay the
6 affected parties the just and full compensation required
7 to be paid under the provisions of sections five and six
8 of this article.


1 The provisions of this article shall take effect on the
2 first day of January, one thousand nine hundred sixty-
3 eight.


1 The terms of this article are declared to be separable;
2 and should any word, phrase, sentence or section be de-
3 clared unconstitutional or otherwise invalid, the re-
4 mainder of this article shall not thereby be affected, but
5 shall remain in full force and effect.
AN ACT to repeal article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twenty-three, relating to the licensing, regulation and control of salvage yards, prescribing areas in which no salvage yards are permitted and areas in which salvage yards are permitted only if screened by fences, providing for the removal of certain salvage yards or the acquisition thereof by purchase or proceeding in eminent domain, declaring salvage yards in violation of the article to be public nuisances which may be abated by court action, providing penalties and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article twenty-three be enacted in lieu thereof, to read as follows:

ARTICLE 23. SALVAGE YARDS.

Section

1. Legislative finding.
2. Definitions.
3. License required; issuance; fee; renewal; disposition of fees.
4. Areas where establishment prohibited; screening requirements; existing licensed yards.
5. Requirements as to fences.
6. Payment of costs of screening.
7. Exempt areas in municipalities.
8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.
9. Violations declared public nuisance; abatement; injunctions; penalties.
10. Special fund.
12. Certain other code provisions inapplicable.
§17-23-1. Legislative finding.

The Legislature hereby finds and declares that the establishment, operation, maintenance and use of salvage yards in areas adjacent to state roads, including federal-aid interstate and primary roads, is unsightly, visually offensive, depresses the value of the public investment in such roads, detracts from the safety and recreational value of travel thereon and destroys natural beauty, and therefore should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel thereupon, and to preserve natural beauty.


As used in this article:

(a) “Salvage” shall mean old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous or nonferrous materials.

(b) “Salvage yard” shall mean any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard, and the term shall also include garbage dumps and sanitary fills.

(c) “Fence” shall mean an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commissioner and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

(d) “Owner or operator” shall include an individual, firm, partnership, association or corporation or the plural thereof.

(e) “Commissioner” shall mean the state road commissioner of West Virginia.
§17-23-3. License required; issuance; fee; renewal; disposition of fees.

No salvage yard or any part thereof shall be established, operated or maintained without a license. The commissioner shall have the sole authority to issue such a license, and he shall charge therefor a fee of fifty dollars payable annually in advance. All licenses issued under this section shall expire on the first day of January following the date of issuance. A license may be renewed from year to year upon paying the commissioner the sum of fifty dollars for each such renewal. All such license fees collected under the provisions of this article shall be deposited in the special fund provided for in section ten of this article.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards.

On and after the effective date of this article, (1) no license shall be issued to establish a salvage yard or any part thereof within one thousand feet of the nearest edge of the right of way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline, or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems, and (2) no license shall be issued to establish a salvage yard or any part thereof within three hundred feet of the nearest edge of the right of way of any state local service road, unless the view thereof from such state local service road shall be effectively screened and obscured by fences.

The license of any salvage yard duly issued under the former provisions of this article, which salvage yard or any part thereof on the effective date of this article, is (1) within one thousand feet of the nearest edge of the right of way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline, or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal
highway funds as part of the federal-aid interstate or primary systems or is (2) within three hundred feet of the nearest edge of the right of way of any state local service road, may be renewed only if the view of the said salvage yard and all parts thereof is effectively screened from the adjacent road by fences.

Any salvage yard which, on the effective date of this article, is duly licensed under the former provisions of this article may be established or continue to be operated and maintained without screening by fences so long as any part of such salvage yard is (1) not located within one thousand feet of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline, or feeder, or any road within the state road system designated and classified or redesignated and reclassified for the purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems or is (2) not located within three hundred feet of the nearest edge of the right of way of any state local service road.

§17-23-5. Requirements as to fences.

Fences shall be kept in good order and repair and no advertisement shall be permitted thereon other than the name of the licensee and the nature of the business conducted on the premises. The height, location, construction, planting, size and composition of any sign or advertisement and maintenance of fences, living or otherwise, shall conform to such rules and regulations as are promulgated with respect thereto by the commissioner.

§17-23-6. Payment of costs of screening.

The costs of screening by fences shall be paid by the salvage yard owner or operator: Provided, That if in the opinion of the commissioner, such screening cannot be accomplished by the usual and ordinary methods, the commissioner may determine and pay such additional costs as are necessary and required to provide effective screening.
§17-23-7. Exempt areas in municipalities.

The provisions of this article shall not apply to salvage yards or any parts thereof within municipalities situated in areas zoned industrial, nor to salvage yards or any parts thereof situated in areas within municipalities not zoned industrial but which the commissioner determines are used for industrial activities. The provisions of section four of this article shall not apply to salvage yards within municipalities in existence on the effective date of this article but not required to be licensed under the former provisions of this article if the view of said salvage yards is effectively screened from the adjacent road by fences.

§17-23-8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.

Whenever a salvage yard is so situated that it or any part thereof is or shall be required to be effectively screened by fences as provided in section four of this article, and the said salvage yard or any part thereof cannot, in the opinion of the commissioner, be effectively screened by fences to comply with the provisions of this article, so that the owner or operator of the salvage yard cannot lawfully continue to operate and do business in compliance with the terms hereof, then and only in such event, the commissioner, in addition to all other powers herein conferred, may (1) with the consent of said owner or operator pay the cost of removal of all salvage and equipment from such salvage yard to such other location as the said owner or operator may direct whereon a salvage yard business may be conducted in compliance with the provisions of this article, or (2) purchase at private sale or acquire by proceeding in eminent domain, in accordance with the provisions of chapter fifty-four of this code, all such property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of the salvage business conducted on any such salvage yard, or on any part thereof.

If any salvage yard at any location is terminated under the provisions of this section or by court order as provided
in section nine of this article, the commissioner shall not
thereafter license any salvage yard at any such location if
such location or any part thereof is (1) within one thou-
sand feet of the nearest edge of the right of way of any
road within the state road system designated and classi-
fied or redesignated and reclassified as expressway, trunk-
line or feeder, or any road within the state road system
designated and classified or redesignated and reclassified
for purposes of allocation of federal highway funds as
part of the federal-aid interstate or primary systems or
(2) within three hundred feet of the nearest edge of the
right of way of any state local service road unless and
until the view of such salvage yard or any part thereof
from such state local service road is screened by fences as
provided in this article.

§17-23-9. Violations declared public nuisance; abatement; in-
junctions; penalties.

The establishment, operation or maintenance of a sal-
vage yard or any part thereof in violation of any provision
of this article is hereby declared to be a public nuisance,
and the commissioner or the prosecuting attorney of the
county in which such salvage yard or any part thereof is
located shall apply to the circuit court or other court of
competent jurisdiction of the county in which said salvage
yard or any part thereof is located, for an injunction to
abate such nuisance. The court shall have authority to
hear and decide such questions and grant injunctions or
such other relief as the court may deem proper.

Any person violating any provision of this article,
whether as principal, agent or employee, shall be deemed
guilty of a misdemeanor, and, upon conviction thereof,
shall be punished by a fine of not less than one hundred
dollars nor more than one thousand dollars; and such per-
son shall be guilty of a separate offense for each month
during a portion of which any violation of this article is
committed, continued or permitted: Provided, however,
That in the event of an appeal from any such conviction,
the period between the date a notice of appeal is filed
and the date of the final order of the court last considering
23 the appeal shall not be considered a period of continuing
24 in violation of this article.

§17-23-10. Special fund.

There is hereby created a special fund, to the credit of
which shall be paid such funds as may from time to time
be appropriated by the Legislature, all funds received
from licenses issued under section three of this article
and all federal funds allocated and distributed to the state
of West Virginia in implementation of the provisions of
Title 23, United States Code, relating to junkyards (sal-
vage yards), to be administered by the commissioner in
the enforcement and carrying out of the provisions of this
article.


To implement the provisions of this article, the com-
misioner is hereby authorized and empowered to promul-
gate rules and regulations in accordance with the pro-
visions of chapter twenty-nine-a of this code.

§17-23-12. Certain other code provisions inapplicable.

The provisions of section seven, article twelve, chapter
eleven, and article thirteen-a, chapter eleven of this code,
shall not apply to salvage yards covered by the provisions
of this article.


If any provision of this article or the application thereof
to any person or circumstance is held unconstitutional or
invalid, such unconstitutionality or invalidity shall not
affect other provisions or applications of this article, and
to this end the provisions of this article are declared to be
severable.

CHAPTER 179

(Senate Bill No. 59—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed February 16, 1967; in effect from passage. Approved by the Governor.]

AN ACT authorizing the issuance and sale by the governor of
bonds of the state of West Virginia in an amount not exceeding twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred sixty-eight, for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road sinking fund; providing for the disposition and investment of the state road sinking fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; and declaring that all necessary expenses incurred in the execution of the act shall be paid out of the state road fund on warrants of the auditor drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

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. Covenants of state.
8. Sale by governor; minimum price.
9. Proceeds paid into separate account in state road fund; expenditures.
10. Plates, etc., property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

§1. Road bonds; amount; when may issue.

Bonds of the state of West Virginia of the par value not to exceed twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred sixty-eight, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such time and bearing such date or dates as the governor may determine, based upon an examination of the state road commission's yearly program which justifies the issuance by the governor of said bonds, and shall become due and payable serially in equal amounts beginning one year and ending twenty-five years from the date thereof.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. Bonds taken in exchange shall be cancelled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents shall likewise be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at some bank in the city of New York to be designated by the governor. The bonds shall bear interest at a rate not exceeding four and one-half per cent per annum, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by the governor, upon presentation.
and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be signed on behalf of the state of West Virginia, by the treasurer thereof, under the great seal of the state, and countersigned by the auditor of the state, and shall be in the following form or to the following effect, as nearly as may be, namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA

The state of West Virginia, under and by virtue of authority of an amendment to the constitution, which was proposed by House Joint Resolution No. 10, adopted the seventh day of March, one thousand nine hundred sixty-three, and was ratified by a vote of the people at the general election on the third day of November, one thousand nine hundred sixty-four, which is hereby made a part hereof as fully as if set forth at length herein, acknowledges itself to be indebted to and hereby promises to pay to the bearer hereof (in case of a coupon bond) or to or assigns (the owner of record, in case of registered bonds) on the __________ day of __________, 19____, in lawful money of the United States of America at the office of the treasurer of the state of West Virginia at the capitol of said state, or at the option of the holder at ______________ bank in the city of New York, the sum
of ______________ dollars, with interest thereon at ______
per centum per annum from the date, payable semi-
annually in like lawful money of the United States of
America at the treasurer’s office or bank aforesaid, on the
first day of __________ and the first day of __________ of
each year, (and in the case of coupon bonds) according to
the tenor of the annexed coupons bearing the facsimile
signature of the treasurer of the state of West Virginia,
upon surrender of such coupons. This bond (in case of a
coupon bond) may be exchanged for a registered bond of
like tenor upon application to the treasurer of the state
of West Virginia.

To secure the payment of the principal and interest of
this bond, the state of West Virginia covenants and agrees
with the holder as follows: (1) That this bond shall con­
stitute a direct and general obligation of the state of West
Virginia; (2) that the full faith and credit of the state is
pledged to secure the payment of the principal and inter­
est of this bond; (3) that an annual state tax shall be col­
lected in an amount sufficient to pay as it may accrue the
interest on this bond and the principal thereof; and (4)
that such tax shall be levied in any year only to the extent
that the moneys in the state road fund irrevocably set
aside and appropriated for and applied to the payment of
the interest on and principal of this bond becoming due
and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by
the state of West Virginia, or by any county, district, or
municipal corporation thereof.

In testimony whereof, witness the signature of the
treasurer of the state of West Virginia, and the counter-
signature of the auditor of the state, hereto affixed ac­
according to law, dated the ______ day of __________, one
thousand nine hundred __________, and the seal of
the state of West Virginia.

(SEAL)

Treasurer of the State of West Virginia

Countersigned:

Auditor of the State of West Virginia
§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA
Bond No. ............ Coupon No. ............
On the first day of ........., 19....., the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or at the option of the holder at ................. bank in the city of New York, the sum of ................. dollars, the same being semiannual interest on Road Bond No. ............

Treasurer of the State of West Virginia
The signature of the treasurer to such coupon shall be by his facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in the office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and post-office address of the person, firm or corporation registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

Into the state road sinking fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein pro-
All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all money belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.
§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the building and construction of free state roads and highways, as herein provided, upon the recommendation of the state road commissioner, and after reviewing the program of the state road commission and subject to the limitations contained in section one hereof. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account in the state road fund, and shall be used and appropriated solely for the building and construction of free state roads and highways provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: Provided, That no such investment or reinvestment shall adversely affect the current operating balances of such account.

§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full
§13. Payment of expenses.

All necessary expenses incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

CHAPTER 180

(Senate Bill No. 260—By Mr. Carson, Mr. President, and Mr. Brotherton)

[Passed March 11, 1967; 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, providing for the continuation of the office of tax commissioner under the designation of “state tax department” and relating to the tax commissioner and his appointment, authority, duties and responsibilities.

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:

ARTICLE 1. SUPERVISION.

Section 1. Office of tax commissioner continued and designated state tax department; appointment, term, oath, bond and compensation of commissioner; powers and duties generally; divisions of department; assistant tax commissioner; assistant attorneys general to assist commissioner.

§11-1-1. Office of tax commissioner continued and designated state tax department; appointment, term, oath, bond and compensation of commissioner; powers and duties generally; divisions of department; assistant tax com-
Taxation

missioner; assistant attorneys general to assist com-
mmissioner.

The office of the tax commissioner shall be continued
in all respects as heretofore constituted in the state
government, but is hereby designated as the state tax
department. The tax 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, to serve at the will and pleasure of the gov-
ernor for the term for which the governor was elected
and until a successor has been appointed and has qual-
ified. The tax commissioner in office when this section
takes effect shall, unless sooner removed, continue to
serve until his term expires, and his successor has been
appointed and has qualified.

The tax commissioner, before entering upon the duties
of his office, 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 sal-
ary of the tax commissioner shall be sixteen thousand dol-
ars 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 assist-
ance as shall be necessary.

The tax commissioner shall have control and supervision
of the state tax department and shall be responsible for
the work of each of its divisions. Each division shall be
headed by a director appointed by the tax commissioner
and who shall be responsible to the tax commissioner for
the work of his division. The tax commissioner may create
such divisions and employ such staff or employees as may
be necessary to administer the state tax laws for which he
or his department is responsible, and he shall have the au-
uthority to appoint an assistant tax commissioner who shall
be his principal assistant. The powers and duties vested
in the tax commissioner by this chapter and other provi-
sions of law may be delegated by him to such assistant or
other employees, but the tax commissioner shall be re-
sponsible for all official acts of such delegates.
The tax commissioner, if he deems 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 general, in pursuance of such request, may select and appoint assistant attorneys general, to serve during the will and pleasure of the attorney general, and such assistants shall be paid out of any funds made available for that purpose by the Legislature to the state tax department.

CHAPTER 181

(Senate Bill No. 401—Originating in the Senate Committee on Finance)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of taxes erroneously collected, to change the period within which claims for refund may be filed from three years from the date of payment to five years from the date of the filing of the return in respect of which the tax was imposed or four years from the date the tax was paid, whichever of such periods expires the later.

Be it enacted by the Legislature of West Virginia:

That section two-a, 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:

ARTICLE 1. SUPERVISION.

Section 2a. Refund of taxes erroneously collected.

§11-1-2a. Refund of taxes erroneously collected.

(1) On and after the effective date of this section, any taxpayer claiming to be aggrieved through being required to pay any tax into the treasury of this state, may, within five years from the date of the filing of the return in re-
spect of which the tax was imposed or within four years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within four years from the time the tax was paid, and not after, file with the official or department through which the tax was paid, a petition in writing to have refunded to him any such tax, or any part thereof, the payment whereof is claimed by him to have been required unlawfully; and if, on such petition, and the proofs filed in support thereof, the official collecting the same shall be of the opinion that the payment of the tax collected, or any part thereof was improperly required, he shall refund the same to the taxpayer by the issuance of his or its requisition on the treasury upon which the auditor shall issue his warrant as hereinafter provided; if the official collecting the same shall be in doubt as to whether or not such taxes were unlawfully paid, or if he be of the opinion that the payment of the tax collected, or any part thereof, was lawful, and the taxpayer within thirty days after notice of such opinion is not satisfied with the ruling of such official, then such tax official may on his own initiative, and shall, upon written notice so to do from the taxpayer given within said thirty-day period, promptly institute against said taxpayer, in a court of competent jurisdiction, a declaratory judgment proceeding to ascertain whether any such tax, or part thereof, has been unlawfully collected; if it be determined in such proceeding that any such tax, or part thereof was unlawfully collected, then such official shall promptly refund the same to the taxpayer by the issuance of his or its requisition on the treasury; and the auditor shall issue his warrant on the treasurer for any refund requisitioned under this section payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid. Provided, That no refund shall be made at any time on any claim involving the assessed valuation or appraisement of the property which was fixed at the time the tax was originally paid: Provided further, That such official shall be under no duty to institute any such declaratory judgment proceeding unless
it shall appear that the taxpayer giving the notice as herein provided is acting in good faith and that there is a substantial question as to the lawfulness of the collection of such tax.

(2) With respect to any tax imposed for any period ending prior to the effective date of this section, the time within which any taxpayer claiming to be aggrieved, through being required to pay any tax into the treasury of this state, may file with the official or department through which the tax was paid the petition provided in subsection (1) shall be three years from the date of such payment, and not after.

(3) The provisions of this section shall take effect on the first day of July, one thousand nine hundred sixty-seven.

CHAPTER 182
(House Bill No. 795—By Mr. Speaker, Mr. White, and Mr. Watson)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen and twenty-five, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property books, time for completing, extension of levies and to whom copies of said books are delivered and the filing of court orders relating to changes in and the filing of court orders with certain state and county officials.

Be it enacted by the Legislature of West Virginia:

That sections nineteen and twenty-five, 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:

ARTICLE 3. ASSESSMENTS GENERALLY.

Section 19. Property books; time for completing; extension of levies; copies.

25. Relief in circuit court against erroneous assessment.
§11-3-19. Property books; time for completing; extension of levies; copies.

The assessor shall complete his assessment and make up his official copy of the land and personal property books in time to submit the same to the board of equalization and review not later than February first of the assessment year. The assessor shall, as soon as practicable after the levy is laid, extend the levies on the land and personal property books, and shall forthwith make three copies of the land books and two copies of the personal property books with the levies extended; one of such copies of the land books he shall deliver to the sheriff not later than the seventh day of June, one copy he shall deliver to the clerk of the county court not later than the first day of July, and one copy he shall send to the state auditor not later than the first day of July, and one of such copies of the personal property books he shall deliver to the sheriff and one to the clerk of the county court on or before the same date fixed above for the delivery of the land books and such copies so delivered shall be official records of the respective officers. He may require the written receipt of each of such officers for such copy. Before delivering any of such copies the assessor shall make and subscribe the following oath at the foot of each of them: I, __________________, assessor of the county of __________________, do solemnly swear, (or affirm) that in making the foregoing assessment I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors and that I have not been influenced in making the same by fear, favor or partiality; so help me, God.

Assessor.

The officer administering the foregoing oath shall append thereto a certificate in substantially the following form:

Subscribed and sworn to before me, a ___________ ____________ for the county of ___________ and state of West Virginia, by ________________, assessor for said county, this the ___ day of ____________________________, 19________.
§11-3-25. Relief in circuit court against erroneous assessment.

Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has been raised by the county court above the assessment fixed by the assessor, or who contested the classification or taxability of his property may, at any time up to thirty days after the adjournment of the county court, apply for relief to the circuit court of the county in which such books are made out; but he shall, before any such application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of such hearing to the tax commissioner. The right of appeal from any assessment by the county court, as hereinbefore provided, may be taken either by the applicant or by the state, and in case the applicant, by his agent or attorney, or the state, by its prosecuting attorney or tax commissioner, desires to take an appeal from the decision of the county court, the party desiring to take such an appeal shall have the evidence taken at the hearing of the application before the county court. If there was an appearance by or on behalf of the owner before the county court, or if actual notice, certified by such court, was given to the owner, the appeal, when allowed by the court or judge in vacation, shall be determined from the evidence so certified. If, however, there was no actual notice to such owner, and no appearance by or on behalf of the owner before the county court, or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit court. If, upon the hearing of such appeal, it is determined that any property has been valued at more than its true and actual value, or illegally classified or assessed, the circuit court shall, by an order entered of record, correct the assessment, and fix the property at its true and actual value. A copy of such order or orders entered by the circuit court reducing the valuation shall be certified to the auditor, if the order or orders pertain to real property, by the clerk within
twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or tax commissioner was present and defended the interest of the state, county and district. If it be ascertained that any property has been valued too high, and that the owner has paid the excess tax, it shall be refunded to him, and if not paid he shall be relieved from the payment thereof. If it is ascertained that any property is valued too low the circuit court shall, by an order entered of record, correct the valuation and fix it at its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real property, to the auditor, the county clerk and the sheriff; however, if the order pertains only to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff and it shall be the duty of the auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where such property is situated for the current year. The order shall also be filed in the office of the auditor and clerk of the county court. Any order disposing of a question of classification or taxability shall be similarly prepared, certified and filed, and the increase or decrease of taxes resulting shall be treated as provided above for changes in valuation. The state or the aggrieved taxpayer may appeal a question of valuation to the supreme court of appeals, if the assessed value of the property is fifty thousand dollars or more, and either party may appeal a question of classification or taxability.

CHAPTER 183

(Senate Bill No. 256—By Mr. Martin)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article eleven, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to appeals from assessment of inheritance and transfer taxes.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article eleven, 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 11. INHERITANCE AND TRANSFER TAXES.

Section


Within sixty days after the tax commissioner shall have forwarded a certificate of the amount of tax assessed upon the transfer of any property, any person interested in such transfer, or in such property, may apply to the circuit court of any county, in which such property or the greater part thereof may be, for an appeal from the assessment so made. Unless such appeal is taken within the time period herein provided, the tax commissioner's assessment shall be final and not subject to judicial review. Such application shall be by petition in writing, stating the names and addresses of all persons interested, showing the grounds upon which the appellant claims to be aggrieved, and an appeal shall be allowed thereon forthwith; and, until the same shall have been heard and decided, proceedings for the collection of such taxes may be stayed by order of such court for good cause shown, and upon such conditions as it may direct. The appellant may amend his petition once as a matter of right if done within twenty days of the filing of his petition and before the appeal has been placed on the court's calendar; otherwise appellant may amend his petition only by leave of court. Such appeal shall be heard and decided as soon as may be. Before any such hearing reasonable notice thereof shall be given to all other persons interested, and to the tax commissioner and prosecuting attorney, who, with the said commissioner, shall defend the interest of the state. Upon such hearing the court shall consider all certificates relating to such taxes, and all other pertinent evidence, that may be offered by either party. If it be of the opinion that the assessment appealed from was correct, it shall
affirm the same; if it be of the opinion that the transfer was not subject to any such taxes, it shall set aside such assessment and enter an order exonerating the property from taxes. If it be of the opinion that the transfer was subject to such taxation, but the amount of taxes assessed was erroneous, it shall correct the assessment thereof by increasing or decreasing the amount thereof, as it may think just, and shall enter judgment accordingly. A copy of the judgment upon any such appeal shall be certified in duplicate, and forwarded and recorded as is herein provided with respect to the certificate of the tax commissioner.

CHAPTER 184

(Senate Bill No. 371—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal section three-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new section three-a of said article, relating to the imposition of a license tax on coin-operated laundries and coin-operated auto wash devices.

Be it enacted by the Legislature of West Virginia:

That section three-a, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new section three-a of said article be enacted in lieu thereof to read as follows:

ARTICLE 12. LICENSE TAXES.

§11-12-3a. Coin-operated laundries and coin-operated auto wash devices; license fee.

Coin-operated devices which wash, dry, clean or dry clean items of any description, including clothing, house-
hold items, automotive vehicles, boats, or dispense merchandise for use in such washing, drying, cleaning or dry cleaning, are hereby subject to a license tax.

All persons owning the aforementioned devices, or like washing devices, shall be liable for payment of said license tax. Ownership shall be deemed established by determining who is the purchaser by either a bill of sale, paid invoice, or a conditional sales contract or agreement filed and recorded in the applicable county clerk's office in this state or in the office of the secretary of state. Leasing of machines will not be deemed a transfer of ownership.

The annual license fee to own machines being operated in this state and whether operated by the owner or other persons shall be as follows: Upon ten or more machines, in any one location, the annual license fee shall be thirty dollars. Upon less than ten machines, in any one location, the annual license fee shall be three dollars for each machine: Provided, That in no instance shall the annual license fee be less than fifteen dollars.

Application for the license required herein shall be made upon forms provided by the tax commissioner and the applicant shall furnish such information as may be required by the tax commissioner. The completed application shall be subscribed and sworn to before a notary public.

It is hereby provided that no machine or device licensed under the provisions of this section shall be subject to the license fees and taxes imposed by section three of this article.

CHAPTER 185

(Senate Bill No. 324—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed March 11, 1967; in effect from passage. Approved by the Governor.]

AN ACT to repeal section six-b, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, and to amend and reenact section six-a of article twelve, relating to cigarette licenses and to allocation of funds to be used for enforcement of cigarette sales act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. LICENSE TAXES.

Section

6a. Wholesale or sub-jobber dealers in cigarettes; definitions; licenses.

§11-12-6a. Wholesale or sub-jobber dealers in cigarettes; definitions; licenses.

When used in this article the following words, terms and phrases and any variations thereof required by the context, shall be the meaning ascribed to them in this article, except where the context indicates a different meaning.

(a) "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 or conservator.

(b) "Wholesaler" or "wholesale dealer" shall include any person who purchases unstamped cigarettes directly from the manufacturer.

(b-1) "Sub-jobber" or "sub-jobber dealer" shall include any person who purchases stamped cigarettes from any other person who purchases from the manufacturer when such other person is located in any state which levies an excise tax on cigarettes and who purchases such cigarettes solely for the purpose of bona fide resale to retail dealers or to other wholesalers.

(c) "Retail dealer" includes every person in this state, other than a wholesaler, engaged in the selling of cigarettes to a consumer or to any person for any purpose other than resale.
Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.

(d) "Vending machine operator" is any person operating one or more cigarette vending machines.

(e) "Sale by wholesaler or sub-jobber" shall mean and include any bona fide transfer of title to cigarettes by a wholesaler or sub-jobber for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business.

(f) "Cigarette" means:

1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
2. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph 1.

(g) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(h) "Stamp" shall mean any cigarette stamps required under this article, or any meter or ink impression authorized by the tax commissioner to serve as such stamp.

(i) "Commissioner" means the state tax commissioner and where the meaning of the context requires, all deputies and employees duly authorized by him.

(j) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(k) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than resale.

(l) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution.

(m) "Consumer" means a person who receives or in any way comes into possession of cigarettes for the purpose of consuming them, giving them away or disposing
of them in any way other than by sale, barter, or exchange.

(n) "Rules and regulations" means those made and promulgated by the state tax commissioner.

(o) "Stamped cigarettes" means that the stamp or impression as required by article seventeen has been affixed to the bottom of the package of cigarettes.

(p) "Unstamped cigarettes" means that no stamp or impression, as required by article seventeen, has been affixed.

After the effective date of this section, no person shall engage in, or conduct the business of purchasing, selling, consigning or distributing cigarettes as defined herein, in the state without having first obtained the appropriate license for that purpose as prescribed in this section. The annual license fee as a wholesaler or sub-jobber dealer to sell cigarettes as defined herein shall be divided into three classes as follows: (1) Class A—all dealers who sell annually up to seven hundred fifty thousand packages of cigarettes, one hundred dollars; (2) Class B—all dealers who sell annually from seven hundred fifty thousand packages of cigarettes to one million five hundred thousand packages, two hundred dollars; (3) Class C—all dealers who sell annually more than one million five hundred thousand packages of cigarettes, three hundred fifty dollars, plus a fee of fifty cents for each license issued.

CHAPTER 186

(Senate Bill No. 370—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal section ten, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections eight and twenty of said article and chapter, relating to
license taxes on itinerant vendors, hawkers and peddlers, and the time for which licenses are granted.

Be it enacted by the Legislature of West Virginia:

That section ten, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that sections eight and twenty of said article and chapter be amended and reenacted to read as follows:

ARTICLE 12. LICENSE TAXES.

Section
8. Hawkers and peddlers.
20. Time for which licenses granted; license tax for part of year.

§11-12-8. Hawkers and peddlers.

(a) When used in this section the term "hawker and peddler" shall mean and include all persons who engage or conduct, within this state, in traveling from place to place, a temporary or transient business of selling goods, wares or merchandise for delivery at the time of sale; and who, for the purpose of carrying on such business may use, lease or occupy either in whole or in part, a shed or sheds, open ground, streets, roads or highways, a room, building or other structure, or who use, lease or occupy for such purposes a room or rooms in any hotel or lodging house, for the exhibition and sale of goods, wares and merchandise; or any person who shall carry goods, wares, or merchandise from place to place on foot or with a vehicle, either in person or by agent or employee, and sell, for delivery at the same time, any such goods, wares or merchandise to any purchaser at wholesale or retail, and any person who shall solicit for the purpose of rendering any service shall be deemed a hawker and peddler under this section. The person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of any local dealer, trader, merchant or auctioneer.

The annual license fee to act as a hawker and peddler, if the person licensed travels without a vehicle, shall be
ten dollars; if he travels with a vehicle of not more than one-half ton capacity, fifteen dollars; if he travels with a vehicle of more than one-half ton capacity, but not exceeding one ton capacity, fifty dollars; if he travels with a vehicle of more than one ton capacity, but not exceeding two tons' capacity, one hundred dollars; and if he travels with a vehicle of more than two tons' capacity, one hundred fifty dollars, plus one hundred dollars for each additional ton or fraction thereof over two tons' capacity; and the person licensed shall pay at the same rate for each and every vehicle so used. Such person shall carry his license in some conspicuous place in his vehicle or about his pack; and in addition thereto he shall cause to be painted or stenciled in a conspicuous place on the left-hand side of his vehicle the number of such license and the words "West Virginia Hawker and Peddler" and the license year for which said license is issued, which said information shall be in black letters on a white background, and the whole thereof shall be at least eight by twenty inches in size.

(b) The provisions of this section shall not apply to any person who sells any goods, wares or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the goods, wares, or merchandise being sold:

(1) Any person or persons engaged within this state in the business or calling of agriculture, horticulture or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid.

(2) Any retail or wholesale business concern, established and operating continuously for one year or more within this state in the sale of any product or products over regular routes who are licensed under other provisions of this article.

(3) Any wholesaler or jobber selling soft drinks or nonintoxicating beer for which he is duly licensed under other provisions of this or another chapter of this code.

(4) Any person who sells petroleum products, ice, wood, meat, ice cream, dairy products, bread, cakes, pies
(5) Sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by organizations acting for charitable, religious or benevolent purposes; nor to annual showings or street exhibits, which may include sales of their showings or exhibits conducted by members of art associations; numismatic or philatelic societies or antique associations or societies when such showing or exhibit does not continue for more than one week each calendar year; nor to judicial sales directed by law, or under the orders of any court.

(6) Any agent or salesman selling manufactured products produced by his employer, and who sells the same to retail dealers for the purpose of resale.

(7) Any firm, corporation, or individual having a stock of goods, or merchandise, or manufacturing or processing plant or plants kept or operating at a fixed situs in the state of West Virginia, and declared for taxation in the county where located, and using a vehicle or vehicles over a fixed route or routes for the purpose of selling or distributing, at wholesale, their, his or its said merchandise, stock of goods or plant products.

(8) Any person exempt from license as provided by this section, shall obtain from the tax commissioner a license receipt, without cost, showing that he is so exempt, which shall be effective for the period as provided for annual licenses in this article and shall be coextensive with the entire state; but to obtain such license receipt, he shall make an affidavit and produce such other evidence as to the fact entitling him to such exemption as the tax commissioner, in his discretion, may require, which shall be on a form to be prescribed by the tax commissioner.
§11-12-20. Time for which licenses granted; license tax for part of year.

Except as may be herein otherwise expressly provided, all annual licenses issued under the provisions of this article shall be for a period of one year beginning on the first day of July and ending on the thirtieth day of the following June: Provided, That licenses issued prior to the first day of January of any year shall be charged at the full annual fee and all licenses issued on or after the first day of January shall be charged at one half of the full annual fee, as prescribed in this article.

CHAPTER 187

(Com. Sub. for Senate Bill No. 288—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed March 8, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to repeal article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and enact in lieu thereof a new article twelve-a of said chapter, relating to an annual tax on incomes of certain carriers.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article twelve-a of said chapter be enacted in lieu thereof, to read as follows:

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

Section
1. Definitions.
2. Imposition of annual tax on gross income of certain carriers.
3. Imposition of annual tax on net income of certain carriers.
4. Effective date.
5. Effect of rate changes during a tax year.
6. Annual return.
7. Erroneous computation.
8. Tax year.
9. Payment.
10. Assessment of tax when insufficiently returned.
12. Notice of assessment; petition for reassessment; hearing.
15. Tax imposed is in addition to other license taxes and charges.
16. Lien of tax; penalty.
17. Creation and release of lien.
18. Collection by distraint.
19. Payment before certificate of dissolution or withdrawal issues.
20. Contracts with political subdivisions; final payment withheld until taxes paid by contractor.
21. Taxes paid first by fiduciary; personal liability.
22. Offenses; penalties.

§11-12A-1. Definitions.

When used in this article, the term “person” or the term “company” or “carrier,” herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or 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.

The phrase “urban or suburban bus line” in this state is hereby defined to mean bus lines the majority of whose passengers use the buses for traveling a distance of not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools.

The phrase “motor vehicle carrier” shall mean any person engaged in the transportation of passengers or property, or both, for compensation by motor propelled vehicle for the operation of which a permit or certificate of convenience or necessity is required by law.

The term “ton-mile” shall be a unit of transportation meaning transportation of one net ton in weight a distance of one mile.

The term “passenger-mile” means the transportation of one passenger a distance of one mile.

The term “car-mile” means the operation of a railroad car over a distance of one mile.

The term “barrel-mile” means the transportation of the equivalent of a barrel of oil or the transportation of the equivalent of a barrel of liquid coal or slurry a distance of one mile.
The phrase “one thousand cubic feet-mile” means the transportation of one thousand cubic feet of gas, measured at sixty degrees Fahrenheit and a pressure of thirty inches of mercury, a distance of one mile.

The term “wire-mile” means the equivalent of a single metallic telephone or telegraph conductor one mile in length.

The phrase “motor vehicle-mile” means the operation of a motor vehicle carrier over a distance of one mile.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

Every motor vehicle carrier operating on the public highways of this state and every railroad car carrier, railroad carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in the state shall pay to the state an annual tax for each calendar year. This tax shall be equal to the gross income from all business beginning and ending within the state multiplied by the respective rates as follows: Motor vehicle carriers, railroad car carrier, railroad carrier, express companies, pipeline companies, airline companies, any person operating a steamboat or other watercraft and telegraph companies, three per cent; and telephone companies, three and four-tenths per cent: Provided, That any motor vehicle carrier which is an urban or suburban bus line shall be taxed at the rate of two per cent of such gross income.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

In addition to the tax imposed in the preceding section, every motor vehicle carrier operating on the public highways of the state and every railroad carrier, railroad car carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in this state shall pay an annual tax for each calendar year on
the net income earned within the state equal to three and
d four-tenths per cent of such net income for telephone
companies and six per cent of such net income for all other
carriers included in this section, such net income to be
determined as follows:
(a) The net income of motor vehicle carriers earned
within the state shall be determined by ascertaining a
sum bearing the proportion to the total net income of the
motor vehicle carrier that its business done in West Vir-
ginia measured in motor vehicle-miles of motor vehicle
carrier operation, bears to all business done, measured in
like fashion;
(b) The net income of railroad carriers earned within
the state shall be determined by ascertaining a sum bear-
ing the proportion to total net income of the carriers that
its business done in West Virginia, measured in ton-miles,
bears to all business done, measured in like fashion;
(c) The net income of railroad car carriers and express
companies earned within the state shall be determined
by ascertaining a sum bearing the proportion to the total
net income of the carriers or company that its business
done in West Virginia, measured in car-miles of car oper-
ation, bears to all business done, measured in like fashion:
Provided, however, That nothing in this article shall be
construed as applying to railroad freight car carriers not
owned by railroad carriers or their subsidiaries;
(d) The net income of pipeline companies earned
within the state shall be determined by ascertaining a
sum bearing the proportion to the total net income of the
company that its business done in West Virginia, meas-
ured in barrel-miles in the case of oil and liquid coal or
slurry and of thousand cubic feet-miles in the case of gas,
bears to all business done, measured in like fashion;
(e) The net income of airline companies and any per-
son operating a steamboat or other watercraft for the
transportation of passengers or freight earned within the
state shall be determined by ascertaining a sum bearing
the proportion to the total net income of the corporation
that its business done in West Virginia, measured in pas-
senger-miles in the case of airline companies and ton-
miles in the case of any person operating a steamboat or
other watercraft, bears to all business done, measured in
like fashion;
(f) The net income of telephone and telegraph com-
panies shall be determined by ascertaining a sum bearing
the proportion to the total net income of the companies
that its business done in West Virginia, measured in wire-
miles, bears to all business done, measured in like fashion;
(g) In computing the tax imposed by this section, the
total net income of a taxpayer, who shall have been taxed
under the preceding section, shall be reduced by an
amount bearing the proportion to such total net income
that the gross income of the taxpayer which is the mea-
sure of the tax under the preceding section bears to its
total gross income from all business done wherever con-
ducted. No county, city, town, village or other political
subdivision of the state shall levy a license, net income
or any other kind of tax on the business taxed under this
article.

§11-12A-4. Effective date.

The provisions of sections two and three shall be given
effect in determining the taxes due and payable under
this article for all tax years or portion thereof beginning
on or after the first day of January, one thousand nine
hundred sixty-seven.

§11-12A-5. Effect of rate changes during a tax year.

If any rate of tax imposed by this article changes to
become effective after the thirty-first day of December,
one thousand nine hundred sixty-six, and if the tax year
includes the effective date of change (unless that date is
the first day of the tax year), then: (1) The total taxes
due and payable under this article shall be computed by
applying the rate of tax for the period before the effective
date of the change, and the rate of tax for the period on
and after such date, against gross income as provided in
section two and against net income as provided in section
three of this article for the entire tax year; and (2) the
tax for such tax year shall be the sum of that portion of
the total taxes due and payable which the number of
14 days in each period bears to the number of days in the entire tax year.

§11-12A-6. Annual return.

The taxpayer under this article shall file an annual return with the state tax commissioner upon a form prescribed by the commissioner setting out the following and such other information as that officer may deem necessary or useful in aid of the assessment and computation of the tax:

1. The gross income from all transportation business done within the state, namely, business beginning and ending entirely within the state;

2. The total gross income of the business wherever conducted;

3. The net transportation income of the business wherever conducted. For this purpose the tax commissioner may consider as relevant any determination of net transportation income as made by the taxpayer for purposes of the net income tax due the government of the United States under the laws of the United States;

4. The total amount of business done in this state, measured in the units hereinbefore prescribed. The tax commissioner may designate a single month in the tax year as the period for which the amount of business done in this state, measured in the units hereinbefore prescribed, shall be reported and shall fix the total amount of business done in the state for the whole tax year by multiplying the amount determined for the designated month by twelve;

5. The total amount of business done, wherever conducted, measured in the units hereinbefore prescribed.

Every return shall be signed and sworn to by the taxpayer, if a natural person, and if a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer.


If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him, the tax commissioner shall
correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the tax commissioner to the state auditor, who shall issue his warrant on the treasurer, which shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit resulting from any clerical error to taxes subsequently accruing hereunder.

§11-12A-8. Tax year.

The assessment of taxes under this article and the returns required therefor shall be for the year ending on the thirty-first day of December, one thousand nine hundred sixty-seven, and any tax year thereafter. If the taxpayer keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the tax commissioner, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books. For a fractional part of a tax year, the annual tax shall be computed in like proportion to the tax for a full year.


The total amount of tax imposed by this article shall be paid on or before the fifteenth day of March following the close of the calendar year, or if the returns should be made on the basis of a taxpayer's fiscal year, then on or before the fifteenth day of the third month following the close of the fiscal year. The taxpayer may by writing, filed with the tax commissioner, elect to pay the tax in two equal installments in which case the first installment shall be paid on the date hereinabove prescribed and the second installment shall be paid on the fifteenth day of the third month after such date.
§11-12A-10. Assessment of tax when insufficiently returned.

If the tax commissioner believes that the tax imposed by this article is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.


If the tax commissioner believes that the collection of any tax which he is required to administer will be jeopardized by delay, he shall thereupon make an assessment of the tax, noting that fact upon the assessment. The amount assessed shall be immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final.

A petition for reassessment by a taxpayer against whom a jeopardy assessment has been made must be accompanied by such security as the tax commissioner may deem necessary to insure compliance with this article.


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 with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become due and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above
described is filed, the tax commissioner shall assign a
time and place for the hearing of same and shall notify
the petitioner of such hearing by written notice at least
twenty days in advance thereof and such hearing shall be
held within sixty days from the filing of the petition for
reassessment unless continued by agreement or by the tax
commissioner for good cause. The hearing shall be in-
formal and may be conducted by an examiner designated
by the tax commissioner. At such hearing evidence may
be offered to support the assessment or to prove that it is
incorrect. After such hearing the tax commissioner shall,
within a reasonable time, give notice in writing of the
decision. Unless an appeal is taken within thirty days
from service of this notice, the tax commissioner's de-
cision shall be final.


An appeal may be taken by the taxpayer to the circuit
court of the county in which the activity taxed was en-
gaged or in the circuit court of Kanawha county, within
thirty days after he shall have received notice from the
tax commissioner of his determination as provided in
section twelve.

The appeal shall be taken by a written notice and a
petition served upon the tax commissioner as an original
notice. When said notice and petition is so served it shall,
with the return thereon, be filed in the office of the clerk
of the circuit court and docketed as other cases with the
taxpayer as plaintiff and the tax commissioner as de-
fendant. Before the appeal is heard, the plaintiff shall file
with such clerk a bond for the use of the defendant, with
sureties approved by said clerk, the penalty of the bond
to be not less than the total amount of the tax and pen-
alties appealed from, and conditioned that the plaintiff
shall perform the orders of the court; except that in lieu
of said bond, the tax commissioner may upon a proper
showing find and certify to said clerk that the properties
of the plaintiff subject to the liens imposed by sections
sixteen and seventeen of this article are adequate to se-
cure the performance of the orders of the court.

The court shall hear the appeal in equity and determine
25 anew all questions submitted to it on appeal from the
determination of the tax commissioner. In such appeal a
certified copy of the tax commissioner's assessment shall
be admissible and shall constitute prima facie evidence of
the tax due under the provisions of this article. The court
shall render its decree thereon and a certified copy of said
decree shall be filed by the clerk of said court with the
tax commissioner who shall then correct the assessment
in accordance with said decree. An appeal may be taken
by the taxpayer or the tax commissioner to the supreme
court of appeals of this state in the same manner that
appeals are taken in equity.


Any written notice required by this article shall, unless
2 otherwise specifically provided, be served upon the tax-
3 payer personally or by certified mail.

§11-12A-15. Tax imposed is in addition to other license taxes
and charges.

The tax imposed under this article shall be in addition
to other license taxes and charges imposed by the laws
3 of this state. It is the purpose of this article to rest a fair
4 share of the tax burden upon the incomes of any person
5 who benefits by doing business within the state and tax-
6 able under this article.

§11-12A-16. Lien of tax; penalty.

The amount of the tax imposed by this article shall be a
debt due the state. It shall be a personal obligation of the
taxpayer and shall be a lien upon all property used in the
business or occupation upon which such tax is imposed,
and said lien shall have priority over all other liens and
obligations except those given priority by the laws of the
United States. A penalty of one per cent per month shall
be added to the amount of the tax for each month of de-
linquency and shall be secured by said lien: Provided,
That if such delinquency is due to reasonable cause the
tax commissioner may waive or remit in whole or in part
said penalties.
§11-12A-17. Creation and release of lien.

The tax commissioner for the more effective collection of such taxes, may file with the clerk of the county court of any county a certified copy of any assessment of taxes under this article. A certificate so filed shall be recorded in a book provided for the purpose and shall thereby create a lien upon all property and assets of the taxpayer located in the county, which lien shall likewise be binding against all other parties whose interest may arise after such recordation. Upon payment of taxes delinquent under this article and for which such lien shall have been perfected as herein provided, the tax commissioner shall certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificate, one to the taxpayer and one to the clerk of the county court of the county wherein such certificate of assessment shall have been recorded. The clerk of the county court shall record the certificate in the book in which releases are recorded, without payment of any fee, and the recordation of such certificate, certifying to the payment in full of such delinquent taxes, shall constitute a release and full discharge of said lien.


The tax commissioner may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued. The commissioner may require the assistance of the sheriff of any county of the state in levying such distress in the county of which such sheriff is an officer. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all penalties collected over and above the principal amount of the tax due, but in no case shall such compensation exceed twenty-five dollars. All taxes and penalties so collected shall be reported within ten days after collection to the tax commissioner, who shall prescribe by general regulation the manner of remittance of such funds and of allowing the collecting officer the compensation due him under this section. The lien created by this article on real estate may
be enforced by suit in equity, and the provisions of section
seven, article two, chapter eleven-a of this code may also
be invoked for the collection of taxes accruing under this
article.

§11-12A-19. Payment before certificate of dissolution or with­
drawal issues.

The secretary of state shall withhold the issuance of a
certificate of dissolution of any corporation organized
under the laws of this state, or a certificate of withdrawal
to any foreign corporation authorized to do business in
this state, until notified in writing by the tax commissioner
that all taxes imposed against such corporation have been
paid in full.

§11-12A-20. Contracts with political subdivisions; final pay­
ment withheld until taxes paid by contractor.

All state, county, district and municipal officers and
agents making contracts on behalf of the state of West
Virginia or any political subdivision thereof shall with­
hold final settlement under such contracts until notified
in writing by the tax commissioner that all taxes imposed
by this article against such contractors have been paid.

§11-12A-21. Taxes paid first by fiduciary; personal liability.

In the distribution of the estate of any person, firm or
corporation, arising out of a creditor's suit, bankruptcy or
receivership proceeding, or assignment for the benefit of
creditors, all unpaid taxes accruing under this article shall
be paid from the first moneys available for distribution
for that purpose, in conformity with the liens created by
this article. Any person charged with the administration
of an estate who shall violate the provisions of this section
shall be personally liable for any taxes accrued and un­
paid under this article, which are chargeable against the
person, firm or corporation whose estate is in adminis­
tration.

§11-12A-22. Offenses; penalties.

It shall be unlawful for any person to refuse to make
the return required to be made by section six of this
article; or to make any false or fraudulent return or false
statement in any return, with intent to defraud the state
or to evade the payment of the tax, or any part thereof,
 imposed by this article; or for any person to aid or abet
 another in any attempt to evade the payment of the tax,
or any part thereof, imposed by this article; or for the
 president, vice president, secretary or treasurer of any
corporation to make, or permit to be made, for any cor-
poration or association any false return or any false state-
ment in any return required in this article, with the intent
to evade the payment of any tax hereunder. A person
violating any of the provisions of this section shall be
guilty of a misdemeanor, and, on conviction thereof, shall
be fined not more than one thousand dollars or imprisoned
not exceeding one year in the county jail or punished by
both fine and imprisonment, at the discretion of the court,
within the limitations aforesaid. In addition to the fore-
going penalties, any person who shall knowingly swear to
or verify any false or fraudulent return, or any return
containing any false or fraudulent statement, with the
intent aforesaid, shall be guilty of the offense of false
swearing, and, on conviction thereof, shall be punished in
the manner provided by law. Any corporation for which
a false return, or a return containing a false statement as
aforesaid, shall be made, shall be guilty of a misdemeanor
and may be punished by a fine of not more than one thou-
sand dollars. The circuit and criminal courts of the
county in which the offender resides, or, if a corporation,
in which it carries on business, shall have concurrent juris-
diction to enforce this section.

CHAPTER 188
(Senate Bill No. 414—By Mr. Hylton and Mr. Bowling)

[Passed March 8, 1987; in effect April 1, 1987. Approved by the Governor.]
thousand nine hundred thirty-one, as amended, relating to
the business and occupation tax and the various rates
thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

Section
1. Definitions.
  2b. Manufacturing, compounding or preparing products; processing of
   poultry and turkeys excepted.

§11-13-1. Definitions.

When used in this article, the term “person” or the term
“company,” herein used interchangeably, includes any in-
dividual, firm, copartnership, joint adventure, association,
corporation, trust, or any other group or combination act-
ing as a unit, and the plural as well as the singular num-
ber, unless the intention to give a more limited meaning
is disclosed by the context.

“Tax year” or “taxable year” means either the calendar
year, or the taxpayer's fiscal year when permission is ob-
tained from the tax commissioner to use same as the tax
period in lieu of the calendar year.

“Sale,” “sales” or “selling” includes any transfer of the
ownership of, or title to, property, whether for money or
in exchange for other property.

“Taxpayer” means any person liable for any tax here-
under.

“Gross income” means the gross receipts of the taxpayer
received as compensation for personal services and the
gross receipts of the taxpayer derived from trade,
business, commerce or sales and the value proceeding or
accruing from the sale of tangible property (real or per-
sonal), or service, or both, and all receipts by reason of
the investment of the capital of the business engaged in,
including rentals, royalties, fees or other emoluments
however designated and without any deductions on ac-
count of the cost of property sold, the cost of materials
used, labor costs, taxes, royalties, interest or discount paid
or any other expense whatsoever.

"Gross proceeds of sales" means the value, whether in
money or other property, actually proceeding from the
sale of tangible property without any deduction on ac-
count of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sales"
shall not be construed to include (1) cash discounts al-
lowed and taken on sales; (2) the proceeds of sale of
goods, wares or merchandise returned by customers when
the sale price is refunded either in cash or by credit; (3)
the amount allowed as "trade-in value" for any article
accepted as part payment for any article sold; (4) ex-
cise taxes imposed by this state; or (5) money or other
property received or held by the taxpayer for the use
and benefit of another person.

"Business" shall include all activities engaged in or
caused to be engaged in with the object of gain or eco-
nomic benefit, either direct or indirect. "Business" shall
not include a casual sale by a person who is not engaged in
the business of selling the type of property involved in
such casual sale. "Business" shall include the production
of natural resources or manufactured products which are
used or consumed by the producer or manufacturer.

"Service business or calling" shall include all activities
engaged in by a person for other persons for a considera-
tion, which involve the rendering of a service as dis-
tinguished from the sale of tangible property, but shall
not include the services rendered by an employee to his
employer. This term shall include persons engaged in
manufacturing, compounding or preparing for sale, profit,
or commercial use, articles, substances, or commodities
which are owned by another or others, as well as persons
engaged as independent contractors in producing natural
resource products for persons required to pay the tax
imposed by section two-a of this article.

"Selling at wholesale" or "wholesale sales" shall mean
and include: (1) Sales of any tangible personal property
for the purpose of resale in the form of tangible personal
property; (2) sales of machinery, supplies or materials
which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article or by article twelve-a of this chapter; (3) sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the state of West Virginia, its institutions or political subdivisions.

“Contracting” shall include the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

§11-13-2b. Manufacturing, compounding or preparing products; processing of poultry and turkeys excepted.

Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or electric power not produced by public utilities taxable under other provisions of this article, the amount of the tax to be equal to the value of the article, substance, commodity or electric power manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eight tenths of one per cent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. However, the dressing and processing of poultry and turkeys by a person, firm or corporation, which poultry and turkeys are to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is
imposed on the business of selling at wholesale as provided in section two-c.

It is further provided, however, that in those instances in which the same person partially manufactures products within this state and partially manufactures such products outside of this state the measure of his tax under this section shall be that proportion of the sale price of the manufactured product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

CHAPTER 189
(House Bill No. 908—By Mr. Boiarsky and Mr. Grewe)

[Passed February 20, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions to the business and occupation tax and providing exceptions to said exemptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.
Section
3. Exemptions.

1. There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable
hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, however, That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) persons engaged in the business of banking: Provided, however, That said exemptions shall not extend to that part of the gross income of such persons which is received for the use of real property owned, other than the banking house or building in which the business of the bank is transacted, whether such income be in the form of rentals or royalties; (c) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (d) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (e) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (f) production credit association, organized under the provisions of the federal “Farm Credit Act of one thousand nine hundred thirty-three”: Provided, however, That the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; (g) building and loan associations and federal savings and loan associations;
persons engaged in conducting the business of industrial loans under authority granted them by article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one: Provided, however, that said exemption shall not extend to that part of the gross income of such persons which is received from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income be in the form of rentals or royalties.

CHAPTER 190

(Senate Bill No. 13—By Mr. Barnett and Mr. McCourt)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the use of gasoline taxes 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.

§11-14-22. Taxes to be used for road purposes.

All taxes collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of the construction, reconstruction, maintenance and repair of roads and highways, payment of the interest and sinking fund on state bonds issued for road purposes and the cost of administration and enforcement of this article by the tax commissioner, which cost of administration and enforcement shall not exceed three
fourths of one per cent of the total net gasoline excise tax collections during each fiscal year. Unless necessary for such bond requirements, five fourteenths of the taxes collected under the provisions of this article shall be used for state local service road purposes.

CHAPTER 191

(House Bill No. 927—By Mr. Speaker, Mr. White)

(Passed March 10, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend article sixteen, 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 unlawful practices with respect to the labeling of beer, ale or other malt beverage containers.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 16. NONINTOXICATING BEER.

Section

3a. Container labeling.

§11-16-3a. Container labeling.

It shall be unlawful to have affixed upon any beer, ale or other malt beverage container sold, or for sale in this state a label bearing any design, picture or wording, indicating that the contents of the container are brewed for one particular retailer or group of retailers, or use any trademark other than that of the brewer. The provisions of this section shall not apply to existing stocks of beer, ale or other malt beverages in the hands of brewers, distributors or retailers on the effective date of this
section, the labels on which would be in violation of this section.

CHAPTER 192

(House Bill No. 907—By Mr. Boiarzsky and Mr. Grewe)

[Passed February 25, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the form of application for a license under said article, the fee and bond therefor, the refusal of licenses, and unlawful acts of persons holding a license as a retailer, distributor or brewer of nonintoxicating beer and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That sections twelve and thirteen, article sixteen, 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 16. NONINTOXICATING BEER.

§11-16-12. Form of application for license; fee and bond; refusal of license.

A license may be issued by the commissioner to any person who submits an application therefor, accompanied by a license fee, and, where required, a bond, stating under oath:

(a) The name and residence of the applicant, how long he has resided there, that he has been a resident of the state for a period of two years next preceding the date of his application, that he is twenty-one years of age, and, if a firm, association, partnership or corporation, the residence of the members or officers for a period
of two years next preceding the date of such application:

Provided, That if any person, firm, partnership, association or corporation applies for a license as a distributor, such person, or in the case of a firm, partnership, association, the members or officers thereof, shall state under oath that he or they have been bona fide residents of the state for four years preceding the date of such application;

(b) The place of birth of applicant and that he is a citizen of the United States and, if a naturalized citizen, when and where naturalized; and, if a corporation, organized or authorized to do business under the laws of the state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association or partnership, the place of birth of each member of the firm, association or partnership, that each member is a citizen of the United States and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application: Provided, however, That the requirements as to residence shall not apply to the officers of a corporation which shall apply for a Class B retailer's license, but the officers, agent, or employee who shall manage and be in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license, including the requirement as to residence;

(e) The particular place for which the license is desired and a detailed description thereof;

(d) The name of the owner of the building and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;

(e) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building, and is not within three hundred feet of any school or church, measured from front door to front door, along the street or streets: Provided, That this requirement shall not apply to a Class B licensee,
or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such proposed business in a place or building within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such proposed business in a place or building within three hundred feet of such college or university;

(f) That the applicant has never been convicted of a felony, or a violation of the liquor laws either federal or state;

(g) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed, and that no other person shall be in any manner pecuniarily interested therein during the continuance of the license;

(h) That the applicant has not during five years next immediately preceding the date of said application had a nonintoxicating beer license revoked, nor during the same period been convicted of any criminal offense.

The foregoing provisions and requirements are mandatory prerequisites for the issuance of a license, and in the event any applicant fails to qualify under the same, license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable; and for this reason each and all applications, with license fee and bond, must be filed thirty days prior to the beginning of any fiscal year, and if application is for an unexpired portion of any fiscal year, issuance of license may be withheld for such reasonable time as necessary for investigation.

The commissioner may refuse a license to any applicant under the provisions of this article if he shall be of the opinion:

(a) That the applicant is not a suitable person to be licensed; or,

(b) That the place to be occupied by the applicant
is not a suitable place; or is within three hundred feet of any school or church, measured from front door to front door along the street or streets: Provided, That this requirement shall not apply to a Class B licensee, or to any place now occupied by a beer licensee, so long as it is continuously so occupied: Provided, however, That the prohibition against locating any such place to be occupied by an applicant within three hundred feet of any school shall not apply to any college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within three hundred feet of such college or university; or, (c) That the license should not be issued for reason of conduct declared to be unlawful by this article.

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

1 It shall be unlawful:
2 (a) For any licensee, his, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer between the hours of midnight and seven o'clock the following morning on week days or before one o'clock in the afternoon of any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;
3 (b) For any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of eighteen years;
4 (c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this clause. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or
deposited for such containers when title is retained by
the vendor;

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

(e) For any brewer or distributor to give, furnish, rent
or sell any equipment, fixtures, signs or supplies directly
or indirectly or through a subsidiary or affiliate to any li-
censee engaged in selling products of the brewing industry
at retail, or to offer any prize, premium, gift, or other simi-
lar inducement, except advertising matter of nominal val-
ue, to either trade or consumer buyers: Provided, however,
That nothing contained herein shall prohibit a distributor
from offering for sale or renting tanks of carbonic gas;

(f) For any licensee to transport, sell, deliver or pur-
chase any nonintoxicating beer or product of the brewing
industry upon which there shall appear a label or other
informative data which in any manner refers to the
alcoholic content of such beer or product of the brewing
industry, or upon the label of which there appears the
word or words “strong,” “full strength,” “extra strength,”
“prewar strength,” “high test” or other similar expres-
sions bearing upon the alcoholic content of such product
of the brewing industry, or which refers in any manner
to the original alcoholic strength, extract or balling proof
from which such beverage was produced, except that
such label shall contain a statement that the alcoholic
content thereof does not exceed three and two-tenths
per cent by weight;

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

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

(i) For any licensee to obstruct the view of the interior
of his premises by enclosure, lattice, drapes or any means
which would prevent plain view of the patrons occupying
such premises. The interior of all licensed premises shall
be adequately lighted at all times: Provided, however,
That provisions of this paragraph shall not apply to the
premises of a Class B retailer or to the premises of a
private club licensed under the provisions of article
seven, chapter sixty of this code;
(j) For any licensee to manufacture, import, sell,
trade, barter, possess, or acquiesce in the sale, possession
or consumption of any alcoholic liquors on the premises
covered by such license or on premises directly or in-
directly used in connection therewith: Provided, how-
ever, That the prohibitions contained in this paragraph
with respect to the selling or possessing or to the acqui-
escence in the sale, possession or consumption of alco-
holic liquors shall not be applicable with respect to the
holder of a license to operate a private club issued under
the provisions of article seven, chapter sixty of this
code;
(k) For any licensee to print, paint or place upon the
door, window, or in any other public place in or about
the premises, the word “saloon” or word of similar char-
acter or nature, or for the word “saloon” or similar words
to be used in any advertisement by the licensee;
(l) For any retail licensee to sell or dispense non-
intoxicating beer purchased or acquired from any source
other than a licensed distributor or brewer under the
laws of this state;
(m) For any licensee to permit loud, boisterous or
disorderly conduct of any kind upon his premises or to
permit the use of loud musical instruments if either or
any of same may disturb the peace and quietude of the
community wherein such business is located: Provided,
That no licensee shall have in connection with his place
of business any loud speaker located on the outside of
the licensed premises that broadcasts or carries music
of any kind;
(n) For any person whose license has been revoked,
as in this article provided, to obtain employment with
any retailer within the period of one year from the date
of such revocation, or for any retailer to employ know-
ingly any such person within such time;
(o) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

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

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, on or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.
CHAPTER 193

(Senate Bill No. 326—By Mr. Carson, Mr. President)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-six and twenty-seven, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seventeen, by adding thereto seven new sections, designated sections seven-a, seven-b, nine-a, ten-a, ten-b, seventeen-a and twenty-eight, all relating to an excise tax on the sale of cigarettes.

Be it enacted by the Legislature of West Virginia:

That sections one, four, five, six, seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-six and twenty-seven, article seventeen, chapter eleven 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 seven new sections, designated sections seven-a, seven-b, nine-a, ten-a, ten-b, seventeen-a and twenty-eight, all to read as follows:

ARTICLE 17. EXCISE TAX ON SALE OF CIGARETTES.

Section

1. Definitions.
2. How tax paid; stamps; how affixed; violations.
4. Dealer's records.
5. Cigarette retail dealer's license required; suspension or revocation.
6. Wholesaler's and sub-jobber's license required; suspension or revocation.
7. Conditions precedent to issuance of licenses; bond; disqualification for license.
8. Cigarette vending machine operators; licenses.
9. Sales by licensed wholesale dealers; liability for tax; sale of unstamped cigarettes prohibited; penalties.
10. Operation as both wholesaler and retailer; separate places of business.
11. Power of tax commissioner; rules and regulations; records by wholesalers, sub-jobbers and retailers; metering in lieu of stamping; agents for metering; levy to collect tax.
11. Form of stamps; custody; discounts; security for payments.
13. Possession of unstamped cigarettes; failure to produce invoices; penalty; seizure and sale of unstamped cigarettes and vending machines.
14. False records; penalties.
15. Preventing inspections; penalties.
16. Sales or possession without affixing stamps; penalties.
17. Altering or counterfeiting stamps; penalties.
17a. Enforcement; powers and bonds of employees of cigarette tax division; assistance of department of public safety.
18. Penalties.
26. Expiration and renewal of license; proration of fees.
27. Transportation of unstamped cigarettes; forfeitures and sales of cigarettes and equipment.
28. Separability of provisions of article.

§11-17-1. Definitions.

When used in this article the following words, terms and phrases and any variations thereof required by the context, shall be the meaning ascribed to them in this article, except where the context indicates a different meaning:

(a) "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 or conservator.

(b) "Wholesaler" or "wholesale dealer" shall include any person who purchases unstamped cigarettes directly from the manufacturer.

(b-1) "Sub-jobber" or "sub-jobber dealer" shall include any person who purchases stamped cigarettes from any other person who purchases from the manufacturer when such other person is located in any state which levies an excise tax on cigarettes and who purchases such cigarettes solely for the purpose of bona fide resale to retail dealers.

(c) "Retail dealer" includes every person in this state, other than a wholesaler or sub-jobber, engaged in the selling of cigarettes at retail to a consumer or to any person for any purpose other than resale.

Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.
(d) "Vending machine operator" is any person operating one or more cigarette vending machines.

(e) "Sale by wholesaler or retailer" shall mean and include any bona fide transfer of title to cigarettes by a wholesaler or retailer for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's or retailer's business.

(f) "Cigarette" means:

1. Any roll of tobacco wrapped in paper or in substance not containing tobacco, and

2. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph 1.

(g) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(h) "Stamp" shall mean any cigarette stamps required under this article, or any meter or ink impression authorized by the tax commissioner to serve as such stamp.

(i) "Commissioner" means the state tax commissioner and where the meaning of the context requires, all deputies and employees duly authorized by him.

(j) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(k) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than resale.

(l) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution.

(m) "Consumer" means a person who receives or in any way comes into possession of cigarettes for the purpose of consuming them, giving them away or disposing of them in any way other than by sale, barter or exchange.

(n) "Rules and regulations" mean those made and promulgated by the state tax commissioner.
(o) "Stamped cigarettes" means that the stamp or impression as required by this article has been affixed to the bottom of the package of cigarettes.

(p) "Unstamped cigarettes" means that no stamp or impression, as required by this article, has been affixed.

§11-17-4. How tax paid; stamps; how affixed; violations.

The tax hereby imposed shall be paid by the purchase of stamps as provided in this article. Payment for stamps purchased from the commissioner shall be made by cash, money order, bank draft, certified check or by noncertified check. However, in the event a noncertified check is returned unpaid by its bank, then the license of the maker of the check shall be, and without notice of hearing, and in the discretion of the commissioner, subject to suspension or revocation and such suspension or revocation shall in no manner prevent action by the commissioner against the dealer's surety bonding company to recover moneys in the amount of the unpaid check.

A stamp as described in the cigarette rules and regulations shall be affixed to, or impressed upon each package of cigarettes of an aggregate value of not less than the amount of the tax upon the contents thereof. The stamp or impression, so affixed, shall be prima facie evidence of payment of the tax imposed by this article. Stamps or meter impressions shall be purchased from the commissioner by and paid for by properly licensed wholesalers. Except as may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, and unless such stamps have been previously affixed, they shall be so affixed by each wholesale dealer who must be licensed by this state and prior to the sale or delivery of any cigarettes to any retail dealer or sub-jobber in this state.

Whenever any cigarettes are found in the place of business of any retail dealer or sub-jobber without the stamps so affixed, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this article.
§11-17-5. Ultimate incidence for tax.

Any person who advances or pays the tax imposed by this article through the purchase of such stamps shall add the amount of the tax so advanced or paid to the price of the cigarettes when sold by the wholesaler, it being intended that the ultimate incidence for the tax shall be upon the ultimate possessor, consumer or user.

§11-17-6. Dealer's records.

From and after the effective date hereof and at the time of delivering cigarettes to any person, each wholesale dealer and sub-jobber in this state shall make a true duplicate invoice showing the date of delivery, the amount and value of each shipment of cigarettes delivered and the name of purchaser to whom delivery is made, and retain the same for a period of two years from the date of such delivery, subject to the use and inspection of the tax commissioner.

Each wholesaler, sub-jobber and retail dealer in this state shall procure and retain as a part of his records, invoices showing the amount and value of each shipment of cigarettes received by him, the date thereof and the name of the shipper, and shall retain the same for a period of two years subject to the use and inspection of the commissioner. The commissioner, in his discretion, may require reports from all dealers pertaining to the sale of cigarettes.

In each case in which cigarettes are shipped into the state of West Virginia by common carrier, such common carrier transporting any shipment thereof shall file with the commissioner a copy of the freight bill within ten days after delivery in this state of each shipment when requested so to do by the commissioner.

§11-17-7. Cigarette retail dealer's license required; suspension or revocation.

No person shall engage in selling cigarettes at retail within this state without having first secured an annual cigarette retail dealer's license, which shall be issued by
§11-17-7a. Wholesaler's and sub-jobber's license required; suspension or revocation.

No person shall engage in selling cigarettes as a wholesaler or sub-jobber without having first secured a wholesaler's or sub-jobber's license as required by article twelve of this chapter and having complied with the provisions of section seven-b of this article. Wholesaler's and sub-jobber's licenses will be subject to suspension or revocation, in the discretion of the commissioner, for violation of any laws or for other good causes or rules and regulations of article twelve or article seventeen, chapter eleven of the code.

§11-17-7b. Conditions precedent to issuance of licenses; bond; disqualification for license.

Application for a wholesale cigarette dealer's license shall be accompanied by payment of the proper license fee together with a letter from at least three of the major cigarette manufacturers indicating that they will sell to the applicant on a direct basis in the event a proper license is issued by this state. For the purpose of this section, major cigarette manufacturers will be those manufacturers who are among the six companies showing the largest taxable cigarette removals during the previous calendar year, as indicated by the records of the tobacco tax branch of the United States Internal Revenue Service. This section shall not apply to applications for renewal of licenses provided the applicant is, at the time of applying for renewal, purchasing from at least three of the major cigarette manufacturers.

Each application for a wholesale cigarette license shall have attached thereto a surety bond in such amount as the commissioner may designate, but in no event shall the bond be less than one thousand dollars nor more

the state tax commissioner without charge. Cigarette retail dealer's license will be subject to suspension or revocation, in the discretion of the commissioner, for violation of any laws or for other good causes or rules and regulations of article seventeen, chapter eleven of the code.
than ten thousand dollars, conditioned upon the payment
of the tax due upon the cigarettes stamped by the whole-
saler. This surety bond will not be required from per-
sons who have filed a surety bond for the purpose of
purchasing stamps on credit as provided for in section
eleven of this article.

Wholesaler's or sub-jobber's licenses shall be issued only
to persons, except corporations, of good moral character,
who are not less than twenty-one years of age. No whole-
saler's or sub-jobber's license shall be issued to any person
who has been convicted within the past five years of any
offense against the cigarette laws of this state or who has
been convicted in this state, or any state of the United
States, during the past five years of any offense designated
as a felony by such state or the United States, or to a
corporation, any of whose officers have been so convicted.
The term “conviction” shall include the adjudication of
guilt on a plea of nolo contendere, or the forfeiture of a
bond when charged with a crime. The commissioner may
refuse to issue any license provided for under this sec-
tion to any person, firm or corporation whose license
under the cigarette law has been suspended or revoked
or to any corporation, an officer of which has had his
cigarette license suspended or revoked, or to any person
who is or has been an officer of a corporation whose cig-
arette license has been suspended or revoked.

§11-17-8. Cigarette vending machine operators; licenses.

A cigarette vending machine operator is any person
owning and operating one or more cigarette vending
machines. Cigarette vending machine operators who pur-
case cigarettes directly from the manufacturer are re-
quired to secure a wholesaler's license; however, for the
purposes of this article, the sale of cigarettes through a
vending machine will be construed as sales at retail and
will subject the cigarette vending machine operator to
the cigarette law and rules and regulations pertaining to
cigarette retail dealers. Cigarette vending machines are
licensed under the general license law, section three, arti-
cle twelve, chapter eleven of the code.
§11-17-9. Sales by licensed wholesale dealers; liability for tax; sale of unstamped cigarettes prohibited; penalties.

No wholesale dealer shall sell cigarettes to any person in this state other than to another licensed wholesaler, licensed sub-jobber or licensed retail dealer and no person in this state other than a licensed wholesaler, or licensed sub-jobber, shall sell cigarettes to a licensed retail dealer. It shall be unlawful and a violation of this article for any licensed retail cigarette dealer to purchase or acquire cigarettes from any person other than a licensed wholesaler or licensed sub-jobber. The original wholesaler who purchases unstamped cigarettes from the manufacturer is liable for the excise tax and the affixing of the required stamps, and the sale of unstamped cigarettes in this state is hereby expressly prohibited and any sale of unstamped cigarettes shall be a violation of this article and any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail for not more than six months, or both, in the discretion of the court.

§11-17-9a. Operation as both wholesaler and retailer; separate places of business.

No person in this state shall sell any cigarettes both as a wholesale dealer and a retail dealer at the same place of business. However, one person may operate as both a wholesale dealer and a retail dealer: Provided, That the two said operations are completely set apart by walls or partitions, or an entirely different address, and the stocks of cigarettes are not intermingled and separate and complete records are maintained which may be inspected during regular business hours by agents of the commissioner.

§11-17-10. Power of tax commissioner; rules and regulations; records by wholesalers, sub-jobbers and retailers; metering in lieu of stamping; agents for metering; levy to collect tax.

The tax commissioner shall have power and authority to enforce and administer the provisions of this article.
The tax commissioner shall have authority to promulgate in accordance with the provisions of this article such rules and regulations as he may deem necessary to carry out its provisions, and may adopt different detailed regulations applicable to diverse methods and conditions of sale of cigarettes in this state. All books, papers, invoices and records of any wholesaler, sub-jobber or retail dealer in this state shall at all times, during the usual business hours of the day, be open for the inspection of the tax commissioner, or his authorized agent, for such purposes; and the tax commissioner or a deputy shall have power to investigate the stock of cigarettes in and upon the premises where the same are placed, stored, or sold, for the purpose of determining compliance by the dealers with the provisions of this article. The tax commissioner, if he shall determine that it is practicable to stamp packages of cigarettes by impression by means of a metering device, shall provide that such metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax commissioner may authorize any wholesaler purchasing un-stamped cigarettes and holding the licenses herein required, to use any metering device approved by the commissioner, such devices to be sealed by the commissioner or a deputy, or agent, authorized by the commissioner, before being used, which device shall be used only in accordance with the regulations prescribed by the commissioner.

Any wholesaler authorized by the tax commissioner to affix stamps to packages of cigarettes by means of a metering device shall file with the tax commissioner a bond in such amount as the tax commissioner may designate, conditioned upon the payment of the tax upon the cigarettes so stamped. Wholesalers licensed to use said device shall make a monthly return to the commissioner and remit monthly the amounts of tax due the state: Provided, however, That a wholesaler may elect to pay the tax in advance where a metering device is used, in which event such
dealer shall deliver the metering device to the commis-
sioner, or his agent authorized for the purpose, who shall
seal the meter in accordance with the prepayment so
made. The commissioner may designate and authorize
any bank or trust company with banking offices in any
county of this state, to act as his deputy or agent for the
purpose of performing his duties with respect to sealing
of metering devices or the selling of stamps in such
county, and may require bond, and the action of any such
deputy by its duly authorized officer or employees shall
be as valid as though performed by the commissioner.

The commissioner shall have power to make an assess-
ment against any wholesaler who fails to return or makes
a false or erroneous return. The commissioner may col-
lect such assessment by levy, action at law, distraint, or
any other method of enforcing taxes which may be pro-
vided by law and shall have the right to file liens there-
for in any county.

§11-17-10a. Jeopardy assessments.

If the tax commissioner believes that the collection of
any tax which he is required to administer will be
jeopardized by delay, he shall thereupon make an assess-
ment of the tax, noting that fact upon the assessment.
The amount assessed shall be immediately due and pay-
able. Unless the taxpayer against whom a jeopardy as-
assessment is made petitions for reassessment within twenty
days after service of notice of the jeopardy assessment,
such an assessment becomes final.

A petition for reassessment by a person against whom
a jeopardy assessment has been made must be accompa-
nied by such security as the tax commissioner may deem
necessary to insure compliance with this article.

§11-17-10b. Notice of assessment; petition for reassessment;
hearing.

The tax commissioner shall give to the taxpayer writ-
ten notice of any assessment made pursuant to this ar-
ticle. Unless the taxpayer to whom a notice of assess-
ment is directed, shall, within thirty days after service
thereof (except in the case of jeopardy assessments),
either personally or by certified mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final.

§11-17-11. Form of stamps; custody; discounts; security for payments.

The commissioner shall design and procure stamps to be used as herein provided for, affixed and attached to containers, packages or receptacle of whatever kind that may be used for containing cigarettes. In the preparing of said stamp or stamps the same shall have printed or impressed thereon the words “State of West Virginia—Cigarette Tax Stamp” and such other words and figures as he may deem proper to show the value and denomination of the stamp or stamps. He shall also prescribe the form of impression to be placed upon any package or container of cigarettes by any metering device. The state tax commissioner shall collect the taxes provided for by this article.

Such stamps shall be kept in the custody of the state
tax commissioner or such deputies as he may designate to sell the same. Such stamps shall be sold and accounted for at the face value thereof except that the tax commissioner may authorize sale thereof, or sell to wholesalers in this state, or to wholesalers outside of this state such stamps at a discount of four per cent of the face value of such stamps, the same to be allowed as a commission for affixing the stamps and prepaying the cigarette tax; and excepting further that the tax commissioner may, by like regulation so certified, authorize the delivery of stamps to wholesalers in this state, or to wholesalers outside of this state on credit, allowing the same discount as when sold for cash, if and when the purchaser shall file with the tax commissioner a bond made payable to the state of West Virginia, in such form and amount as the commissioner shall prescribe, and with surety or sureties to the satisfaction of the commissioner, conditioned as he may require, to guarantee payment within thirty days for stamps so delivered within such period of time and by making of such reports and settlement as the commissioner may require. The commissioner may, by further regulations, provide for cancelling, renewing or increasing such bond or for the substitution of the surety thereon. The commissioner shall redeem any unused or mutilated, but identifiable, stamps, that any licensed wholesaler or retail dealer may present for redemption, on written verified requests made by the purchaser, his administrators, executors, successors, or assigns, and refund therefor, ninety-five per cent of the face value of said stamps, less any discounts allowed on the purchase of said stamps. The commissioner shall pay on a like basis for stamps destroyed by fire or flood upon presentation of proof of such loss satisfactory to him. Such payments shall for the purposes hereof be deemed to be refunds of taxes improperly collected and shall be allowed and paid as part of the cost of administration of this article as in this article provided.

§11-17-13. Possession of unstamped cigarettes; failure to produce invoices; penalty; seizure and sale of unstamped cigarettes and vending machines.

Whoever, being a retail dealer in this state, has in his
possession packages of cigarettes not bearing the stamps herein required to be affixed thereto or, whoever fails to produce on demand by the commissioner invoices of all cigarettes purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

If unstamped cigarettes be found in any vending machine, both the cigarettes and the vending machine shall be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the state at the discretion of the commissioner, his agents or employees, without a warrant.

Cigarettes and vending machines seized under this section shall be forthwith sold in the manner provided by law for the sale of personal property for taxes and such sale shall not relieve the owner of the sold personal property of any action by the commissioner for violations of any sections of this article.

§11-17-14. False records; penalties.

Whoever makes any false entry upon an invoice, package or container of cigarettes required to be made under the provisions of this article, or with intent to evade the tax imposed by this article, presents any such false entry for the inspection of the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

§11-17-15. Preventing inspections; penalties.

Whoever prevents or hinders the commissioner or his deputy from making a full inspection of any place where cigarettes subject to the tax imposed by this state are sold or stored, or prevents or hinders the full inspection of in-
§11-17-16. Sales or possession without affixing stamps; penalties.

Whoever sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or stamps required to be affixed thereto by this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two dollars and fifty cents per package of cigarettes or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

If a person, firm or corporation, who is not a regularly licensed dealer in tobacco products, as provided by this article, shall have in his possession within the state more than ten packages of cigarettes not bearing cigarette tax paid indicia of this state, such possession shall be presumed to be for the purpose of evading the payment of the taxes due thereon and shall be subject to the penalties as outlined in this section.

§11-17-17. Altering or counterfeiting stamps; penalties.

Whoever falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed by the commissioner under the provisions of this article and cigarette tax rules and regulations, and any person who knowingly and wilfully makes, causes to be made, purchases, receives or has in his possession, any device for forging or counterfeiting any stamp, or uses more than once any stamp provided for and required by this article for the purpose of evading the tax hereby imposed, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary for a term of not less than one year nor more than five years. For the purpose of this section, the words "stamp provided for and
required by this article” shall include a stamp or imprint made by a metering machine to evidence the payment of the excise tax on cigarettes as required by this article and the stamps and metering device as described in the West Virginia administrative regulations pertaining to the excise tax on cigarettes.

§11-17-17a. Enforcement; powers and bonds of employees of cigarette tax division; assistance of department of public safety.

Any employee of the cigarette tax division so designated by the tax commissioner shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or city of this state, and such employee shall, before entering upon the discharge of his duties, execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the board of public works, and the same shall be filed with the secretary of state and preserved in his office.

The state department of public safety is hereby authorized and may be requested to assist in the enforcement of the provisions of this article as directed by the tax commissioner or his agents.

§11-17-18. Penalties.

Whoever violates any of the provisions of this article or any lawful rule or regulation promulgated by the commissioner under authority of this article for the violation of which no penalty is provided by law shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ninety days, or both, in the discretion of the court.

§11-17-26. Expiration and renewal of license; proration of fees.

The license required to be issued pursuant to this article shall expire on the thirtieth day of June of each year. On
or before the first day of July of each year, every person having a license shall apply to the state tax commissioner for a renewal for the year next ensuing, unless such person has ceased to operate or does not propose to continue operation during the year next ensuing, in which event he shall notify the state tax commissioner that he has ceased operation or that he proposes to cease operation prior to the first day of July of the year next ensuing. All applications for renewal shall be made on the forms prescribed by the state tax commissioner.

Each new license issued prior to the first day of January of any year shall be charged for at the full rate and each license issued on or after the first day of January shall be charged for at one half of the full rate, as prescribed in section six-a, article twelve, chapter eleven of the code.

§11-17-27. Transportation of unstamped cigarettes; forfeitures and sales of cigarettes and equipment.

Every person who shall transport cigarettes not stamped as required by this article upon the public highways, waterways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee, or purchaser, the quantity and brands of the cigarettes transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state tax, or the tax, if any, of the state or foreign country at the point of ultimate destination: Provided, That any common carrier which has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required by this article shall be deemed to have complied with this article and the vehicle or vessel in which said cigarettes are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported and any paraphernalia or devices used in con-
nection with the unstamped cigarettes, are declared to be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the state when directed by the commissioner, his agents or employees so to do without a warrant.

The person or persons transporting unstamped cigarettes in violation of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one year, or both, in the discretion of the court.

The commissioner shall immediately, after any seizure made pursuant to this section, institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation to the commissioner: Provided, however, That anything to the contrary notwithstanding that any person claiming to be the holder of a mortgage, conditional sales contract or other security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than such claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel was going to be so used, the court shall either waive forfeiture in favor of such claimant and order the vehicle or vessel returned or delivered to such claimant or if it is found that the value thereof exceeds the amount of the claim, the court shall order payment of the amount of the claim out of the proceeds of the sale.

§11-17-28. Separability of provisions of article.

The various provisions of the several sections of article seventeen, contained in this act, shall be deemed to be separable insofar as they or their meaning is not inseparably connected, and if any provisions of this act shall be held unconstitutional, such holding shall not affect any of the other provisions of this act not inseparably connected
AN ACT to repeal article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the cigarette excise tax law.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of excise tax on use, consumption or storage of cigarettes.

Article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, defining the terms “endorser, guarantor and accommodator” within the personal income tax law.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, 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 nine-a, to read as follows:
ARTICLE 21. PERSONAL INCOME TAX.

Section

9a. Pledge of credit or collateral by endorser, guarantor or accommodator not to constitute investment in borrower.

§11-21-9a. Pledge of credit or collateral by endorser, guarantor or accommodator not to constitute investment in borrower.

1. Any person pledging his credit or collateral as an endorser, guarantor, or accommodator to another person or corporation for the purpose of assisting another in obtaining credit shall not be, or construed to be, an investor in said borrower as to the amount so borrowed,
2. nor shall any payments by said borrower on the indebtedness be, or construed to be, dividend to the endorser, guarantor or accommodator.

CHAPTER 196

(Com. Sub. for Senate Bill No. 315—By Mr. Carson, Mr. President, and Mr. Carrigan)

[Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six and ten, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition of a state and county excise tax on the privilege of transferring real property.

Be it enacted by the Legislature of West Virginia:

That sections two, six and ten, 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

2. Rate of tax; when and by whom payable; additional county tax.
6. Duties of clerk; declaration of consideration or value; disposition and use of proceeds.
10. Erroneous collections; refund.
§11-22-2. Rate of tax; when and by whom payable; additional county tax.

Every person who delivers, accepts or presents for recording any document, or in whose behalf any document is delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of one dollar and ten cents for each five hundred dollars value or fraction thereof as represented by such document as defined in section one hereof, which state tax shall be payable at the time of delivery, acceptance or presenting for recording of such document.

Effective January first, one thousand nine hundred sixty-eight and thereafter, there is hereby imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of fifty-five cents for each five hundred dollars value or fraction thereof as represented by such document as defined in section one hereof, which county tax shall be payable at the time of delivery, acceptance or presenting for recording of such document. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes: Provided, That only one such state tax and one such county tax shall be paid on any one document and shall be collected in the county where the document is first admitted to record, and the same shall be paid by the grantor therein unless the grantee accepts the same without such tax having been paid, in which event such tax shall be paid by the grantee: Provided, however, That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee.

§11-22-6. Duties of clerk; declaration of consideration or value; disposition 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, each instrument 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
duplicate deed shall be admitted to record, and when
recorded shall have the same effect for all purposes as if
stamps were attached thereto.

The clerk shall, at the end of the month, pay all of the
proceeds collected from the sale of stamps for the state
tax to the state auditor in the manner provided by
law which shall be credited to the state general revenue
fund.

The clerk shall, at the end of the month, pay all of the
proceeds collected from the sale of stamps for the county
tax into the county general fund for the use of the
county.

§11-22-10. Erroneous collections; refund.

Any person who may have been required to pay the
state tax provided for in this article because of any
mistake of law or fact or because the tax herein provided
for was improperly collected may apply for a refund
thereof either to the county clerk receiving such payment,
or to the state auditor.

Any person who may have been required to pay the
county tax provided for in this article because of any
mistake of law or fact or because the tax herein provided
for was improperly collected may apply for a refund
thereof to the county clerk receiving such payment.

CHAPTER 197

(Com. Sub. for Senate Bill No. 209—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed March 8, 1967; in effect July 1, 1967. 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-
four, imposing a tax on the net incomes of corporations and similar business organizations subject thereto as such incomes are defined therein, providing for the administration and collection thereof of said tax, and providing for penalties for violation of the provisions of said article.

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, be amended by adding thereto a new article, designated article twenty-four, to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

Table of Sections

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§11-24-35. Interest.
§11-24-36. Additions to Tax.
§11-24-37. Penalties.
§11-24-40. Effective Date; Severability.

§11-24-1. Legislative findings.

The Legislature hereby finds and declares that the adoption by this state for its corporation net income tax purposes of certain 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 corporation net income tax returns by taxpayers, (2) improve enforcement of the state corporation net income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state corporation net income tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does therefore declare that this article twenty-four be construed so as to accomplish the foregoing purposes.

§11-24-2. Short title; arrangement and classification.

This article may be cited as the “West Virginia Corporation Net Income Tax Act.” No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, nor shall the descriptive matter or headings relating to any
7 part, section, subsection or paragraph be given any legal
effect.

PART I—DEFINITIONS, IMPOSITION OF TAX
AND RATE, AND EXEMPTIONS


(a) General.—Any term used in this article shall
have the same meaning as when used in a comparable
context in the laws of the United States relating to federal
income taxes, unless a different meaning is clearly re-
quired by the context or by definition in this article. Any
reference in this article to the laws of the United States
or to the Internal Revenue Code or to the federal income
tax law shall mean the provisions of the laws of the
United States as relate to the determination of income
for federal income tax purposes. All amendments made
to the laws of the United States prior to the first day of
January, one thousand nine hundred sixty-seven, shall
be given effect in determining the taxes imposed by this
article for the tax period beginning the first day of July,
one thousand nine hundred sixty-seven, and thereafter,
but no amendment to laws of the United States made on
or after the first day of January, one thousand nine hun-
dred sixty-seven, shall be given effect.

(b) Certain Terms Defined.—For purposes of this
article:

(1) The term “tax commissioner” means the tax
commissioner of the state of West Virginia or his delegate.

(2) The term “corporation” means and includes
a joint stock company or any association which is taxable
as a corporation under the federal income tax law.

(3) The term “domestic corporation” means any
corporation organized under the laws of West Virginia.

(4) The term “foreign corporation” means any
corporation other than a domestic corporation.

(5) The term “state” means any state of the United
States, the District of Columbia, the Commonwealth of
Puerto Rico, any territory or possession of the United
States, and any foreign country or political subdivision
thereof.
(6) The term "taxable year" means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(7) The term "taxpayer" means a corporation subject to the tax imposed by this article.

(8) The term "tax" includes, within its meaning, interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

(9) The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(10) The term "compensation" means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

(11) The term "West Virginia taxable income" means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its "West Virginia taxable income" shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven.

(12) The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) "Nonbusiness income" means all income other than business income.

(14) The term "public utility" means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia, as amended.

(15) The term "this code" means the code of West
Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term “this state” means the state of West Virginia.

§11-24-4. Imposition of tax and rate.

(1) In the case of taxable years beginning after the thirtieth day of June, one thousand nine hundred sixty-seven, a tax is hereby imposed for each taxable year at the rate of six per centum per annum on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

(2) In the case of a taxable year beginning on the first day of January, one thousand nine hundred sixty-seven, and ending on the thirty-first day of December, one thousand nine hundred sixty-seven, a tax of one half of the rate set forth in paragraph (1) is hereby imposed for such taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

(3) In the case of taxable years, other than the year beginning on the first day of January, one thousand nine hundred sixty-seven, beginning after the thirtieth day of June, one thousand nine hundred sixty-six, and before the first day of July, one thousand nine hundred sixty-seven, a tax is hereby imposed on the West Virginia taxable income of every domestic or foreign corporation engaging in business in West Virginia or deriving income from property, activity or other sources in this state, except corporations exempt under section five, in an amount equal to that portion of the tax calculated in the manner set forth in paragraph (1) which the number of days in such taxable year after the thirtieth day of June, one thousand nine hundred sixty-seven, bears to the total number of days in such taxable year.
§11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax. Without limiting the generality of the preceding sentence and notwithstanding any contrary meaning of such term under the Internal Revenue Code, for the purposes of subsection (a) the term "unrelated business income" includes income from the sale by any private club, as defined in section two, article seven, chapter sixty of this code, of food and alcoholic liquors, other than in sealed packages, for consumption on its premises, and of services related thereto, to its members and their guests in accordance with the provisions of section two, article seven, chapter sixty of this code.

(b) Banks, banking associations, trust companies, building and loan associations and savings and loan associations.

(c) Insurance companies which pay this state a tax upon premiums: Provided, That this exemption shall not extend to income of any such corporation which is received for the use of real property other than property in which any such corporation maintains its place of business in this state, whether such income be in the form of rentals or royalties.

(d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(e) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended.

(f) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of
the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended, prior to the first day of January, one thousand nine hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General.—In determining the West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted by the items specified in this section.

(b) Adjustments Increasing Federal Taxable Income.—There shall be added to federal taxable income (unless already included in the computation of federal taxable income):

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof (other than this state and its political subdivisions and authorities), unless made exempt by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine; and

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal taxable income.

(c) Adjustments Decreasing Federal Taxable Income.—There shall be subtracted from federal taxable income:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;
(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includable in gross income for federal income tax purposes, but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes; and

(5) The amount of dividends received, to the extent included in federal taxable income.

(d) Adjustment Resulting from Recomputation of Net Operating Loss Deduction.—In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

(e) Special Adjustments for Expenditures for Water and Air Pollution Control Facilities.

(1) If the taxpayer so elects under paragraph (2) of this subsection, there shall be—

(A) subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in sec-
tion 48 (h) (12) (B) and (C) of the Internal Revenue Code, and

(B) added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in paragraph (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope and application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in subparagraphs (A) and (B) of paragraph (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.


(a) General.—Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in subsection (d) or by one of the methods provided in subsection (e). For purposes of this section, the term “net income” means the taxpayer's federal taxable income adjusted as provided in section six.

(b) “Taxable in Another State” Defined.—For purposes of allocation and apportionment of net income under
this section, a taxpayer is taxable in another state if (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) Business Activities Entirely within West Virginia.
—If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, the entire net income of such taxpayer is subject to the tax imposed by this article.

(d) Business Activities Partially within and Partially without West Virginia.—If the business activities of a taxpayer take place partially within and partially without this state and such taxpayer is also taxable in another state:

(1) Rents and royalties from real or tangible personal property, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in paragraphs (2) through (4).

(2) (A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable
year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(3) Interest is allocable to this state if the taxpayer’s commercial domicile is in this state.

(4) (A) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer’s commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer’s commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer’s commercial domicile is located.

(5) All net income, after deducting those items specifically allocated under paragraphs (1) through (4), shall be apportioned to this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used in this state during the taxable year and the denomi-
nator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year.

(B) Property owned by the taxpayer is valued at its original cost: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others is valued at eight times the annual rental rate.

(C) The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the tax commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(D) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year.

(E) Compensation is paid in this state if:

(i) the individual's service is performed entirely within the state; or

(ii) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(iii) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(e) Other Methods of Allocation.—(1) General.—If the allocation and apportionment provisions of subsection (d) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition
for or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) separate accounting;
(B) the exclusion of one of the factors;
(C) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
(D) the employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income.

(2) Alternative method for public utilities.—If the taxpayer is a public utility and if the allocation and apportionment provisions of subsection (d) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for or the tax commissioner may require, as an alternative to the other methods provided for in paragraph (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of Proof.—In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in paragraph (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (d) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall—

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or
(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.
§11-24-8. **Accounting periods and methods of accounting.**

(a) **Period of Computation of West Virginia Taxable Income.**—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) **Change of Taxable Year.**—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed.

(c) **Methods of Accounting.**—(1) **Same as federal.**—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, West Virginia taxable income for purposes of this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(2) **Change of accounting methods.**—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall be similarly changed.

(d) **Adjustments.**—In computing a taxpayer's West Virginia taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's West Virginia taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the tax commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(e) **Limitation on Additional Tax.**—(1) **Change other than to installment method.**—If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were rateably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer
used the method of accounting from which the change
is made.

(2) Change from accrual to installment method.—
If a taxpayer's method of accounting is changed from an
accrual to an installment method, any additional tax for
the year of such change of method and for any subse-
quent year which is attributable to the receipts of in-
stallment payments properly accruing in a prior year shall
be reduced by the portion of tax for any prior taxable
year attributable to the accrual of such installment pay-
ments, under regulations prescribed by the tax com-
missioner.

(f) Application of Federal Accounting Adjustments.—
Notwithstanding any of the other provisions of this sec-
tion, any accounting adjustments made for federal income
tax purposes for any taxable year shall be applied in
computing the taxpayer's taxable income for such taxable
year.

(g) Taxpayer Currently on the Installment Method of
Accounting.—If a taxpayer is using the installment
method of accounting at the time of the enactment of this
article, any tax for the year of the enactment of this
article and for any subsequent year which is attributable
to the receipts of installment payments properly accruing
in a period prior to the enactment of this article and
which were subject to the privilege tax as imposed by
article thirteen of chapter eleven of this code shall, under
regulations of the tax commissioner, be reduced by the
portion of such privilege tax previously paid on such
receipts.

§11-24-9. Credits against tax.

(a) Credit for Taxes Imposed under Article Thirteen,
Chapter Eleven of This Code.

A credit shall be allowed against the tax imposed by
this article equal to the amount of the liability of the
taxpayer for the taxable year for any tax imposed under
article thirteen, chapter eleven of this code: Provided,
That the amount of such credit shall not exceed the por-
tion of the tax imposed by this article which is attribut-
able to the West Virginia taxable income derived by the
taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: Provided further, That no such credit shall be allowed for any tax imposed under article thirteen with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

(b) Credit for Taxes Imposed under Article Twelve-A, Chapter Eleven of This Code.

A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: Provided further, That no such credit shall be allowed for any tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

§§11-24-10 through 11-24-12. (Reserved for future use.)

PART II—RETURNS, DECLARATIONS AND PAYMENT OF TAX


(a) Time for Filing.—On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article.

(b) Consolidated Returns of Corporations.—Any corporation subject to tax under this article which is affiliated through controlling stock ownership with one or more other corporations shall be permitted, under regulations prescribed by the tax commissioner, to make a
11 consolidated return showing the consolidated taxable income of all such affiliated corporations wherever incorporated, and such other information as the tax commissioner may require to establish the West Virginia taxable income of the consolidated group. If such corporation does not make a consolidated return, the tax commissioner may, if he determines that the intercompany prices or transactions of such corporation have been artificially arranged to shift taxable income from itself to another member or members of its affiliated group not subject to tax under this article, require such corporation to make a consolidated return in order clearly to reflect the taxable income of such corporation. In the event that such a consolidated return is filed, whether voluntarily or by requirement of the tax commissioner, the net income or loss of each member of the group, after proper intercorporate eliminations, shall be consolidated pursuant to regulations prescribed by the tax commissioner to produce the consolidated taxable income of the group, and the tax imposed by this article shall be computed and assessed upon the taxable income of the consolidated group, determined according to the provisions of section seven, in the application of which the consolidated group shall be treated as the taxpayer.

§11-24-14. Time and place for filing returns and paying tax.

A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the tax commissioner on or before the date fixed for filing such return determined without regard to any extension of time for filing the return. The tax commissioner shall prescribe by regulation the place for filing any return, statement or other document required to be filed by this article and for the payment of any tax.


(a) Any return, statement or other document required to be made pursuant to this article shall be filed in accordance with regulations or instructions prescribed by the tax commissioner. The fact that an individual’s name
is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him. The fact that a return, statement or other document is signed by an officer of a corporation shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the corporation.

(b) The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this article, including a copy of a federal return, shall constitute a certification by the person, corporation or officer making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.


(a) Requirement of Declaration.—Every corporation subject to tax under this article shall make a declaration of estimated tax for the taxable year if its West Virginia taxable income can be reasonably expected to exceed ten thousand dollars.

(b) Definition of Estimated Tax.—The term "estimated tax" means the amount which a corporation estimates to be its income tax under this article for the taxable year, less an amount which such corporation estimates to be the sum of any credits allowable against the tax.

(c) Contents of Declaration.—The declaration shall contain such pertinent information as the tax commissioner may by forms or regulations prescribe, including, but not limited to, such detailed information as may be necessary to clearly reflect the estimated West Virginia taxable income of the corporation for the taxable year.

(d) Amendment of Declaration.—A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the tax commissioner.

(e) Time for Filing Declaration.—If the requirements of subsection (a) are first met before the first day of the fourth month of the taxable year a declaration of esti-
mated tax of a corporation shall be filed on or before the fifteenth day of the fourth month of the taxable year, except that if the requirements of subsection (a) are first met—

(1) after the last day of the third month and before the first day of the sixth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the sixth month of the taxable year, or

(2) after the last day of the fifth month and before the first day of the ninth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the ninth month of the taxable year, or

(3) after the last day of the eighth month and before the first day of the twelfth month of the taxable year, the declaration shall be filed on or before the fifteenth day of the twelfth month of the taxable year.

(f) Declaration of Estimated Tax of One Hundred Dollars or Less.—A declaration of estimated tax of a corporation having a total estimated tax for the taxable year of one hundred dollars or less may be filed at any time on or before the fifteenth day of the first month of the succeeding taxable year under regulations of the tax commissioner.

(g) Return as Declaration or Amendment.—If on or before the fifteenth day of the second month of the succeeding taxable year a corporation files its return for the taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as such corporation's declaration, if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before the fifteenth day of the first month of the succeeding taxable year.

(2) Such return, if filed on or before such applicable date shall be considered an amendment permitted by subsection (d) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.
§11-24-17. Payments of estimated tax.

(a) *Installment Payments.*—The estimated tax of a corporation with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on the following fifteenth days of the sixth, ninth and twelfth months of the taxable year, respectively.

(2) If the declaration is filed after the fifteenth day of the fourth month and not after the fifteenth day of the sixth month of the taxable year, and is not required to be filed on or before the fifteenth day of the fourth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following fifteenth days of the ninth and twelfth months of the taxable year, respectively.

(3) If the declaration is filed after the fifteenth day of the sixth month and not after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the sixth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following fifteenth day of the twelfth month of the taxable year.

(4) If the declaration is filed after the fifteenth day of the ninth month of the taxable year, and is not required to be filed on or before the fifteenth day of the ninth month of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) of this subsection shall not apply, and there shall be paid at
the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Amendments of Declaration by Any Corporation.

—If any amendment of a declaration is filed by a corporation, the remaining installments, if any, shall be rateably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) Application to Short Taxable Year.—This section shall apply to a taxable year of less than twelve months in accordance with regulations of the tax commissioner.

(d) Installment Paid in Advance.—Any corporation may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.


(a) General.—The tax commissioner may grant a reasonable extension of time for payment of tax or estimated tax (or any installment), or for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as he may require.

(b) Amount Determined as Deficiency.—The tax commissioner may, under regulations, extend the time for payment of an amount determined as a deficiency for a period not to exceed eighteen months from the date designated for payment of the deficiency, and under exceptional circumstances, for a further period not to exceed twelve months. An extension under this subsection may be granted only where it is established to the satisfaction of the tax commissioner that the payment of a deficiency upon the date designated for payment would result in undue hardship. No extension shall be granted if any part of the deficiency is due to intentional disregard of rules and regulations or to fraud.
(c) **Claims in Bankruptcy or Receivership Proceedings.**

Extension of time for payment of any portion of a claim for tax allowed in bankruptcy, receivership or similar proceedings, which is unpaid, may be granted subject to the same provisions and limitations as in the case of a deficiency in such tax.

(d) **Furnishing of Security.**—If any extension of time is granted for payment of any tax or deficiency, the tax commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding the amount for which the extension of time for payment is granted on such terms and conditions as the tax commissioner may require.

§11-24-19. **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 corporation, by regulation or notice served upon such corporation, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

(b) **Information at Source.**—The tax commissioner may prescribe regulations and instructions requiring returns of information to be made by 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.

(c) **Notice of Qualification as Receiver, Etc.**—Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his

If the amount of a taxpayer’s federal taxable income reported on its federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal taxable income within ninety days after the final determination of such change, correction or renegotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the tax commissioner may require. The tax commissioner may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.


Any election expressly authorized by this article, other than any election expressly stated to be irrevocable, may be changed on such terms and conditions as the tax commissioner may prescribe by regulation.

§§11-24-22 through 11-24-25. (Reserved for future use.)

PART III—PROCEDURE AND ADMINISTRATION


(a) Regulations.—The tax commissioner shall administer and enforce the tax imposed by this article. He shall make all needful regulations, rules and interpretations thereof as provided in article three, chapter twenty nine-a of this code and shall file the same with the secretary of state of West Virginia as provided in article two, chapter twenty nine-a of this code.

(b) Investigations.—The tax commissioner for the purpose of ascertaining the correctness of any returns or for
the purpose of making an estimate of any taxpayer’s in-
come subject to tax under this article shall have the power
to examine or cause to be examined, by any agent or
any representative designated by the tax commissioner,
any books, papers, records or memoranda bearing upon
the matters required to be included in the return and
may require the attendance of the person rendering the
return or the attendance of any other person having
knowledge in the premises and may take testimony and
may require material proof with power to administer
oath to such person or persons.

(c) Returns by Tax Commissioner.—If any taxpayer
fails to file a return at the time required by law or by
regulation made under authority of law, the tax commis-
sioner may proceed to make a return from any informa-
tion available.

(d) Secrecy of Returns.—Except when required in an
official investigation or proceedings in court involving
taxes payable under this article and except as provided
in subsection (e) of this section, it shall be unlawful
for any officer or employee of the state to divulge or
make known in any manner the amount of income or any
particulars set forth or disclosed in any report, declara-
tion or return required to be filed with the tax commis-
sioner by this article or by any regulation of the tax com-
missioner issued hereunder.

(e) Reciprocal Exchange.—The tax commissioner may
permit the proper officer of the United States or any state,
territory or political subdivision of the United States, or
his authorized representative, to inspect reports, declara-
tions, or returns filed with the tax commissioner or may
furnish to such officer or representative a copy of any
such document provided such other jurisdiction grants
substantially similar privileges to the tax commissioner
or to the attorney general of this state. Subsection (d) of
this section shall not be construed to prohibit the publica-
tion of statistics so classified as to prevent the identifica-
tion of particular reports and the items thereof.

(f) Service of Notice.—Any written notice required by
this article shall, unless otherwise specifically provided,
§11-24-27. Assessment.

(a) Assessment of Deficiencies.—Whenever the tax commissioner shall determine that any tax due under this article has not been paid in full, the tax commissioner shall make an assessment against the taxpayer of such deficiency in tax, addition to tax, interest or penalties as he may find to be due, and shall serve the taxpayer with written notice of such assessment, either in person or by certified mail. For purposes of this article such written notice is termed a “notice of assessment.”

(b) Jeopardy Assessment.—If the tax commissioner believes that the assessment or collection of a deficiency, as defined in subsection (a), or the collection of any tax due under this article, will be jeopardized by delay, he shall, notwithstanding the provisions of section twenty-eight of this article, immediately make an assessment of such deficiency or such tax due (together with all additional amounts, interest or penalties provided for by this article), noting that fact upon the assessment. The amount so assessed shall be immediately due and payable, and a notice of assessment and demand for the payment thereof shall be served upon the taxpayer. Unless the taxpayer against whom a jeopardy assessment is made petitions the tax commissioner for reassessment within twenty days after service of notice of the jeopardy assessment, such assessment shall become final: Provided, That the tax commissioner may, upon the written request of the taxpayer made within such twenty-day period, showing reasonable cause therefor, grant an extension of time not to exceed thirty additional days within which such petition may be filed. A petition for reassessment by a taxpayer against whom or which a jeopardy assessment has been made shall be accompanied by such security as the tax commissioner may deem necessary to insure compliance with this article. If such petition for reassessment is filed, accompanied by the necessary security, the provisions for hearing, determination and appeal set forth in section twenty-eight shall then be applicable.
(c) Abatement of Assessments.—The tax commissioner may abate in whole or in part any assessment which he shall determine to be erroneous.


(a) Informal Proceedings.—(1) General.—Prior to assessing a deficiency and giving a notice of assessment as provided in section twenty-seven, the tax commissioner shall notify the taxpayer in writing by certified mail that he proposes to make such assessment and shall afford the taxpayer in person or by his representative an opportunity to be heard with respect to the proposed assessment, either by the filing of a written protest against the proposed assessment or by informal conference or both.

(2) Written protest.—The tax commissioner shall, by regulations, prescribe the circumstances under which the taxpayer shall be required to file a written protest and the formal requirements thereof. Such written protest, whether the filing thereof is required by the tax commissioner or whether it is filed voluntarily by the taxpayer, shall be filed by the taxpayer within thirty days after the receipt by the taxpayer of the tax commissioner’s written notice of the proposed assessment. The tax commissioner may, upon the written request of the taxpayer made within such thirty-day period, showing reasonable cause therefor, grant an extension of time within which such protest may be filed.

(3) Time and place for hearing.—The tax commissioner shall assign a time and place for any hearing on the proposed assessment and shall notify the taxpayer of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of a written protest or within ninety days after the date of the tax commissioner’s notice of the proposed assessment, whichever is later, unless continued by agreement or by the tax commissioner for cause.

(4) Determination by tax commissioner.—(A) After the hearing on a proposed assessment the tax commissioner shall, within a reasonable time, give the taxpayer written notice of his determination. If the tax com-
missioner determines that any tax is due from the taxpayer, he shall make an assessment as provided in section twenty-seven (a).

(B) If the taxpayer fails to file a written protest when required to do so by the tax commissioner, or if the taxpayer fails to request an informal hearing, or if the taxpayer having requested a hearing fails to appear, the tax commissioner shall then, in any case, make an assessment as provided in section twenty-seven (a).

(C) Except as provided in subsection (b) (2), any assessment made pursuant to section twenty-seven (a) and subsection (a) of this section shall be payable at the expiration of ninety days from the date of the notice of assessment unless the taxpayer takes an appeal from such assessment as provided in subsection (c) of this section.

(b) Exceptions for Mathematical Errors; Collection of Balance Due on Return without a Remittance.—(1) When a mathematical error appears on the face of a return (including an overstatement of the credit for the amount paid as estimated tax), the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency in tax; and the taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the tax commissioner shall, notwithstanding the provisions of subsection (a) of this section, promptly make an assessment of such deficiency in tax against the taxpayer and shall give the taxpayer written notice thereof.

(2) If a taxpayer files a mathematically correct return which reflects a balance due of the tax imposed by this article, and if no payment thereof has been made, the tax commissioner shall notify the taxpayer, in writing, of the amount of tax, additions to tax, interest or penalties due, and the taxpayer shall have fifteen days after receipt of such notice within which to make such payment. If the taxpayer fails to make payment within such fifteen-day period the tax commissioner shall, notwithstanding the provisions of subsection (a) of this section, promptly
make an assessment against the taxpayer for such amount
due and shall give the taxpayer written notice thereof.
Notwithstanding the provisions of subsection (c) of this
section, the amount of such assessment shall be immedi-
ately due and payable.

(c) Appeal.—(1) An appeal may be taken by the tax-
payer to the circuit court of the county in which the tax-
payer engages in or carries on business, or, at the election
of the taxpayer, to the circuit court of the county in which
the seat of the state government is located, within ninety
days after the date of the notice of assessment.

(2) The appeal shall be taken by the filing of a
petition and notice which petition and notice shall be
served upon the tax commissioner as an original notice.
When said petition and notice is so served it shall, with
the return thereon, be filed in the office of the clerk of the
circuit court and docketed as other cases with the tax-
payer as plaintiff and the tax commissioner as defendant.
Before the appeal is heard, the plaintiff shall file with
such clerk a bond for the use of the defendant, with sure-
ties approved by said clerk, the penalty of the bond to be
not less than the total amount of the tax, interest and
penalties appealed from, and conditioned that the plaintiff
shall perform the orders of the court; except that in lieu
of said bond, the tax commissioner may upon a proper
showing find and certify to said clerk that the properties
of the plaintiff subject to the liens imposed by sections
twenty-nine and thirty of this article are adequate to
secure the performance of the orders of the court.

(3) The court shall hear the appeal and determine
anew all questions submitted to it on appeal from the
determination of the tax commissioner. Any pleadings
filed by the taxpayer or the tax commissioner may be
amended upon leave of the court any time prior to the
final determination by the court. In such appeal a certi-
fied copy of the tax commissioner's notice of assessment
shall be admissible and shall constitute prima facie evi-
dence of the tax due under the provisions of this article:
Provided, That the tax commissioner shall have the
burden of proof on any new issue raised by him subse-
quent to the commencement of the appeal proceeding. The
court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

§11-24-29. Collection.

(a) General.—The tax commissioner shall collect the taxes, additions to tax, interest and penalties imposed by this article. In addition to all other remedies available for the collection of debts due the state, the tax commissioner may proceed by foreclosure of the lien provided in section thirty, or by distraint and sale under section thirty-one. Every assessment made by the tax commissioner under this article which has become final and is not subject to appeal by the taxpayer under section twenty-eight (c) shall constitute a judgment and may be collected as judgments are collected.

(b) Prerequisite to Final Settlement with Nonresident Contractor; User Personally Liable.

(1) Any person contracting with a nonresident contractor subject to the provisions of this article shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six per centum of the contract price, as will in such person's opinion be sufficient, until the receipt of a certificate from the tax commissioner to the effect that all taxes imposed by this article against the contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided herein, such person shall be personally liable for the payment of all such taxes, and the same shall be recoverable by the tax commissioner by appropriate legal proceedings.

(c) Prerequisite for Issuance of Certificate of Dissolution or Withdrawal of Corporation.—The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business
in this state, until the receipt of a notice from the tax
commissioner to the effect that the tax imposed by this
article against any such corporation has been paid or pro-
vided for, if any such corporation is a taxpayer under this
article, or until the secretary of state shall be notified by
the tax commissioner that the applicant is not liable for
any tax imposed by this article.

(d) Prerequisite to Final Settlement with State or
Political Subdivision Contractor; Penalty.—All state,
county, district and municipal officers and agents mak-
ing contracts on behalf of the state of West Vir-
ginia, or any political subdivision thereof, shall with-hold payment, in the final settlement of any such
contract, until the receipt of a certificate from the
tax commissioner to the effect that all taxes imposed
by this article against the contractor have been paid.
Any official violating this section shall be guilty of
a misdemeanor, and, on conviction thereof, shall be
fined not more than one thousand dollars or impris-
oned not exceeding one year in the county jail or
shall be subject to fine and imprisonment in the dis-
cretion of the court.

(e) Payment When Person Sells Out or Quits Busi-
ness; Lien.

(1) If any person subject to tax under this article
sells out his or its business or stock of goods, or shall cease
doing such business, any tax, interest, additions to tax and
penalties imposed by this article shall become due and
payable immediately, and such person shall make a final
return and remit the entire tax that may be chargeable
against him because of all business done, within thirty
days after selling out his or its business or stock of goods,
or ceasing to do such business. The tax imposed by this
article shall be a lien upon the property of such person.

(2) The successor in business of any such person
shall withhold so much of the purchase money as will sat-
ify the tax, interest, additions to tax and penalties which
may be due until the former owner shall produce a receipt
from the tax commissioner evidencing the payment there-
of. If the purchaser of a business or stock of goods shall
74 fail to withhold purchase money as above provided, and
75 such tax, interest, additions to tax and penalties remain
76 unpaid after expiration of the thirty-day period allowed
77 for payment thereof, the purchaser shall be personally
78 liable for the payment of all such tax, interest, additions
79 to tax and penalties, and the same shall be recoverable by
80 the tax commissioner by action or suit as provided by
81 this section.

82 (f) Injunction.—If the taxpayer fails to comply with
83 any of the provisions of this article for a period of more
84 than sixty days, the tax commissioner may institute a
85 proceeding to secure an injunction to restrain the tax-
86 payer from doing business in this state until the tax-
87 payer fully complies with the provisions of this article.

88 (g) “Person” Defined.—The term “person” as used in
89 this section includes, but is not limited to, any individual,
90 firm, partnership, limited partnership, joint venture, as-
91 sociation, corporation, organization, receiver, estate, trust
92 or any other group or combination acting as a unit.

93 (h) “Contractor” Defined.—The term “contractor” as
94 used in this section means any person engaged in the
95 business of furnishing labor or materials or both labor
96 and materials in the fulfillment of any contract, either
97 written or oral, for the construction, alteration, repair
98 or improvement of a new or existing building or structure
99 or any part thereof or for the alteration, improvement
100 or development of real property.


(a) If any person liable to pay any tax assessed under
2 this article neglects or refuses to pay the same within ten
3 days after written notice of assessment of the same, the
4 amount of said tax, including any additions to tax, interest
5 and penalties, together with any costs that may accrue,
6 shall become a lien in favor of the state of West Vir-
7 ginia upon all property and rights to property whether
8 real or personal belonging to such person.

9 (b) The lien imposed by this section shall arise at the
10 time the assessment is made and shall continue until the
11 liability for the amount so assessed shall be satisfied or
12 becomes unenforceable by reason of lapse of time.
(c) The lien imposed by this section shall be subject to the restrictions and conditions embodied in article ten-c, chapter thirty-eight of this code and any amendment made or which may hereafter be made thereto.

(d) The tax commissioner, pursuant to regulations prescribed by him, may issue his certificate of release of any lien imposed pursuant to this section upon finding that the liability for the amount assessed has been fully satisfied or has become legally unenforceable or is adequately secured by bond or other security.

(e) For purposes of this section, the meaning of the term “person” is the same as that provided in section twenty-nine (g).


If any tax imposed by this article required to be paid at the time a return is filed, or any portion of such tax be not so paid, or if an assessment of the tax be made by the tax commissioner and notice thereof be given as required by this article and such assessment has become final and is not subject to appeal by the taxpayer under section twenty-eight (c), or if any installment of a tax be not paid within thirty days after the same becomes due, the tax commissioner may issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer owing the same found within his county for the payment of the amount thereof with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the tax commissioner and pay to him the money collected by virtue thereof by a time to be therein specified and not less than sixty days from the date of such warrant. In case the tax commissioner shall find that the collection of a tax would be jeopardized by the delay of thirty days, as above provided, he may issue his warrant within said period. The sheriff shall within five days after the receipt of the warrant file with the clerk of the county court a copy thereof and thereupon the clerk shall enter in the judgment docket the name of the taxpayer mentioned in the warrant and the amount of the tax or portion thereof and penalties for which the
warrant is issued and the date when such copy is filed and
thereupon the amount so docketed shall become a lien
upon the title to and interest in real property or chattels
real of the person against whom it is issued in the same
manner as a judgment duly docketed in the office of such
clerk. The said sheriff shall thereupon proceed upon the
same in all respects, with like effect, and in the same man-
ner prescribed by law in respect to executions issued
against property upon judgments of a court of record, and
shall be entitled to the same fees for his services in exe-
cuting the warrant, to be collected in the same manner.
In the discretion of the tax commissioner a warrant of
like terms, force and effect may be issued and directed to
any officer or employee of the tax commissioner and in
the execution thereof such officer or employee shall have
all the powers conferred by law upon sheriffs, but shall
be entitled to no fee or compensation in excess of actual
expenses paid in the performance of such duty. If a war-
rant be returned not satisfied in full, the tax commissioner
shall have the same remedies to enforce the claim for
taxes against the taxpayer as if the state had recovered
judgment against the taxpayer for the amount of the tax.

§11-24-32. Overpayments, credits and refunds.

(a) Refunding of Overpayments.—In the case of any
overpayment of any tax, addition to tax, interest or pen-
talties imposed by this article, whether by reason of error
on the part of the taxpayer or an erroneous assessment of
tax, the tax commissioner shall refund the amount of the
overpayment to the taxpayer. If any overpayment is not
refunded within six months from the date a claim for the
refund thereof is filed by the taxpayer, interest shall be
paid upon the amount of such overpayment at the rate of
six per centum per annum from the date of the overpay-
ment. The tax commissioner may prescribe by regulation
the form and content of a claim for refund.

(b) Credits.—At the request of the taxpayer and with
the approval of the tax commissioner, the amount of any
overpayment (including interest) may be applied by the
taxpayer as a credit against the taxpayer's liability for
taxes under this article for subsequent periods.
Petitions for Refund.—In the event that any overpayment of tax, addition to tax, interest or penalty paid under this article is not refunded or credited pursuant to subsection (a) or (b) within six months after the filing of a claim for the refund thereof, or in the event such claim is denied by the tax commissioner, the taxpayer may file a petition for refund pursuant to section two-a of article one, chapter eleven of this code. Notwithstanding the period of limitations prescribed in said section, a taxpayer may file a petition for refund at the latest within six months after a final determination by the United States Internal Revenue Service or other competent authority of an overpayment in the taxpayer's federal income tax liability.

§11-24-33. Limitations on assessment.

(a) General Rule.—The amount of any tax imposed by this article shall be assessed within five years after the due date of the return: Provided, That in the case of a false or fraudulent return filed with the intent to evade tax or in the case no return is filed the tax may be assessed or a proceeding in court for the collection of such tax may be begun at any time: Provided further, That in the event the tax commissioner notifies the taxpayer of a proposed assessment pursuant to section twenty-eight, within five years after the due date of the return, the assessment may be made when the tax commissioner makes the determination provided in section twenty-eight.

(b) Extension by Agreement.—The tax commissioner and the taxpayer may by a written agreement extend the period within which the tax may be assessed in accordance with regulations promulgated by the tax commissioner.

(c) Deficiency in Federal Tax.—In the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation upon assessment of a deficiency reflecting said final determination in the tax imposed by this article shall not expire until ninety days after the tax commissioner is advised of the determination by the taxpayer as provided in section twenty.
§11-24-34. Limitations on collection.

No proceeding shall be maintained in any court to collect any tax imposed by this article or to subject any property to sale under the lien provided for in section thirty after the expiration of the period of limitation on assessment provided in section thirty-three, unless the tax was assessed prior to the expiration of such period.

§11-24-35. Interest.

Taxes imposed by this article, if not paid when due, shall bear interest at the rate of six per centum per annum from the due date of the return. Each assessment made by the tax commissioner shall bear interest at the rate of six per centum per annum from the date thereof if not paid within ten days from receipt of notice thereof by the taxpayer.

§11-24-36. Additions to tax.

(a) Delinquency.—In the case of any failure to make or file a return or whenever the full amount of the tax or any portion thereof as shown on a return has not been paid as required by this article, unless it be shown that such failure be due to reasonable cause there shall be added to the tax five per centum if a failure is not for more than thirty days with an additional five per centum for each additional thirty days or fraction thereof during which failure shall continue not to exceed twenty-five per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect by the tax commissioner in which case the amount so added shall be collected in the same manner as the tax: Provided, That in all cases of delinquency, interest shall be assessed.

(b) Fraud.—In the case of the filing of any false or fraudulent return with intent to evade the tax imposed by this article, or in the case of a wilful failure to file a return with intent to evade the tax, there shall be added to the tax an amount equal to fifty per centum thereof which shall be in lieu of the addition to the tax provided for in
subsection (a). The burden of proving fraud, wilfulness, or intent to evade tax shall be upon the tax commissioner.

§11-24-37. Penalties.

(a) *Failure to Collect, Account For, and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who wilfully fails to truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall, in addition to other penalties provided by law, be liable to a money penalty equal to the total amount evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section thirty-six for any offense to which this section is applicable.

(b) *"Person" Defined.*—The term "person" as used in this section includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

(c) *Collection of Penalty.*—Any money penalty may be collected in the same way as the tax imposed by this article.


(a) *Failure to File Returns, Submit Information, or Pay Tax.*—Any person required under this article to pay any tax or estimated tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax or estimated tax imposed by this article, who, at the time or times required by law, wilfully fails to pay such tax or estimated tax, make such return or declaration, keep such records, or supply such information, or wilfully furnishes false and fraudulent information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than one thousand dollars or
imprisoned for not more than one year, or both, together
with the costs of prosecution.

(b) **Failure to Collect and Pay Over Tax, or Attempt
to Defeat or Evade Tax.**—Any person required under this
article to collect, account for, and pay over any tax im-
posed by this article, who wilfully fails to collect or truth-
fully to account for and pay over such tax, and any person
who wilfully attempts in any manner to evade or defeat
any tax imposed by this article or the payment thereof,
shall in addition to other penalties provided by law, be
guilty of a misdemeanor, and, upon conviction thereof, be
fined not more than one thousand dollars or imprisoned
for not more than one year, or both, together with the
costs of prosecution.

(c) **False Returns or Certification.**—Any person who
wilfully makes and subscribes a return which he does not
believe to be true and correct as to every material matter,
or who wilfully makes a certification (as defined in sub-
section (b) of section fifteen) that is false, shall be guilty
of a misdemeanor, and, upon conviction thereof, shall be
fined not more than one thousand dollars or imprisoned
for not more than one year, or both, together with the
costs of prosecution.

(d) **“Person” Defined.**—The term “person” as used in
this section includes, but is not limited to, an officer or
employee of a corporation, or a member or employee of a
partnership, who, as such officer, employee or member,
is under a duty to perform the act in respect of which the
violation occurs.

(e) **State Officers or Employees.**—Any officer or em-
pLOYEE of the state who violates subsection (d) of section
twenty-six shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars or imprisoned for not more than one
year, or both, together with the costs of prosecution.

(f) **Certificate of Tax Commissioner as Evidence.**—The
certificate of the tax commissioner to the effect that
a tax has not been paid, that a return has not been filed,
or that information has not been supplied as required
by or under the provisions of this article shall be evidence
that such tax has not been paid, that such return has not
been filed, or that such information has not been supplied.

(g) Venue.—The tax commissioner or any other public
officer initiating proceedings against any person under
this section shall do so in the county wherein such person
resides, or if such person be a nonresident, then in the
county wherein such nonresident is employed, or, if
such nonresident is not employed in this state then in
the county in which the seat of the state government is
located.


Pursuant to the Legislature's authority under section
one of article ten of the constitution of this state, where-
by the Legislature is authorized to impose a tax upon
incomes of persons and corporations and to classify and
graduate the tax on all incomes according to the amount
thereof and to exempt from taxation incomes below a
minimum to be fixed by the Legislature, and whereby
revenues so derived may be appropriated as the Legisla-
ture may provide, of the revenue collected under this
article the state treasurer shall retain in his hands such
amount as the tax commissioner may determine to be
necessary for refunds to which taxpayers shall be entitled
under this article and on or before the tenth day of each
month the state treasurer shall, after reserving such
refund amount, pay all interests, penalties and taxes col-
clected under this article, and remaining to his credit in
banks, banking houses or trust companies at the close
of business on the last day of the preceding month, into
the general fund of the state treasury.

§11-24-40. Effective date; severability.

(a) Effective Date.—The provisions of this article shall
take effect on the first day of July, one thousand nine
hundred sixty-seven.

(b) Severability.—If any provision of this article or
the application thereof shall for any reason be adjudged
by any court of competent jurisdiction to be invalid, such
judgment shall not affect, impair or invalidate the re-
mainder of said article, but shall be confined in its opera-
tion to the provision thereof directly involved in the con-
AN ACT to amend and reenact sections fourteen and fifteen, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that clerk of county court certify delinquent personal property lists to state auditor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

Section

14. Correction of delinquent lists by county court; certification to auditor; recordation.

15. Examination of lists by auditor; credit to sheriff.

§11A-2-14. Correction of delinquent lists by county court; certification to auditor; recordation.

1 The sheriff shall on or before June fifteenth present the delinquent lists to the county court for examination. The court having become satisfied that the lists are correct, or having corrected them if erroneous, shall direct the clerk of the court to certify a copy of each list, pertaining to real property, to the auditor not later than July first. The original lists shall be preserved by the clerk in his office, and the list of delinquent real estate shall be recorded in a permanent book to be kept by him for that purpose.
§11A-2-15. Examination of lists by auditor; credit to sheriff.
1 It shall be the duty of the auditor to examine each list
2 pertaining to real property, and if he has reason to be-
3 lieve that it is erroneous, he shall return it to the county
4 court for correction, stating his reasons why it should
5 be corrected as to any person or subject listed therein.
6 The auditor shall credit the sheriff with all state taxes
7 mentioned in each list.

CHAPTER 199
(Senate Bill No. 261—By Mr. Carson, Mr. President, and
Mr. Brotherton)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article
three, chapter eleven-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to delinquent lands, the accounting by the sheriff for
the proceeds from all sales and redemptions with respect
thereto and the disposition of any surplus realized from
the sale of delinquent lands.

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

ARTICLE 3. SALE OF LAND FOR TAXES.
Section
37. Sheriff to account for proceeds; disposition of surplus.

§11A-3-37. Sheriff to account for proceeds; disposition of
surplus.

The sheriff shall account for the proceeds of all sales
and redemptions included in such list in the same way
he accounts for other taxes collected by him, except that
if the purchase money paid for any property sold is in
excess of the amount of taxes, interest and charges due
thereon, the surplus shall be deposited in a special county
fund to be known and designated as the "Sale of Land Surplus Fund," and disposed of as follows:

(a) In any case where the property was redeemed, such surplus shall be distributed to the person or persons who redeemed such property, or the heirs, devisees, legatees, executors, administrators, successors or assigns thereof, if a proper claim therefor is filed with the sheriff within two years from and after the date of the sale; or

(b) If a claim as specified in subdivision (a) hereof is not timely filed, or if there were no redemption, such surplus shall be distributed to the person or persons who owned the property at the time of the sale, or the heirs, devisees, legatees, executors, administrators, successors or assigns thereof, if a proper claim thereof is filed with the sheriff within three years from and after the date of the sale; or

(c) If there be no proper claim filed under either subdivision (a) or (b) within the time limits aforesaid, all claims to such surplus shall be forfeited and such surplus shall be distributed by the sheriff in the manner provided by law for the distribution of property taxes collected by him.

All real estate included in the first delinquent list sent to the auditor, and not accounted for in the list of sales, suspensions and redemptions, shall be deemed to have been redeemed before sale, and the taxes, interest and charges due thereon shall be accounted for by the sheriff as if they had been received by him before the sale.

CHAPTER 200

(Com. Sub. for House Bill No. 762—By Mr. Speaker, Mr. White, and Mr. Kopp)

[Passed March 11, 1967; in effect April 1, 1967. Approved by the Governor.]

AN ACT to repeal section twenty-two, article seven, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and
reenact section five, article two; section seven, article three; section five, article four; section five, section seven, section ten and section ten-a, article five; section three and section ten, article six; section eleven and section seventeen, 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 one-b, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article seven, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section five, article two; section seven, article three; section five, article four; section five, section seven, section ten and section ten-a, article five; section three and section ten, article six; section eleven and section seventeen, 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 one-b, all to read as follows:

Article
4. Board of Review.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

Section
5. Compensation; traveling expenses.

§21A-2-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the commissioner of employment security shall receive a yearly salary of sixteen thousand dollars and the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

ARTICLE 3. ADVISORY COUNCIL.

Section
7. Honorarium and traveling expenses.
§21A-3-7. Honorarium and traveling expenses.

1 Each member of the council shall receive an honorarium of thirty-five dollars for each day actually served in attendance at meetings of the council and such traveling expenses as are incurred in the performance of his duties under the provisions of this chapter.

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

3 Members shall not be compensated for more than thirty days' service in any year.

ARTICLE 4. BOARD OF REVIEW.

Section 5. Compensation.

§21A-4-5. Compensation.

1 Notwithstanding the provisions of section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, each member of the board shall receive an annual salary of nine thousand dollars and the necessary traveling expenses incurred in the performance of his duties.

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

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

Section 5. Rate of contribution.

§21A-5-5. Rate of contribution.

1 On and after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths per cent of wages paid by him with respect to employment during each calendar year beginning with

1 (1) The commissioner shall maintain a separate account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one per cent of taxable wages: Provided, That any adjustment made in an employer's account after the computation date shall not be used in the computation of the balance of an employer until the next following computation date: Provided further, That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his behalf or on behalf of such individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

2 (2) Benefits paid to an eligible individual for total unemployment beginning after the effective date of this act shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer's account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: And provided further, That benefits paid to an eligible individual for partial unemployment beginning after the effective date of this act shall be charged to the account of the claimant’s current employer.

3 (3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on their own
behalf and with respect to benefits charged against
their accounts, with a view of fixing such contribution
rates as will reflect such experiences. For the purpose
of fixing such contribution rates for each calendar year,
the books of the department shall be closed on July
thirty-one of the preceding calendar year, and any con-
tributions thereafter paid, as well as benefits thereafter
paid with respect to compensable weeks ending on or
before June thirty of the preceding calendar year, shall
not be taken into account until the next annual date
for fixing contribution rates: Provided, however, That
if an employer has failed to furnish to the commissioner
on or before July thirty-one of such preceding calendar
year the wage information for all past periods necessary
for the computation of the contribution rate, such em-
ployer's rate shall be, if it is immediately prior to such
July thirty-one, less than three and three-tenths per cent,
increased to three and three-tenths per cent: Provided
further, That any payment made or any information
necessary for the computation of a reduced rate furnished
on or before the termination of an extension of time
for such payment or reporting of such information
granted pursuant to a regulation of the commissioner
authorizing such extension, shall be taken into account
for the purposes of fixing contribution rates: Provided
further, That when the time for filing any report or
making any payment required hereunder falls on Satur-
day, Sunday, or a legal holiday, the due date shall be
deemed to be the next succeeding business day: And
provided further, That whenever through mistake or
inadvertence erroneous credits or charges are found to
have been made to or against the reserve account of any
employer, the rate shall be adjusted as of January
one of the calendar year in which such mistake or in-
advertence is discovered, but payments made under any
rate assigned prior to January one of such year shall
not be deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for
the establishment, maintenance, and dissolution of joint
accounts by two or more employers, and shall, in ac-
cordance with such regulations and upon application by
two or more employers to establish such an account, or
to merge their several individual accounts in a joint ac-
count, maintain such joint account as if it constituted a
single employer’s account.

§21A-5-10. Experience ratings; decreased rates.
1 (a) On and after January one, one thousand nine hun-
dred fifty-four, after the requirements of section nine have
been complied with, an employer’s payment shall remain
two and seven-tenths per cent until:
2 (1) There have elapsed thirty-six consecutive months
immediately preceding the computation date throughout
which an employer’s account was chargeable with bene-
3 fits.
4 (2) His payments credited to his account for all past
years exceed the benefits charged to his account by an
amount equal to at least the per cent of his average annual
payroll as shown in column B of Table II. His rate
shall be the amount appearing in column C of Table II
on line with the percentage in column B.
5 The commissioner shall determine an employer’s com-
plian with these requirements.

TABLE II

<table>
<thead>
<tr>
<th>Col. A</th>
<th>Col. B</th>
<th>Col. C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class</td>
<td>Rate</td>
<td>Per Cent of Average Annual Payroll by Which Credits Exceed Charges</td>
</tr>
<tr>
<td>22 (1)</td>
<td>6.0</td>
<td>2.5</td>
</tr>
<tr>
<td>23 (2)</td>
<td>7.0</td>
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<td>10.0</td>
<td>1.7</td>
</tr>
<tr>
<td>27 (6)</td>
<td>10.5</td>
<td>1.5</td>
</tr>
<tr>
<td>28 (7)</td>
<td>11.0</td>
<td>1.3</td>
</tr>
<tr>
<td>29 (8)</td>
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<td>12.0</td>
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<td>32 (11)</td>
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<td>33 (12)</td>
<td>14.0</td>
<td>0.3</td>
</tr>
<tr>
<td>34 (13)</td>
<td>16.0</td>
<td>0.1</td>
</tr>
<tr>
<td>35 (14)</td>
<td>18.0 and over</td>
<td>0.0</td>
</tr>
</tbody>
</table>
(b) All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection one of section seven of article five relating to the noncrediting of employers' accounts with the first seven tenths of one percent of contributions paid; for the purpose of determining whether or not an employer shall pay contributions at a rate in excess of two and seven-tenths per cent as hereinafter set forth, but not for the purpose of determining such rate, the department shall, only for the purpose set forth herein and not as a credit to such account, add to the accounts of all employers having a debit balance, contribution payments made by such employers on and after July one, one thousand nine hundred sixty-seven, which payments are not credited to employers' accounts by reason of the provisions contained in subsection one of section seven of article five.

If, after such contribution payments have been added to such employers' accounts, such accounts continue to show a debit balance, such employers shall make payments at a rate in excess of two and seven-tenths per cent. If, after such contribution payments have been added to such employers' accounts, such accounts show a credit balance, such employers shall make payments at the rate of two and seven-tenths per cent. If, under the conditions set forth in this paragraph, it is determined that an employer shall pay contributions at a rate in excess of two and seven-tenths per cent, the rate in excess of two and seven-tenths per cent at which an employer shall pay contributions shall then be determined solely under the conditions set forth in the following paragraphs of this subsection. The provisions contained in this paragraph shall in no way be considered as providing for the crediting to an employer's account,
of amounts of employer contribution payments which are expressly not credited to employers' accounts in subsection one of section seven of article five.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten per cent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three per cent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of ten per cent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths per cent of wages paid by them with respect to employment.

"Debit Balance Account" for the purposes of this subsection means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit Balance Account" for the purposes of this subsection means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year notwithstanding the provisions of section ten-a of this article.

§21A-5-10a. Same—Modification or suspension of decreased rates.

(1) As used in this section, unless the context clearly requires otherwise:
"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(2) The commissioner shall as of the due date for the payment of contributions for each calendar quarter determine the amount in the unemployment compensation fund, including the trust fund, the clearing account, and the benefit account; and if, at any such time or times the fund is below the sum of sixty-five million dollars, the commissioner shall, effective at the commencement of the next calendar quarter, increase each employer's rate one step; and if, at any time or times the fund is below the sum of sixty million dollars, the commissioner shall further increase each employer's rate one additional step; and if, at any such time or times the fund is below the sum of fifty-five million dollars, the commissioner shall further increase each employer's rate one additional step.

Where the employer rates have been increased by virtue of the provisions of this section, they shall be correspondingly decreased in the same manner when the balance in the fund returns to the successive levels hereinabove set forth.

For purposes of this subsection the term "one step" or "one additional step" shall mean four tenths of one percent, except that, for an employer whose rate is zero the term "one step" shall mean three tenths of one percent: Provided, however, That under no circumstances shall an employer's rate be increased above two and seven-tenths per cent if such employer's contribution rate, as computed by the commissioner in compliance with subsection three, section seven, article five of this chapter, is two and seven-tenths per cent or less: Provided further, That if the contribution rate of such employer as computed by the commissioner in compliance with subsection three, section seven, article five of this chapter, is three per cent or higher, then such employer's rate shall not be increased above three and three-tenths per cent.
(3) If, as of the due date for the payment of contributions for any calendar quarter the unemployment compensation fund, including the trust fund, clearing account and benefit account, is below the sum of fifty million dollars, the commissioner shall, effective at the commencement of the next calendar quarter, suspend the decreased rates as provided in this chapter, and all contributions of employers due thereafter whose contribution rate as computed by the commissioner in compliance with subsection three, section seven of this article, is two and seven-tenths per cent or less, shall be paid at the rate of two and seven-tenths per cent; and all contributions of employers due thereafter whose contribution rate as computed by the commissioner in compliance with subsection (b), section ten of this article, is over two and seven-tenths per cent, shall remain and be paid at said rate over two and seven-tenths per cent.

(4) As of January first of the year next following the date on which the unemployment compensation fund, including the trust fund, clearing account and benefit account, reaches and remains above the sum of fifty-five million dollars, the commissioner shall supersede the suspension of the decreased rates as provided for in subsection three.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

Section

1b. Requalification requirement.
3. Disqualification for benefits.
10. Benefit rate—total unemployment; annual computation and publication of rates.

§21A-6-1b. Requalification requirement.

An individual filing a claim for benefits which, if otherwise valid, would establish a subsequent benefit year, in order to be eligible for benefits for such subsequent benefit year, must have earned wages in covered employment after the beginning of his previous benefit year equal to or exceeding an amount eight times his weekly benefit rate amount established for the previous benefit year, and be otherwise eligible under the provisions of this article and of this chapter.
§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual shall be disqualified for benefits:

2 (1) For the week in which he left his most recent work voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification. For the purpose of this subdivision, the term "work" means employment with the last employing unit with whom such individual was employed as much as thirty days, whether or not such days are consecutive.

3 (2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

4 If he were discharged from his most recent work for one of the following reasons: Misconduct consisting of wilful destruction of his employer's property; assault upon the person of his employer or any employee of his employer, if such assault is committed at such individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; arson, theft, larceny, fraud or embezzlement in connection with his work; or any other gross misconduct; he shall be and remain disqualified for benefits until he has thereafter worked for at least thirty days in covered employment.
(3) For the week in which he failed without good cause to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow and for such an additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification. However, if the claimant returns to work in covered employment during his benefit year, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification.

(4) For a week in which his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he was last employed, unless the commissioner is satisfied that he was not (one) participating, financing, or directly interested in such dispute, and (two) did not belong to a grade or class of workers who were participating, financing, or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision shall be imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his plant or operation or dismisses his employees in order to force wage reduction, changes in hours or working conditions.

For the purposes of this subdivision, if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there shall be a rebuttable presumption that that part of the stoppage of work which exists after said period of four weeks after the termination of said labor dispute, did not exist because of said labor dispute; and in such event the burden shall be upon the
(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice or payments under any form of a separation wage plan;
(b) Compensation for temporary total disability under the workmen’s compensation law of any state or under a similar law of the United States;
(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

(7) For the week in which an individual:

(a) Voluntarily quit her employment because of pregnancy, whether or not upon a physician’s advice, and until she returns to covered employment and has been employed therein at least thirty working days; except that such disqualification shall last no longer than six weeks subsequent to the birth of her child, provided such individual furnishes to the department a certificate from a physician that she is physically able to work;

(b) Was discharged or laid off from her employment because of pregnancy and until she returns to covered employment and has been employed therein at least thirty working days; except that such disqualification shall last no longer than six weeks prior to and six weeks subsequent to the date of birth of the child, provided such individual furnishes to the department certificates from a physician that she is physically able to work.

(8) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other edu-
cational institution, he is attending such school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(9) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(10) For each week in which he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay, from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided further, That there shall be no disqualification if in the individual’s base period there are no wages which were paid by the employer paying such remuneration, or by a fund into which the employer has paid during said base period. Claimant may be required to certify as to whether or not he is receiving or has received remuneration in the form of an annuity, pension, or other retirement pay from an employer or from a trust fund contributed to by an employer.

(11) For each week in which he knowingly made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in order to obtain or increase a benefit under this article. For each such week of disqualification he shall be disqualified an additional five weeks and his maximum benefit amount shall be reduced by an amount equal to five times his weekly benefit rate. Such five weeks disqualification periods are to run consecutively beginning with the first week in which it is determined a fraudulent
Provided, That an individual shall not be disqualified under this subdivision for a period of more than fifty-two consecutive weeks: Provided further, That disqualification under this subdivision shall not preclude prosecution under article ten, section seven.

(12) For the purposes of this section an employer's account shall not be charged under any of the following conditions: When benefits are paid for unemployment immediately after the expiration of a period of disqualification for (a) leaving work voluntarily without good cause involving fault on the part of the employer, (b) discharge for any of the causes set forth in subdivision (2) of this section, (c) failing without good cause to apply for available suitable work, accept suitable work, when offered, or return to his customary self-employment when directed to do so by the commissioner.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in column (C) in Table A in this paragraph, on the line on which in column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in column (B) in Table A. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of ten dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment. The provisions of this section shall apply to all benefit weeks occurring in benefit years beginning after the effective date of this act; for benefit weeks
22 occurring in benefit years beginning prior thereto the provisions then in effect shall apply.

**TABLE A**

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment</th>
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<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
</tr>
<tr>
<td>Under $700.00 Ineligible</td>
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55 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty per cent of the average weekly wage in West Virginia.
The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars.

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or before June one following such calendar year. The average weekly wage, as determined by the commissioner, shall be rounded to the next higher dollar.

The computation and determination of rates as aforesaid shall be completed annually before July one, and any such new wage class, with its corresponding wages in base period, weekly benefit rate, and maximum benefit in a benefit year established by the commissioner in the foregoing manner effective on a July one, shall apply only to a new claim established by a claimant on and after said July one, and shall not apply to continued claims of a claimant based on his new claim established before said July one.

ARTICLE 7. CLAIM PROCEDURE.

Section

17. Finality of board's decision—judicial review.


If an appeal is filed, benefits for the period prior to final determination of the board shall be paid only after such determination. If benefits are allowed by the decision of the board on appeal from the decision of the ap-
peal tribunal the benefits shall be paid whether such
decision reverses or affirms the decision of the appeal
tribunal and regardless of any further appeal: Provided,
That such decision does not relate to a disqualification
under subdivision (4) of section three of article six; but
if the decision of the board is reversed on appeal an
employer's account shall not be charged with the benefits
so paid.

§21A-7-17. Finality of board's decision—Judicial review.
The decision of the board shall be final and benefits
shall be paid or denied in accordance therewith, unless
a claimant, last employer, or other interested party ap-
peals to the circuit court of Kanawha county within
thirty days after mailing of notification of the board's
decision: Provided, That, in cases relating to a disqual-
ification under subdivision (4) of section three of article
six, the decision of the board shall be final and benefits
shall be paid or denied in accordance therewith, unless
a claimant, last employer, or other interested party ap-
peals to the circuit court of Kanawha county within
twenty days after mailing of notification of the board's
decision.
Parties to the proceedings before the board shall be
made defendants in any such appeal; and the commis-
sioner shall be a necessary party to such judicial review.

CHAPTER 201

(Senate Bill No. 34—By Mr. Carson, Mr. President, and
Mr. Carrigan)

[Passed January 25, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chap-
ter forty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the uni-
form testamentary additions to trusts act, finding and de-
claring the legislative intent at the time of the enactment
thereof at the one thousand nine hundred sixty-one regular session of the West Virginia Legislature as to the devises and bequests concerning which said act is effective.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PROVISIONS AS TO CONSTRUCTION.

Section 9. Same—legislative intent; devises and bequests as to which act is effective.

§41-3-9. Same—Legislative intent; devises and bequests as to which act is effective.

The Legislature hereby finds and declares as a legislative finding that when chapter one hundred fifty-nine, acts of the Legislature, regular session, one thousand nine hundred sixty-one, being sections eight through eleven of this article was enacted, it was intended in section nine to make the provisions of said sections eight through eleven effective with respect to any devise or bequest described in section eight made by the will of a decedent dying after the effective date of said chapter. It having been found that this intent was not clearly expressed, it is hereby provided by way of amendment and reenactment that sections eight through eleven of this article have been, are and shall be effective with respect to any devise or bequest described in section eight made by the will of a decedent dying after the effective date of said chapter one hundred fifty-nine.

CHAPTER 202

(Senate Bill No. 64—By Mr. Carson, Mr. President, and Mr. Moreland)

(Passed March 11, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section one, article two, chapter twenty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the employ­ers and employees subject to the workmen’s compensa­tion fund of this state; requiring county boards of educa­tion to subscribe to such fund; specifying that certain fire fighters shall be employees within the meaning of the work­men’s compensation statute; and authorizing certain civil defense organizations and duly incorporated volunteer fire departments or companies to subscribe to the work­men’s compensation fund.

Be it enacted by the Legislature of West Virginia:

That section one, article two, 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:

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; PREMIUMS.

Section 1. Employers and employees subject to chapter.

§23-2-1. Employers and employees subject to chapter.

The state of West Virginia and all governmental agen­cies or departments created by it, including county boards of education, are hereby required to subscribe to, and pay premiums into, the workmen’s compensation fund for the protection of their employees, and shall be subject to all requirements of this chapter, and all rules and regula­tions prescribed by the commissioner with reference to rates, classifications and premium payments.

All persons, firms, associations and corporations regu­larly employing other persons for the purpose of carrying on any form of industry, service or business in this state, including county courts, municipalities, other political subdivisions of the state, and civil defense organizations organized under article five, chapter fifteen of this code, are employers within the meaning of this chapter and subject to its provisions: Provided, That the provisions of section eight, article two of this chapter shall not apply to such county courts, municipalities, other political subdivisions of the state, or civil defense organizations organized as aforesaid: Provided, however, That the failure of such county courts, municipalities, other political sub-
22 divisions of the state, or civil defense organizations organized as aforesaid, to elect to subscribe to, and to pay premiums into, the workmen's compensation fund, shall not impose any liability upon them, or either of them, other than such liability as would exist notwithstanding the provisions of this chapter. All persons in the service of employers as herein defined, and employed by them for the purpose of carrying on the industry, business, service, or work in which they are engaged, including persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state, and check-weighmen employed according to law, all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines, and all forest fire fighters who, under the supervision of the director of the department of natural resources or his designated representative, assist in the prevention, confinement and suppression of any forest fire, are employees within the meaning of this chapter and subject to its provisions: Provided further, That this chapter shall not apply to employers of employees in domestic service or persons whose employment is prohibited by law, nor to employees of an employer while employed without the state, except in case of temporary employment without the state as hereinbefore provided; nor shall a member of a firm of employers, or any official of an association or of a corporate employer, including managers, or any elective or appointive official of the state, county, county court, board of education, municipality, other political subdivision of the state, or civil defense organization organized as aforesaid, whose term of office is definitely fixed by law, be deemed an employee within the meaning of this chapter: And provided further, That employers of not more than three employees for a period of not more than one month, who shall be called herein "casual employers," employers of employees in agricultural service and duly incorporated volunteer fire departments or companies may voluntarily elect to subscribe to, and pay premiums into, the workmen's compensation fund for the protection of the em-
employees of such employers and all of the members, including the chief, commander or other officials thereof, of such duly incorporated volunteer fire departments or companies, and in such case shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classifications and premium payments; but such casual employers, employers of employees in agricultural service and duly incorporated volunteer fire departments or companies shall not be required to subscribe to the workmen's compensation fund and their failure to subscribe to such fund shall not impose any liability upon them other than such liability as would exist notwithstanding the provisions of this chapter; nor shall the provisions of section eight of this article apply to casual employers, employers of employees in agricultural service or to such duly incorporated volunteer fire departments or companies.

The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

County courts, municipalities, other political subdivisions of the state, county boards of education, civil defense organizations organized as aforesaid, and duly incorporated volunteer fire departments or companies which shall elect to become subscribers to the workmen's compensation fund shall provide for the funds to pay their prescribed premiums into the fund, and such premiums, and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter. In addition to its usual and ordinary meaning, the term "employer" or "employers," as used in this chapter, shall be taken to extend to and include any duly incorporated volunteer fire department or company, or civil defense organization organized as aforesaid, which shall elect to subscribe to, and pay premiums into, the workmen's compensation fund, and in
addition to its usual and ordinary meaning, the term
“employee” or “employees,” as used in this chapter, shall
be taken to extend to and include all of the members of
any such department, company or organization. All duly
incorporated volunteer fire departments or companies,
and civil defense organizations organized as aforesaid,
which shall elect to subscribe to, and pay premiums into,
such fund, shall be placed in a separate group or class of
subscribers to be established by the commissioner, and
such departments, companies or organizations shall pay
into the fund such premiums (computed, notwithstanding
the provisions of section five of this article, on such basis
as to the commissioner shall seem right and proper) as
may be necessary to keep such group or class entirely self-
supporting.

Any employer whose employment in this state is to be
for a definite or limited period, which could not be con-
sidered “regularly employing” within the meaning of this
section, may elect to pay into the workmen’s compensa-
tion fund the premiums herein provided for, and at the
time of making application to the commissioner such
employer shall furnish a statement under oath showing
the probable length of time the employment will continue
in this state, the character of the work, an estimate of the
monthly payroll, and any other information which may
be required by the commissioner. At the time of making
application such employer shall deposit with the state
compensation commissioner to the credit of the work-
men’s compensation fund the amount required by section
five of this article, which amount shall be returned to such
employer, if his application be rejected by the commis-
sioner. Upon notice to such employer of the acceptance
of his application by the commissioner, he shall be an
employer within the meaning of this chapter and subject
to all of its provisions.

Any foreign corporation employer electing to comply
with the provisions of this chapter and to receive the
benefits hereunder, shall, at the time of making applica-
tion to the commissioner, in addition to other require-
ments of this chapter, furnish such commissioner with a
certificate from the secretary of state showing that it has
complied with all the requirements necessary to enable
it legally to do business in this state, and no application of
such foreign corporation employer shall be accepted by
the commissioner until such certificate is filed.
For the purpose of this chapter, a mine shall be ad-
judged within this state when the main opening, drift,
shaft or slope is located wholly within this state.
Any employee within the meaning of this chapter whose
employment necessitates his temporary absence from this
state in connection with such employment, and such
absence is directly incidental to carrying on an industry
in this state, who shall have received injury during such
absence in the course of and resulting from his employ-
ment, shall not be denied the right to participate in the
workmen's compensation fund.

CHAPTER 203
(Com. Sub. for Senate Bill No. 224—By Mr. Carson, Mr. President,
and Mr. Moreland)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, six, eight, ten,
fifteen, fifteen-b and fifteen-c, article four, chapter twenty-
three of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, relating to workmen's com-
ensation.

Be it enacted by the Legislature of West Virginia:

That sections one, four, six, eight, ten, fifteen, fifteen-b 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, all to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.
Section
1. To whom compensation fund disbursed; silicosis and other occu-
pational diseases included in "injury" and "personal injury";
definitions of silicosis and other occupational diseases.
4. Funeral expenses.
8. Physical examination of claimant; expenses.
10. Classification of death benefits; "dependent" defined.
15. Application for benefits; report of injuries by employer.
15b. Determination of nonmedical questions by commissioner—claims for silicosis; hearing.
15c. Same—hearing on claim for occupational diseases other than silicosis.

§23-4-1. To whom compensation fund disbursed; silicosis and other occupational diseases included in "injury" and "personal injury"; definition of silicosis and other occupational diseases.

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the quarter in which the injury occurs, and in case of catastrophe, in addition to the employees next above described, to the employees of employers who have elected, under section nine, article two of this chapter, to make payments into the surplus fund as provided in that section, and which employees shall have received personal injuries in the course of and resulting from their employment in this state, or in temporary employment without the state as provided in section one, article two of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms "injury" and "personal injury" shall be extended to include silicosis and any other occupational disease as hereinafter defined, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the last quarter in which such employees have been exposed to the hazard of silicon dioxide dust or to any other occupational hazard, and have contracted silicosis or other occupational disease, or have suffered a perceptible aggravation of an existing silicosis, in this state
in the course of and resulting from their employment, or
to the dependents, if any, of such employees, in case
death has ensued, according to the provisions hereinafter
made: Provided, however, That compensation shall not
be payable for the disease of silicosis, or death resulting
therefrom, unless in the state of West Virginia the em­
ployee has been exposed to the hazard of silicon dioxide
dust over a continuous period of not less than two years
during the ten years immediately preceding the date of
his last exposure to such hazards. An application for bene­
fits on account of silicosis shall set forth the name of the
employer or employers and the time worked for each, and
the commissioner may allocate to and divide any charges
on account of such claim among the employers by whom
the claimant was employed for as much as sixty days
during the period of three years immediately preceding
the filing of the application. The allocation shall be based
upon the time and degree of exposure with each employer.

For the purpose of this chapter silicosis is defined as an
insidious fibrotic disease of the lung or lungs due to the
prolonged inhalation and accumulation, sustained in the
course of and resulting from employment, of minute par­
ticles of dust containing silicon dioxide (SiO₂) over such
a period of time and in such amounts as result in the
substitution of fibrous tissues for normal lung tissues,
whether or not accompanied by tuberculosis of the lungs.

Whenever the expression “injurious exposure to silicon
dioxide dust,” or “injurious exposure to silicon dioxide
dust in harmful quantities,” or “exposure to the hazard
of silicon dioxide dust,” or any similar language shall
appear in this chapter, such expression shall be construed
to mean the exposure of an employee in the course of his
employment to a working condition in which the air con­
tains such a concentration of silicon dioxide dust that the
breathing of such air by a person over a long period of
time would be likely to cause him to contract the disease
of silicosis.

For the purpose of this chapter, occupational disease
means a disease incurred in the course of and resulting
from employment. No ordinary disease of life to which
the general public is exposed outside of the employment
shall be compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of silicosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

§23-4-4. Funeral expenses.

In case the personal injury causes death, and disability is continuous from the date of such injury to date of death, reasonable funeral expenses, not to exceed five hundred dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents.
§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provisions of this chapter for a personal injury other than first stage silicosis, such compensation shall be as provided in the following schedule:

(a) If the injury causes temporary total disability, the employee shall receive during the continuance thereof sixty-six and two-thirds per cent of his average weekly earnings, not to exceed a maximum of forty-seven dollars a week nor to be less than a minimum of twenty-four dollars a week.

(b) Subdivision (a) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(c) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed and allowed as follows:

For permanent disability of from one per cent to eighty-four per cent, inclusive, sixty-six and two-thirds per cent of the average weekly earnings for a period to be computed on the basis of four weeks compensation for each per cent of disability determined.

For a disability of eighty-five to one hundred per cent, sixty-six and two-thirds per cent of the average weekly earnings during the remainder of life.

(d) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (c) of this section:

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.
The loss of all toes shall be considered a twenty-five percent disability.
The loss of fore part of foot shall be considered a thirty percent disability.
The loss of foot shall be considered a thirty-five percent disability.
The loss of a leg shall be considered a forty-five percent disability.
The loss of thigh shall be considered a fifty percent disability.
The loss of thigh at hip joint shall be considered a sixty percent disability.
The loss of little or fourth finger (one phalanx) shall be considered a three percent disability.
The loss of little or fourth finger shall be considered a five percent disability.
The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
The loss of ring or third finger shall be considered a five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a three percent disability.
The loss of middle or second finger shall be considered a seven percent disability.
The loss of index or first finger (one phalanx) shall be considered a six percent disability.
The loss of index or first finger shall be considered a ten percent disability.
The loss of thumb (one phalanx) shall be considered a twelve percent disability.
The loss of thumb shall be considered a twenty percent disability.
The loss of thumb and index finger shall be considered a thirty-two percent disability.
The loss of index and middle finger shall be considered a twenty percent disability.
The loss of middle and ring finger shall be considered a fifteen percent disability.
The loss of ring and little finger shall be considered a ten percent disability.
The loss of thumb, index and middle finger shall be considered a forty percent disability.
The loss of index, middle and ring finger shall be considered a thirty percent disability.
The loss of middle, ring and little finger shall be considered a twenty percent disability.
The loss of four fingers shall be considered a thirty-two percent disability.
The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.
The loss of arm shall be considered a sixty percent disability.
The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability.
For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.
The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.
For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.
(e) Should a claimant to whom has been made a permanent partial award of from one per cent to eighty-four per cent, both inclusive, die from sickness or non-compensable injury, the unpaid balance of such award
shall be paid to claimant’s dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, however, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(f) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one per cent to eighty-four per cent shall be in the same proportion and shall be computed and allowed by the commissioner.

(g) The percentage of all permanent disabilities other than those enumerated in subdivisions (c), (d), (e) and (f) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (c).

(h) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed a maximum of forty-seven dollars a week nor to be less than a minimum of twenty-four dollars a week.

(i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (c): Provided, That in cases where the amount of permanent partial disability is specifically provided for under subdivision (d) of this section, payments made under subdivision (a) shall not be considered as payment of the compensation for such injury.

Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to
the dependents of such injured employee if there be such dependents at the time of death.

(j) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (c).

§23-4-8. Physical examination of claimant; expenses.

1 The commissioner shall have authority, after due notice to the employer and claimant, whenever in his opinion it shall be necessary, to order a claimant of compensation for a personal injury other than silicosis or other occupational disease to appear for examination before a medical examiner or examiners selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commissioner. The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner or examiners selected by the commissioner, or each may file with the commissioner a separate report, which separate report shall be considered by the commissioner in passing upon the claim. If the compensation claimed is for silicosis, the commissioner shall have the power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the silicosis medical board hereinafter provided. If the compensation claimed is for an occupational disease other than silicosis, the commissioner
shall have the power after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the occupational diseases medical board hereinafter provided. In any case the claimant shall be entitled to reasonable traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the amount allowed under this chapter for medical, surgical, dental and hospital treatment.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, in addition to the reasonable traveling and other expenses, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commissioner, such claimant shall be reimbursed by the employer for loss of wages necessarily incurred by him in connection with such examination or examinations.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury other than silicosis or other occupational disease, suffered by an employee in the course of and resulting from his employment, causes death within the period of ten years and disability is continuous from date of such injury until date of death, or if death results from silicosis or from any other occupational disease within ten years from the date of the last exposure to the hazard of silicon dioxide dust or to the other particular occupational hazard involved, as the case may be, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article.

(b) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be ninety dollars a month until death or remarriage of such widow or widower, and in addition twenty-five dollars a month for each child under eighteen years of age, to be paid until such child reaches such age, or where such child after reaching eighteen years of age continues as a full-time student
in an accredited high school, college, university, business or trade school, to be paid until such child reaches the age of twenty-two years, or, if an invalid child, thirty-five dollars and fifty cents a month, to continue as long as such child remains an invalid: Provided, however, That if such widow or invalid widower shall remarry within ten years from the date of the death of such employee, such widow or widower shall be paid at the time of remarriage twenty per cent of the amount that would be due for the period remaining between the date of such remarriage and the end of ten years from the date of death of such employee, and such widow or widower shall be advised in writing by the commissioner of his or her rights under this proviso at the time of making the original award: Provided further, That if upon investigation and hearing, as provided in article five of this chapter, it shall be ascertained that such widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or that the widow is living a life of prostitution, the commissioner shall stop the payments of the benefits herein provided to such widow or widower.

If the deceased employee be a widow or widower and leaves a child or children under the age of eighteen years, the payments shall be thirty dollars a month to each child until he or she reaches the age of eighteen years, or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school to be paid until such child reaches the age of twenty-two years.

In all awards of compensation to children, unless otherwise provided herein, the award shall be until they reach the age of eighteen years or until their death prior thereto.

(c) If the deceased employee leaves no dependent widow or widower and leaves a wholly dependent father or mother, he or she shall be paid the sum of seventy dollars a month, payments to continue until death, and if there be no widow or widower and both the father and mother are wholly dependent, then a joint award shall be made to the father and mother in the sum of seventy dollars a month until death.
Upon the death of either the father or mother in any case in which a joint award has been made to them, the full award of seventy dollars a month shall be paid to the survivor until his or her death.

(d) If the deceased employee leaves no dependent widow or widower or wholly dependent father or mother but there are other wholly dependent persons, as defined in subdivision (f) of this section, the payment shall be fifty-seven dollars and fifty cents a month, to continue for six years after the death of the deceased, except as otherwise provided herein.

(e) If the deceased employee leaves no dependent widow or widower, child under eighteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be thirty dollars a month, to continue for such portion of the period of six years after the death, as the commissioner may determine, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b), (c), (d) and (e) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under eighteen years of age, or under twenty-two years of age when a full-time student as provided herein, invalid child or posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions: Stepchild under eighteen years of age, or under twenty-two years of age when a full-time student as provided herein, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-two years of age when a full-time student as provided herein, father, mother, grandfather or grandmother, who at the time of the injury causing death, is dependent in whole or in part for his or her support
upon the earnings of the employee; an invalid brother or
sister wholly dependent for his or her support upon the
earnings of the employee at the time of the injury causing
death.

§23-4-15. Application for benefits; report of injuries by em­
ployer.

To entitle any employee or dependent of a deceased
employee to compensation under this chapter, other than
for silicosis or other occupational disease, the application
therefor must be made on the form or forms prescribed
by the commissioner and filed in the office of the com­
missioner within one year from and after the injury or
death, as the case may be, and all proofs of dependency
in fatal cases must likewise be filed with the commissioner
within one year from and after the death. In case the
employee is mentally or physically incapable of filing
such application, it may be filed by his attorney or by a
member of his family. It shall be the duty of every
employer to report to the commissioner every injury
sustained by any person in his employ. Such report shall
be on forms prescribed by the commissioner and shall
be made within sixty days from the date the employer
first receives knowledge of such injury.

To entitle any employee to compensation for silicosis
under the provisions hereof, the application therefor
must be made on the form or forms prescribed by the
commissioner and filed in the office of the commissioner
within three years from and after the last day of the
last continuous period of sixty days or more during which
the employee was exposed to the hazard of silicon dioxide
dust or to the other particular occupational hazard in­
volved, as the case may be, or, in the case of death, the
application shall be filed as aforesaid by the dependent
of such employee within one year from and after such
employee's death.

To entitle any employee to compensation for occupa­
tional disease other than silicosis under the provisions
hereof, the application therefor must be made on the
form or forms prescribed by the commissioner and filed
in the office of the commissioner within three years from
and after the day on which the employee was last exposed to the particular occupational hazard involved, or, in the case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after such employee's death.

§23-4-15b. Determination of nonmedical questions by commissioner—Claims for silicosis: hearing.

If a claim for silicosis benefits be filed by an employee, the commissioner shall determine whether the claimant was exposed to the hazard of silicon dioxide dust for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his claim, and whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure thereto. If a claim for silicosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was exposed to the hazard of silicon dioxide dust for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, and whether in the state of West Virginia the deceased employee was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure thereto. The commissioner shall also determine such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

§23-4-15c. Same—Hearing on 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:
(a) Whether the employee was in fact, within three years prior to the filing of his claim, in the employ of the employer, and, if so, the duration of such employment and whether or not such employment was subject to the provisions hereof.

(b) The occupation or occupations, process or processes, in which the employee was engaged during such employment and the approximate periods of work in each such occupation or process.

(c) The employments, previous and subsequent to the employment out of which the claim arose, the duration thereof and the exposure therein to the hazard causing the occupational disease.

(d) Whether the last injurious exposure to the hazard causing occupational disease in the employment with the employer occurred within three years prior to the filing of the claim, and if the employee is no longer in the service of the employer, the date upon which such employee ceased so to work; and, if the employee has died, the date and place of such death, and the place of interment of the body.

The parties may in writing waive the hearing required by this section, in which case the commissioner shall determine the nonmedical facts listed above, and such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts, and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

CHAPTER 204

(Senate Bill No. 314—By Mr. Tompos)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter twenty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the workmen's compensation appeal board.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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:

ARTICLE 5. REVIEW.

Section

2. Workmen's compensation appeal board.


There shall be a board to be known as the "Workmen's Compensation Appeal Board," which shall be referred to in this article as the "board," to be composed of three members, none of whom shall be a contributor to the compensation fund or in any way connected with a contributor thereto and none of whom shall be a beneficiary of the compensation fund or in any way connected with a beneficiary thereof. Two members of such board shall be of opposite politics to the third, and all three shall be citizens of this state who have resided therein for a period of at least five years. All members of the board shall be appointed by the governor for a term of six years. The governor is hereby vested with power to remove any member of the board in accordance with the provisions of section four, article six, chapter six of this code. Notwithstanding the provisions of section two-a, article seven, chapter six of this code, they shall each receive an annual salary of six thousand dollars, payable in monthly installments, and shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. The governor shall designate one of the members of the board as chairman thereof, and the board shall meet at the capitol or at such other places throughout the state as it may deem proper at regular sessions commencing on the first Tuesday in February, April, June, August, October and December, and continuing as long as may be necessary for the proper and expeditious transaction of the business before it. All clerical services required by the
board shall be paid for by the compensation commissioner from any funds at his disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of its business and such rules shall be submitted to the supreme court of appeals for approval, and if approved by such court shall have the same force and effect as the approved rules of procedure of circuit courts. The board shall employ such clerical staff as may be necessary for the efficient conduct of its business but the number of such employees shall not exceed two. Salaries of the board, and its employees, and all of its necessary operating expense shall be paid from the workmen’s compensation fund. The board shall submit its annual budget to the state compensation commissioner for inclusion as a separate item in the budget estimates prepared by him annually, and within the limits of such budget, all expenses of the board shall be by requisition to the commissioner. Salaries of the employees of the board shall be fixed by the board.

CHAPTER 205

(House Bill No. 535—By Mr. Steptoe)

[Passed February 16, 1967; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county court of Berkeley county to use unexpended funds and any surplus in any county fund to purchase land for public refuse dumps or sanitary landfills and to purchase equipment for such facilities.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY.

§1. County court authorized to use surplus funds for purchase of public refuse dumps or sanitary landfills and equipment therefor.

In addition to all other powers conferred upon it, the
county court of Berkeley county is hereby authorized and empowered to use any unexpended funds of said county and any surplus in any county fund, now or hereafter created, for the purpose of acquiring, by purchase or otherwise, land for use as public refuse dumps or sanitary landfills, and to purchase equipment for such facilities.

CHAPTER 206

(House Bill No. 1089—By Mr. Moyers)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, eight, nine, thirteen, sixteen and twenty, chapter one hundred ninety-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, relating to the Braxton county Four-H club development authority.

Be it enacted by the Legislature of West Virginia:

That sections one, two, eight, nine, thirteen, sixteen and twenty, chapter one hundred ninety-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

BRAXTON COUNTY.

Section

1. Board of education authorized to create Braxton county recreational development authority.
2. Acquisition, construction, maintenance, etc., of county youth camps and recreational areas and facilities.
5. County court authorized to convey properties and facilities to authority.
6. Contributions; funds and accounts; publication of annual report.
7. Construction of act; additional powers of board of education and county court.

§1. Board of education authorized to create Braxton county recreational development authority.

1 The board of education of the county of Braxton is hereby authorized to create and establish a public agency
to be known as the “Braxton County Recreational Development Authority” (hereinafter called the authority), to succeed to all the rights, interests and authority hereinbefore vested in the Braxton county Four-H club development authority, for the purposes and in the manner hereinafter set forth.

§2. Acquisition, construction, maintenance, etc., of county youth camps and recreational areas and facilities.

The authority is hereby authorized to acquire, equip, construct, improve, maintain and operate county youth camps and general public recreational areas and facilities in Braxton county with all usual and convenient appurtenances, including but not limited to recreational facilities, such as swimming pools, tennis courts, golf courses and horse riding stables; and to operate, either directly or on a concession basis, any activity that is necessary or convenient, customary or desirable, and related or incidental to the above-mentioned camps and recreational areas and facilities, including but not limited to hotels, restaurants and gift shops.


The authority when created, and the members thereof, shall constitute and be a public corporation under the name of “Braxton County Recreational Development Authority” and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded and have and use a common seal.


The authority is hereby given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules and regulations for its organization and operation not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel 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 12 any and all things necessary or convenient for the pur­ 13 pose of acquiring, equipping, constructing, maintain­ 14 ing, improving, extending, financing and operating 15 county youth camps and general public recreational 16 areas and facilities and all usual and convenient appur­ 17 tenant activities and facilities in Braxton county, West 18 Virginia, including but not limited to those enumerated 19 in section two hereof;

20 (4) To delegate any authority given to it by law to 21 any of its officers, committees, agents or employees;

22 (5) To apply for, receive and use grants-in-aid, dona­ 23 tions and contributions from any source or sources, 24 including but not limited to the federal government and 25 any agency thereof, and the state of West Virginia, and 26 to accept and use bequests, devises, gifts and donations 27 from any person, firm or corporation;

28 (6) To acquire lands and hold title thereto in its 29 own name;

30 (7) To purchase, own, hold, sell and dispose of per­ 31 sonal property and to sell, lease or otherwise dispose of 32 any real estate which it may own;

33 (8) To borrow money and execute and deliver negoti­ 34 able notes, mortgage bonds, other bonds, debentures, 35 and other evidences of indebtedness therefor, and give 36 such security therefor as shall be requisite, including 37 giving a mortgage or deed of trust on its property and 38 facilities in connection with the issuance of mortgage 39 bonds;

40 (9) To raise funds by the issuance and sale of reve­ 41 nue bonds in the manner provided by the applicable 42 provisions of article four-a, chapter eight of the code 43 of West Virginia, one thousand nine hundred thirty­ 44 one, as amended, it being hereby expressly provided that 45 the authority is a "municipal authority" within the defi­ 46 nition of that term as used in said article four-a, chap­ 47 ter eight of the code; and
(10) To expend its funds in the execution of the powers and authority herein given.

§13. County court authorized to convey properties and facilities to authority.

The county court of the county of Braxton is hereby authorized to convey to the newly created authority property owned by the county of Braxton, together with all the appurtenances and facilities therewith, such conveyance to be without consideration or for such price and upon such terms and conditions as the county court of the county of Braxton shall deem proper.

§16. Contributions; funds and accounts; publication of annual report.

Contributions may be made to the authority from time to time by the county court of the county of Braxton, the board of education of Braxton county, the federal government, and by any persons, firms or corporations that shall desire so to do. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a report to the board of education of the county of Braxton containing an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year and such annual report shall be published once a week for two successive weeks in two newspapers of opposite politics published in Braxton county, West Virginia, and of general circulation in Braxton county, West Virginia, if there be two such papers, or otherwise in any newspaper of general circulation in said county. The books, records and accounts of the authority shall be subject to audit and examination by the
office of the state tax commissioner of West Virginia
and by any other proper public official or body in the
manner provided by law.

§20. Construction of act; additional powers of board of educa-
tion and county court.

It is the purpose of this act to provide for the acquisi-
tion, construction, improvement, extension, maintenance
and operation of a camp or camps and recreational facili-
ties and appurtenant facilities in a prudent and economi-
cal manner, and this act shall be liberally construed as
giving to the authority full and complete power reason-
ably required to give effect to the purposes hereof. The
provisions of this act are in addition to and not in dero-
gation of any power existing in the board of education
and the county court of the county of Braxton under
any constitutional or statutory provisions which they
may now have, or may hereafter acquire.

CHAPTER 207

(House Bill No. 801—By Mr. Bobbitt and Mr. Nelson, of Cabell)

[Passed March 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to establish the Cabell county public library to serve
the residents of the county of Cabell, to create a library
board with power to operate the said public library, to
provide a stable method of financing the operation of the
said public library; and to confer upon the employees of
the said public library the benefits of chapter twenty-three
and of articles seven and ten of chapter five of the West
Virginia code.

Be it enacted by the Legislature of West Virginia:

CABELL COUNTY.

Section

1. Public library; created; joint support by board of education and
county court.
2. Board of directors; appointment, terms, meetings, powers and duties generally; officers; bylaws, rules and regulations.
3. Same—a body corporate.
4. Title to property.
5. Levies for support, maintenance and operation.
6. Deposit and disbursement of funds.
7. Workmen's compensation, social security and public employees retirement benefits for employees.
8. Effect of future amendments of general law.

§1. Public library; created; joint support by board of education and county court.

1 There is hereby created a public library, which shall be known as the “Cabell County Public Library,” which shall be supported by the board of education of the county of Cabell and the county court of Cabell county, as a joint endeavor of the two governing authorities in the manner hereinafter prescribed.

§2. Board of directors; appointment, terms, meetings, powers and duties generally; officers; bylaws, rules and regulations.

1 There shall be a board of five directors, who shall serve without compensation. Before the first day of July, one thousand nine hundred sixty-seven, the board of education of the county of Cabell shall appoint two members of the said board of directors—appointing one person for a term of one year, and one person for a term of three years; the county court of Cabell county shall appoint two members of the said board of directors—appointing one person for a term of two years, and one person for a term of four years; and the city of Huntington shall appoint one member of the said board of directors for a term of five years. Said initial terms of office shall commence July first, one thousand nine hundred sixty-seven. Each successor member of said board of directors shall be appointed by that governing authority which shall have appointed the predecessor member, and each such successor member shall be appointed for a term of five years each, except that any person appointed to fill a vacancy occurring before the expiration of the term vacated shall serve only for the unexpired term. A member shall be
eligible for reappointment. The governing authority
which appointed any member may remove such member
for cause. There shall be an annual meeting of the board
of directors on the second Friday in July in each year,
and a monthly meeting on the day in each month which
the board may designate in its bylaws. A special meet-
ing may be called by the president, the secretary or any
two members of the board, and shall be held only after
all the directors are given notice thereof. At all meet-
ings three members shall constitute a quorum. At each
annual meeting the board of directors shall elect, from
its membership, a president, a vice president, a secretary
and a treasurer: Provided, however, That the librarian
may be elected secretary and/or treasurer. The board of
directors shall adopt such bylaws, rules and regulations
as are necessary for its own guidance and for the admin-
istration, supervision and protection of the library and
all property belonging thereto. The board of directors
shall have all the powers necessary, convenient and ad-
visable for the proper operation, equipment and manage-
ment of the said library; and, except as otherwise spe-
cially provided in this act, shall have the powers and be
subject to the duties which are conferred and imposed,
respectively, upon library directors by sections six, seven,
eight, nine, ten and eleven of article one of chapter ten
of the West Virginia code. The board of directors shall
have the benefits arising out of the creation and con-
tinuance of the state library commission of West Vir-

§3. Same—A body corporate.
The board of directors of the public library hereby
created shall be a corporation. As such it may contract
and be contracted with, sue and be sued, plead and be
impleaded, and shall have and use a common seal.

§4. Title to property.
The title to all property, both real and personal, now
devoted to public library purposes by the board of edu-
cation of the county of Cabell in connection with the
operation by it of a public library in the city of Hunting-
ton and the county of Cabell, shall, on July first, one
six thousand nine hundred sixty-seven, vest in the board of
directors of the Cabell county public library hereby
created.

§5. **Levies for support, maintenance and operation.**

In order to provide for the support, maintenance and
operation of the public library hereby created and any
and all branches thereof the said supporting governing
authorities shall, upon written request by the board of
directors of the public library, levy annually as follows
within the respective taxing districts of the governing
authorities, on each one hundred dollars of assessed val-
uation of the property taxable in the area served by it
according to the last assessment for state and county
purposes, amounts not exceeding the following amounts
for the fiscal year beginning July first, one thousand nine
hundred sixty-seven:

A. The county court of Cabell county, for the first
year of the act and annually thereafter: Class one, one
and four-tenths cents; class two, two and eight-tenths
cents; class three, five and six-tenths cents; class four,
five and six-tenths cents.

B. The board of education of the county of Cabell
shall provide funds available to the board through spe-
cial and excess levies for the first year of the act: Class
one, one-half cent; class two, one cent; class three, two
cents; class four, two cents; for the second year of the
act: Class one, one cent; class two, two cents; class three,
four cents; class four, four cents; for the third year of
the act: Class one, one and four-tenths cents; class two,
two and eight-tenths cents; class three, five and six-tenths
cents; class four, five and six-tenths cents; and thereafter
the board shall provide from special and excess levies
as follows: Class one, one and four-tenths cents; class
two, two and eight-tenths cents; class three, five and
six-tenths cents; class four, five and six-tenths cents.

In addition to the aforesaid amounts which, upon writ-
ten request by said board, the governing authorities shall
levy, each such governing authority may support the pub-
lic library with any other general or special revenues or
excess levies. All income realized by the operation of
the public library from any sources other than the above
levies shall be used by the board of directors for support
of the public library.

§6. Deposit and disbursement of funds.
1 All money collected or appropriated by said two govern-
ing authorities for library purposes shall be deposited in
a special account of the board of directors of the Cabell
county public library, and shall be disbursed by that
board for the purpose of operating a public library system.

§7. Workmen’s compensation, social security and public em-
ployees retirement benefits for employees.
1 All employees of the public library hereby created
shall be entitled to the benefits of the provisions of chap-
ter twenty-three and of articles seven and ten of chapter
five of the West Virginia code.

§8. Effect of future amendments of general law.
1 Amendments to article one, chapter ten of the West
Virginia code, and other general laws shall control this
act only to the extent that they do not conflict with the
special features hereof, or unless the intent to amend
this act is clear and unmistakable.

1 If any provision hereof is held invalid, such invalidity
shall not affect other provisions hereof which can be
given effect without the invalid provision, and to this
end the provisions of this act are declared to be severable.

CHAPTER 208
(House Bill No. 970—By Mrs. Paul and Mr. Casey)

[Passed March 8, 1967; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact sections two and twenty-four,
chapter twenty-eight, acts of the Legislature, regular ses-
sion, one thousand eight hundred ninety-three, and as last amended by chapter one hundred ninety-seven, acts of the Legislature, regular session, one thousand nine hundred sixty-three, creating and defining the purposes and jurisdiction of the common pleas court of Cabell county and fixing the salary of the judge thereof.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-four, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended by chapter one hundred ninety-seven, acts of the Legislature, regular session, one thousand nine hundred sixty-three, be amended and reenacted to read as follows:

COMMON PLEAS COURT OF CABELL COUNTY.

Section
2. Jurisdiction.

§2. Jurisdiction.

1 That common pleas court of Cabell county shall have jurisdiction within said county, common and concurrent with the circuit court, of all felonies and misdemeanors committed within said county, and shall have the supervision and control of criminal and civil proceedings before justices of said county, the police judge or mayor of any incorporated city, town or village therein, by appeal, mandamus, prohibition and certiorari; the said court shall have original jurisdiction within said county concurrent with the circuit court of Cabell county of all suits and proceedings, and of all civil actions and proceedings at law, except where it shall appear from the pleadings that the matter in controversy exceeds the value of one hundred thousand dollars; appellate jurisdiction in all cases, civil and criminal, from judgments of justices of the peace in said county, police judge or mayor of any incorporated city, town or village, or of any inferior tribunal therein, wherein an appeal, writ of error, supersedeas or writ of certiorari may be allowed. The foregoing jurisdiction shall extend to and include, but not be restricted to all matters and causes contained in chapter forty-eight of the
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§22. Code of West Virginia commonly known as the adoption law; all matters and causes contained in chapter forty-eight of the code of West Virginia commonly known as the change of name law; all matters and causes contained in chapter forty-eight of the code of West Virginia commonly known as the maintenance of illegitimate children law; all matters and causes contained in chapter forty-four of the code of West Virginia commonly known as the approval and compromise of infants' claims for damages; all matters and causes contained in chapter forty-eight of the code of West Virginia commonly known as the issuance of marriage licenses in cases of emergencies or extraordinary circumstances; all matters and causes contained in chapter thirty-seven of the code of West Virginia commonly known as the approval of the sale, lease or mortgage of infants' lands. The proceedings, modes of procedure, powers and jurisdiction of this court in all of the foregoing matters shall be common and concurrent with the powers and jurisdiction of the circuit court, subject to the right to proceed by appeal, writ of error, supersedeas or certiorari in all matters to the circuit court of Cabell county, as provided in section fifteen, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, and section twenty-six, chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen. This act shall become effective on the first day of July, one thousand nine hundred sixty-seven.


1 The judge of the common pleas court of Cabell county shall receive for his services seventeen thousand five hundred dollars annually, payable monthly in installments beginning on the first day of January, one thousand nine hundred sixty-nine, which amount shall be provided for and paid by the county court, out of the treasury of said county, which provision as to salary shall not repeal the existing provision until the said first day of January, one thousand nine hundred sixty-nine.
All acts or parts of acts inconsistent or in conflict with this act are hereby repealed.

CHAPTER 209

(House Bill No. 1013—By Mr. Nelson, of Cabell)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and as last amended by chapter one hundred sixty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the domestic relations court of Cabell county.

Be it enacted by the Legislature of West Virginia:

That sections two and four, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, and as last amended by chapter one hundred sixty-five, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

Section
2. Jurisdiction.
4. Salary of judge.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of property rights arising out of the same, and all other matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof concerning domestic relations,
habeas corpus proceedings involving the award and custody of children under the age of twenty-one years; of all matters and causes coming within the purview of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one, acts of the Legislature of West Virginia, one thousand nine hundred thirty-six, and of all amendments and reenactments thereof, commonly known as the child welfare law; of all matters and causes coming within the purview of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly called the general school law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the reciprocal dependency law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the adoption law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the change of name law; of all matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the maintenance of illegitimate children law; and of all matters and causes coming within the purview of chapter forty-four, article ten, section fourteen of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof, commonly known as the approval of the compromising of infants' claims for damages; of all matters and causes coming within the purview of chapter forty-eight, article one, section six-c of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the issuance of marriage
license in case of emergency or extraordinary circumstances, and of all matters and causes coming within the purview of chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, and of all amendments and reenactments thereof, commonly known as the approval of the sale, lease or mortgage of infants' lands, and of all matters and causes coming within the purview of all other or future acts of the Legislature touching the subject matter of any and all said laws and acts, and the amendments and reenactments thereof, and of the common law of said state relating to the subject matter thereof. Independently of any of the foregoing matters, the said domestic relations court shall also have and is hereby given what was heretofore recognized as general equity jurisdiction concurrent with the circuit court, excepting in cases involving the enforcement of criminal laws and labor disputes, and excepting cases where it shall appear from the pleadings that matter or thing in controversy exceeds in value the sum of three hundred fifty thousand dollars. The proceedings and modes of procedure and power and jurisdiction conferred by law upon the circuit court or the common pleas court in any and all of said matters and causes are hereby conferred upon and shall be exercised by said domestic relations court.

The court is authorized and empowered to appoint and discharge one probation officer at a yearly salary of six thousand five hundred dollars, which said salary shall be paid by the county court monthly, and in addition thereto the said county court shall reimburse the said probation officer of his or her necessary expenses actually incurred monthly in the performance of official duties including an allowance of ten cents per mile for his or her automobile driven in the performance of official duties. The court is further authorized and empowered to appoint and discharge such medical, clerical and secretarial assistance as shall enable it to discharge all of the duties required of it under the provisions of this act and the general laws of the state and such person or persons shall be paid by the county court monthly upon the written approval of the judge of the said court.
§4. Salary of judge.

1 The judge of the domestic relations court of Cabell county shall receive for his services seventeen thousand five hundred dollars, annually, payable monthly in installments beginning on the first day of January, one thousand nine hundred sixty-nine, which amount shall be provided for and paid by the county court, out of the treasury of said county, which provision as to salary shall not repeal the existing provision until the said first day of January, one thousand nine hundred sixty-nine.

10 All acts or parts of acts inconsistent or in conflict with this act are hereby repealed.

CHAPTER 210

(House Bill No. 979—By Mr. Ours)

[Passed March 8, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred forty-seven, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, relating to the establishment of a tribunal to be known as the county court of Grant county under section twenty-nine, article eight of the constitution of West Virginia; making provision for the commissioners of said county court now in office to continue until the expiration of the term of office to which they were elected, and reestablishing the county court in said county as created by section twenty-two, article eight of the constitution of West Virginia.

Be it enacted by the Legislature of West Virginia:

GRANT COUNTY.

§1. Special tribunal known as county court abolished; county court consisting of three commissioners established; designation by lot of terms of first commissioners elected.

1 That chapter one hundred forty-seven, acts of the Legislature of West Virginia, regular session, one thou-
sand nine hundred twenty-seven, relating to the establishment of a special tribunal known as the county court of Grant county under section twenty-nine, article eight of the constitution of West Virginia, be and the same is hereby repealed, and that after the thirty-first day of December, one thousand nine hundred sixty-eight, the county court of Grant county shall be composed of three commissioners, as established by section twenty-two, article eight of the constitution of West Virginia, and who, in all respects, shall be elected, compensated, regulated, controlled and governed by the provisions of the constitution and the laws of the state of West Virginia respecting county courts generally. At the next general election to be held in November, one thousand nine hundred sixty-eight, there shall be elected by the voters of said county of Grant three commissioners of said county court; the commissioners shall hold their office for the term of six years, except that at the first meeting of said commissioners they shall designate by lot, or otherwise, in such manner as they may determine, one of their number, who shall hold his office for the term of two years, one for four years, and one for six years, so that one shall be elected every two years. Provided, however, That the commissioners now in office shall continue in their respective offices and in the performance of the duties thereof until the expiration of their terms of office, and will be regulated, controlled, governed, and compensated as provided by law.

CHAPTER 211

(House Bill No. 630—By Mr. Speaker, Mr. White, and Mr. Kopp)

[Passed February 16, 1967; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Harrison county to create a special courthouse and jail fund, delineating purposes for which the fund may be used, and to repeal chapter one hundred sixty-two, acts of the Legislature,
regular session, one thousand nine hundred forty-five, creating a special jail fund.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COURTHOUSE AND JAIL FUND.

Section

1. County court authorized to create special courthouse and jail fund; source of fund; authority to expend.
2. Retransfer of funds to general fund.
3. Repeal of act creating special jail fund; transfer of balances therein.

§1. County court authorized to create special courthouse and jail fund; source of fund; authority to expend.

1 The county court of Harrison county, West Virginia, 2 is hereby authorized from year to year to use any unex- 3 pended funds of said county and any surpluses in county 4 funds and any existing surpluses or funds derived from 5 capital assets for the purpose of creating a special fund 6 for the enlarging, remodeling, repairing, improving or 7 constructing additions to the present court house of said 8 county, or for razing the present county jail and sheriff's 9 residence and the constructing of a new jail, or for the 10 enlarging, remodeling, repairing, improving or construct- 11 ing additions to the present jail of said county, or for all 12 or any of said purposes. The special fund hereby created 13 shall be designated the "Special Courthouse and Jail 14 Fund." The county court of said county is hereby 15 authorized and empowered to expend for such purposes 16 the fund so created.

§2. Retransfer of funds to general fund.

1 In case of emergency the county court of Harrison 2 county, by unanimous vote thereof, shall be empowered 3 to retransfer funds from the special fund herein created 4 to the general fund.

§3. Repeal of act creating special jail fund; transfer of balances therein.

1 Chapter one hundred sixty-two, acts of the Legisla- 2 ture, regular session, one thousand nine hundred forty- 3 five, relating to the creation and use by the Harrison 4 county court of a special jail fund is hereby repealed.
All funds in said special jail fund shall be transferred to the fund created by this act.

CHAPTER 212
(House Bill No. 1149—By Mr. Marstiller and Mr. Kopp)

(Passed March 11, 1967; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section two, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine; and to amend and reenact section four of said chapter twenty-seven, as last amended and reenacted by chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty-four, relating to the jurisdiction and salary of the judge of the criminal court of Harrison county.

Be it enacted by the Legislature of West Virginia:

That section two, chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine; and section four of said chapter, as last amended and reenacted by chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted to read as follows:

CRIMINAL COURT OF HARRISON COUNTY.

Section
2. Jurisdiction.
4. Salary of judge.

§2. Jurisdiction.

1 The said court shall have jurisdiction within the said county of Harrison concurrent with the circuit court of all felonies and misdemeanors committed within said county of Harrison. Said court shall also have jurisdic-
5 tion concurrent with the circuit court of said county, and shall have the supervision and control of criminal proceedings before justices of said county, the mayor of any incorporated city, town or village, or other police
court of any incorporated city, town or village therein, by appeal, mandamus, prohibition and certiorari. It shall also have jurisdiction concurrent with said circuit court for the collection of all recognizances taken by said criminal court and for the collection of all bonds taken by said criminal court, or by the clerk thereof in vacation, to secure the payment of judgments for fines and costs rendered by said court, and for the collection of all recognizances and bonds taken by the justices of said county or the mayor of any incorporated city, town or village in said county in relation to criminal proceedings before said justices or mayor. The said court shall also have jurisdiction concurrent with the circuit court of said county in all matters set forth in articles one, two, three, four, five, seven, eight and nine of chapter forty-eight, code of West Virginia, one thousand nine hundred thirty-one, as amended.

§4. Salary of judge.

The judge of the criminal court of Harrison county, West Virginia, shall from and after the first day of July, one thousand nine hundred sixty-seven, receive for his services a salary of fifteen thousand dollars per year; said amount to be paid in twelve equal monthly installments from year to year by the county court of said county, out of funds of said county, in the manner provided by statute. The salary of said judge shall continue as provided in section four, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty-four, until the first day of July, one thousand nine hundred sixty-seven.

CHAPTER 213

(House Bill No. 1088—By Mr. Speaker, Mr. White, and Mr. Fantasia)

[Passed March 9, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, chapter thirty-one, acts of the Legislature, regular session, one
thousand nine hundred sixty, authorizing the county court of Harrison county and the county court of Marion county to create an airport authority, and providing for membership in the authority and for the appointment and removal of members.

Be it enacted by the Legislature of West Virginia:

That sections three and four, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, be amended and reenacted to read as follows:

BENEDUM AIRPORT AUTHORITY.

Section 3. Members of authority.

3. The management and control of the “Benedum Airport Authority,” its property, operations, business and affairs, shall be lodged in a board of ten persons who shall be known as the members of the authority and who shall be appointed for a term of three years each, five members by the county court of Harrison county, and five members by the county court of Marion county, except that, as to the first board appointed, the term of one member appointed by each county court shall expire on the first day of March next ensuing, the term of another member appointed by each county court shall expire on the first day of the following March, and the term of the third original member appointed by each county court shall expire on the first day of the next following March. All members of the board except the members of the first board shall be appointed for full three-year terms. As a member’s term expires, the county court which appointed such member shall appoint a member for a full term of three years. A member may be re-appointed for such additional term or terms as the county court appointing him may deem proper. If a member resigns, is removed or for any reason his membership terminates during his term of office, a successor member to fill out the remainder of his term shall be appointed by the county court which appointed him. Members in office at the expiration of their respective terms shall
27 continue to serve until their successors have been ap-
28 pointed and have qualified. The county court of the
29 county appointing a member may at any time for good
30 cause, and upon at least five days’ notice in writing to
31 such member, remove such member of the board of the
32 authority by an order duly entered of record in the
33 record book of such court and may appoint a successor
34 member for any member so removed. If any member
35 objects to being so removed, he may, in writing, demand
36 a hearing, and the county court proposing to remove him
37 shall promptly thereafter, in its own county, hold a public
38 hearing thereon. After such public hearing, the county
39 court holding the hearing shall determine whether the
40 member shall be removed or shall be permitted to con-
41 tinue in office.

§4. Qualification of members of the authority.
1 All members of the board of the authority shall be
2 citizens of West Virginia, over thirty years of age, and
3 residents of either Harrison county or Marion county. No
4 member of the board shall be engaged in the aviation
5 business as a major part of his activities. Not more than
6 three members of the authority from the same county
7 shall belong to the same political party. Two members
8 of the board of the authority from each county may also
9 be members of the county court of his county: Provided,
10 That service by a member of the county court as a mem-
11 ber of the authority shall not permit the members of the
12 county court to additional compensation for services other
13 than services in court under section five, article one, chap-
14 ter seven of the code.

CHAPTER 214
(House Bill No. 990—By Mr. Galperin and Mr. Kinder)

[Passed March 4, 1967; in effect ninety days from passage. Approved by the
Governor.]
nine hundred fifteen, as last amended by chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, relating to the salaries of the judges of the court of common pleas of Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section ten, chapter one hundred nine, acts of the Legislature, regular session, one thousand nine hundred fifteen, as last amended by chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted to read as follows:

COURT OF COMMON PLEAS OF KANAWHA COUNTY.

§10. Salary of judges; payment from county treasury.

1 After the first day of January, one thousand nine hundred sixty-nine, the judge of the court of common pleas then taking office shall for his services receive seventeen thousand five hundred dollars per annum, and after the first day of January, one thousand nine hundred seventy-three, the judge of the court of common pleas then taking office shall for his services receive seventeen thousand five hundred dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county, out of the funds of said treasury, in the manner provided by statute. The salaries of the present judges of said court shall continue as provided in chapter thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-four, until the dates aforesaid.

CHAPTER 215

(House Bill No. 1055—By Mr. Galperin and Mr. Zakaib)

(Passed March 4, 1967; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended
by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred sixty-four, relating to the salary of the judge of the domestic relations court of Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as last amended by chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted to read as follows:

DOMESTIC RELATIONS COURT OF KANAWHA COUNTY.

§4. Salary of judge.

1. The judge of the domestic relations court of Kanawha county, West Virginia, shall, from and after the first day of January, one thousand nine hundred seventy-three, receive for his services a salary in the amount of seventeen thousand five hundred dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county in the manner provided by statute.

2. The salary of said judge shall continue as provided in chapter thirty-three, acts of the Legislature, regular session, one thousand nine hundred sixty-four, until the first day of January, one thousand nine hundred seventy-three.

CHAPTER 216

(House Bill No. 989—By Mr. Galperin and Mr. Davisson)

[Passed March 4, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, as last amended by chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the salary of the judge of the Kanawha county intermediate court.
Be it enacted by the Legislature of West Virginia:

That section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, as last amended by chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF KANAWHA COUNTY.


1 The judge of the intermediate court of Kanawha county, West Virginia, shall, from and after the first day of January, one thousand nine hundred seventy-five, receive for his services a salary in the amount of seventeen thousand five hundred dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county, out of funds of said treasury, in the manner provided by statute. The salary of said judge shall continue as provided in chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-five, until the first day of January, one thousand nine hundred seventy-five.

CHAPTER 217

(House Bill No. 991—By Mr. Galperin and Mr. Potter)

[Passed March 4, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hundred eighty-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-nine, relating to the salary of the Kanawha county juvenile court judge.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred eighty-five, acts of the Legislature of West Virginia, regular session, one thousand
nine hundred fifty-nine, be amended and reenacted to read as follows:

**JUVENILE COURT OF KANAWHA COUNTY.**

§4. Salary of judge.

1 The judge of the juvenile court of Kanawha county
2 shall for his services receive the sum of seventeen thou-
3 sand five hundred dollars per annum, to be paid in
4 monthly installments out of the county treasury of Ka-
5 nawha county, from and after the first day of January,
6 one thousand nine hundred sixty-nine. The salary of
7 said judge shall continue as provided in chapter one
8 hundred eighty-five, acts of the Legislature, regular ses-
9 sion, one thousand nine hundred fifty-nine, until the first
10 day of January, one thousand nine hundred sixty-nine.

**CHAPTER 218**

*(Senate Bill No. 63—By Mr. Brotherton and Mr. Kaufman)*

[Passed February 17, 1961; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred eighty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-seven, relating to the authorization of the judge of the thirteenth judicial cir-
cuit of West Virginia to appoint a law assistant, fixing his qualifications and salary, and requiring the county court of Kanawha county to provide the manner of payment of such salary.

*Be it enacted by the Legislature of West Virginia:*

That chapter one hundred eighty, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

**CIRCUIT COURT OF KANAWHA COUNTY.**

§1. Law assistant; appointment; qualifications; salary.

On or after the effective date of this act, the judge of
the circuit court of Kanawha county, West Virginia (thirteenth judicial circuit), may appoint a law assistant, who shall be a person duly licensed to practice law in this state, and who shall discharge such secretarial duties as may be assigned to him by the judge; said law assistant, while acting as such, shall not engage in the practice of law, but shall devote his time to the duties of his office, and may be removed and his successor appointed at any time by the judge. Said law assistant shall receive a salary of nine thousand dollars per year payable monthly, and the county court of Kanawha county shall annually, at its levy session, provide for the payment out of general county funds the amount of the salary so fixed.

CHAPTER 219

(House Bill No. 572—By Mr. Rogerson and Mr. Polen)

[Passed March 4, 1967; in effect January 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section five, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-four, relating to the salary of the judge of the common pleas court of Marshall county.

Be it enacted by the Legislature of West Virginia:

That section five, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted to read as follows:

COMMON PLEAS COURT OF MARSHALL COUNTY.

§5. Salary of judge.

1 The judge of said court shall, for his services receive the sum of thirteen thousand dollars per annum, to be paid in monthly installments out of the treasury of Marshall county. The county court shall annually make provision by appropriate levy and appropriation for the payment of said salary.
CHAPTER 220

(House Bill No. 1123—By Mr. Christian and Mr. Cain)

[Passed March 9, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, chapter one hundred seventy-four, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the jurisdiction and judge’s salary of the intermediate court of Mercer county.

Be it enacted by the Legislature of West Virginia:

That sections two and four, chapter one hundred seventy-four, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF MERCER COUNTY.

Section

2. Jurisdiction.
4. Salary of judge.

§2. Jurisdiction.

1. The said court, which is the same court originally established by chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, but with its name and jurisdiction changed as in this act provided, shall continue to have jurisdiction within the county of Mercer, concurrent with the circuit court of said county, of all felonies, misdemeanors and offenses committed or which may be committed within the said county of Mercer, and shall also have, concurrent with the circuit court of said county, jurisdiction, supervision and control by appeal, mandamus, prohibition and certiorari of all proceedings before justices of the peace of said county or the police court, mayor or other constituted tribunal, board or commission of any city, town or village in said county. The said court shall likewise have jurisdiction within said county of Mercer, concurrent with the circuit court of said county, of all suits and proceedings in equity,
in all actions of ejectment, and in all civil actions or
proceedings at law, except where it shall appear from
the pleadings that the matter or thing in contro-
versy in any such suit, proceeding or action, exclu-
sive of interest and costs, exceeds in value the sum
of fifty thousand dollars, and all summary proceed-
ings at law and any other manner of action or proceed-
ing at law authorized by the general laws of West
Virginia, as well as of appeals from judgments of the
justices of said county when such appeals shall lie to
the said court in the same manner and under the same
regulations as provided in the general laws for appeals
from justices. The said court shall likewise have jurisdici-
tion within said county of Mercer, concurrent with the
circuit court of said county, of suits for divorce, annul-
ment of marriage and separate maintenance, of bastardy
proceedings and actions for maintenance of illegitimate
children as provided by the general laws of West Vir-
ginia, and the said court shall continue to have juris-
diction within said county of proceedings for adoption
and all juvenile and other matters of which the afore-
said criminal court of Mercer county was given juris-
diction by the general laws of West Virginia or of
which the court hereby established may be given juris-
diction by such general laws.

§4. Salary of judge.

The judge of said intermediate court shall receive
for his services the sum of fifteen thousand dollars per
annum to be paid out of the county treasury of said
county of Mercer.

CHAPTER 221

(Senate Bill No. 199—By Mr. Hubbard)

(Passed March 3, 1967; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section one, chapter one hundred
seventy-eight, acts of the Legislature, regular session, one
thousand nine hundred sixty-five, authorizing and empower­ing the board of commissioners of the county of Ohio to transfer a certain parcel of land, commonly known as the Ohio county sanitarium and owned by the county of Ohio, to the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

OHIO COUNTY.

§1. Board of commissioners authorized to transfer certain county-owned real property to state.

The board of commissioners of the county of Ohio is hereby authorized and empowered to sell and transfer to the state of West Virginia, a certain tract or parcel of land owned by the county of Ohio, located on Roney’s Point in Triadelphia district of said county, commonly known as the Ohio county sanitarium, being approximately three hundred seventy-six acres, more or less:

Provided, That the conveyance and transfer be conditioned upon an agreement with the state that the said property will be used solely for mental or physical health and rehabilitation purposes, or any other purpose of a similar nature thereto, but expressly excluding therefrom any penal or other law enforcement purpose.

CHAPTER 222

(House Bill No. 1074—By Mr. Seibert and Mr. Stamp)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven; and to further amend said chapter by adding thereto three new sections, designated sections five, six and seven, relating to the
board of trustees, ownership, management and operation of the Ohio county public library and providing levies for the support, maintenance and operation thereof, and to provide funds for the purchase, acquisition and construction of library buildings and for the purchase of land and the construction and equipping of buildings thereon, defining the powers and authority in the board of trustees of said library as to receiving and disbursing the funds from the levies herein provided, authorizing said board to borrow money for public library purposes, and further providing that the employees of said board shall be subject to and covered by the West Virginia public employees retirement act.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, be amended and reenacted; and that said chapter be further amended by adding thereto three new sections, designated sections five, six and seven, all to read as follows:

OHIO COUNTY PUBLIC LIBRARY.

Section

4. Levies for maintenance and operation; disbursement of funds; accumulation of surplus; borrowing funds; limitation on use of proceeds from levies.

5. Employees subject to public employees retirement act.


7. Severability.

§4. Levies for maintenance and operation; disbursement of funds; accumulation of surplus; borrowing funds; limitation on use of proceeds from levies.

1 In order to provide for the maintenance and operation of said public library and any and all branches thereof, and to provide funds for the purchase, acquisition and construction of a new library or libraries and library facilities, the board of education of Ohio county and the board of commissioners of Ohio county, upon request by the said board of trustees, shall each levy annually, on each one hundred dollars of the assessed valuation of property within the limits of Ohio county, according to the last assessment thereof for state and county purposes, amounts not exceeding the following
amounts for each fiscal year as follows: By the board of education of Ohio county, three cents on one hundred dollars of said assessed valuation; by the board of commissioners of Ohio county, one and two-tenths cents on Class I, two and four-tenths cents on Class II, four and eight-tenths cents on Class III, and four and eight-tenths cents on Class IV, of each one hundred dollars of said assessed valuation. The proceeds of these levies shall be for the exclusive use of said public library, any branches thereof, and any other public libraries acquired by purchase or otherwise by said board of trustees, and shall be disbursed only upon order of the said board of trustees, evidenced by warrants drawn on the sheriff of Ohio county, and signed by the chairman and secretary-treasurer of said board. Said levies shall be included within the limits and be a part of the levy or levies authorized to be made by the said board of education of Ohio county, and the board of commissioners of Ohio county.

The proceeds of said levies may be used by the board of trustees of said public library for the maintenance, support, operation, equipping and management of said library, and any and all other public libraries or branch libraries acquired by the said board, either by gift or purchase, the purchase of real estate, the construction and equipping of buildings, either by way of replacement of present library property and facilities or additional libraries and library facilities.

The board is hereby vested with authority to accumulate out of the proceeds of said levies any surplus thereof over and above the amount currently required for the proper operation, maintenance and management of present library facilities from year to year for a period not to exceed five years and such accumulated surplus may be used for the purchase of land, construction of buildings and the equipping of such buildings for library purposes. The board is further vested with full power and authority to borrow funds from such sources as the same may be available for the purchase of land, the construction of new buildings and the equipping of said buildings for library purposes, and to pledge by the execution and the delivery of appropriate legal instru-
ments, any real estate the said board of trustees may
now own or which it may hereafter acquire for the re-
payment of such borrowed funds; the principal thereof
and interest thereon may be paid out of the proceeds
of the levies hereinbefore authorized: Provided, how-
ever, That not more than thirty-three and one-third per
cent of the proceeds from said levies may be so used
in any fiscal year.

§5. Employees subject to public employees retirement act.
1 The employees of the Ohio county public library shall
2 be subject to the West Virginia public employees retire-
3 ment act, and the board of trustees of the Ohio county
4 public library shall be deemed to be a “participating
5 public employer” and the said employees shall be deemed
6 to be “an employee” as said terms are defined and used
7 in said act.

1 Amendments to article one, chapter ten of the code
2 of West Virginia, one thousand nine hundred thirty-one,
3 as amended, and other general laws shall not control
4 this act except to the extent that they do not conflict
5 with the special features hereof and unless the intent
6 to amend this act is clear, specific and unmistakable.

§7. Severability.
1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be
3 given effect without the invalid provision, and to this end
4 the provisions of this act are declared to be severable.

CHAPTER 223

(House Bill No. 534—By Mr. Ranson)

[Passed February 16, 1967; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Putnam county to
establish and maintain a county cannery.
Be it enacted by the Legislature of West Virginia:

PUTNAM COUNTY.

Section
1. Court authorized to establish and maintain county cannery.
2. Expenditure of county funds for maintenance and operation; fees for use of cannery.

§1. Court authorized to establish and maintain county cannery.
1. The county court of Putnam county is hereby authorized and empowered to build, equip, maintain and operate a county cannery to be erected upon county-owned land for use by residents of Putnam county.

§2. Expenditure of county funds for maintenance and operation; fees for use of cannery.
1. The county court of Putnam county is hereby authorized to make expenditures from its general fund or from any special fund to build, equip, maintain and operate the county cannery and may set and charge fees for its use in amounts as the court may deem fit.

CHAPTER 224
(Senate Bill No. 351—By Mr. Porter)

[Passed March 10, 1967; in effect from passage. Approved by the Governor.]

AN ACT to authorize and empower the county court of Raleigh county to transfer a certain parcel of land owned by the county of Raleigh to the state of West Virginia, authorizing the county court of Raleigh county to lease county properties and authorizing the sale of a certain parcel of land owned by the county of Raleigh for industrial development purposes.

Be it enacted by the Legislature of West Virginia:

RALEIGH COUNTY.

Section
1. County court authorized to transfer certain real estate to state.
2. Authority to lease or rent county-owned real property; disposition of proceeds.
4. Severability.

§1. County court authorized to transfer certain real estate to state.

The county court of the county of Raleigh is hereby authorized and empowered to sell and transfer to the state of West Virginia that certain tract and parcel of land owned by the county court of Raleigh county situate in Shady Spring district therein and commonly known and referred to as "Little Beaver Park and Recreation Area," to be used by the state of West Virginia through its department of natural resources as a public park and recreation area and for other related purposes.

§2. Authority to lease or rent county-owned real property; disposition of proceeds.

The county court of Raleigh county is hereby authorized to lease or rent any county-owned real property that is determined by the county court to be surplus to the present or immediate needs of the county. Such property may be leased or rented to any responsible person, firm or corporation as the county court may select, and for such uses and at such rental fees as the county court may deem proper. Such leases may extend for periods in excess of one year.

All rentals or proceeds derived from such leases or rentals shall be placed to the credit of the general county fund of Raleigh county.

§3. Sale of Fitzpatrick Park property for industrial development purposes authorized.

The Legislature hereby finds and declares that the sale and conveyance of that certain tract or parcel of land known as Fitzpatrick Park, located in Town District, Raleigh county, by the county court of said county for industrial development purposes for less than adequate consideration is for a public purpose, and is necessary for the public good. The Legislature hereby finds and declares that said land is peculiarly suited for such use and will, if so sold for such use, produce tax revenues for the said county
equal to or in excess of the fair market value of the property. The Legislature hereby finds and declares that, in the particular circumstances existing in regard to the said property, the method of accomplishing its industrial development, which is hereby declared to be a public purpose, would be best accomplished by the method set forth in this section.

Based on the above legislative findings and declarations, the county court of Raleigh county is hereby authorized and empowered to sell and convey that certain tract or parcel of land, known as Fitzpatrick Park, located in Town District, Raleigh county, to any person, including, but not limited to, a private or public corporation, under such terms and conditions as, in the sole discretion of said county court, will insure the use of the land for the public purpose of industrial development.

§4. Severability.

If any provision of this act or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the act, and to this end each and every provision of this act is declared to be severable. The Legislature hereby declares that it would have enacted the remaining provisions of this act even if it had known that any provisions thereof would be declared to be unconstitutional or invalid, and that it would have enacted this act even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

CHAPTER 225

(House Bill No. 1108—By Mr. Sayre and Mr. Payne)

[Passed March 9, 1967; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, chapter one hundred ninety-one, acts of the Legislature, regular session,
one thousand nine hundred fifty-seven, relating to salary of the judge of the criminal court of Raleigh county.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter one hundred ninety-one, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

CRIMINAL COURT OF RALEIGH COUNTY.


1 The judge of the criminal court of Raleigh county, West Virginia, shall from and after the first day of January, one thousand nine hundred sixty-nine, receive for his services a salary in the amount of ten thousand five hundred dollars per annum, to be paid in monthly installments out of the county treasury of Raleigh county, out of funds of said treasury, in the manner provided by statute.

CHAPTER 226

(House Bill No. 1014—By Mr. Burk)

[Passed March 8, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, relating to supplies, finances, seals, court rooms and offices of the intermediate court of Wood county.

Be it enacted by the Legislature of West Virginia:

That section twelve, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF WOOD COUNTY.

§12. County court to provide records, books, supplies, rooms and equipment, and pay salary of secretary to judge; full
faith and credit to be given authenticated court records; salary of secretary.

1. It shall be the duty of the county court of Wood county to provide all record and other books and stationery that may be necessary for said court. Likewise a seal for said court shall be provided and full faith and credit shall be given to the records of the court and certificates of its judge or clerk in like manner and with the same effect as if the same were records of the circuit court similarly authenticated. The county court of Wood county shall likewise furnish such rooms, furniture and equipment for the proper conduct and administration of said court and shall, through annual levy and appropriations, make provision for the payment for all such rooms, supplies and equipment. It shall be the duty of the county court of Wood county to pay the salary of a full-time secretary in the office of the judge of said court, to be appointed by him, whose compensation shall be not less than four thousand dollars nor more than five thousand five hundred dollars annually, to be determined by the judge.

CHAPTER 227
(Senate Bill No. 294—By Mr. Hylton)

(Passed February 17, 1967; in effect from passage. Approved by the Governor.)

AN ACT authorizing the creation of a hospital fund for Wyoming county.

Be it enacted by the Legislature of West Virginia:

WYOMING COUNTY.

Section
1. County court authorized to establish special hospital fund.
2. Expenditures from fund; purposes.

§1. County court authorized to establish special hospital fund.

The county court of Wyoming county is hereby authorized and empowered to create a special hospital fund, and
to transfer into such fund, sums raised by levy and such
amounts as it shall deem proper from unexpended or
surplus moneys or from any other special fund, to borrow
money, to accept gifts, and to accept grants and federal
money.

§2. Expenditures from fund; purposes.

The county court of Wyoming county is hereby author-
ized and empowered to make expenditures from the hos-
pital fund herein created for the purposes of purchasing or
acquiring land, building, equipping, staffing and main-
taining a hospital and/or a nursing home, or for any other
purpose consistent with this act as the county court shall
deeem necessary.
RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature are included in this volume.)

HOUSE CONCURRENT RESOLUTION NO. 6
(By Mrs. Paul and Mr. Bowman)

[Adopted January 25, 1967.]

Requesting the Chesapeake & Ohio Railway Company and the Interstate Commerce Commission to continue the service of the Fast-Flying Virginian and the Sportsman.

WHEREAS, For many decades the Fast-Flying Virginian, westbound train No. 3, and the Sportsman, east bound train No. 4, of the Chesapeake & Ohio Railway Company, have provided passenger service to the citizens of the State of West Virginia from Cabell County on the west to Greenbrier County on the east; and

WHEREAS, These trains have become a tradition and have been relied upon by the citizens of this State for fast, dependable service and have connected West Virginia with Richmond, Virginia, and Washington, D. C., on the one hand and Cincinnati, Ohio, and Chicago, Illinois, on the other; and

WHEREAS, There is now pending before the Interstate Commerce Commission a petition filed by the Chesapeake & Ohio Railway Company to discontinue the service of these two trains, thus reducing by fifty per cent the passenger service to be provided by the main line of the C & O and reducing central West Virginia's rail outlet to the rest of the country by half; and

WHEREAS, It is not uncommon in the rail industry for companies to maintain passenger service in instances where such is not economically profitable if the service is desirable and necessary and the company enjoys a profitable freight business that offsets any loss experienced in passenger service; therefore, be it

[1278]
Resolved by the Legislature of West Virginia:

That the Chesapeake & Ohio Railway Company is hereby requested to continue the Fast-Flying Virginian and the Sportsman, and the Interstate Commerce Commission is hereby petitioned to deny the application of the railway to discontinue these trains because of the tremendous effect their discontinuance would have upon the available passenger service in this State; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward copies of this resolution to the president of the Chesapeake & Ohio Railway Company and to the members of the Interstate Commerce Commission.

HOUSE CONCURRENT RESOLUTION NO. 8
(By Mr. Ours)
[Adopted February 18, 1967.]

Directing the Joint Committee on Government and Finance to make a study of vocational, technical and adult education in and for the State of West Virginia.

WHEREAS, Education for work has been and is an integral part of a total education program; and

WHEREAS, Technological developments result in changing patterns of occupational demands; and

WHEREAS, Only approximately twenty per cent of the students enrolled in public schools of the State are enrolled in classes providing learning and skills directly applicable to post school employment; and

WHEREAS, A significant percentage of adults of this State lack adequate education in basic and work skills areas; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to review, examine and study the status of vocational, technical and adult education in this State, the needs for development of these programs, the ways and means for such development and the kind of programs which are
feasible and advisable and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the said Joint Committee on Government and Finance report its findings and recommendations, together with any legislation to carry out its recommendations, to the regular session of the Legislature, one thousand nine hundred sixty-eight, and that expenses necessary to make such study, to prepare such report, and to draft legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 14

(By Mr. Myles and Mr. Seibert)

[Adopted March 11, 1967.]

Authorizing a study of Chapter 48 of the Code of West Virginia, relating to domestic relations or family law, by the Joint Committee on Government and Finance.

WHEREAS, The Committee on Jurisprudence and Law Reform of the West Virginia State Bar, composed of Howard R. Klostermeyer (Chairman), Charleston; James C. West, Jr. (Vice Chairman), Clarksburg; W. H. Ansel, Jr., Romney; Robert W. Burk, Parkersburg; Chester R. Hubbard, Wheeling; Sidney J. Kwass, Bluefield; Langdon C. Morris, Charleston; John L. Ray, Charleston; and John F. Wood, Jr., Huntington, members, has made an exhaustive study of Chapter 48 of the West Virginia Code and has recommended extensive amendments to and revision of said chapter; and

WHEREAS, This committee's report has been approved by the Board of Governors of the West Virginia State Bar and ordered referred to the Joint Committee on Government and Finance with the recommendation that the Legislature enact legislation to carry out the recommendations of the State Bar's Standing Committee on Jurisprudence and Law Reform; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance proceed to consider and study the recommendations of the State
Bar's Committee on Jurisprudence and Law Reform with respect to Chapter 48 of the Code of West Virginia, and report its recommendations thereon to the 1968 regular session of the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 17
(By Mrs. Withrow and Mr. Casey)
[Adopted March 11, 1967.]
Requesting the Joint Committee on Government and Finance to make a study of the Department of Mental Health and its institutions; the office of the Commissioner of Public Institutions and all health, humane, penal and correctional institutions thereof; and of the programs, needs and laws relating thereto; and providing for a special committee to make certain visits and inspections and to assist said Joint Committee on Government and Finance.

WHEREAS, The many problems in the field of mental health and the problems with respect to the care and treatment of persons in state health, humane, penal and correctional institutions are of such magnitude as to demand full and adequate information for use by members of the Legislature in order for such members to evaluate intelligently the budgetary requests and other matters of interest pertaining to these areas of concern; and

WHEREAS, The time available during the session of the Legislature is inadequate for the members of the standing committees of both branches of the Legislature dealing with such departments and institutions to make detailed studies and analyses of the needs of said departments and institutions under their control and supervision, their practices, problems and needs, and to make adequate constructive recommendations for the improvement of services and facilities in all such departments and institutions under their control; and

WHEREAS, The institutions, programs and practices of, and laws relating to, the Department of Mental Health and the office of the Commissioner of Public Institutions and all units and divisions thereof, cover broad and complicated areas for legislative consideration and action which can best be con-
DUCTED, INVESTIGATED AND ANALYZED BETWEEN THE CURRENT SESSION OF THE LEGISLATURE AND THE NEXT REGULAR SESSION THEREOF, TO BE HELD IN JANUARY, ONE THOUSAND NINE HUNDRED SIXTY-EIGHT; THEREFORE, BE IT

RESOLVED BY THE LEGISLATURE OF WEST VIRGINIA:

That the Joint Committee on Government and Finance make a continuing and coordinated study of the Department of Mental Health, its institutions, programs, needs and laws relating thereto, and of the office of the Commissioner of Public Institutions in relation to health, humane, penal and correctional institutions, programs, needs and laws relating thereto, with particular emphasis on the total program functions and total needs of all health, humane, penal and correctional institutions; and, be it

FURTHER RESOLVED, That five members of the Senate Standing Committee on Public Buildings and Humane Institutions, to be designated by the President of the Senate, and five members of the House of Delegates Standing Committee on Health and Welfare, to be designated by the Speaker of the House of Delegates, no more than three of those designated from each house to be of the same political party, hereinafter referred to as the "special committee," shall assist the Joint Committee on Government and Finance in making such study to the extent specified by said Joint Committee on Government and Finance. Any six members of the special committee shall constitute a quorum. In addition to assisting the Joint Committee on Government and Finance as above specified, the special committee shall be charged with the responsibility to visit the state health, humane, penal and correctional institutions of this State in order to inspect the condition thereof; to consult with the Director of the Department of Mental Health, the Commissioner of Public Institutions, and the Director of the Division of Corrections, the superintendents of all such institutions and their staffs; and to report their findings, conclusions and recommendations to the Joint Committee on Government and Finance or other proper subcommittee thereof: PROVIDED, That no such visitations and inspections shall be made unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by said special committee; and, be it
Further Resolved, That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, one thousand nine hundred sixty-eight, on its findings, conclusions and recommendations, together with drafts of any proposed legislation that shall be necessary to carry its recommendations into effect; and, be it

Further Resolved, That the members of the special committee participating in this study shall be reimbursed for their expenses in the amount of twenty-five dollars per diem while away from home in the performance of their duties hereunder and mileage at the rate of ten cents per mile for their travel in visiting such institutions: Provided, That no expenses shall be incurred unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by said special committee; and, be it

Further Resolved, That the expenses necessary to conduct such study and to prepare any such report and drafts of proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 22
(By Mr. Cann and Mr. Boiarsky)
[Adopted March 9, 1987.]
Requesting and directing the Joint Committee on Government and Finance to study the present formula for the distribution of state aid to public schools, and related 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, other laws, including the property re-evaluation program, 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 questionable 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 Legislature of West Virginia:

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 properly meets the changing social and economic conditions of this State; what changes should be made to make more equitable 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-eight, together with such recommendations and reports of their findings; and, be it

Further Resolved, That the expenses necessary to conduct such study be paid from the appropriate joint fund.

HOUSE CONCURRENT RESOLUTION NO. 27
(By Mr. Hager, of Logan)
[Adopted March 11, 1967.]

Requesting the Joint Committee on Government and Finance to study the laws of West Virginia pertaining to the operation of both publicly and privately operated water supply systems and to report thereon to the Legislature.

WHEREAS, Matters involving the health, safety, and well-being of the citizens of the State have traditionally been of primary concern to the Legislature; and

WHEREAS, The improper operation of a water supply system is a menace to the health of the thousands of persons who rely on said water system for their daily supply of water; and
WHEREAS, It has come to the attention of the Legislature that some persons engaged in the business of water supply are administering the various chemicals, compounds, and additives commonly used for water purification in improper proportions and that others are marketing water which contains offensive minerals and other impurities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested and directed to make a study of the laws of West Virginia governing the operation of water supply systems, both public and private, and of the provisions for the supervision and inspection of water supply systems by the State Department of Health and the State Public Service Commission for the purpose of determining whether said laws and provisions are adequate to assure that all water supply systems operating within the State offer to the public a product which meets the standards established for water for human consumption by the Department of Health; and, further, to determine whether said laws and provisions are adequate to allow the Department of Health to establish minimal standards relative to color, odor, mineral content, extraneous turbidity and residue in order to make publicly consumed water more palatable and more compatible with the orderly functioning of devices, equipment or appliances which utilize water to service direct human need, both domestically and industrially; and, further, to determine whether said laws and provisions are adequate to assure that any water supply system whose product is substandard in any way will be caused to correct its operations immediately; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature at its regular session, one thousand nine hundred sixty-eight, on its findings and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare reports, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.
HOUSE CONCURRENT RESOLUTION NO. 42
(By Mr. Boiarsky and Mr. Cann)
[Adopted March 9, 1967.]

Directing the Joint Committee on Government and Finance to make a study of the State’s financial needs, both immediate and future, and to continue and broaden the study of a long-range program of taxation and revenue.

WHEREAS, The study of the State’s tax structure by the Joint Committee on Government and Finance during 1965 and 1966 has been of great benefit; and

WHEREAS, This study must be continued without interruption to insure that these benefits not be lost and to provide an orderly process for the necessary accumulation of additional pertinent information; and

WHEREAS, It is important for successful fiscal planning for the future that basic data and tables be updated continuously, that the taxation and revenue structure and problems of local taxing and levying units of government be analyzed, that the State Tax Commissioner acquire the broadest possible statistical data and that a projection be developed for the yield from present revenue sources and of the State’s financial needs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance continue its study of the tax structure of West Virginia and that it include in this study, without being limited thereto, the following:

1. An in-depth study of local taxation including all local taxing and levying units of government;

2. Gathering the broadest possible statistical data by the State Tax Commissioner;

3. Projection for a period of at least the next five years of the yield from present revenue sources and a projection of the State’s financial needs for a similar period;

4. Development of a continuing and permanent program of taxation and revenue research to provide technical assistance and factual and analytical review and appraisal of the state and local tax structure in West Virginia; and, be it
Further Resolved, That the committee report to the regular session of the Legislature, one thousand nine hundred sixty-eight, on its findings, conclusions, and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expense necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 47
(By Mr. Lohr and Mr. Edgar)

[Adopted March 11, 1967.]

Appointing a special committee to investigate forest management practices in the national forests situate in the State of West Virginia.

WHEREAS, It has come to the attention of members of the Legislature that the forest management practices employed in the national forests situate in West Virginia may not be conducive to the best utilization of such forests for recreational and other uses; and

WHEREAS, The great natural beauty and game habitat of West Virginia is being depleted by such practices in many instances; and

WHEREAS, It is deemed necessary that the forest management practices in the national forests of the State of West Virginia be such that the interests of our State are protected; therefore, be it

Resolved by the Legislature of West Virginia:

That a committee is hereby created to study the forest management practices employed in the national forests situate in the State of West Virginia, and to report its findings to the Legislature during its next regular session, such committee to consist 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; and, be it
Further Resolved, That any costs or expenses incidental to this study be paid from the appropriate joint fund, the aggregate sum shall not exceed one hundred dollars per member.

HOUSE JOINT RESOLUTION NO. 3
(By Mr. Boiarsky and Mr. Seibert)
[Adopted March 8, 1967.]

Proposing an amendment to the Constitution of the State, amending section fifty-one, article six thereof, relating to the annual budget and supplementary appropriation bills.

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-eight, which proposed amendment is as follows:

That section fifty-one, article six of the Constitution of the State of West Virginia be amended to read as follows:

ARTICLE VI. THE LEGISLATURE.

Section 51. Budget and Supplementary Appropriation Bills.
—The Legislature shall not appropriate any money out of the treasury except in accordance with provisions of this section.

Subsection A—Appropriation Bills

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

Subsection 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 each 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 decreasing any item therein: Provided, That no item relating to the judiciary shall be decreased, and except as otherwise provided in this Constitution, the salary or compensation of any public officer shall not be increased or decreased during his term of office: Provided further, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of 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.

Subsection C—Supplementary Appropriation Bills

(7) Neither House shall consider other appropriations until the budget bill has been finally acted upon by both Houses, and no such other appropriations 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.

Subsection 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 such an extension of a 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) Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each House of the Legislature shall, before it becomes a law, be presented to the Governor. The Governor may veto the bill, or he may disapprove or reduce items or parts of items contained therein. If he approves he shall sign it and thereupon it shall become a law. The bill, items or parts thereof, disapproved or reduced by the Governor, shall be returned with his objections to each House of the Legislature.

Each House shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each House agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the Governor. In all such cases, the vote of each House shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the Governor within five days (Sundays excepted) after the bill
has been presented to him shall become a law in like manner as if he had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the Secretary of State, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the Governor, in which case it shall become law to the extent not disapproved by the Governor.

(12) 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.

(13) 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.

(14) 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 RESOLUTION NO. 22
(By Mr. Davisson)

[Adopted March 11, 1967.]

Memorializing the Congress of the United States and the Postmaster General to reexamine the postal rates and procedures for mailing third-class mail with a view to equalizing such rates in order to cover the cost of handling, sorting and delivering said third-class mail.

WHEREAS, It has been a source of concern to the House of Delegates of West Virginia that third-class mail requires more time, personnel, equipment and expense for its handling, sorting and delivery than other mail; and
WHEREAS, This resultant increase in expense is reflected in higher postal rates on other classes of mail and, therefore, amounts to an unfair privilege to advertisers and other persons using third-class mail privileges; and

WHEREAS, The Post Office Department operates at a deficit, and it would represent sound fiscal policy to require an increase in the postal rates on this class mail; therefore, be it

Resolved by the House of Delegates:

That it is the sense of this House of Delegates that Congress enact the legislation required to correct this inequity in our postal department and to impel the users of third-class mail to pay for the expense inherent in its use; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit copies of this resolution to all members of the congressional delegation from West Virginia.

HOUSE RESOLUTION NO. 35
(By Messrs. Anderson, Hager, of Logan, and Queen, of Logan)

[Adopted March 8, 1967.]

Requesting the President of the United States to rescind the moratorium on the expenditure of funds for the first phase of construction of the R. D. Bailey Reservoir in Wyoming County, West Virginia.

WHEREAS, The Congress of the United States has heretofore authorized the construction of the R. D. Bailey Reservoir on the waters of the Guyandotte River, Wyoming County, West Virginia; and

WHEREAS, The construction of this reservoir will reduce the flooding of the Guyandotte River from its head waters in Wyoming County through the counties of Mingo, Lincoln, Logan and Cabell; and

WHEREAS, The County of Logan suffered flood damage in 1963 in amount of more than eight million dollars, a large part of which would not have occurred if the said reservoir had been erected and in operation at that time; and
WHEREAS, The County of Logan is now plagued with flood waters from recent rains which will cause additional millions of dollars in loss to its citizens; and

WHEREAS, Final plans for said reservoir have been completed and the original target date for completion of the reservoir was 1973; and

WHEREAS, Congress has heretofore authorized the expenditure of the sum of one million five hundred thousand dollars out of the current budget for completion of the first phase of the property acquisition and railroad relocation; and

WHEREAS, In an economy move, the President, in his wisdom, has declared a six-month moratorium on the authorized expenditure for the said reservoir in an effort to reduce the threat of inflation; and

WHEREAS, It is imperative for the protection of the lives and property of the citizens of Wyoming, Mingo, Logan, Lincoln and Cabell Counties that work on this project proceed with dispatch; and

WHEREAS, Further delay in the construction of the R. D. Bailey Reservoir will subject the citizens to the hazards of death, disease and pestilence which follow flood waters; therefore, be it

Resolved by the House of Delegates:

That the President of the United States is hereby requested to rescind the moratorium on the expenditure of funds for the first phase of construction of the R. D. Bailey Reservoir in Wyoming County, West Virginia, in order that further loss of life and property and the spread of pestilence and disease along the course of the Guyandotte River may be reduced or eliminated, and the people who live along its banks may go to sleep at night without worrying about destruction and despair; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the President of the United States, to each member of the West Virginia Congressional Delegation and to the Chief Engineer of the United States Army Corps of Engineers.
Requesting the West Virginia Delegation in Congress to take appropriate action to aid flood victims in West Virginia.

WHEREAS, It has come to the attention of the House of Delegates that certain streams and waterways in West Virginia have reached and passed flood level; and

WHEREAS, Timely action on the part of the Governor, in dispatching National Guardsmen to stricken areas, minimized losses to life and property and helped maintain order; and

WHEREAS, Resultant damage to lives and property will undoubtedly be extensive and will require both emergency and long-term relief measures beyond the ability of the State to provide; therefore, be it

Resolved by the House of Delegates:

That the West Virginia Delegation in Congress be apprised of the emergency now existing in West Virginia and do all things necessary in their respective Houses and in the executive branch to aid the flood stricken areas; and, be it

Further Resolved, That the Clerk of the House forward copies of this resolution to each member of Congress from West Virginia.

Commemorating the one hundredth birthday of West Virginia University.

WHEREAS, Tuesday, February seventh, one thousand nine hundred sixty-seven, there occurs the one hundredth anniversary of the act establishing West Virginia Agricultural College, later known as West Virginia University; and

WHEREAS, The State of West Virginia thus provided for the education of its young people on a basis comparable with that of the older states of the Union; and
WHEREAS, West Virginia University has brought far-reaching economic and cultural benefits to the people of the State of West Virginia through its three-fold mission of resident instruction, research, and extension services; and

WHEREAS, Among the institution’s graduates there are those who are nationally and internationally recognized for distinguished scholarship, significant scientific achievements, and outstanding leadership in government, education, business and industry; and

WHEREAS, West Virginia University will provide during this one hundredth anniversary year special programs, meetings, displays and observances on its campus and throughout the State to focus public attention on its services to the people of West Virginia and to the entire free world as well; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That this Fifty-eighth Legislature of the State of West Virginia hereby officially recognizes West Virginia University’s one hundredth anniversary observance, commends West Virginia University for its contributions through education for a century, and urges the people of West Virginia to give special attention to this observance.

SENATE CONCURRENT RESOLUTION NO. 7
(By Mr. McCourt)
[Adopted February 15, 1967.]

Directing the Joint Committee on Government and Finance to conduct a study of the delays in the payment of state bills and in the meeting of state payrolls, and of the statutes, records and procedures in connection therewith to determine whether any additional legislation is necessary and to make recommendations with respect thereto.

WHEREAS, There is an unreasonable and unnecessary delay in the payment of certain accounts payable and other obligations owed by the State of West Virginia; and
WHEREAS, Certain state departments and agencies do not submit regular payrolls in a timely manner thereby causing a delay in the regular payment of a number of state employees; and

WHEREAS, There is a duplication of records and procedures in processing many state accounts payable, other obligations and payrolls which oftentimes causes delays in payment; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance make a thorough and detailed study of the delays in the payment of accounts payable and other obligations of the State of West Virginia and in the submission and payment of state payrolls, and of the statutes, records and procedures in connection therewith for the purpose of eliminating any and all of such unreasonable delays and unnecessary duplication of records and procedures; and, be it

Resolved further, That the Committee submit its report to the regular session of the Legislature, one thousand nine hundred sixty-eight, on its findings, conclusions, and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Resolved further, That the expense necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 9

(Originating in the Senate Committee on the Judiciary)

[Adopted March 10, 1967.]

Directing the Joint Committee on Government and Finance to make a study of the various pension systems established by the Legislature and by certain political subdivisions of this State, and to make recommendations with respect thereto.
WHEREAS, From time to time, the Legislature has established various pension systems; and

WHEREAS, The Legislature has from time to time authorized the political subdivisions of this State to establish sundry types of pension systems; and

WHEREAS, There appears to be little uniformity between the various systems with respect to eligibility, benefits, credits, etc.; and

WHEREAS, The Legislature is constantly being urged to liberalize or to authorize the liberalization of such pension systems; and

WHEREAS, There appears to be a need to determine whether such pension systems are actuarially sound; and

WHEREAS, It appears that it might be possible with the continuing increase in social security benefits to terminate one or more of the various pension systems; and

WHEREAS, It appears that it might be possible to combine one or more of the various pension systems into a single retirement system; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be directed to conduct, or cause to be conducted, a study of the various pension systems established by the Legislature and by certain political subdivisions of this State, with a view to determining whether there is a lack of uniformity between the various systems with respect to eligibility, benefits, credits, etc., whether such systems are actuarially sound, whether, with the continuing increase in social security benefits, one or more of the systems might be terminated, whether one or more of the systems might be combined into a single retirement system, and any other matters relevant and material to the foregoing; and, be it

Resolved further, That a final report containing the conclusions and recommendations of the Committee and any drafts of proposed legislation to carry such conclusions and recommendations into effect be submitted to the Legislature prior
to the convening of its regular session, one thousand nine hun-
derd sixty-nine; and, be it

Resolved further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 11
(By Mr. Carson, Mr. President)

[Adopted March 9, 1967.]

Directing the Joint Committee on Government and Finance to conduct a study of the state statutes relating to elections, for the purpose of determining whether such statutes should be revised, and to make recommendations with respect thereto.

WHEREAS, Various reports indicate that certain deficiencies and inadequacies exist in the state election laws relating to the registration of voters, the appointment of election officials, the conduct of elections, and the procedural aspects of canvasses, recounts, contests, and appeals therefrom; and

WHEREAS, From these reports it would appear that said deficiencies and inadequacies are too numerous and complex to permit the state election laws to be properly revised by the piecemeal method; and

WHEREAS, A thorough bipartisan examination and study of all of the state election laws is necessary in order to properly strengthen the state election laws and correct any such deficiencies and inadequacies; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance make a thorough and detailed study of the state statutes relating to elections for the purpose of determining whether such statutes should be revised so that the results of each and every election held in this State will reflect the true will of the voters in the matter of choosing their public officers; and, be it
Resolved further, That the Committee shall make its report to the Legislature prior to the convening of its regular session, one thousand nine hundred sixty-eight, and shall include in its report its findings and recommendations and drafts of any proposed legislation that shall be necessary to carry the recommendations of the Committee into effect; and, be it

Resolved further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 12
(By Mr. Carson, Mr. President)
[Adopted March 10, 1967.]
Providing for a Citizens' Advisory Commission on the Legislature of West Virginia; defining its powers and duties; providing for its operational expenses.

WHEREAS, The Legislature of West Virginia is facing ever-increasing problems in fulfilling its responsibilities to the people of the State of West Virginia; and

WHEREAS, The declared policy of the Legislature of West Virginia is to improve its legislative processes to the end that it may truly become in the fullest sense an equal and coordinate branch of the government of this State; and

WHEREAS, The effective pursuit of these goals will require a comprehensive study over an extended period of time to determine and define the problems and develop solutions for them; and

WHEREAS, National organizations and foundations headed by outstanding citizens from all walks of life have been formed to encourage and assist in this endeavor, and other long established national organizations have made the improvement of legislatures one of their major objectives, indicating that substantial improvements will be forthcoming on a national scale; and

WHEREAS, The Legislature has great respect for the ability of the people of the State and desires to have and to make use of
their knowledge and views concerning legislative improvement; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Legislature shall create a Citizens' Advisory Commission on the Legislature of West Virginia consisting of outstanding citizens from all walks of life. The President of the Senate and the Speaker of the House of Delegates shall be members ex officio and there shall be thirty other members as follows: Three members of the Senate and twelve private citizens of the State, appointed by the President of the Senate; three members of the House of Delegates and twelve private citizens of the State appointed by the Speaker of the House of Delegates. Of the three members appointed from each chamber, no more than two may be of the same political party. All appointees shall serve until the fifteenth day of April, one thousand nine hundred sixty-nine, at which time the Commission will expire. Any vacancy in the commission, created by death, resignation or refusal to serve shall be filled by appointment in the same manner; and, be it

Resolved further, That within thirty days of the adoption of this resolution, appointments of the members of the Commission shall be made. Within fifteen days thereafter at the State Capitol and on the day designated by the President of the Senate and the Speaker of the House, the Commission shall meet and organize by selecting from its nonlegislative members a chairman and such other officers as it considers necessary and shall provide rules for transacting its business and keeping records thereof. A majority of the members of the Commission constitutes a quorum at any of its meetings. Members of the Commission shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties; and, be it

Resolved further, That the Commission may employ and fix the compensation of such employees and technical assistants as it considers necessary, and the Commission shall have full access and use of all legislative records and facilities, and may, with the consent of the Joint Committee on Government and
Finance, be provided professional and clerical assistance from the staff or consultants of that Committee; and, be it

Resolved further, That it shall be the duty of the Commission to study the legislative needs, organization, facilities and functions with the goal of improving and strengthening the ability of the Legislature to fulfill its responsibilities in our representative democracy. The study shall be broad and comprehensive in scope. In order to make its findings known to the Legislature and the citizens of the State, the Commission shall submit interim reports as it deems necessary, and a final report on the fifteenth day of December, one thousand nine hundred sixty-eight. In the final report the Commission shall set out the problems as it has found them to exist, together with its recommendations and proposed legislation; and, be it

Resolved further, That all expenses necessary to conduct the study, draft proposed legislation, reimburse the members of the Commission for expenses actually incurred in the discharge of their duties, and to fulfill the purpose of this resolution, shall be paid out of the legislative appropriations made to the Joint Committee on Government and Finance after prior approval of same by said Joint Committee. In addition, the Commission may, by a four-fifths vote of the members present, accept any offer of services, equipment, supplies, materials or funds by gift or grant made for purposes of assisting the Commission in carrying out its functions.

SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Carson, Mr. President, and Mr. Porter)

[Adopted March 10, 1967.]

Directing the Joint Committee on Government and Finance to conduct a study of the desirability and feasibility of the State establishing an accident and health insurance program and a life insurance program for state employees, and to make recommendations with respect thereto.

WHEREAS, Competition for competent and qualified employees has increased in recent years in both the private and public sectors of our economy; and
WHEREAS, Many employers in business and industry offer their employees accident and health and life insurance programs in order to attract and retain competent and qualified personnel; and

WHEREAS, Many other states have found such programs desirable and now provide their employees with accident and health and life insurance programs in order to attract and retain competent and qualified personnel; and

WHEREAS, Our state government needs to attract and retain competent and qualified personnel in order to meet the needs of the people of our State; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance make a thorough and detailed study of the desirability, feasibility and cost of establishing an accident and health insurance program or a life insurance program, or both such programs, for state employees and the various types of benefits and coverage to be afforded; and, be it

Resolved further, That the Committee shall make its report to the Legislature prior to the convening of its regular session, one thousand nine hundred sixty-eight, and shall include in its report its findings and recommendations and drafts of any proposed legislation that shall be necessary to carry the recommendations of the Committee into effect; and, be it

Resolved further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 16
(By Mr. Carson, Mr. President)
[Adopted March 9, 1967.]

Adopting rules and regulations to govern travel and other related expenses incurred by members of the Legislature,
and by officers and employees of the Legislature incurred on official business for the State of West Virginia.

Resolved by the Senate, the House of Delegates concurring therein:

That the rules and regulations to govern travel and other related expenses incurred by members of the Legislature, and by officers and employees of the Legislature incurred while on official business for the State, shall be as follows:

1. Members of the Legislature.—(a) All travel by members of the Legislature in the course of performing official business for the State shall be governed by these rules and regulations: 

Provided, That these rules and regulations shall not apply to regular visitations to state health, mental health and penal and correctional institutions during annual legislative sessions as may be specifically authorized and provided for by resolution of the Legislature, and shall not apply to transportation to and from the seat of government for legislative sessions and party caucuses as authorized in article six, section thirty-three of the West Virginia Constitution.

(b) For in-state travel, meaning a trip totally within this State, members of the Legislature shall be reimbursed at the rate of twenty-five dollars per day in lieu of actual and necessary expenses for meals and lodging.

(c) For out-of-state travel, meaning a trip from West Virginia to an out-of-state point or points and return, members of the Legislature shall be reimbursed at the rate of thirty-five dollars per day in lieu of actual and necessary expenses for meals and lodging.

(d) Members of the Legislature may travel by private automobile or public carrier and shall be reimbursed for the expenses of their transportation on the basis of the actual mode of travel. Members shall be reimbursed for transportation costs at the rate of ten cents per mile for the most direct usually traveled route, if travel is by private automobile; or actual transportation costs for direct route travel, if travel is by public carrier.

2. Officers and Employees of the Legislature.—(a) All travel by officers and employees of the Legislature in the course of
performing official business for the State shall be governed by these rules and regulations, except that the President of the Senate and the Speaker of the House of Delegates shall be governed by the rules and regulations for "members of the Legislature" and not by rules and regulations for "officers and employees of the Legislature."

(b) For in-state travel, meaning a trip totally within West Virginia:

(1) Reimbursement shall be made for actual hotel room expenses (excluding radio, television, laundry, valet and other similar charges) while absent from official stations. A receipt for the amount paid for hotel rooms shall be submitted with the original expense account. If an officer or employee is accompanied by his spouse, hotel reimbursement for double occupancy will be on the basis of single occupancy rate (not to exceed eighty per cent of actual room cost).

(2) Reimbursement shall be made for the actual cost of meals while absent from official stations not to exceed a maximum amount of seven dollars and fifty cents per day.

(3) Reimbursement for transportation costs shall be made at the rate of ten cents per mile for the most direct usually traveled route, if travel is by private automobile; or actual transportation costs for direct route travel, if travel is by public carrier.

(4) Reimbursement for tips and gratuities shall not be allowed unless included in the maximum allowance for meals.

(5) Necessary charges for the transfer and storage of baggage shall be allowed on the date of hotel "check-in" and on the date of hotel "check-out" but not to exceed ten per cent of the daily hotel room rate for each date.

(c) For out-of-state travel, meaning a trip from West Virginia to an out-of-state point or points and return:

(1) Reimbursement shall be made for actual hotel room expenses on the same basis as provided above for in-state travel.

(2) Reimbursement shall be made for meals on the same basis as provided above for in-state travel, except that the
maximum amount shall be twelve dollars and fifty cents per day.

(3) Reimbursement for transportation shall be made on the same basis as provided above for in-state travel, except that the mode of transportation shall be that which is most efficient and economical to the State. If travel by automobile is justified hereunder, reimbursement shall be made at the rate of ten cents per mile for the most direct usually traveled route. However, if travel is by automobile notwithstanding the fact that automobile travel is not justified hereunder, reimbursement shall be made on the basis of airline transportation costs or on the basis of the above automobile mileage rate, whichever it less.

(4) Reimbursement for tips, gratuities, and baggage transfer and storage shall be made on the same basis as provided above for in-state travel.

3. Miscellaneous Rules and Regulations.—The Joint Committee on Government and Finance shall designate the number of days that shall be authorized for travel, including transportation days and days for meetings, conferences and other official business. Reimbursement as provided herein shall be limited to the number of days so designated. Travel time by automobile shall be designated on the basis of not less than four hundred miles per day. The provisions in this paragraph shall not apply to regular requirements of travel by the Legislative Auditor and his staff to perform post-audit functions.

All travel by persons subject to the provisions of these rules and regulations shall be approved and authorized by the Joint Committee on Government and Finance, except that regular requirements of travel by the Legislative Auditor and his staff to perform post-audit functions do not require such approval and authorization. Such approval by the Joint Committee on Government and Finance shall be sufficient authority for the Auditor of West Virginia to issue warrant in payment of such expenses.

No reimbursement shall be made for federal excise tax on transportation.

If more than one person travels in the same automobile, re-
imbursement for transportation shall be made only to the person providing the automobile.

Registration fees at conferences may be reimbursed to both members and to officers and employees when supported by a receipt as an additional item of expense.

Necessary parking, toll bridge and turnpike fees may be reimbursed to both members and to officers and employees as an additional item of expense.

Justified limousine and taxi fares in connection with authorized travel may be reimbursed to both members and to officers and employees as an additional item of expense.

Combined travel by private automobile and common carrier may be justified when a person travels by private automobile between his residence, in case of a member, or from his official station, in case of an officer or employee, and a common carrier terminal. In such case, the expense of the private automobile portion shall be reimbursed as provided above and the expense of the common carrier portion shall be reimbursed as provided above.

For the purposes of these rules and regulations, the departure point for members shall be considered as the place of residence of the member traveling, and the departure point for officers and employees shall be the official station of the person traveling.

Specific prior approval by the Joint Committee on Government and Finance shall be obtained for lodging at the Greenbrier Hotel at White Sulphur Springs, West Virginia. Upon any such approval, reimbursement shall be made for the actual cost of such lodging. Gratuities in this instance shall not exceed fifteen per cent of the daily room rate.

Expense accounts shall be verified by affidavit of the person incurring the expense.

All expense accounts for travel shall be approved by the Legislative Auditor's Office prior to submission for payment.

The President of the Senate and Speaker of the House of Delegates shall resolve any problems with respect to travel expenses which may arise hereunder.
SENATE CONCURRENT RESOLUTION NO. 20
(By Mr. Carson, Mr. President)
[Adopted March 10, 1967.]

Directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to continue certain studies.

WHEREAS, Certain studies referred to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation by prior sessions of the Legislature have not been completed and require additional study; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the studies authorized by the following resolutions be continued:

1. Senate Concurrent Resolution No. 11, adopted regular session, one thousand nine hundred fifty-seven, and continued by Senate Concurrent Resolution No. 33, adopted regular session, one thousand nine hundred sixty-five, and again continued by House Concurrent Resolution No. 40, adopted regular session, one thousand nine hundred sixty-six, relating to a study of institutions of higher education;

2. House Concurrent Resolution No. 20, adopted regular session, one thousand nine hundred sixty-three, and continued by Senate Concurrent Resolution No. 33, adopted regular session, one thousand nine hundred sixty-five, and again continued by House Concurrent Resolution No. 40, adopted regular session, one thousand nine hundred sixty-six, relating to a study of executive and administrative offices;

3. Senate Concurrent Resolution No. 4, adopted regular session, one thousand nine hundred sixty-five, relating to a study of a recodification of the municipal corporation laws; and, be it

Resolved further, That all provisions of said concurrent resolutions be continued in full force and effect; and, be it

Resolved further, That all reports, together with findings, conclusions, recommendations, and any proposed drafts of leg-
islation, be made to the Legislature at its regular session, one thousand nine hundred sixty-eight, insofar as said Senate Concurrent Resolution No. 11 and said Senate Concurrent Resolution No. 4 are concerned; and to the Legislature at its regular session, one thousand nine hundred sixty-nine, insofar as said House Concurrent Resolution No. 20 is concerned.

SENATE CONCURRENT RESOLUTION NO. 23
(Originating in the Senate Committee on Natural Resources)
[Adopted March 11, 1967.]
Directing the Joint Committee on Government and Finance to conduct a study relating to the water resources of the State and to make recommendations with respect thereto.

WHEREAS, The waters of the State of West Virginia constitute one of the State's most important resources; and

WHEREAS, With each passing year there is an increase in the improper use of the waters of the State; and

WHEREAS, The federal government, recognizing the importance of water resources, has recently created the Federal Water Pollution Control Administration to administer the water resources of the country; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance make a thorough and detailed study of the development, conservation and proper use of the water resources of the State, the rules and regulations to be promulgated by the newly created Federal Water Pollution Control Administration which becomes effective on the first day of July, one thousand nine hundred sixty-seven, and the State's declared legislative policy on water resources; and, be it

Resolved further, That the Committee shall make its report to the Legislature prior to the convening of its regular session, one thousand nine hundred sixty-eight, and shall include in its report its findings and recommendations and drafts of any proposed legislation that shall be necessary to carry the recommendations of the committee into effect; and, be it
Resolved further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 25
(By Mr. Carson, Mr. President)
[Adopted March 11, 1967.]
Requesting additional space in the State Capitol for use of the Legislature.

Whereas, The space available for the use of the Legislature and its officers, staff and employees is severely limited; and

Whereas, The ever-expanding work load of the Legislature creates a pressing need for more space to carry on the work of the Legislature; and

Whereas, The present assignment of space within the Capitol Building leaves no space in which to house the expanding functions of the Legislature; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Governor, the Board of Public Works, the Commissioner of Finance and Administration and the State Building Commission are hereby requested to make available for the use of the Legislature before the beginning of the Regular Session of the Legislature, 1968, the space on the ground floor of the Capitol Building now occupied by the Department of Public Safety and the Alcohol Beverage Control Commissioner and to make other space available to the aforementioned agencies; and, be it

Resolved further, That, with the exception of the offices presently occupied by the Governor and the Attorney General, all offices now located on the ground floor of the main unit of the Capitol Building and all offices in the east wing down to and including room 143 on the east side of the corridor and room 126 on the west side of the corridor on the ground floor and all offices in the west wing down to and including room
129 on the east side of the corridor and room 148 on the west side of the corridor on the ground floor be made available for the use of the Legislature within five years or as soon thereafter as other space for said offices may be made available in the Capitol Building or elsewhere, through the leasing of office space or through the erection of a new office building or buildings, or both.
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 the number of members to which the state is entitled in the House of Representatives of the United States Congress and arranging the counties of the state into districts for the election thereof.

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:

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-3. Congressional districts.

The number of members to which the state is entitled 2 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: Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Marion, Marshall, Ohio, Tyler and Wetzel.


Third District: Boone, Braxton, Clay, Kanawha, Nicholas, Putnam and Roane.

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

AN ACT to amend and reenact section three, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adoption.

Be it enacted by the Legislature of West Virginia:

That section three, 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:

ARTICLE 4. ADOPTION.

§48-4-3. Proceedings on petition; appointment of next friend; contents of decree.

1 Upon the presentation of such petition to the court, or judge thereof in vacation, the same shall be ordered filed with the clerk of such court, and the court or judge thereof shall appoint a day for the hearing of such petition and the examination under oath of the parties in interest. And the court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court may cause a discreet inquiry to be made respecting the child, for the purpose of ascertaining whether such child is a proper subject for adoption and
shall cause a discreet inquiry to be made respecting the home of the petitioner or petitioners to determine whether it is a suitable home for such child. Such inquiry shall be made by any suitable person or agency designated by the court, and the results thereof shall be embodied in a full written report and shall be submitted to the court at or prior to the hearing upon the petition and shall be filed with the records of the proceeding and become a part thereof. If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested. Upon the day so appointed the court or judge thereof shall proceed to a full hearing of the petition and examination of the parties in interest, under oath and of such other witnesses as the court or the judge thereof may deem necessary to fully develop the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or the judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make a decree reciting at length the facts proved and the name by which the child shall thereafter be known,
and declaring and adjudging that from the date of such decree, the rights, duties, privileges and relations, there-
tofore existing between the child and his or her parents, 
shall be in all respects at an end, and that the rights, 
duties, privileges and relations between the child and 
his or her parent or parents by adoption shall thence-
forth in all respects be the same, including the right of 
inheritance, as if the child had been born to such adopt-
ing parent or parents in lawful wedlock, except only 
as otherwise provided in this article.

CHAPTER 2

(House Bill No. 204—By Mr. Speaker, Mr. White, and Mr. Edgar)

[Passed February 6, 1968; in effect July 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six, seven, 
eight and ten, article two-b, chapter nineteen of the code 
of West Virginia, one thousand nine hundred thirty-one, 
as amended, relating to inspection of meat and meat 
products.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six, seven, eight and ten, article 
two-b, 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 2B. INSPECTION OF ANIMALS, MEAT AND MEAT 
PRODUCTS.

Section
19-2B-4. License required for commercial slaughterer, custom slaugh-
terer, commercial processor, custom processor or distribu-
tor; application for license; fees; refusal, revocation or sus-
pension; suspension of inspection; establishment number 
or numbers.
19-2B-6. Inspection of animals, carcasses and establishments; schedul-
ing of operations; conveyances; quarantine and segregation; 
labeling, branding, etc.; seizure and destruction of certain 
animals, products, etc.; reinspection; reprocessing; health 
examinations for employees; rejection tags; removal of in-
spection marks.
19-2B-7. Exclusion of slaughterhouses and processing plants under 
the supervision of or approved by the United States de-
partment of agriculture; exclusion of farmers.
19-2B-10. Additional prohibitions.


1 Unless the context in which used clearly requires a different meaning, as used in this article:
2 (a) "Department" means the department of agriculture of the state of West Virginia;
3 (b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives;
4 (c) "Person" means any individual, partnership, corporation, association, or other entity;
5 (d) "Contract veterinarian" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association who provides services for the department under contract;
6 (e) "Veterinary supervisor" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association, and employed by the department to inspect and supervise the inspection of animals, carcasses, meat, meat food products or meat by-products;
7 (f) "Meat inspector" means an individual employed by the department to inspect animals, carcasses, meat, meat food products or meat by-products under the supervision of a veterinary supervisor;
8 (g) "State inspection" means inspection services conducted by the department at or in connection with establishments required to be licensed by this article;
9 (h) "W. Va. condemned," or abbreviation thereof, means the animal so marked has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass;
10 (i) "W. Va. inspected and condemned," or abbreviation thereof, means that the carcass, meat, meat food product or meat by-product, so marked or so identified, is unwholesome or adulterated and shall be disposed of in the manner prescribed by the commissioner;
(j) "W. Va. retained" means that the carcass, meat, meat food product or meat by-product so identified is held for further examination by a veterinary supervisor or contract veterinarian to determine its disposal;

(k) "W. Va. suspect" means that the animal so marked and identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by a contract veterinarian or veterinary supervisor to determine its disposal;

(l) "W. Va. inspected and passed," or abbreviation thereof, means that the carcass, meat, meat food product or meat by-product, so marked or so identified, was at the time it was so marked or so identified found to be wholesome;

(m) "Country" when used in the name of a meat, meat food product or meat by-product means that such meat, meat food product or meat by-product was actually prepared on a farm;

(n) "Federal inspection" means the meat and poultry inspection service conducted or approved by the meat inspection division and the poultry inspection division of the United States department of agriculture;

(o) "Federal Meat Inspection Act" means the act so entitled, approved March four, one thousand nine hundred seven, as amended by the Wholesome Meat Act.

(p) "Federal Poultry Products Inspection Act" means the act of Congress approved August twenty-eighth, one thousand nine hundred fifty-seven, as amended;

(q) "Inspection legend" means a mark or a statement on a carcass, meat, meat food product or meat by-product indicating the same has been inspected and passed in this state under the provisions of this article;

(r) "Meat label" means a display of written, printed or graphic matter on a container indicating the carcass, meat, meat food products or meat by-products contained therein have been inspected and passed in this state under the provisions of this article;

(s) "Official inspection mark" means any symbol pre-
scribed by the commissioner for the purpose of identifying
the inspection status of any article so inspected;
(t) "Establishment number" means an official num-
ber assigned by the commissioner to each establishment
and included on the inspection legend and meat label to
identify all inspected and passed carcasses, meat, meat
food products and meat by-products handled in that
establishment;
(u) "Container" and "package" shall include but not
be limited to any box, can, tin, cloth, plastic or any other
receptacle, wrapper or cover;
(v) "Sell" means offer for sale, expose for sale, have
in possession for sale, exchange, barter or trade;
(w) "Animals" mean cattle, swine, sheep, goats and
rabbits;
(x) "Carcass" means all or any part of a slaughtered
animal, including viscera, which is capable of being used
for human consumption;
(y) "Meat" means the edible part of the muscle of
animals, which is skeletal or which is found in the
tongue, in the diaphragm, in the heart or in the esopha-
gus, with or without the accompanying or overlying fat,
and the portions of bone, skin, sinew nerve and blood
vessels which normally accompany the muscle tissue
and which are not separated from it in the process of
dressing; it does not include the muscle found in the
lips, snout or ears;
(z) "Meat food product" means any article of food
for human consumption or any article which enters into
the composition of food for human consumption, which
is derived or prepared in whole or in part from any por-
tion of any animal, except organotherapeutic sub-
tances, meat juices, meat extract and the like which are only
for medicinal purposes and are advertised only to the
medical profession; any edible part of the carcass which
has been manufactured, cured, smoked, processed or
otherwise treated shall be considered a meat food prod-
uct;
(aa) "Meat by-product" means any edible part of an
animal other than meat or meat food product;
(bb) "Denature" means the uniform application of sufficient quantities of crude carbolic acid, cresylic disinfectant, or any other agent approved by the commissioner upon and into the freely slashed flesh of any carcass or product condemned;

(cc) "Decharacterization" means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, or any other agent approved by the commissioner, upon and into the freely slashed flesh of carcasses or meat not being rendered, so as to unequivocally preclude its use for human food;

(dd) "Inedible" means meat, meat food products and meat by-products derived from 4-D or condemned animals, or animals which the meat, meat food products or meat by-products are otherwise unsuitable for human consumption and shall include meat, meat food products or meat by-products regardless of origin, which have deteriorated so far as to be unfit for human consumption;

(ee) "4-D animal" means an animal that is dead, dying, down or diseased on arrival at the slaughterhouse;

(ff) "Commercial slaughterer" means a person engaged for profit in this state in the business of slaughtering or dressing animals for human consumption which are to be sold or offered for sale through a commercial outlet or establishment, and shall include a person who in addition to such commercial slaughtering also engages in the business of a custom slaughterer;

(gg) "Custom slaughterer" means a person engaged for profit in this state in the business of slaughtering or dressing animals for human consumption which are not to be sold or offered for sale through a commercial outlet or establishment, and shall include the boning or cutting up of carcasses of such animals and the grinding, chopping and mixing of the carcasses thereof;

(hh) "Slaughterhouse" shall include but not be limited to all buildings, structures and facilities used in the slaughtering or dressing of animals for human consumption;

(ii) "Distributor" means a person engaged for profit
in this state in the business where carcasses, meat, meat food products or meat by-products are received from state or federally inspected establishments, or approved by the United States department of agriculture, and who stores and distributes to commercial outlets, processors or individuals, and who conducts no processing other than wrapping and/or cutting of carcasses or its parts into quarters or wholesale cuts;

(jj) “Processor” means a person who engages for profit in this state in the business of packing or packaging carcasses, meat, meat food products or meat by-products for human consumption or a person engaged for profit in the business of curing, salting, smoking, processing or other preparing of carcasses, meat, meat food products or meat by-products for human consumption;

(kk) “Commercial processor” means a processor for commercial outlets or distributors and shall include the business of custom processing;

(ll) “Custom processor” means a processor in which the meat, meat food products or meat by-products derived through processing cannot be sold or be offered for sale through a commercial outlet, or distributor;

(mm) “Processing plant” shall include but not be limited to all buildings, structures, chill rooms, aging rooms, processing rooms, sanitary facilities, other facilities, and utensils, used by or in connection with the operations of a processor;

(nn) “Establishment” means any slaughterhouse, processing plant or distributor in this state;

(oo) “Related industries” means rendering plants, refrigerated meat warehouses, food lockers, meat and poultry wholesalers, brokers, pet food manufacturers, other animal food manufacturers, animal impoundments whose main source of food supply is derived from the raw meats, transportation firms and private carriers;

(pp) “Commercial outlet” means a place of business in this state and shall include all retail stores and public eating places in which carcasses, meat, meat food products or meat by-products are stored, sold or offered for sale for human consumption by the purchaser or others;
(qq) "Commercial dealer" means any person who operates one or more commercial outlets and who sells or offers for sale thereat any carcasses, meat, meat food products or meat by-products for human consumption, and who does not can, cook, cure, dry, smoke or render any carcass, meat, meat food products or meat by-products at such outlets and who conducts no slaughtering or preparing of carcasses, meat, meat food products or meat by-products at such outlets other than boning or cutting up of carcasses, and other than grinding, chopping and mixing operations at such outlets with respect to trim or meat derived only from such boning or cutting up operations;

(rr) "Custom slaughtered carcass or meat," "custom slaughtered meat food products" or "custom slaughtered meat by-products" mean, respectively, carcasses, meat, meat food products or meat by-products which were slaughtered, dressed or otherwise processed by a custom slaughterer;

(ss) "Wholesome" means sound, healthful, clean, and otherwise fit for human consumption;

(tt) "Unwholesome" means any animal, carcass, meat, meat food product or meat by-product which:

(i) Is unsound, injurious to health, contains any biological residue not permitted under reasonable rules and regulations promulgated by the commissioner, or is otherwise unfit for human consumption,

(ii) Consists in whole or in part of any filthy, putrid, or decomposed substance,

(iii) Was processed, prepared, packed, or held under insanitary conditions so that the same may have become contaminated or may have become injurious to health, or

(iv) Was produced in whole or in part from animals which died other than by slaughter;

(uu) "Adulterated" means any animal, carcass, meat, meat food product or meat by-product:

(i) Which bears or contains any poisonous or deleterious substance, whether added or natural, that may
render it injurious to health or unfit for human consumption,

(ii) Concerning which a substance has been substituted, wholly or in part,

(iii) In which damage or inferiority has been concealed in any manner,

(iv) Concerning which any casing has been used which contains any dye or artificial coloring not authorized by reasonable rules and regulations promulgated by the commissioner,

(v) From which a valuable constituent has been in whole or in part omitted or abstracted, or

(vi) To or with which any substance has been added, mixed or packed for the purpose of increasing its bulk or weight, or so as to reduce its quality or strength, or to make it appear better or of greater value than it is, unless authorized by reasonable rules and regulations promulgated by the commissioner;

(vv) "Licensee" means any person licensed under the provisions of this article.

§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

(a) No commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor shall operate an establishment unless he shall first have obtained a license from the commissioner so to do, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the fee required in this section. When such a person operates as a commercial slaughterer and also operates as a commercial processor, whether such operations are located on the same or different premises in this state, each such operation shall be licensed. When such a person operates two or more slaughterhouses not on the same premises in this state, or operates two or more processing plants not on the same premises in this state, a separate
license shall be required for each such slaughterhouse and each such processing plant. Each license shall expire on the thirtieth day of June next following its issuance, and the annual fee for each such license shall be based upon the average number of animals slaughtered per year and upon the average finished product poundage processed per year as set forth in the following table, except that the annual fee for the license of a person who operates solely as a custom slaughterer shall be ten dollars or as a custom processor shall be five dollars or as a distributor shall be five dollars.

<table>
<thead>
<tr>
<th>Class</th>
<th>Average Number of Animals</th>
<th>Average Finished Product</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>1 - 500</td>
<td>1 - 25,000</td>
<td>$10.00</td>
</tr>
<tr>
<td>Medium</td>
<td>501 - 1000</td>
<td>25,001 - 250,000</td>
<td>$25.00</td>
</tr>
<tr>
<td>Large</td>
<td>1001 - 5000</td>
<td>250,001 - 1,000,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 5000</td>
<td>Over 1,000,000</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's establishment and if the commissioner is satisfied that the establishment is clean and sanitary, is properly equipped, and is in conformity with the provisions of this article and any reasonable rules and regulations promulgated by the commissioner, and if he is further satisfied that the carcasses, meat, meat food products or meat by-products to be sold or offered for sale through commercial outlets will be wholesome and unadulterated, he shall issue the license. Each license shall specify the location of the establishment at which the licensee shall carry on his operations. The license shall also contain the establishment number assigned by the commissioner.

(b) When a licensee changes the location of his establishment, he shall not operate at such new location unless and until his establishment at such new location
has been inspected by the commissioner and a new
license has been issued, or when a licensee leases, sells,
changes name, incorporates or in any other way changes
the status of his establishment with relationship to
issuance of current license, the new lessee, owner, etc.,
shall not operate at the location unless and until the
establishment at such location has been inspected and
approved by the commissioner and a new license has
been issued in accordance with the provisions of sub-
section (a) of this section: Provided, That a fee shall
not be charged for such new license during the license
year in which the change in location or change in owner-
ship, name or leasing was made.

(c) The commissioner may refuse to grant a license
or may suspend or revoke a license issued under the
provisions of this section whenever he finds that the
applicant's or licensee's establishment, as the case may
be, is not clean or sanitary, or is not properly equipped,
or is not in conformity with the provisions of this article
or any reasonable rules and regulations promulgated
by the commissioner, or if he finds that the carcasses,
meat, meat food products or meat by-products to be
sold or offered for sale therefrom through commercial
outlets are or will be unwholesome or adulterated. Upon
the refusal to grant a license, the commissioner shall
furnish a written statement to the applicant specifying
the grounds for such refusal. No such revocation or
suspension of a license shall be effective until the licensee
has received written notice thereof, which notice shall
specify the grounds for such revocation or suspension.
Whenever there is sufficient cause for the revocation
or suspension of a license as hereinabove specified, the
commissioner may in lieu of such revocation or sus-
pension, suspend inspections at the establishment.
Immediately upon suspension of such inspections the
commissioner shall give the licensee written notice
thereof, and such notice shall contain a recitation of
the deficiencies which must be fully and completely
corrected before inspections shall be resumed. Upon
receipt of a written statement advising that a license
has been refused or upon receipt of a written notice
of the revocation or suspension of a license, or upon the
suspension of inspections at the licensee's establishment,
the applicant or licensee, as the case may be, may, in
writing, demand a hearing. The commissioner shall hold
such a hearing within ten days after receipt of such
written demand, in accordance with the provisions of
section nine of this article.

§19-2B-6. Inspection of animals, carcasses and establishments;
scheduling of operations; conveyances; quarantine
and segregation; labeling, branding, etc.; seizure
and destruction of certain animals, products, etc.;
reinspection; reprocessing; health examinations
for employees; rejection tags; removal of inspection
marks.

(a) The commissioner shall provide antemortem
inspection of all animals before they are slaughtered
for human consumption in any establishment under state
inspection.

(b) The commissioner shall provide postmortem
inspection of all animals slaughtered for human con-
sumption in any establishment under state inspec-
tion.

(c) All inspections under the provisions of this
article shall be performed in accordance with reasonable
rules and regulations promulgated by the commissioner.

(d) The commissioner shall inspect all establish-
ments under state inspection to make certain that they
are operating in accordance with the provisions of this
article and all reasonable rules and regulations pro-
mulgated by the commissioner.

(e) When one inspector is assigned to make inspec-
tions at two or more establishments where few animals
are slaughtered, or where small quantities of carcasses,
meat, meat food products or meat by-products are
handled, or where the operations at such establishments
are sporadic, and such establishments in any of such
cases are in reasonably close proximity to one another,
the commissioner, giving full consideration to the con-
venience of the licensees of such establishments, may
by written notice to such licensees specify a reasonable
schedule for such operations: *Provided*, That the com-
missioner may not require operations other than during
normal working hours.

(f) Every conveyance used by any establishment
under state inspection, and, notwithstanding the pro-
visions of subsection (a) of section seven of this article,
every conveyance used by any slaughterhouse, processing
plant or distributor operating under federal inspection
or approved by the United States department of agri-
culture, for the transportation of carcasses, meat, meat
food products or meat by-products shall be maintained
in a clean and sanitary condition and may be inspected
in accordance with the provisions of this article and
reasonable rules and regulations promulgated by the
commissioner.

(g) The commissioner shall require such quarantine
and segregation of animals, carcasses, meat, meat food
products and meat by-products in establishments as is
deemed necessary to effectuate the provisions of this
article.

(h) The head, tongue, tail, thymus glands, viscera,
blood and other parts of any slaughtered animal shall
be retained in such a manner as to preserve their
identity until after the postmortem inspection has been
completed.

(i) Each licensee shall pay for such devices for the
affixing of marks, brands or stamps and for such meat
labels as may be prescribed for his establishment by
the commissioner. Such devices and meat labels shall be
under the exclusive control and supervision of the
commissioner. The meat label used by any licensee
shall be of the form and size prescribed by reasonable
rules and regulations promulgated by the commissioner.

(j) Each carcass that has been inspected and passed
in this state by the commissioner shall be marked at
the time of inspection with the inspection legend. Any
carcass which is not passed shall be marked conspicuously
by the commissioner at the time of inspection in the
following manner: "W. Va. inspected and condemned,"
or any abbreviation thereof.

(k) Each primal part of a carcass that has been
inspected and passed shall be marked with the inspection
legend, and each liver, beef heart and beef tongue that
has been inspected and passed shall be branded with
the inspection legend at the time of final inspection.
Meat that has been boned out, cut from primal parts
or otherwise changed so that the inspection legend is
no longer plainly visible, and meat food products and
meat by-products that are too small to be marked with
the inspection legend shall be packed in closed con-
tainers to which shall be affixed the meat label indicating
that the meat, meat food products or meat by-products
contained therein have been inspected and passed. Upon
removal of the contents of such containers bearing
such label, the label shall be defaced to prevent its
reuse.

(l) All carcasses, meat, meat food products and meat
by-products which have been derived from an animal
slaughtered by a custom slaughterer or processed by
a custom slaughterer or custom processor shall be
marked “W. Va. custom slaughtered” in letters not less
than three eighths of an inch in height.

(m) Each official inspection mark shall contain the
establishment number of the establishment involved,
unless otherwise authorized by rules and regulations
promulgated by the commissioner.

(n) The commissioner is hereby authorized and em-
powered to seize and destroy (i) any animal to be
slaughtered in this state and thereafter sold or offered
for sale through a commercial outlet or distributor which
cannot be made fit for human consumption; (ii) any
animal, carcass, meat, meat food product or meat by-
product slaughtered or processed in this state in violation
of the provisions of this article or any reasonable rules
and regulations promulgated by the commissioner; (iii)
any carcass, meat, meat food product or meat by-
product that does not bear an inspection legend or meat
label provided for by this article or which has not been
inspected and passed under federal inspection or
approved by the United States department of agricul-
ture and which is intended to be sold or offered for
sale through a commercial outlet or distributor; and
AGRICULTURE

(iv) any animal, carcass, meat, meat food product or meat by-product which is unwholesome or adulterated. Where appropriate the commissioner may in lieu of destruction as aforesaid denature, decharacterize, mutilate or slash any carcass, meat, meat food product or meat by-product intended to be sold or offered for sale through a commercial outlet or distributor. The commissioner is also authorized and empowered to seize and retain under a retained tag any animal, carcass, meat, meat food product or meat by-product until the commissioner determines to destroy, denature, decharacterize, mutilate, slash or release the same. Whenever the commissioner is authorized or empowered to take any of the actions specified in this subsection, he may order and direct the person having custody or possession of such animal, carcass, meat, meat food product or meat by-product, or the licensee of the establishment in which it is found, to be responsible for the disposition thereof, as well as any necessary storage, handling or other incidentals related thereto. Such disposition shall be carried out only under the direction and supervision of the commissioner.

(o) Whenever practicable, the commissioner shall forgo the actions authorized in the immediately preceding subsection and permit reprocessing if such reprocessing will correct or eliminate the conditions which would have justified any of such actions. Any such reprocessing in this state shall be under the supervision of the commissioner.

(p) Whenever the commissioner has good cause to believe that any carcass, meat, meat food product or meat by-product whether fresh, frozen, cured or otherwise prepared, and which is intended to be sold or offered for sale through a commercial outlet or distributor, may be unwholesome or adulterated or otherwise injurious to health, he may inspect or reinspect the same under the provisions of this article and any reasonable rules and regulations promulgated by him, even though such carcass, meat, meat food product or meat by-product may have been previously inspected and passed.
(q) No licensee shall employ in any establishment any person who has any communicable disease or infected wounds or who is a carrier of any communicable disease. To enforce the provisions of this subsection, the commissioner may require any employee or prospective employee to submit to a health examination by a physician and furnish to the commissioner a certificate from such physician concerning his findings. The cost of conducting such examination and furnishing such certificate shall be borne by the licensee concerned.

(r) Whenever the commissioner inspects any room, compartment, equipment or utensil in any establishment subject to state inspection and finds the same not to be clean and sanitary or finds the same to be otherwise unsuitable for the slaughtering or processing operations carried on in such establishment, he shall affix thereto a rejection tag or rejection notice. No such rejected room, compartment, equipment or utensil shall be used until the deficiencies requiring such rejection shall have been fully and completely corrected. No person other than the commissioner shall remove any such rejection tag or notice.

(s) When any animal, carcass, meat, meat food product or meat by-product has been inspected hereunder, the appropriate official inspection mark shall be affixed thereto, and no person shall remove the same unless authorized so to do by the commissioner.

§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States department of agriculture; exclusion of farmers.

(a) The provisions of this article shall not apply to any slaughterhouse or processing plant operating under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act, or approved by the United States department of agriculture.

(b) For the purposes of this subsection, a farmer is a person who owns or operates a farm or farms in this state and does not engage, directly or indirectly, in the business of buying or selling any animals, other than
as a part of his normal farming operations, and does not engage in any business that involves the slaughtering or processing of any animals other than those owned by him, or the buying or selling of any carcasses, meat, meat food products or meat by-products of any animals other than those owned by him. Without being licensed under the provisions of this article, a farmer may slaughter or process or cause to be slaughtered or processed his own animals on his own premises, on the premises of another person or in the establishment of a West Virginia licensed commercial or custom slaughterer or a West Virginia licensed commercial or custom processor, and a farmer shall not sell or trade such animals or the carcasses, meat, meat food products or meat by-products thereof to commercial dealers or distributors.


(a) The provisions of this article shall not apply to:

(i) Any commercial dealer, provided all carcasses, meat, meat food products and meat by-products sold or offered for sale by such dealer were slaughtered and/or processed in commercial establishments under state inspection or have been inspected and passed by the United States department of agriculture or have been approved by the United States department of agriculture and shall be identified and labeled as prescribed by reasonable rules and regulations promulgated by the commissioner;

(ii) Any educational activities relating to animals, carcasses, meat, meat food products or meat by-products and conducted by 4-H clubs, Future Farmers of America, Future Homemakers of America; and

(iii) The West Virginia University meat laboratory.

(b) The commissioner may by reasonable rules and regulations exempt any other activity, any animal, carcass, meat, meat food product or meat by-product, or any person, from all of the provisions of this article or one or more of such provisions.

(c) The commissioner may by reasonable rules and regulations exempt a licensed custom slaughterer from
The requirements of this article relating to antemortem and postmortem inspection.

(d) The commissioner may by written order to the person concerned suspend, limit or terminate any exemption provided under this section or granted by rules and regulations authorized under subsections (b) and (c) hereof when he determines that such suspension, limitation or termination is necessary to effectuate the purposes of this article: Provided, That the person affected by any such suspension, limitation or termination may demand a hearing in writing which shall be held by the commissioner in accordance with the provisions of section nine of this article. The commissioner shall hold such a hearing within ten days after receipt of such written demand.

§19-2B-10. Additional prohibitions.

1. In addition to any other prohibitions contained in this article, it shall be unlawful:
   (a) For any person to operate any establishment under state inspection which is not clean and sanitary;
   (b) To slaughter any unwholesome or adulterated animal intended to be sold or offered for sale through a commercial outlet or distributor;
   (c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat, meat food product or meat by-product for human consumption which is unwholesome or adulterated;
   (d) To slaughter for human consumption any animal tagged or permanently identified as "W. Va. condemned," or abbreviation thereof;
   (e) To process, sell or offer for sale for human consumption any carcass, meat, meat food product or meat by-product which is mislabeled with intent to deceive or which is marked "W. Va. inspected and condemned," or abbreviation thereof;
   (f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat, meat food product or meat by-product intended for human consumption and derived in
whole or in part from any calf, pig, kid or lamb which is
so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any car-
cass, meat, meat food product or meat by-product in
any establishment under state inspection to insects, live
animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or
other equine meat to any animal meat, or meat food
product or meat by-product derived from animals and
to be sold or offered for sale through commercial outlets
or distributors for human consumption;

(i) To remove any hide, skin or any other part of
an unborn or stillborn animal in the confines of a room in
an establishment where any animals, carcasses, meat, meat
food products or meat by-products are slaughtered or
processed, as the case may be, or to be sold or offered for
sale through a commercial outlet or distributor;

(j) To process for human consumption in any estab-
lishment subject to state inspection any carcass, meat,
meat food product or meat by-product derived from any
animal which died other than by slaughter;

(k) To transport to any commercial outlet or distrib-
utor for the purpose of being sold or offered for sale
therein, any carcass, meat, meat food product or meat
by-product which is not marked, branded or stamped as
having been inspected and passed by the commissioner or
by the United States department of agriculture or which
has not been approved by the United States department of
agriculture;

(l) For any commercial outlet or distributor to re-
ceive, for the purpose of being sold or offered for sale
therein, any carcass, meat, meat food product or meat
by-product which is not marked, branded or stamped as
having been inspected and passed by the commissioner
or by the United States department of agriculture or
which has not been approved by the United States de-
partment of agriculture;

(m) To slaughter any horse, mule or other equine in
any establishment under state inspection in which ani-
mals are slaughtered for human consumption for the
(n) To bring any kangaroo meat, horse meat, mule meat or other equine meat into any establishment under state inspection where animal carcasses, meat, meat food products or meat by-products are processed for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;

(p) For any person to use an establishment number not assigned to him or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;

(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him;

(r) For a licensee to use any container bearing an official inspection mark unless it contains the exact carcass, meat, meat food product or meat by-product which was in the container at the time such contents were inspected and passed: Provided, That such a container may be otherwise used if such official inspection mark thereon is removed, obliterated or destroyed, and such other use is authorized by reasonable rules and regulations promulgated by the commissioner;

(s) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any meat label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;

(t) For any person, with intent to deceive, to possess, keep or use any meat label, mark, brand or stamp similar in character or import to an official meat label, mark, brand or stamp prescribed by the commissioner hereunder or to
an official meat label, mark, brand or stamp used by the
United States department of agriculture;

(u) To falsely make, falsely issue, falsely publish,
alter, forge, simulate or counterfeit any inspection certifi-
cate, memorandum, meat label, mark, brand, or stamp,
or device for making an inspection mark, brand or stamp,
or to possess, keep or use the same, with intent to de-
ceive;

(v) For any person to refuse to permit the commis-
sioner to enter and inspect at any time, upon presenta-
tion of appropriate credentials, an establishment under
state inspection, or to interfere with any such lawful
entry or inspection;

(w) For any person to refuse to permit the commis-
sioner, upon presentation of appropriate credentials, to
examine and copy the records described in section five
of this article;

(x) For a person to prevent or fail to decharacterize or
denature carcasses, meat or meat food products as pre-
scribed by reasonable rules and regulations promulgated
by the commissioner;

(y) For a person to transport offal, blood, or inedible
and condemned parts of animal bodies from slaughter-
houses, meat processing plants or other related industries:
Provided, That such products may be transported if
placed in suitable containers with tight covers, or water-
tight tanks so as not to contaminate the public highways
or private roadways while going to or from the points of
pickup;

(z) For a person to store offal, blood, or inedible and
condemned parts of animal bodies from slaughterhouses,
meat processing plants or other related industries during
interim transit movement in refrigerated warehouses,
food lockers or other related industries: Provided, That
such products may be otherwise stored if properly marked
"NOT FOR HUMAN FOOD" "FOR ANIMAL FOOD
ONLY" and identified as approved products to be used for
animal food;

(aa) For a person knowingly to purchase or deliver,
or both, a 4-D animal to an establishment in this state;
143 (bb) For any person to transport carcasses, meat, meat food products or meat by-products that are intended for human consumption in a manner which would permit the products to become unwholesome or adulterated.

CHAPTER 3

(Senate Bill No. 14—By Mr. Carson, Mr. President, and Mrs. Baker)

[Passed February 3, 1968; in effect 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 twelve-b, relating to West Virginia participating in a pest control compact with other states.

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 twelve-b, to read as follows:

ARTICLE 12B. INTERSTATE COMPACT ON PEST CONTROL.

Section
19-12B-1. Enactment of compact.
19-12B-3. Filing of bylaws and amendments.
19-12B-5. Request for assistance.
19-12B-6. Disposition of compact grants and reimbursements.
19-12B-7. Executive head.

§19-12B-1. Enactment of compact.

1 The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in accordance with its terms, in the form substantially as follows:

PEST CONTROL COMPACT

ARTICLE I. FINDINGS.

1 The party states find that:
2 (a) In the absence of the higher degree of cooperation
among them possible under this compact, the annual loss
of approximately seven billion dollars from the depreda-
tions of pests is virtually certain to continue, if not to
increase.

(b) Because of varying climatic, geographic and
economic factors, each state may be affected differently
by particular species of pests; but all states share the in-
ability to protect themselves fully against those pests
which present serious dangers to them.

(c) The migratory character of pest infestations makes
it necessary for states both adjacent to and distant from
one another, to complement each other’s activities when
faced with conditions of infestation and reinfection.

(d) While every state is seriously affected by a sub-
stantial number of pests, and every state is susceptible
of infestation by many species of pests not now causing
damage to its crop and plant life and products, the fact
that relatively few species of pests present equal danger
to or are of interest to all states makes the establishment
and operation of an insurance fund, from which indi-
vidual states may obtain financial support for pest control
programs of benefit to them in other states and to which
they may contribute in accordance with their relative
interests, the most equitable means of financing cooper-
ative pest eradication and control programs.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly re-
quires a different construction:

(a) “State” means a state, territory or possession of
the United States, the District of Columbia, and the Com-
monwealth of Puerto Rico.

(b) “Requesting state” means a state which revokes
the procedures of the compact to secure the undertak-
ing or intensification of measures to control or eradicate
one or more pests within one or more other states.

(c) “Responding state” means a state requested to
undertake or intensify the measures referred to in sub-
division (b) of this article.

(d) “Pest” means any invertebrate animal, pathogen,
parasitic plant or similar or allied organism which can
cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

(e) "Insurance fund" means the pest control insurance fund established pursuant to this compact.

(f) "Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(g) "Executive committee" means the committee established pursuant to Article V (e) of this compact.

ARTICLE III. THE INSURANCE FUND.

There is hereby established the pest control insurance fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional: Provided, That the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV. THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT.

(a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be deemed the actions of the insurance fund.

(b) The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes of the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.
(c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.

(d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.

(f) The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.
(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V. COMPACT AND INSURANCE FUND ADMINISTRATION.

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:
1. Assist in the coordination of activities pursuant to the compact in his state; and
2. Represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising
and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

**ARTICLE VI. ASSISTANCE AND REIMBURSEMENT.**

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.
2. The meeting of emergency outbreaks of infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and find that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control or prevention of introduction of the pest concerned.
4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within twenty days of the determination
with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determination of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII. ADVISORY AND TECHNICAL COMMITTEES.

The governing board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or
committee may receive and consider the same: Provided,
That any participant in a meeting of the governing
board or executive committee held pursuant to Article
VI (d) of the compact shall be entitled to know the sub-
stance of any such information and recommendations, at
the time of the meeting if made prior thereto or as a part
thereof or, if made thereafter, no later than the time at
which the governing board or executive committee makes
its disposition of the application.

ARTICLE VIII. RELATIONS WITH NONPARTY JURISDICTIONS.
(a) A party state may make application for assistance
from the insurance fund in respect of a pest in a nonparty
state. Such application shall be considered and disposed
of by the governing board or executive committee in the
same manner as an application with respect to a pest
within a party state, except as provided in this article.
(b) At or in connection with any meeting of the
governing board or executive committee held pursuant to
Article VI (d) of this compact a nonparty state shall be
entitled to appear, participate, and receive information
only to such extent as the governing board or executive
committee may provide. A nonparty state shall not be
entitled to review of any determination made by the
executive committee.
(c) The governing board or executive committee shall
authorize expenditures from the insurance fund to be
made in a nonparty state only after determining that the
conditions in such state and the value of such expendi-
tures to the party states as a whole justify them. The
governing board or executive committee may set any con-
ditions which it deems appropriate with respect to the
expenditure of moneys from the insurance fund in a
nonparty state and may enter into such agreement or
agreements with nonparty states and other jurisdictions
or entities as it may deem necessary or appropriate to
protect the interests of the insurance fund with respect
to expenditures and activities outside of party states.

ARTICLE IX. FINANCE.
(a) The insurance fund shall submit to the executive
head or designated officer or officers of each party state

a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: One tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the “Operating Account” and the “Claims Account.” The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to
it under Article IV (g) of this compact, providing that the
governing board takes specific action setting aside such
moneys prior to incurring any obligation to be met in
whole or in part in such manner. Except where the in-
surance fund makes use of moneys available to it under
Article IV (g) hereof, the insurance fund shall not incur
any obligation prior to the allotment of moneys by the
party states adequate to meet the same.
(e) The insurance fund shall keep accurate accounts
of all receipts and disbursements. The receipts and dis-
bursements of the insurance fund shall be subject to the
audit and accounting procedures established under its
byllaws. However, all receipts and disbursements of funds
handled by the insurance fund shall be audited yearly by
a certified or licensed public accountant and a report of
the audit shall be included in and become part of the
annual report of the insurance fund.
(f) The accounts of the insurance fund shall be open at
any reasonable time for inspection by duly authorized
officers of the party states and by any persons authorized
by the insurance fund.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.
(a) This compact shall enter into force when enacted
into law by any five or more states. Thereafter, this
compact shall become effective as to any other state upon
its enactment thereof.
(b) Any party state may withdraw from this compact
by enacting a statute repealing the same, but no such with-
drawal shall take effect until two years after the execu-
tive head of the withdrawing state has given notice in
writing of the withdrawal to the executive heads of all
other party states. No withdrawal shall affect any lia-
bility already incurred by or chargeable to a party state
prior to the time of such withdrawal.

ARTICLE XI. CONSTRUCTION AND SEVERABILITY.
This compact shall be liberally construed so as to effec-
tuate the purposes thereof. The provisions of this comp-
act shall be severable and if any phrase, clause, sentence
or provision of this compact is declared to be contrary

Consistent with law and within available appropriations, the departments, agencies and officers of this state may cooperate with the insurance fund established by the pest control compact.

§19-12B-3. Filing of bylaws and amendments.

Pursuant to Article IV (h) of the compact, copies of bylaws and amendments thereto shall be filed with the commissioner and the department of agriculture.

§19-12B-4. Compact administrator.

The compact administrator of this state shall be the commissioner of agriculture. The duties of the compact administrator shall be deemed a regular part of the duties of his office.

§19-12B-5. Request for assistance.

Within the meaning of Article VI (b) or VIII (a), a request or application for assistance from the insurance fund may be made by the governor or the commissioner of agriculture whenever in their judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

§19-12B-6. Disposition of compact grants and reimbursements.

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant
4 to the compact shall have credited to his account in the
5 state treasury the amount or amounts of any payments
6 made to this state to defray the cost of such program, or
7 any part thereof, or as reimbursement thereof.

§19-12B-7. Executive head.

1 As used in the compact, with reference to this state, the
term “executive head” shall mean the governor.

CHAPTER 4

(House Bill No. 301—By Mr. Kincaid and Mr. Ranson)

[Passed February 3, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven-a,
chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the man-
agement of regional airport authorities, and authorizing
regional airport authorities to permit additional counties
or municipalities without the state to participate in the
affairs of the authority, to appoint members of the author-
ity in the same manner, and to have such vote or votes,
as prescribed by law with respect to the original partici-
pating bodies.

Be it enacted by the Legislature of West Virginia:

That section four, article eleven-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:

ARTICLE 11A. REGIONAL AIRPORTS.

§8-11A-4. Management of authority vested in members; ap-
pointment and terms of members; vote of mem-
ers; participation by additional counties or munici-
palities without state.

1 The management and control of each authority, its
2 property, operations, business and affairs shall be lodged
in a board of not less than five nor more than twenty-
one persons who shall be known as members of the
authority and who shall be appointed for terms of three
years each by the public corporations contributing to
the funds of the authority. However, the first board shall
be comprised of one member appointed by each partici-
pating county court and one member from each particip-
pating municipality contributing to the funds of the
authority, and such member shall serve one year. No
more than three members shall serve from one county
on the first board. Each county or municipality shall
have one vote for each five thousand dollars it has con-
tributed to the funds of said authority. Following its
formation, each authority may permit any additional
county or municipality without this state to participate
in the affairs of the authority, to appoint members of the
authority in the same manner, and to have such vote or
votes, as prescribed by law with respect to the original
participating bodies.

CHAPTER 5
(Senate Bill No. 86—Mr. Carson, Mr. President, and Mrs. Baker)

[Passed February 2, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three,
article twelve, chapter five of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, re-
lating to the acquisition of historic treasures and sites,
granting authority to the antiquities commission to receive
grants and funds from any public or private source, and
expanding the membership of the commission.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twelve, chapter five
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be amended and reenacted to read as follows:
ARTICLE 12. WEST VIRGINIA ANTIQUITIES COMMISSION.

Section
5-12-1. Legislative determination and declaration of policy.
5-12-2. Creation; composition; appointment and terms of members ap­pointed by the governor; reimbursement of expenses; officers; meetings; reports.
5-12-3. Powers and duties of commission; receipt and use of funds.

§5-12-1. Legislative determination and declaration of policy.
1 It is hereby declared as a matter of legislative deter­mination:
2 (a) That the state of West Virginia, being richly
3 endowed with treasures and sites of historic archaeolo­
gical importance, should explore by excavation or other­wise, and preserve these historic treasures and sites;
4 (b) That in the past, there has been no systematic
5 and planned development and preservation of treasures
6 and sites of historical and archaeological importance in
7 the state of West Virginia; and
8 (c) That this article contemplates the establishment
9 of a commission which shall be authorized and empowered
10 to recommend the acquisition, development and preser­vation of our state's historic archaeological sites and
11 treasures.

§5-12-2. Creation; composition; appointment and terms of members appointed by the governor; reimburse­ment of expenses; officers; meetings; reports.
1 There is hereby created the West Virginia antiquities
2 commission, hereinafter referred to as the commission,
3 to consist of nine members, one of whom shall be the
4 chief of the division of parks and recreation of the depart­ment of natural resources, one of whom shall be the state
5 historian and archivist, one of whom shall be the director
6 of the state geological and economic survey, one of whom
7 shall be the state archaeologist, one of whom shall be the
8 president of the West Virginia historical society, and
9 one of whom shall be the president of the West Virginia
10 historical association of college and university teachers.
11 The remaining three members of the commission shall
12 be representative of the public at large and shall be ap­pointed by the governor, by and with the advice of the
13 Senate, for terms of one, two and three years respectively.
All the members of the commission shall serve without pay, but shall be reimbursed for any and all reasonable and necessary expenses incurred in the performance of their duties hereunder. The members of the commission shall elect from their own membership the officers of the commission.

The commission will meet at least twice during the year, in May and in November, at a time and place to be determined by the chairman.

The commission shall transmit an annual report of its activities to the governor, the president of the Senate, and the speaker of the House of Delegates on or before the opening day of each regular session of the Legislature.

§5-12-3. Powers and duties of commission; receipt and use of funds.

The commission shall be authorized and empowered to locate, identify, and recommend for acquisition historic sites and structures worthy of preservation; to direct and supervise the excavation, study, restoration and development of such sites or structures; to conduct a survey and study throughout the state to determine needs and priorities for the preservation, restoration, and development of sites, buildings, and other objects of archaeological or historic interest, and to receive in the name of the state grants, appropriations, gifts, bequests and funds from any public or private source for the purpose of carrying out its powers and duties hereunder. All such funds received by the commission shall be deposited in the special fund provided for in section five of this article and shall be used by the commission in carrying out the provisions of this article.

CHAPTER 6

(Com. Sub. for Senate Bill No. 17—By Mr. Carson, Mr. President)

(Passed February 10, 1968; in effect from passage.)

AN ACT making appropriations of public moneys 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

2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

Section

1. General Policy.
2. Definitions.
3. Classification of Appropriations.

Section 1. General Policy.—The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred sixty-nine.

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

1. “Board” shall mean the board of public works;
2. “Spending unit” shall mean the department, agency or institution to which an appropriation is made;
3. The “fiscal year one thousand nine hundred sixty-nine” shall mean the period from July first, one thousand nine hundred sixty-eight through June thirtieth, one thousand nine hundred sixty-nine.
4. “From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated “from collections” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by chapter 5, article 4 and chapter 5-A, article 2 of the code of West Virginia.

Sec. 3. Classification of Appropriations.—An appropriation for:
“Personal Services” shall be expended only for the payment of salaries, wages, fees and other compensation for skill, work, or employment, except from the appropriations made to the spending units of State Government, there may be transferred upon approval of the Board of Public Works, to a special account an amount sufficient to match Federal Funds under any Federal Acts;

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending units;

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

“Repairs and Alterations” shall include all expenditures for materials, supplies and labor used in repairing and altering buildings, grounds and equipment, other than personal service;

“Equipment” shall be expended only for things which have an appreciable and calculable period of usefulness in excess of one year;

“Buildings” shall include construction and alteration of structures and the improvements of lands, sewer and water improvements, and shall include shelter, support, storage, protection, or the improvement of a natural condition;

“Lands” shall be expended only for the purchase of lands or interest in lands.

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

Sec. 4. Method of Expenditure.—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of chapter 12, article 3 of the code of West Virginia, or according to any law detailing a procedure specifically limiting that article.
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<td>Board of pharmacy</td>
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2. Appropriations from other funds.

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3. Supplemental and deficiency appropriations.
4. Awards for claims against the state.
5. Reappropriations.
6. Special revenue appropriations.
7. Specific funds and collection accounts.
8. Appropriation for refunding erroneous payments.
10. Appropriations from taxes and license fees.
11. Appropriations of pay costs of publication of delinquent corporations.
12. Appropriations for local governments.
13. Total appropriations.
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 5, article 4 and chapter 5-A, article 2 of the code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-nine.

**LEGISLATIVE**

1—Senate

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<th>Acct. No. 101</th>
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<tr>
<td>1 Salaries of Members</td>
<td>$54,000.00</td>
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<td>2 Compensation and per diem of officers and attaches</td>
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<tr>
<td>3 Mileage of Members</td>
<td>$3,000.00</td>
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<tr>
<td>4 Current Expenses and Contingent Fund</td>
<td>$100,000.00</td>
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<tr>
<td>6 To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state</td>
<td>$10,000.00</td>
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<tr>
<td>15 To pay cost of printing the 1968 edition of the Blue Book</td>
<td>$50,000.00</td>
</tr>
</tbody>
</table>

The appropriations for the Senate for the fiscal year 1967-68 are to remain in full force and effect, and are hereby reappropriated to June 30, 1969.

Any balances so reappropriated may be transferred and credited to the 1968-69 accounts.

Upon the written request of the Clerk of the Senate the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.
28 The Clerk of the Senate is authorized to draw
29 his requisitions upon the Auditor, payable
30 out of the contingent fund of the Senate, for
31 any bills for supplies and services that may
32 have been incurred by the Senate and not
33 included in the appropriation bill, and for
34 bills for supplies and services incurred after
35 adjournment, and for the necessary opera-
36 tion of the Senate offices, the requisition for
37 same to be accompanied by the bills to be
38 filed with the Auditor.

2—House of Delegates

Acct. No. 102

1 Salaries of Members ........................................ $ 153,000.00
2 Compensation and per diem of officers and
3 attaches .......................................................... 183,000.00
4 Mileage of Members ........................................... 5,000.00
5 Current Expenses and Contingent Fund ...... 140,000.00
6 The appropriations for the House of Dele-
7 gates for the fiscal year 1967-68 are to re-
8 main in full force and effect, and are hereby
9 reappropriated to June 30, 1969.
10 Any balances so reappropriated may be trans-
11 ferred and credited to the 1968-69 accounts.
12 Upon the written request of the Clerk of
13 the House of Delegates the State Auditor
14 shall transfer amounts between items of the
15 total appropriation in order to protect or
16 increase the efficiency of the service.
17 The Clerk of the House of Delegates, with
18 approval of the Speaker, is authorized to
19 draw his requisitions upon the Auditor,
20 payable out of the contingent fund of the
21 House of Delegates, for any bills for sup-
22 plies and services that may have been in-
23 curred by the House of Delegates, and not
24 included in the appropriation bill, for bills
25 for services and supplies incurred in prep-
Appropriations

Arangement for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates offices, the requisition for same to be accompanied by bills to be filed with the Auditor.

For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a salary of $1,200.00 per month, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at a salary to be determined by the Speaker of the House of Delegates.

The Speaker of the House of Delegates upon recommendation of the Chairman of Taxation and Finance Committee shall have the authority to convene the Taxation and Finance Committee at any time within ten (10) days prior to the next Legislative session for the purpose of reviewing the budget requests of the various spending units of this State. Such members of the Committee are to be allowed $25.00 per diem in lieu of actual and necessary expenses and the Clerk of the House is hereby authorized to draw requisitions upon the State Auditor payable out of the appropriation for Current Expenses and Contingent Fund for these expenses.

The Speaker of the House of Delegates, upon recommendation of the Chairman of the Taxation and Finance Committee, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, and the Clerk of the House is hereby authorized
to draw requisitions upon the State Auditor, payable out of the appropriation for Contingent Expenses for such services.

3—Joint Expenses
Acct. No. 103

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1967-68</th>
<th>150,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Joint Committee on Government and Finance</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1968-69</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 To pay the cost of legislative printing and stationery</td>
<td>$</td>
<td>220,000.00</td>
</tr>
<tr>
<td>3 Commission on Interstate Cooperation</td>
<td>$</td>
<td>20,000.00</td>
</tr>
<tr>
<td>4 Joint Committee on Government and Finance</td>
<td>$</td>
<td>780,000.00</td>
</tr>
<tr>
<td>5 The appropriation for Joint Expenses for the fiscal year 1967-68 are to remain in full force and effect, and are hereby reappropriated to June 30, 1969.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any balances so reappropriated may be transferred and credited to the 1968-69 accounts.

Upon written request of the Clerk of the Senate and the Clerk of the House of Delegates the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court of Appeals
Acct. No. 110

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1968-69</th>
<th>325,180.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$</td>
<td>112,500.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$</td>
<td>177,680.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$</td>
<td>32,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$</td>
<td>3,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>$</td>
<td>325,180.00</td>
</tr>
</tbody>
</table>
5—Judicial—Auditor's Office

Acct. No. 111

1 Salaries of Judges ........................................... $ 473,000.00
2 Other Personal Services .................................. 112,600.00
3 Current Expenses ........................................... 25,000.00
4 Judges Retirement System ................................. 77,500.00
5 Criminal Charges ........................................... 355,000.00

6 Total .................................................................. $ 1,043,100.00

This appropriation shall be administered by
the State Auditor who shall draw his requi-
sition for warrants in payment of salaries
in the form of payrolls, making deductions
therefrom as required by law, for taxes and
other items. The appropriation for Judges'
Retirement System is to be transferred to
the Judges' Retirement Fund, in accordance
with the law relating thereto, upon requisi-
tion of the State Auditor.

6—State Law Library

Acct. No. 114

1 Personal Services .............................................. $ 36,000.00
2 Current Expenses .............................................. 5,160.00
3 Equipment .......................................................... 28,000.00

4 Total .................................................................. $ 69,160.00

7—Judicial Council

Acct. No. 118

1 To pay expenses of Members of the Council ... $ 12,000.00

EXECUTIVE

8—Governor's Office

Acct. No. 120

1 Salary of Governor ........................................... $ 25,000.00
2 Other Personal Services .................................. 111,400.00
3 Current Expenses ............................................. 35,000.00
4 Equipment .................................................. 5,000.00
5 Civil Contingent Fund .................................. 175,000.00
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 ............................................. 75,000.00
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 house-
16 hold expenses occasioned by such official
17 functions.
18 Federal State Coordination ............................... 200,000.00
19 To match and aid Federal Programs, and
20 any part of this appropriation may be
21 transferred to any department for such
22 purposes.
23 Office of Public Information ............................ 60,000.00
24 Advisory Committee on Potomac River Basin .... 15,000.00
25 Publication of Governor's Papers and Inau-
26 gural Expense ............................................... 50,000.00
27 Total .................................................................. $ 751,400.00
28 Any balances remaining in Federal-State
29 Coordination at the close of the fiscal year
30 1967-68 is hereby reappropriated for ex-
31 penditure during the fiscal year 1968-69 to
32 match and aid federal programs.
33 Any balances remaining in the Civil Con-
34 tingent Fund at the close of the fiscal year
35 1967-68 is hereby reappropriated for ex-
36 penditure during the fiscal year 1968-69.

9—Department of Personnel
Acct. No. 121

1 Personal Services ........................................... $ 50,450.00
2 Current Expenses ............................................. 9,585.00
3 Total ................................................................... $ 60,035.00
FISCAL
10—Auditor’s Office—General Administration
Acct. No. 150

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$446,502.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$135,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>5 Microfilm Program</td>
<td>$7,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$617,002.00</strong></td>
</tr>
</tbody>
</table>

11—Treasurer’s Office
Acct. No. 160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Treasurer</td>
<td>$17,500.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$151,845.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$26,950.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>5 Board of Investments</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$209,295.00</strong></td>
</tr>
</tbody>
</table>

12—Sinking Fund Commission
Acct. No. 170

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$30,750.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,650.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$33,900.00</strong></td>
</tr>
</tbody>
</table>

13—State Tax Department
Acct. No. 180

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,307,675.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$644,465.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$28,600.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,980,740.00</strong></td>
</tr>
</tbody>
</table>

14—State Tax Department
Acct. No. 185

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Property Appraisal</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>2 Any balances remaining in the Property Appraisal Account previously appropriated, in 1966-67 and 1967-68 at the close of the</td>
<td></td>
</tr>
</tbody>
</table>
fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

15—State Commissioner of Public Institutions

Acct. No. 190

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$13,000.00</td>
</tr>
<tr>
<td>Salaries of Board Members—Board of Probation and Parole</td>
<td>$27,000.00</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$397,781.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$142,320.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$584,101.00</td>
</tr>
</tbody>
</table>

16—Department of Finance and Administration

Acct. No. 210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$761,897.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$400,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>Postage</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>Records Management</td>
<td>$37,785.00</td>
</tr>
<tr>
<td>Office of State Emergency Planning</td>
<td>$27,000.00</td>
</tr>
<tr>
<td>Transportation Division—Vehicles</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>State Agency Surplus Property</td>
<td>$27,562.00</td>
</tr>
<tr>
<td>Information Systems Service Division</td>
<td>$300,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$2,011,244.00</td>
</tr>
</tbody>
</table>

The Workmen’s Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Road Commission, State Health Department and State Tax Department—Income Tax Division, shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the Postage account of the
APPROPRIATIONS

Department of Finance and Administration
such amounts. Should this appropriation for
Postage be insufficient to meet the mailing
requirements of the State spending units as
set out above, any excess postage meter serv-
ice requirements shall be a proper charge
against the units, and each spending unit
shall refund to the Postage appropriation of
the Department of Finance and Administra-
tion any amounts required for that Depart-
ment for postage in excess of this appropri-
Any unexpended balance remaining in the
"Postage Account" and all "Records Man-
agement Accounts" at the close of the fiscal
year 1967-68 are hereby reappropriated for
expenditure during the fiscal year 1968-69.
The State Road Commission shall reimburse
the appropriation of the Department of Fi-
ance and Administration monthly for all
actual expenses incurred pursuant to (the
provision of) chapter 17, article 2-A, sec-
tion 13 of the code of West Virginia.

17—The Board of Public Works
Acct. No. 220

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contingent Fund</td>
<td>$50,000.00</td>
</tr>
</tbody>
</table>

18—State Board of Insurance
Acct. No. 225

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$17,220.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,760.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$400.00</td>
</tr>
<tr>
<td>Fire Insurance Premiums</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>Automobile Insurance Premiums</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>Bond Premiums</td>
<td>$30,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$353,380.00</strong></td>
</tr>
</tbody>
</table>

8 The above appropriations on lines 4, 5 and 6
are for the purpose of paying premiums for
the various state agencies. Should these ap-
appropriations be insufficient to meet the premium requirements of the state spending units, any excess premium requirements shall be a proper charge against the units and each spending unit shall transmit to the Board of Insurance any amounts required for that department for premiums in excess of this appropriation.

LEGAL

19—Attorney General

Acct. No. 240

1 Salary of Attorney General ....................... $ 18,500.00
2 Other Personal Services ........................ 306,480.00
3 Current Expenses ................................. 43,190.00
4 Equipment ...................................... 15,500.00
5 To protect the resources or tax structure of the State in controversies or legal proceedings affecting same ....................... 3,250.00
6 Total .............................................. $ 386,920.00

When legal counsel or secretarial help is appointed by the Attorney General, for any state spending unit, this account shall be reimbursed from such unit's appropriated account in an amount agreed upon by the Attorney General and the proper authority of said spending unit.

20—Commission on Uniform State Laws

Acct. No. 245

1 Total .............................................. $ 3,000.00

To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

21—Secretary of State

Acct. No. 250

1 Salary of Secretary of State ....................... $ 17,000.00
2 Other Personal Services ........................ 89,743.00
3 Current Expenses ........................................... 39,905.00
4 Equipment .................................................. 12,000.00

5 Total ................................................................ $ 158,648.00

EDUCATIONAL

22—State Board of Education—Vocational Division—Adult Basic Education
Acct. No. 289
1 Total ............................................................... $ 100,000.00

23—Department of Education
Acct. No. 290
1 Comprehensive Educational Program ................ $ 1,000,000.00

24—Educational Broadcasting Authority
Acct. No. 291
1 Personal Services ............................................ $ 40,460.00
2 Current Expenses ............................................. 19,720.00
3 Equipment ...................................................... 10,100.00
4 Regional ETV .................................................. 229,720.00
5 For participation in the construction and operation of regional ETV stations by Marshall University, Bluefield State College, Concord College, West Virginia Institute of Technology, and West Virginia State College, and may be transferred to special accounts for matching county federal funds.
6
7 Total ................................................................ $ 300,000.00

25—State Board of Education—Vocational Division
Acct. No. 293
1 To implement Vocational Education Act of 1963 P.L. 88-210 ............................................. $ 800,000.00
3 The above appropriation includes $100,000.00 for Manpower Training.
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Any unexpended balance remaining in this appropriation at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

26—State Board of Education—Vocational Division
Acct. No. 294

Any unexpended balance remaining in the appropriation "Aid to Counties" at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

27—State Board of School Finance—State Aid to Schools
Acct. No. 295

State Aid to supplement the General School Fund .................................................. $100,239,506.00

In addition to the above appropriation there is hereby appropriated the sum of $1,256,000.00 from the 1967-68 appropriation "State Aid to Schools."

Provided that changes in the basic foundation support allocations resulting from changes in local shares as a consequence of certification to all counties of the appraisal program provided for in chapter 18, article 9A, section 4 of the code of West Virginia, as amended, shall be reduced by fifty percent.

To be transferred to the General School Fund upon the requisition of the Governor.

28—Department of Education—Aid for Exceptional Children
Acct. No. 296

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$32,092.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$7,600.00</td>
</tr>
<tr>
<td>Out-of-State Instruction</td>
<td>$58,000.00</td>
</tr>
<tr>
<td>Aid to Counties</td>
<td>$569,000.00</td>
</tr>
</tbody>
</table>

Total ........................................... $666,692.00
The appropriation for "Out-of-State Instruction" may be expended to provide instruction, care and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.

### 29—Teachers Retirement Board

**Acct. No. 298**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit Fund—Payments to Retired Teachers</td>
<td>$5,430,000.00</td>
</tr>
<tr>
<td>Employers’ Accumulation Fund—To match contributions of members</td>
<td>$3,525,000.00</td>
</tr>
<tr>
<td>Expense Fund</td>
<td>$35,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,990,000.00</strong></td>
</tr>
</tbody>
</table>

### 30—State Commission on Higher Education

**Acct. No. 299**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Unclassified</td>
<td>$211,070.00</td>
</tr>
</tbody>
</table>

### 31—West Virginia University

**Acct. No. 300**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$16,162,834.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,200,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,200,000.00</td>
</tr>
<tr>
<td>Oak Wilt Control Research</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>State aid to students of Veterinary Medicine</td>
<td>$36,000.00</td>
</tr>
<tr>
<td>Office of Research and Development</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>Bureau for Coal Research</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>9 National Youth Science Camp</td>
<td>80,000.00</td>
</tr>
<tr>
<td>10 Forestry Products</td>
<td>72,000.00</td>
</tr>
<tr>
<td>11 Appalachian Center</td>
<td>122,000.00</td>
</tr>
<tr>
<td>12 Educational TV Program</td>
<td>180,000.00</td>
</tr>
<tr>
<td>13 Regional Research Institute</td>
<td>70,000.00</td>
</tr>
<tr>
<td>14 Parkersburg Branch College</td>
<td>56,491.00</td>
</tr>
</tbody>
</table>

15 **Total**                                                          $21,114,325.00

16 The above appropriation for “Parkersburg Branch College” shall be used in reducing tuition and registration fees in comparison with those at West Virginia University for the same program.

21 Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.

**32—West Virginia University Kanawha Valley Graduate Center**

Acct. No. 301

1 **Total**                                                          $450,000.00

2 The above appropriation is for the operation of the West Virginia University Kanawha Valley Graduate Center. A sufficient amount of this appropriation shall be used to reduce the tuition and registration fees in comparison with those at West Virginia University for the same program.

**33—Potomac State College of West Virginia University**

Acct. No. 315

1 Personal Services                                                   $683,771.00
2 Current Expenses                                                    $85,000.00
3 Repairs and Alterations                                             $48,100.00
4 Equipment                                                           $60,000.00

5 **Total**                                                          $876,871.00
34—Marshall University
Acct. No. 320

1 Personal Services ........................................ $ 5,636,727.00
2 Current Expenses ........................................... 412,700.00
3 Repairs and Alterations ................................. 235,550.00
4 Equipment .................................................. 335,500.00
5 Flood Wall Assessment .................................... 3,200.00
6 Experimental Projects in Teacher Education ........ 40,000.00
7 Educational TV Program ................................. 106,000.00
8 Branch Colleges ........................................... 63,239.00

9 Total ................................................................ $ 6,832,916.00

10 The above appropriation for “Branch Colleges” shall be used in reducing tuition and registration fees in comparison with those at Marshall University for the same program.
11 Any unexpended balance remaining in the appropriation “Educational TV Program” at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

35—Fairmont State College
Acct. No. 321

1 Personal Services ........................................ $ 2,297,377.00
2 Current Expenses ........................................... 135,000.00
3 Repairs and Alterations ................................. 60,000.00
4 Equipment .................................................. 87,500.00

5 Total ................................................................ $ 2,579,877.00

36—Glenville State College
Acct. No. 322

1 Personal Services ........................................ $ 1,278,954.00
2 Current Expenses ........................................... 100,000.00
3 Repairs and Alterations ................................. 45,000.00
4 Equipment .................................................. 112,500.00
5 Community Development and Research ........ 15,500.00

6 Total ................................................................ $ 1,551,954.00
37—West Liberty State College

Acct. No. 323

1 Personal Services ........................................... $ 2,018,047.00
2 Current Expenses ........................................... 150,000.00
3 Repairs and Alterations ................................... 93,000.00
4 Equipment .................................................... 107,000.00
5 Bleachers for Athletic Field ............................... 50,000.00
6 Branch College .............................................. 30,270.00

7 Total .................................................................... $ 2,448,317.00

8 The above appropriation for “Branch College” shall be used in reducing tuition and registration fees in comparison with those at West Liberty State College for the same program.

38—Shepherd College

Acct. No. 324

1 Personal Services ........................................... $ 1,213,145.00
2 Current Expenses ........................................... 113,990.00
3 Repairs and Alterations ................................... 50,000.00
4 Equipment .................................................... 98,950.00

5 Total .................................................................... $ 1,476,085.00

39—Concord College

Acct. No. 325

1 Personal Services ........................................... $ 1,710,246.00
2 Current Expenses ........................................... 169,000.00
3 Repairs and Alterations ................................... 40,000.00
4 Equipment .................................................... 113,000.00
5 Center for Economic Action ............................... 30,000.00

6 Total .................................................................... $ 2,062,246.00

7 Any unexpended balances remaining in the appropriation “Center for Economic Action” at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.
### 40—West Virginia Institute of Technology
Acct. No. 327

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,993,893.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$145,000.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$75,000.00</td>
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<tr>
<td>4 Equipment</td>
<td>$200,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,413,893.00</strong></td>
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</table>

### 41—West Virginia State College
Acct. No. 328

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,452,245.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$215,000.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$138,900.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$100,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$2,906,145.00</strong></td>
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### 42—Bluefield State College
Acct. No. 329

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$966,595.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$82,800.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$61,800.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$135,450.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,246,645.00</strong></td>
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### 43—West Virginia State College 4-H Camp
Acct. No. 330

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$19,400.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,310.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$6,690.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$4,500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$35,900.00</strong></td>
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### 44—West Virginia Schools for the Deaf and Blind
Acct. No. 333

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$845,700.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$178,918.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$40,350.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$36,500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,101,468.00</strong></td>
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</table>
### APPROPRIATIONS

#### 45—State FFA-FHA Camp and Conference Center

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$38,750.00</td>
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<tr>
<td>Current Expenses</td>
<td>$7,900.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$6,650.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$7,700.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$61,000.00</strong></td>
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#### 46—Department of Archives and History

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$58,380.00</td>
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<tr>
<td>Current Expenses</td>
<td>$12,855.00</td>
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<tr>
<td>Equipment</td>
<td>$14,000.00</td>
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<td><strong>Total</strong></td>
<td><strong>$85,235.00</strong></td>
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#### 47—West Virginia Library Commission

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$132,100.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Books and Periodicals</td>
<td>$31,480.00</td>
</tr>
<tr>
<td>To Match Federal Funds</td>
<td>$209,790.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$383,370.00</strong></td>
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### CHARITIES AND CORRECTION

#### 48—West Virginia Industrial School for Boys

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$524,400.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$172,950.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$55,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$30,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$782,550.00</strong></td>
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</table>

#### 49—Forestry Camp for Boys

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$130,430.00</td>
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<tr>
<td>Current Expenses</td>
<td>$91,500.00</td>
</tr>
<tr>
<td>Account</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
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</table>

**50—West Virginia Industrial Home for Girls**  
Account No. 372

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>269,510.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>108,560.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>37,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>11,000.00</td>
</tr>
<tr>
<td>5 Vocational Training</td>
<td>5,000.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>431,070.00</td>
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</table>

**51—West Virginia State Prison for Women**  
Account No. 374

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>65,535.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>44,730.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>10,000.00</td>
</tr>
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<td>4 Equipment</td>
<td>7,350.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>127,615.00</td>
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</table>

**52—West Virginia Penitentiary**  
Account No. 375

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>930,884.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>524,980.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>47,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>88,100.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>1,591,464.00</td>
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</table>

**53—Medium Security Prison**  
Account No. 376

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>558,847.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>200,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>125,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>35,000.00</td>
</tr>
<tr>
<td>5 Total</td>
<td>918,847.00</td>
</tr>
</tbody>
</table>
### 54—West Virginia Children's Home
**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$90,540.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$40,700.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$24,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$11,624.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$166,864.00</strong></td>
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</table>

### 55—Andrew S. Rowan Memorial Home
**Acct. No. 384**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$312,394.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$193,855.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$33,300.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$35,820.00</td>
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<td><strong>Total</strong></td>
<td><strong>$575,369.00</strong></td>
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### HEALTH AND WELFARE
**56—State Health Department**

**Acct. No. 400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$577,500.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$118,271.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$18,079.00</td>
</tr>
<tr>
<td>4 Cancer Control and Treatment</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>5 Tuberculosis Field Clinic and Nursing Service</td>
<td>$10,263.00</td>
</tr>
<tr>
<td>6 Out-Patient Pneumothorax Treatment</td>
<td>$20,642.00</td>
</tr>
<tr>
<td>7 Local Health Services</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>8 Dental Clinics</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>9 Heart Disease Control</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>10 Maternal and Child Health-</td>
<td></td>
</tr>
<tr>
<td>11 mobile Medical Examination Clinic</td>
<td>$57,500.00</td>
</tr>
<tr>
<td>12 Radiological Health</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>13 Mobile Chest X-Ray</td>
<td>$39,000.00</td>
</tr>
<tr>
<td>14 Hospital and Medical Facilities Construction</td>
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</tr>
<tr>
<td>15 Program</td>
<td>$17,500.00</td>
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<tr>
<td>16 Solid Wastes</td>
<td>$24,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,845,757.00</strong></td>
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</table>
57—Commission on Postmortem Examinations
Acct. No. 401

1. Any balance remaining in the Account—
2. Commission on Postmortem Examinations
3. at the close of the fiscal year 1967-68, is
4. hereby reappropriated for expenditure dur-
5. ing the fiscal year 1968-69.

58—Department of Veterans Affairs
Acct. No. 404

1 Personal Services ____________________________ $223,671.00
2 Current Expenses ____________________________ 46,490.00
3 Equipment ________________________________ 3,500.00
4 To provide Educational Opportunities for
5 Children of War Veterans as provided by
6 chapter thirty-nine, acts of the Legislature,
7 one thousand nine hundred and forty-three
8 15,000.00

8 Total ____________________________________________ $288,661.00

9 Any unexpended balance remaining in the ap-
10 propriation "To Provide Educational Op-
11 portunities for Children of War Veterans" at the close of the fiscal year 1967-68 is
12 hereby reappropriated for expenditure dur-
13 ing the fiscal year 1968-69.

59—Department of Welfare
Acct. No. 405

1 Personal Services ____________________________ $6,500,000.00
2 Current Expenses ____________________________ 1,600,000.00
3 Equipment ________________________________ 80,000.00
4 Public Assistance Grants (Classified Aid) ..... 9,300,000.00
5 Aid to Crippled Children ____________________ 770,000.00
6 Medical Services and M.A.A. ....................... 3,500,000.00
7 Conservation of Vision and Prevention of
8 Blindness ________________________________ 40,000.00
9 Child Welfare Services ______________________ 231,000.00
10 General Relief and Boarding Care .............. 2,098,000.00
11 Social Security Matching Fund ................. 450,000.00

12 Total ____________________________________________ $24,569,000.00
### 60—State Agency on Aging
**Acct. No. 406**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total</td>
<td>$36,500.00</td>
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</table>

### 61—Department of Mental Health
**Acct. No. 410**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$620,526.00</td>
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<tr>
<td>Current Expenses</td>
<td>$136,522.00</td>
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<tr>
<td>Equipment</td>
<td>$16,500.00</td>
</tr>
<tr>
<td>Research and Training</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Civil Service Costs</td>
<td>$65,000.00</td>
</tr>
<tr>
<td>Division of Health Education</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Day Care Center</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>Commission on Mental Retardation</td>
<td>$17,197.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$965,745.00</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Research and Training" at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

### 62—Colin Anderson Center
**Acct. No. 419**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,707,554.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$365,100.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$67,700.00</td>
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<tr>
<td>Equipment</td>
<td>$37,300.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$2,177,654.00</strong></td>
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</table>

### 63—Weston State Hospital
**Acct. No. 420**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,170,184.00</td>
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<tr>
<td>Current Expenses</td>
<td>$1,034,800.00</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$165,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$106,546.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$4,476,530.00</strong></td>
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### Appropriations

#### 64—Spencer State Hospital

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,488,478.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$569,505.00</td>
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<td>3 Repairs and Alterations</td>
<td>$80,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$83,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,221,183.00</strong></td>
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#### 65—Huntington State Hospital

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,132,120.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$796,130.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$104,750.00</td>
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<td>4 Equipment</td>
<td>$96,700.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,129,700.00</strong></td>
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</table>

#### 66—Lakin State Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,031,857.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$300,000.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$98,000.00</td>
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<td>4 Equipment</td>
<td>$85,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,514,857.00</strong></td>
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#### 67—Barboursville State Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$538,310.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$169,800.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$46,600.00</td>
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<td>4 Equipment</td>
<td>$24,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$779,210.00</strong></td>
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</table>

#### 68—Fairmont Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$249,962.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$106,985.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
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<td>4 Equipment</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$385,047.00</strong></td>
</tr>
<tr>
<td></td>
<td>69—Welch Emergency Hospital</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>
### Appropriations

#### 74—State Board of Education—Rehabilitation Division
**Acct. No. 440**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$463,188.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$91,150.00</td>
</tr>
<tr>
<td>3 Rehabilitation Center</td>
<td>$367,782.00</td>
</tr>
<tr>
<td>4 Case Services</td>
<td>$565,145.00</td>
</tr>
<tr>
<td>5 Supervisory Services for Vending Stand Program for the Blind</td>
<td>$21,235.00</td>
</tr>
<tr>
<td>6 Training and Special Projects</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>7 Social Security Matching Fund</td>
<td>$31,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,600,000.00</strong></td>
</tr>
</tbody>
</table>

#### BUSINESS AND INDUSTRIAL RELATIONS

#### 75—Bureau of Labor and Department of Weights and Measures
**Acct. No. 450**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$503,925.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$145,200.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$3,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$652,625.00</strong></td>
</tr>
</tbody>
</table>

#### 76—Department of Mines
**Acct. No. 460**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$943,717.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$217,165.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$34,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,195,382.00</strong></td>
</tr>
</tbody>
</table>

#### 77—Department of Commerce
**Acct. No. 465**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$571,850.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$447,500.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$14,100.00</td>
</tr>
<tr>
<td>4 Mt. State Forest Festival</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>5 Alpine Festival</td>
<td>$500.00</td>
</tr>
<tr>
<td>6 Governor's Conference on Wood Utilization</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>7 West Virginia Historical Drama Association</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>8 Arts and Humanities Fund</td>
<td>$67,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,154,050.00</strong></td>
</tr>
</tbody>
</table>
The above appropriations, Mountain State Forest Festival, Alpine Festival, Governor’s Conference on Wood Utilization, and West Virginia Historical Drama Association shall be expended only upon authorization of the Commerce Commissioner and in accordance with the provisions of chapter 5-A of the code of West Virginia.

All Federal moneys heretofore or hereafter received as reimbursements to the Department of Commerce, for moneys expended from General Revenue funds, are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses, Equipment, in-service training programs.

78—State Commission on Manpower, Technology and Training

Acct. No. 470

1 Personal Services $20,355.00
2 Current Expenses 8,000.00
3 Equipment 450.00

4 Total $28,805.00

79—Southern Interstate Nuclear Board

Acct. No. 471

1 Total $7,970.00

80—Interstate Commission on Potomac River Basin

Acct. No. 473

1 West Virginia’s contribution to Potomac River Basin Interstate Commission $4,500.00

81—Ohio River Valley Water Sanitation Commission

Acct. No. 474

1 West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission $20,657.00
### Appropriations

**82—Southern Regional Education Board**  
Acct. No. 475

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia's contribution to Southern Regional Education Board</td>
<td>$79,900.00</td>
</tr>
<tr>
<td>To be expended upon requisition of the Governor</td>
<td></td>
</tr>
</tbody>
</table>

**83—West Virginia Air Pollution Commission**  
Acct. No. 476

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$145,570.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$185,570.00</td>
</tr>
</tbody>
</table>

**84—Interstate Education Compact**  
Acct. No. 477

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia's contribution to Interstate Education Compact</td>
<td>$9,500.00</td>
</tr>
</tbody>
</table>

**85—Antiquities Commission**  
Acct. No. 478

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Expenses</td>
<td>$4,900.00</td>
</tr>
<tr>
<td>Historic Preservation Program</td>
<td>$19,500.00</td>
</tr>
<tr>
<td>Total</td>
<td>$24,400.00</td>
</tr>
</tbody>
</table>

**86—Department of Banking**  
Acct. No. 480

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$143,205.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$52,450.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$100.00</td>
</tr>
<tr>
<td>Total</td>
<td>$195,755.00</td>
</tr>
</tbody>
</table>

**87—West Virginia State Aeronautics Commission**  
Acct. No. 485

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$25,200.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$20,500.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Aerial Markers</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Civil Air Patrol Expenses</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$55,700.00</td>
</tr>
</tbody>
</table>
### 88—West Virginia Nonintoxicating Beer Commissioner

**Acct. No. 490**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$155,685.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,200.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$216,885.00</td>
</tr>
</tbody>
</table>

### 89—West Virginia Racing Commission

**Acct. No. 495**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$106,050.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$137,050.00</td>
</tr>
</tbody>
</table>

### AGRICULTURE

#### 90—Department of Agriculture

**Acct. No. 510**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$674,022.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$264,770.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>5 Interstate Compact on Pest Control</td>
<td>$4,700.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$985,492.00</td>
</tr>
</tbody>
</table>

Out of the above funds a sum may be used to match federal funds for the eradication and control of pest and plant diseases.

#### 91—Department of Agriculture—Soil Conservation Committee

**Acct. No. 512**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$94,325.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$47,000.00</td>
</tr>
<tr>
<td>3 Watershed Program</td>
<td>$50,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$191,325.00</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the Watershed Program at the end of 1967-68 is reappropriated for expenditure during 1968-69.
92—Department of Agriculture—Marketing and Research  
Acct. No. 513

1 For cooperation with the Federal Government  
2 in a program of marketing and research .... $ 168,700.00  
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.

93—Department of Agriculture—Meat Inspection  
Acct. No. 514

1 Total ........................................................................ $ 161,550.00  
2 Any part or all of this appropriation may be  
3 transferred to Special Revenue Fund for the  
4 purpose of matching Federal Funds for the  
5 above-named program.  
6 Any unexpended balance remaining in the ap-  
7 propriation “Meat Inspection” at the close of  
8 the fiscal year 1967-68, is hereby reappropri-  
9 ated for expenditure during the fiscal year  
10 1968-69.

94—Department of Agriculture—Agricultural Awards  
Acct. No. 515

1 West Virginia State Fair ........................................ $ 25,000.00  
2 Agricultural Awards ................................................. 43,000.00  
3 Walnut Festival .......................................................... 3,500.00  
4 Apple Festival ............................................................ 1,500.00  

5 Total ........................................................................ $ 73,000.00  

CONSERVATION AND DEVELOPMENT

95—Geological and Economic Survey Commission  
Acct. No. 520

1 Personal Services ....................................................... $ 209,997.00  
2 Current Expenses ..................................................... 55,000.00  
3 Equipment ............................................................... 13,301.00  
4 Cooperative Mapping Program ............................... 60,000.00  

5 Total ........................................................................ $ 338,298.00
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.

96—Department of Veterans Affairs

Acct. No. 564

1 In aid of Veterans Day Patriotic Exercises ... $ 3,000.00
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.

97—Department of Natural Resources

Acct. No. 565

1 Personal Services ..................................... $ 1,822,985.00
2 Current Expenses ...................................... 674,733.00
3 Repairs and Alterations .............................. 108,850.00
4 Equipment .............................................. 109,570.00
5 Clarke-McNary—Fire Prevention ...................... 120,000.00
6 ARA-EDA Park Programs ............................. 250,000.00
7 Water Resources Board ................................ 5,000.00
8 Rabies Control ......................................... 30,000.00
9 Total ...................................................... $ 3,121,138.00
10 Out of the above appropriation for Current
11 Expenses, subsistence for conservation offi-
12 cers shall be paid at the rate of two dollars
13 and fifty cents per calendar day to the chief
14 conservation officer and to each full-time
15 uniformed conservation officer, under his
16 direct supervision, whose primary duties and
17 responsibilities are law enforcement.
18 Any unexpended balance remaining in the ap-
19 propriation “Clarke-McNary—Fire Preven-
20 tion” at the close of the fiscal year 1967-68
21 is hereby reappropriated for expenditure
22 during the fiscal year 1968-69.
# Appropriations

**Department of Public Safety**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,603,235.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,167,864.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$340,000.00</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>$4,186,099.00</strong></td>
</tr>
</tbody>
</table>

**Adjutant General—State Militia**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$76,001.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$97,720.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$7,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$2,600.00</td>
</tr>
<tr>
<td>5</td>
<td>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>$86,040.00</td>
</tr>
<tr>
<td>6</td>
<td>Property Maintenance</td>
<td>$51,458.00</td>
</tr>
<tr>
<td>7</td>
<td>State Armory Board</td>
<td>$795,493.00</td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td><strong>$1,116,312.00</strong></td>
</tr>
</tbody>
</table>

**Department of Civil and Defense Mobilization**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$39,655.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,300.00</td>
</tr>
<tr>
<td>4</td>
<td><strong>Total</strong></td>
<td><strong>$53,955.00</strong></td>
</tr>
</tbody>
</table>

**Auditor’s Office—Social Security**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To match contributions of state employees for social security</td>
<td>$2,500,000.00</td>
</tr>
<tr>
<td>2</td>
<td>The above appropriation is intended to cover the state's share of social security costs for those spending units operating from General Revenue Fund and General School Fund Appropriations. The State Road Commission, Department of Motor Vehicles,</td>
<td></td>
</tr>
</tbody>
</table>
9 Workmen’s Compensation Commission, Public
10 Service Commission, and other depart-
11 ments operating from Special Revenue Fund
12 and/or Federal Funds shall pay their pro-
13 portionate share of the social security cost
14 for their respective divisions.
15 Any unexpended balance remaining in this
16 appropriation at the close of the fiscal year
17 1967-68 is hereby reappropriated for ex-
18 penditure during the fiscal year 1968-69.

102—State Board of Professional Foresters
Acct. No. 586

1 To pay the per diem of members and other
2 general expenses ................................... $26,000.00
3 From Collections ................................ 26,000.00

103—West Virginia Board of Examiners for Practical Nurses
Acct. No. 587

1 To pay the per diem of members and other
2 general expenses ................................... $ 5,500.00
3 From Collections ................................ 5,500.00

104—State Board of Chiropractic Examiners
Acct. No. 588

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

105—State Board of Dental Examiners
Acct. No. 589

1 To pay the per diem of members and other
2 general expenses ................................... $11,500.00
3 From Collections ................................ 11,500.00

106—State Board of Pharmacy
Acct. No. 590

1 To pay the per diem of members and other
2 general expenses ................................... $11,500.00
3 From Collections ................................ 11,500.00
107—State Board of Osteopathy
   Acct. No. 591
1 To pay the per diem of members and other
general expenses .............................................. $ 1,765.00
3 From Collections ........................................... 1,765.00

108—State Board of Optometry
   Acct. No. 592
1 To pay the per diem of members and other
general expenses .............................................. $ 2,500.00
3 From Collections ........................................... 2,500.00

109—State Board of Embalmers and Funeral Directors
   Acct. No. 593
1 To pay the per diem of members and other
general expenses .............................................. $ 10,000.00
3 From Collections ........................................... 10,000.00

110—State Board of Registration for Professional Engineers
   Acct. No. 594
1 To pay the per diem of members and other
general expenses .............................................. $ 33,740.00
3 From Collections ........................................... 33,740.00

111—State Board of Architects
   Acct. No. 595
1 To pay the per diem of members and other
general expenses .............................................. $ 4,000.00
3 From Collections ........................................... 4,000.00

112—State Veterinary Board
   Acct. No. 596
1 To pay the per diem of members and other
general expenses .............................................. $ 500.00
3 From Collections ........................................... 500.00

113—State Board of Law Examiners
   Acct. No. 597
1 To pay the per diem of members and other
general expenses .............................................. $ 3,000.00
114—Human Rights Commission
Acct. No. 598

1 Personal Services ____________________________ $ 67,620.00
2 Current Expenses ____________________________ 33,305.00
3 Equipment ____________________________ 1,500.00

4 Total ____________________________ $ 102,425.00

115—West Virginia State Board of Sanitarians
Acct. No. 599

1 To pay the per diem of members and other general expenses ____________________________ $ 800.00
2 From Collections ____________________________ 800.00

116—West Virginia Public Employees Retirement Board
Acct. No. 614

1 Employers Accumulation Fund ____________ $ 1,587,500.00
2 Expense Fund ____________ 25,000.00

3 Total ____________________________ $ 1,612,500.00

The above appropriation is intended to cover the state's share of the West Virginia Public Employees' Retirement cost in accordance with chapter 5, article 10 of the code of West Virginia for those departments operating from General Revenue Fund and General School Fund appropriations. The State Road Commission, Department of Motor Vehicles, State Tax Department—Gasoline Tax Division, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.
117—Insurance Commissioner

Acct. No. 616

1 Personal Services.............................................. $ 332,064.00
2 Current Expenses............................................. 82,490.00
3 Repairs and Alterations................................. 5,500.00
4 Equipment.................................................. 5,000.00

5 Total........................................................ $ 425,054.00

118—State Road Commission

Acct. No. 641

1 Total........................................................ $ 6,000,000.00

2 To be transferred to the State Road Fund upon
3 the requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the funds
2 designated there is hereby appropriated conditionally upon
3 the fulfillment of the provisions set forth in chapter 5, article
4 4, and chapter 5-A, article 2, of the code of West Virginia
5 the following amounts, as itemized, for expenditure during
6 the fiscal year one thousand nine hundred sixty-nine.

119—State Road Commission

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Federal-Aid Construction — Interstate Pro-
2 gram ............................................................... $119,090,500.00
3 Federal-Aid Construction—ABC Program .......... 19,850,000.00
4 Appalachian Program ...................................... 29,000,000.00
5 Interstate Maintenance ................................... 1,586,500.00
6 Special Maintenance and State Construction—
7 Expressway, Trunkline and Feeder .................. 9,485,500.00
8 Special Maintenance and State Construction—
9 State Local Service ...................................... 10,696,500.00
10 Routine Maintenance—Expressway, Trunkline
11 and Feeder .................................................. 6,555,000.00
12 Routine Maintenance—State Local Service ....... 7,271,400.00
13 Emergency Operations—Snow and Ice Con-
14 trol—Flood and Slides ................................... 3,000,000.00
15 Scenic Highway ............................................. 1,257,000.00
It is the intent to appropriate and make available for expenditure, the balances and all revenues and income of the state road fund, including the proceeds from the sale of bonds, for the maintenance, construction and reconstruction of state roads and for other purposes in accordance with the provisions of chapter 17, code of West Virginia, one thousand nine hundred thirty-one, as amended.

Funds in excess of amounts herein appropriated may be made available by budget amendment upon request of the Road Commissioner and approval of the Board of Public Works.

The State Road Commissioner shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories of materials and supplies: Provided, however, That the operation of such revolving funds shall not cause expenditures in excess of the foregoing appropriations.

There is hereby appropriated, within the above line items, sufficient moneys for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with chapter 14, article 2, sections 7 and 8, code of West Virginia, one thousand nine hundred thirty-one, as amended.
120—Department of Motor Vehicles
Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,036,600.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$542,365.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Purchase of License Plates</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$44,177.00</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching Fund</td>
<td>$51,406.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$1,954,548.00</td>
</tr>
</tbody>
</table>

121—State Tax Department—Gasoline Tax Division
Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$212,240.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$69,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$9,500.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$294,740.00</td>
</tr>
</tbody>
</table>

122—State Board of Education
Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$110,862.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$18,450.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$2,600.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$131,912.00</td>
</tr>
</tbody>
</table>

123—State Board of Education—Vocational Division
Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$109,943.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$31,550.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,950.00</td>
</tr>
<tr>
<td>4</td>
<td>Vocational Aid</td>
<td>$410,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Aid to Counties</td>
<td>$151,250.00</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$706,693.00</td>
</tr>
</tbody>
</table>
124—Department of Education—Veterans Education
Acct. No. 702
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$38,216.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$12,705.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$50,921.00</td>
</tr>
</tbody>
</table>

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

Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Board of Public Works for any emergency which might arise in the operation of this division during the fiscal year.

125—Department of Education
Acct. No. 703
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Superintendent</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$474,268.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$131,830.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$9,550.00</td>
</tr>
<tr>
<td>5 National Defense Education Act</td>
<td>$223,270.00</td>
</tr>
<tr>
<td>6 Statewide Testing Program</td>
<td>$176,000.00</td>
</tr>
<tr>
<td>7 Experimental Projects</td>
<td>$18,730.00</td>
</tr>
<tr>
<td>8 Total</td>
<td>$1,051,648.00</td>
</tr>
</tbody>
</table>

Any part or all of the appropriation for “National Defense Education Act” may be transferred to a Special Revenue Fund for the purpose of matching Federal Funds for this program.
### 126—State Board of School Finance
Acct. No. 704

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$30,555.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$8,400.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,250.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$40,205.00</strong></td>
</tr>
</tbody>
</table>

### 127—Department of Education—School Lunch Program
Acct. No. 705

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$72,843.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$17,975.00</td>
</tr>
<tr>
<td>3 Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$400,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$490,818.00</strong></td>
</tr>
</tbody>
</table>

### 128—Department of Education
Acct. No. 706

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of County Superintendents</td>
<td>$61,000.00</td>
</tr>
</tbody>
</table>

### 129—Department of Education
Acct. No. 707

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 State Aid to Children’s Home</td>
<td>$25,000.00</td>
</tr>
</tbody>
</table>

### 130—Department of Education—Safety Education
Acct. No. 708

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$12,060.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,940.00</td>
</tr>
<tr>
<td>3 Aid to Counties</td>
<td>$135,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$150,000.00</strong></td>
</tr>
</tbody>
</table>
131—Department of Education—Textbook Aid
Acct. No. 709

TO BE PAID FROM GENERAL SCHOOL FUND
1 Textbooks for Schools $ 300,000.00
2 To be distributed according to chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred and thirty-nine.

132—Treasurer’s Office
Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND
1 Abandoned and Unclaimed Property —
2 Trust and Expense Fund $ 25,000.00

133—Real Estate Commission
Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND
1 Personal Services $ 33,418.00
2 Current Expenses 17,654.00
3 Social Security Matching Fund 1,400.00
4 Public Employees Retirement Matching Fund 1,400.00
5 Total $ 53,872.00
6 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees as provided by law.

134—West Virginia Racing Commission
Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND
1 Medical Expenses $ 5,000.00
2 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this account except for hospitalization, medical care, and/or funeral expenses for persons contributing to this fund.
### Appropriations

#### 135—Auditor’s Office—Land Department Operating Fund

Acct. No. 812

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$21,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$15,000.00</td>
</tr>
</tbody>
</table>

**3 Total** $36,000.00

4 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.

5 Special funds in excess of the amount herein appropriated may be made available by budget amendment upon request of the State Auditor and the approval of the Board of Public Works.

#### 136—Department of Finance and Administration

Division of Purchases—Revolving Fund

Acct. No. 814

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$130,200.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$13,430.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$6,170.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$7,150.00</td>
</tr>
</tbody>
</table>

**6 Total** $173,950.00

7 The total amount of this appropriation shall be paid from Special Revenue Fund as provided by chapter 5, article 4 and chapter 5-A, article 2, of the code of West Virginia.

8 The above appropriation includes salaries and operating expenses.

9 There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.
18 Special funds in excess of the amounts hereby
19 appropriated may be made available by
20 budget amendment upon request of the
21 Department of Finance and Administration
22 and approval of the Board of Public Works.

137—Department of Agriculture
Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$210,140.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$40,590.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$8,500.00</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>Public Employees Retirement Matching Fund</td>
<td>$8,707.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$276,937.00</strong></td>
</tr>
</tbody>
</table>

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 in-
11 tention that special funds in excess of the
12 amounts hereby appropriated shall be made
13 available by budget amendment upon re-
14 quest of the Commissioner of Agriculture,
15 and approval of the Board of Public Works.

138—State Committee of Barbers and Beauticians
Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$60,780.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$900.00</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$2,720.00</td>
</tr>
<tr>
<td>Public Employees Retirement Matching Fund</td>
<td>$3,183.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$99,583.00</strong></td>
</tr>
</tbody>
</table>

7 The total amount of this appropriation shall be
8 paid from Special Revenue Fund out of
9 collections made by the State Committee of
10 Barbers and Beauticians as provided by law.
139—Public Service Commission
Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Commissioners</td>
<td>$42,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$453,199.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$75,875.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$6,440.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$16,670.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>$25,597.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$619,781.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law. Out of the above appropriation $5,000.00 may be transferred to the State Water Resources Commission of the Department of Natural Resources for use in cooperation with the U. S. Geological Survey in a program of stream gauging.

140—Public Service Commission—Motor Carrier Division
Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$256,830.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$69,400.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$4,860.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$10,444.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$12,370.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$353,904.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as authorized by law.
### 141—Department of Natural Resources

#### Acct. No. 830

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$1,327,120.00</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$626,300.00</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$105,100.00</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$301,300.00</td>
</tr>
<tr>
<td>5. Land Purchase and Buildings</td>
<td>$170,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,529,820.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Natural Resources and approval of the Board of Public Works.

### 142—Department of Public Safety—Inspection Fees

#### Acct. No. 835

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$128,302.00</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>$55,980.00</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>$10,864.00</td>
</tr>
<tr>
<td>5. Social Security Matching Fund</td>
<td>$865.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$201,011.00</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected for inspection stickers as provided by law. Special Funds in excess of the amounts hereby appropriated may be made available by
budget amendment upon request of the Department of Public Safety and approval of the Board of Public Works for the purpose of repairs to, or construction of police barracks.

143—West Virginia Alcohol Beverage Control

<table>
<thead>
<tr>
<th>Acct. No. 837</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
</tr>
<tr>
<td>1 Salary of Commissioner ............... $ 14,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services ............... 3,759,250.00</td>
</tr>
<tr>
<td>3 Current Expenses ..................... 959,200.00</td>
</tr>
<tr>
<td>4 Repairs and Alterations ............... 48,000.00</td>
</tr>
<tr>
<td>5 Equipment ................................ 60,000.00</td>
</tr>
<tr>
<td>6 Social Security Matching Fund .......... 181,633.00</td>
</tr>
<tr>
<td>7 Public Employees Retirement Matching Fund .......... 204,531.00</td>
</tr>
<tr>
<td>8 Total .................................... $ 5,226,614.00</td>
</tr>
</tbody>
</table>

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

The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.

There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor, as provided by law.

144—West Virginia Civil Service System

<table>
<thead>
<tr>
<th>Acct. No. 840</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
</tr>
<tr>
<td>1 Personal Services ...................... $ 172,126.00</td>
</tr>
<tr>
<td>2 Current Expenses ..................... 41,940.00</td>
</tr>
<tr>
<td>3 Social Security Matching Fund .......... 9,612.00</td>
</tr>
<tr>
<td>4 Public Employees Retirement Matching Fund .......... 10,515.00</td>
</tr>
<tr>
<td>5 Total .................................... $ 234,193.00</td>
</tr>
</tbody>
</table>
6 The total amount of this appropriation shall be paid from Special Revenue Fund supported by participating agencies as provided by law.

The Board of Public Works is hereby authorized to make available by budget amendment, upon request of the Civil Service Commission, funds in excess of the amounts hereby appropriated.

145—West Virginia University—Special Capital Improvement Fund

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$665,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Forestry Building</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Property Acquisition</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Misc. Small Projects</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Utilities, Roads, and Parking</td>
<td>$400,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Renovating of Existing Building</td>
<td>$650,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$2,825,000.00</td>
</tr>
</tbody>
</table>

8 The total amount of this appropriation shall be paid from the nonrevolving Capital Improvement Fund created by the 1959 Legislature, amended by the 1963 Legislature.

12 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1967-68 is hereby reappropriated for expenditure during the fiscal year 1968-69.

146—West Virginia Board of Education—Special Capital Improvement Fund

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>West Virginia Board of Education — Debt Service</td>
<td>$1,676,600.00</td>
</tr>
<tr>
<td>3</td>
<td>Concord College — Additional Amount for Maintenance Building</td>
<td>$27,500.00</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>5</td>
<td>W. Va. Institute of Technology—Purchase of Maintenance Bldgs.</td>
<td>77,500.00</td>
</tr>
<tr>
<td>7</td>
<td>Glenville State College—Forest Technology Building</td>
<td>150,000.00</td>
</tr>
<tr>
<td>9</td>
<td>Glenville State College—Land Acquisition</td>
<td>10,000.00</td>
</tr>
<tr>
<td>10</td>
<td>Bluefield State College—Additional Amount for Tech.-Science Bldg. Addition</td>
<td>150,000.00</td>
</tr>
<tr>
<td>12</td>
<td>Bluefield State College—Basic Science Building</td>
<td>2,100,000.00</td>
</tr>
<tr>
<td>14</td>
<td>Bluefield State College—Land Acquisition</td>
<td>70,000.00</td>
</tr>
<tr>
<td>15</td>
<td>Bluefield State College—Library Addition</td>
<td>480,000.00</td>
</tr>
<tr>
<td>16</td>
<td>W. Va. Institute of Technology — Library Building</td>
<td>1,800,000.00</td>
</tr>
<tr>
<td>18</td>
<td>W. Va. Institute of Technology—Land Acquisition</td>
<td>100,000.00</td>
</tr>
<tr>
<td>20</td>
<td>W. Va. Institute of Technology—Community-Technical College Building</td>
<td>1,000,000.00</td>
</tr>
<tr>
<td>22</td>
<td>West Liberty State College — Library-Classroom Building</td>
<td>1,800,000.00</td>
</tr>
<tr>
<td>24</td>
<td>West Virginia State College—Classroom-Office Building</td>
<td>3,000,000.00</td>
</tr>
<tr>
<td>26</td>
<td>West Virginia State College—Land Acquisition</td>
<td>130,000.00</td>
</tr>
<tr>
<td>28</td>
<td>Concord College—Health-Phy. Educ. Building</td>
<td>2,170,000.00</td>
</tr>
<tr>
<td>29</td>
<td>Concord College—Land Acquisition</td>
<td>125,000.00</td>
</tr>
<tr>
<td>30</td>
<td>Fairmont State College—Science Building</td>
<td>2,800,000.00</td>
</tr>
<tr>
<td>31</td>
<td>Marshall University—Communications Building</td>
<td>600,000.00</td>
</tr>
<tr>
<td>33</td>
<td>Glenville State College—Classroom Building</td>
<td>2,100,000.00</td>
</tr>
<tr>
<td>34</td>
<td>Glenville State College—Land Acquisition</td>
<td>100,000.00</td>
</tr>
<tr>
<td>35</td>
<td>Shepherd College—Fine Arts Building</td>
<td>1,900,000.00</td>
</tr>
<tr>
<td>36</td>
<td>Fairmont State College — Health-Phy. Educ. Building</td>
<td>1,000,000.00</td>
</tr>
<tr>
<td>38</td>
<td>Marshall University — Engineering-Science Building</td>
<td>4,000,000.00</td>
</tr>
<tr>
<td>40</td>
<td>Marshall University—Land Acquisition</td>
<td>400,000.00</td>
</tr>
<tr>
<td>42</td>
<td>West Liberty State College — Maintenance Building</td>
<td>300,000.00</td>
</tr>
<tr>
<td>43</td>
<td>West Liberty State College — Renovation, Main Hall</td>
<td>250,000.00</td>
</tr>
<tr>
<td>45</td>
<td>West Liberty State College — Renovation,</td>
<td></td>
</tr>
</tbody>
</table>
As required by law, the above projects are listed in a stated order of priority. The appropriation on lines 1 through 11 are to be paid on a cash basis and made available from date of passage and the cost of projects on lines 12 through 49 are to be paid from proceeds of revenue bonds as authorized by law with projects on lines 13 through 23 being made available from date of passage. It is intended that only complete and usable units or projects be constructed and equipped and then only in the listed order of priority: Provided, however, That the amounts shown for each unit or project shall include in said amount matching-grant funds from governmental or nongovernmental sources, and further provided, that whenever the amount in the Capital Improvement Fund including both cash collections and the proceeds of bond sale, shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them, or any one or more, may be constructed as soon as plans can be prepared and contracts let therefor. The total amount of this appropriation shall be paid from the nonrevolving Capital Improvement Fund created by the 1959 Legislature, amended by the 1963 Legislature. Any unexpended balance remaining in this appropriation at the close of the fiscal year 1967-1968 is hereby reappropriated for expenditure during the fiscal year 1968-1969.
Bill, Regular Session 1967, Section 2, Appropriations from Other Funds, pages 48 and 49, State Board of Education—Special Capital Improvements Funds, Account No. 854, lines 19 through 62 inclusive, is hereby voided and superseded by the above appropriation.

Out of funds in excess of the above appropriation a sum of $80,000.00 shall be made available to Concord College for the development of a recreation field.

147—West Virginia University—Medical School
Acct. No. 873
TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$6,905,066.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>2,433,334.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>294,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>367,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$10,000,000.00</strong></td>
</tr>
</tbody>
</table>

Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Board of Governors of West Virginia University and approval of the Board of Public Works.

148—Workmen’s Compensation Commission
Acct. No. 900
TO BE PAID FROM WORKMEN’S COMPENSATION FUND

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>$953,400.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>277,600.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>15,600.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>45,600.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>45,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,337,200.00</strong></td>
</tr>
</tbody>
</table>

There is hereby authorized to be paid out of the above appropriation for current expenses the amount necessary for the premiums on bonds given by the State Treasurer.
and bond custodian for the protection of the Workmen's Compensation Fund. This sum shall be transferred to the Board of Insurance.

Sec. 3. Supplemental and Deficiency Appropriations.—From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-eight to supplement the 1967-68 appropriations, and to be available for expenditure upon date of passage.

149—Governor's Office
Acct. No. 120
1 Contingent Fund $100,000.00

150—Sinking Fund Commission
Acct. No. 170
1 Personal Services $1,825.00

151—State Commissioner of Public Institutions
Acct. No. 190
1 Forestry Camp for Boys $250,000.00
2 To be used for establishing a new Forestry Camp for Boys.

152—Department of Finance and Administration
Acct. No. 210
1 Current Expenses $78,000.00
2 Electronic Data Processing $270,000.00
3 Major Building Repairs $325,000.00
4 Total $673,000.00

153—Weston State Hospital
Acct. No. 420
1 Refrigeration $58,000.00

154—Racing Commission
Acct. No. 495
1 Personal Services $6,000.00
2 Current Expenses $600.00
3 Total $6,600.00
### 155—Department of Natural Resources

**Acct. No. 565**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$82,985.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$62,053.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$23,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$11,400.00</td>
</tr>
<tr>
<td>5 For improvement and repairs of the facilities at Babcock State Park</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>7 Total</td>
<td>$279,538.00</td>
</tr>
</tbody>
</table>

### 156—Human Rights Commission

**Acct. No. 598**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$300.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,610.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$2,910.00</td>
</tr>
</tbody>
</table>

### 157—Department of Motor Vehicles

**Acct. No. 671**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>$36,000.00</td>
</tr>
</tbody>
</table>

### 158—West Virginia Alcohol Beverage Control

**Acct. No. 837**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$24,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$50,069.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$74,069.00</td>
</tr>
</tbody>
</table>

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

From the funds designated there are hereby appropriated for the remainder of the fiscal year 1967-68, and to remain in effect until June 30, 1969, for payment of claims against the state, the following amounts as itemized.

**Claims versus the State Road Commission**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Southern Coals Company</td>
<td>$3,099.67</td>
</tr>
<tr>
<td>2 Charleston Concrete Floor Co.</td>
<td>$14,500.02</td>
</tr>
<tr>
<td>3 Roy L. Warner</td>
<td>$640.16</td>
</tr>
<tr>
<td>4 Buckeye Union Casualty Co. and Melvin</td>
<td>$39,775.00</td>
</tr>
</tbody>
</table>
Ch. 6] APPROPRIATIONS

6 C. J. Langenfelder and Sons ........................................ 269,116.08
7 John Robbins .................................................. 759.00
8 Hubert Fowler .................................................. 859.00
9 Kenton Meadows Company ....................................... 28,535.00
10 Louis Ansline .................................................. 2,853.37
11 Mountain State Construction Co. ...................................... 67,288.99
12 Mary Jane Hurley .............................................. 75.00
13 Clarence E. Dotson ............................................ 87.55
14 David Griffey ................................................. 453.10
15 Russell Collins ................................................. 50.00
16 Sam D. Calhoun ................................................ 30.90
17 Marshall Neely .................................................. 125.73
18 State Farm Mutual Automobile Insurance Co. .. on behalf of James E. Keene ..................................... 24.81
19 Ott Brown .......................................................... 68.25
20 Emmett Buchanan ............................................... 102.40
21 John L. Wood .................................................. 1,450.00
22 Geo. C. and Audra H. Hendershott ...................... 350.79
23 Delos Tenney ................................................... 225.00
24 James D. Clark ................................................ 70.15
25 Clifford Biller ................................................... 124.00
26 Henry L. Miller .................................................. 36.00
27 Armco Steel Corporation ........................................ 11,697.34

Claims versus the Department of Commerce
TO BE PAID FROM GENERAL REVENUE FUND
1 Irving Bowman etc. and Fred Wiedersum etc. $ 23,582.15

Claims versus the Adjutant General
TO BE PAID FROM GENERAL REVENUE FUND
1 Alice and Shual Sargis ........................................... 3,277.11

Claims versus the Department of Health
TO BE PAID FROM GENERAL REVENUE FUND
1 Biggs-Johnston-Withrow ......................................... 4,400.00

Claims versus the Department of Welfare
TO BE PAID FROM GENERAL REVENUE FUND
1 Remington-Rand Office Systems Division $ 13,245.37
Claims versus Department of Welfare
TO BE PAID FROM GENERAL REVENUE FUND
1 Charles R. McElwee..................................................... $ 2,700.00

Claims versus the Department of Welfare
TO BE PAID FROM GENERAL REVENUE FUND
1 W. A. Abbitt Company ................................................. $ 212,511.35

Sec. 5. Reappropriations.—The date for expiring the un-
2 expended balances, if any, in Item II, in the appropriations
3 made by and under authority of Section 6 of the 1965 Budget
4 Act and Item III and Item 151, Section 5 of the 1967 Budget
5 Act are hereby reappropriated for expenditure through
6 June 30, 1969.

Sec. 6. Special Revenue Appropriations.—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred sixty-nine appropriations made by
4 general law from special revenue which are not paid into
5 the state fund as general revenue under the provisions of
6 chapter 12, article 2, section 2, of the code of West Virginia,
7 one thousand nine hundred thirty-one: Provided, however,
8 That none of the moneys so appropriated by this section
9 shall be available for expenditure except in compliance with
10 and in conformity to the provisions of chapter 12, articles 2
11 and 3, chapter 5, article 4 and chapter 5-A, article 2, of the
12 code of West Virginia, unless the spending unit has filed
13 with the state director of the budget and the state auditor
14 prior to the beginning of each fiscal year:
15 (a) An estimate of the amount and sources of all reve-
16 nues accruing to such fund;
17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

Sec. 7. 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 chapter 12,
6 article 3, of the code of West Virginia.
7 There is hereby appropriated to West Liberty State Col-
8 lege the sum of $25,000.00 representing proceeds from the
9 sale of West Liberty Centre School property on Chapline
10 Street, Wheeling, West Virginia, for the purpose of purchas-
11 ing many kinds of equipment (Library books; science,
12 music, business and technical equipment, etc.) to be used at
13 West Liberty State College.
14 Such funds shall be deposited into a special fund for this
15 purpose.

Sec. 8. Appropriation for Refunding Erroneous Payments.
2 —Money that has been erroneously paid into the state trea-
3 sury 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. 9. 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 or
14 local taxing district for which the Board of Public Works ad-
15 vanced funds, with interest at the rate carried by the bonds
16 for which the advance was made.

Sec. 10. Appropriations from Taxes and License Fees.—
2 There is hereby appropriated from the soft drink tax reve-
3 nues for administration and enforcement of the law relating
4 to said tax, a sum not to exceed two and one half percent
5 of the total revenues collected. All such salaries and ex-
6 penses, authorized by law as aforesaid, shall be paid by the
Sec. 11. Appropriations to Pay Costs of Publication of Delinquent Corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the auditor and/or the Governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by chapter 11, article 12, sections 75 and 77, of the code of West Virginia.

Sec. 12. Appropriations for Local Governments.—There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be necessary to pay taxes due county, district, and municipal corporations and which have been paid into the treasury:
(a) For the redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

Sec. 13. Total Appropriations.—Where only a total sum is appropriated to a spending unit that total sum shall include personal services, current expenses, and capital outlay, except as otherwise provided in Title I, Section 3.

Sec. 14. General School Fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with chapter 18, article 9, section 6, of the code of West Virginia.

Title 3. Administration.

Section 1. Appropriations Conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of chapter 5, article 4 and chapter 5-A, article 2, of the code of West Virginia.

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

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

CHAPTER 7

(Senate Bill No. 110—By Mr. Montgomery)

[Passed February 6, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article fourteen,
chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the licens­
ing of schools of barbering and beauty culture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. BARBERING, BEAUTY CULTURE AND MANICURING.

§16-14-10. License to own or operate schools of barbering or
beauty culture; application for license; qualifica­
tions; inspection; license fee; rules and regulations;
suspension, etc., of license; qualifications and regis­
tration of instructors; registration fee; administra­
tive procedures.

1 No person, firm or corporation, whether public or
2 private, and whether organized for profit or not, shall
3 own or operate a school of barbering or beauty culture
4 in this state without first obtaining a license so to do
5 from the committee. The application for such license shall
6 be made in writing on forms prescribed and furnished
7 by the committee and shall be signed and verified by the
applicant. The applicant shall, in addition to such other information as may be reasonably required by the committee, furnish evidence that (a) the applicant is professionally competent and financially responsible, (b) adequate physical facilities will be available for the school, and (c) persons teaching or instructing therein are registered by the committee as duly qualified instructors. If an applicant desires to own or operate more than one school of barbering or beauty culture, a separate application shall be made and a separate license shall be issued for each.

All applicants for a license to own or operate a school of barbering or beauty culture shall permit an inspection of such proposed school by the committee or its designated representative to determine whether it is properly fitted and equipped for instruction in barbering or beauty culture. The committee shall promulgate reasonable rules and regulations to implement and make effective the powers, duties and responsibilities vested in such committee in connection with the licensing and regulation of schools of barbering and beauty culture. If the applicant has met all of the standards and qualifications prescribed herein and by the committee and has complied with the rules and regulations pertaining to the issuance of the license applied for, the committee shall issue such license to the applicant. Thereafter, the committee may suspend, revoke or refuse to renew the license of a school whenever it fails to meet the minimum standards and qualifications required for the issuance of an original license.

The license fee for each school of barbering and for each school of beauty culture shall be twenty-five dollars annually, to be paid in such manner as the committee may prescribe, on or before January first of each year. The license shall be prominently displayed in the school, and a suitable sign shall be kept on the front of the school which shall plainly indicate that a school of barbering or beauty culture is operated therein.

The committee shall make reasonable rules and regulations prescribing the standards and requirements to be met by applicants for registration as
duly qualified instructors in schools of barbering or beauty culture. Such rules and regulations may provide for the issuance of certificates for instructors, including temporary certificates, and shall prescribe minimum qualifications as to age, education and training for applicants for such certificates. Each registered instructor in barbering or beauty culture shall pay an initial registration fee of five dollars, and shall renew his certificate annually and pay a renewal fee of five dollars on or before the first day of January of each year. An expired certificate may be reinstated only upon the payment of all lapsed renewal fees, unless such instructor shall have notified the committee that he or she desires to be placed on an inactive status during which time he or she shall not be liable for any renewal fees. The applicant for reinstatement shall also be required to meet the qualifications for registration in effect at the time application for reinstatement is made.

Recognizing that all of the provisions of chapter twenty-nine-a of this code are fully applicable to any and all administrative procedures, and the right of judicial review, in connection with the provisions of this article, but also recognizing that the question has been raised as to whether rules and regulations adopted under the provisions of this section must be promulgated in accordance with the provisions of said chapter twenty-nine-a, it is hereby expressly provided that all such rules and regulations shall be promulgated in compliance with the provisions of said chapter twenty-nine-a.

CHAPTER 8

(Senate Bill No. 37—By Mr. Carson, Mr. President, and Mr. Carrigan)

[Passed January 27, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to
investments which may be made by building and loan associations and certain limitations and qualifications with respect thereto.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article six, 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 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-19. How funds of association may be invested.

1 Subject to the provisions of this article and its bylaws any building and loan association may invest the funds received by it as follows:

2 First: In loans to its shareholders secured by a bond or other obligation and mortgage or deed of trust on real estate. Such loans may be secured by a transfer and pledge to the association of shares having a matured or par value at least equal to the amount of such loans, or may be written on a direct reduction basis. A direct reduction loan shall mean a loan repayable in consecutive monthly installments, equal or unequal, beginning not later than thirty days after the date of the advance of the loan, sufficient to retire the debt, interest and principal within thirty years. The direct reduction borrower shall be given a membership certificate evidencing his rights in the association, but shall not participate in profits or losses. No building and loan association shall lend upon any one piece of real estate more than ten percent of its paid-in capital stock, contingent or reserve funds, and undivided profits. Personal property may be accepted as additional security where the primary and principal security is a mortgage or deed of trust on real estate.

2 Second: In loans to shareholders upon their obligation secured by the transfer and pledge to the association of shares not previously transferred or pledged to it, the withdrawal or par value of which shall at least equal the amount of such loan.

Any such bonds or obligations, mortgages, or deeds of trust taken by any such association from its share-
holders shall be deemed conditioned upon the performance of the provisions of this article and the bylaws of the association relating to the payment of loans, premium, interest, dues, fees, and fines, although the same may not be fully expressed therein.

Third: In the purchase of direct reduction loans made by others where such loans are secured by bond or other obligation and mortgage or deed of trust on real estate, however, no building and loan association shall purchase a loan made upon any one piece of real estate on which there is owing a sum in excess of ten percent of its paid-in capital stock, contingent or reserve funds, and undivided profits. When a building and loan association purchases loans made by others, the borrowers shall not become shareholders or members of such association.

Fourth: A building and loan association may participate with one or more financial institutions in any direct reduction real estate loan to borrowers, provided (a) that the participating interest of such association is not subordinated or inferior to any other participating interest, and (b) that the participating interest of such association in any loan on one piece of real estate shall not exceed ten percent of its paid-in capital stock, contingent or reserve funds, and undivided profits. When a building and loan association participates with other financial institutions in making real estate loans, the borrowers shall not become shareholders or members of such association. The term "financial institutions," as used herein, shall include a banking institution or trust company, a building and loan association, a mutual savings bank, a cooperative bank, a homestead association, a federal savings association, a federal savings and loan association and any supervised thrift and residential financing institution of a substantially similar nature.

Fifth: In real property as follows: (a) A lot of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business, from portions of which, not required for its own use, a revenue may be derived: Provided, That no building and loan association shall so invest more than ten percent
of its assets; (b) such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business; (c) such as it shall purchase at sales under judgments, decrees, or mortgages or deeds of trust held by it: Provided, however, That any real estate acquired by any building and loan association under classes (b) and (c) shall be disposed of by the association at the earliest practicable date; but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the association from unnecessary losses.

If at any time it has funds in excess of the amount needed for loans to its members, and the payment of matured shares and withdrawals, such funds may be invested:

(a) In loans to other domestic building and loan associations;

(b) In bonds or interest-bearing obligations of the United States, or the District of Columbia, or of the state of West Virginia, or of any county, district, school district, or other political subdivision in the state of West Virginia, or of any incorporated municipality in the state of West Virginia; and in such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks, or approved by the state commissioner of banking;

(c) In loans to students which are insurable under the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965.

CHAPTER 9

(House Bill No. 203—By Mr. Speaker, Mr. White, and Mr. Myles)

[Passed January 29, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, 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 forty-one, authorizing the commissioner of banking
to issue regulations permitting building and loan associa-
tions organized under the laws of this state to exercise
any right, power, privilege or benefit possessed by federal
savings and loan associations with home offices located in
this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-41. Authority of commissioner of banking to issue regu-
lations permitting state associations to exercise
rights, powers, etc., possessed by federal associa-
tions; effective dates for regulations; procedures and
limitations.

1 Notwithstanding any provision of this article, if federal
2 savings and loan associations organized under the “Home
3 Owners’ Loan Act of 1933” and amendments thereto, the
4 home offices of which are located in this state, shall
5 possess a right, power, privilege or benefit by virtue of
6 statute, rule, regulation or judicial decision or will possess
7 such right, power, privilege or benefit by virtue of a rule
8 or regulation issued but not effective, which right, power,
9 privilege or benefit is not possessed by building and loan
10 associations organized under the laws of this state, the
11 commissioner of banking may, by regulation, authorize
12 building and loan associations organized under the laws
13 of this state to exercise such right, power, privilege or
14 benefit. Any such regulation shall be adopted and promul-
gated by the commissioner in conformity with the pro-
visions of chapter twenty-nine-a of this code and shall
15 become effective upon compliance with the procedures
16 therein prescribed, but no such regulation of the com-
17 missioner shall in any event become effective prior to
18 the date on which the federal rule or regulation becomes
19 effective. If such regulation so adopted and so promul-
gated by the commissioner is not embodied in a statute
20 enacted prior to the adjournment of the next regular
session of the Legislature such regulation shall there­
upon no longer be of any force or effect: Provided, That
if the next regular session of the Legislature convening
after the adoption and promulgation of such regulation
shall be the regular thirty-day budget session and the sub­
tject matter of such regulation is not a proper matter for
consideration at such thirty-day budget session such regu­
lation shall remain in full force and effect until the ad­
journment of the next regular sixty-day session of the
Legislature: Provided, however, That no such regu­
lation issued by the commissioner shall grant to building
and loan associations permission or authority to install
or maintain any branch or to engage in business at any
place other than its principal office in this state.

CHAPTER 10
(Senate Bill No. 54—By Mr. Moreland and Mr. Jackson)

[Passed February 8, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, six and
seven, article six, chapter five of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, rela­
ting to the powers and duties of the state building com­
mission.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, six and seven, article six, chap­
ter five of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted to read as
follows:

ARTICLE 6. STATE BUILDING COMMISSION.

Section

5-6-1. Name of state office building commission changed; composition,
appointment, term and qualification of members; chairman
and secretary; compensation and expenses; powers and
duties generally.

5-6-3. Powers of commission.

5-6-4. Deposit and disbursement of funds of commission; security for
deposits; audits.

5-6-6. Contracts with commission to be secured by bond; competitive
bids required for contracts exceeding two thousand dollars.

5-6-7. Commission empowered to issue state building revenue bonds;
form and requirements for bonds; procedure for issuance;
temporary bonds; funds, grants and gifts.
§5-6-1. Name of state office building commission changed; com-  
position, appointment, term and qualification of mem-
bers; chairman and secretary; compensation and  
expenses; powers and duties generally.

"The State Office Building Commission of West Vir-
ginia," heretofore created, shall continue in existence but
on and after February nine, one thousand nine hundred
sixty-six, shall be known and designated as "The State
Building Commission of West Virginia" and shall continue
as a body corporate and as an agency of the state of West
Virginia. On and after the date aforesaid, the commission
shall consist of the governor, and four additional members
to be appointed by the governor by and with the advice
and consent of the Senate. The terms of office for said
members to be appointed by the governor shall be four
years, except that the terms of office of the first four mem-
ers so appointed by the governor shall be for one, two,
three and four years respectively. No more than three
of such members so appointed by the governor shall be
members of the same political party, nor shall any of
said members be members or employees of the executive,
legislative or judicial branches of government of West
Virginia or any political subdivision thereof. The gov-
ernor shall be chairman of the commission. The secretary
of state shall be a member of the commission and serve
as its secretary, but shall not have the right to vote upon
matters before the commission. All members of the com-
mision shall be citizens and residents of this state. The
members of the commission shall be paid or reimbursed
for their necessary expenses incurred under this article,
but shall receive no compensation for their services as
members or officers of the commission: Provided, how-
ever, That each member of the commission appointed by
the governor shall, in addition to such reimbursement for
necessary expenses receive a per diem of thirty-five
dollars for each day or substantial portion thereof that he
is engaged in the work of the commission. Such expenses
and per diem shall be paid solely from funds provided
under the authority of this article, and the commission
shall not proceed to exercise or carry out any authority
or power herein given it to bind said commission beyond
the extent to which money has been provided under the authority of this article. On or before the fifteenth day of each month, the commission shall prepare and transmit to the president and minority leader of the Senate and the speaker and the minority leader of the House of Delegates, a report covering the activities of the said commission for the preceding calendar month.

§5-6-3. Powers of commission.

1 The commission shall have power:

2 1. To sue and be sued, plead and be impleaded;

3 2. To have a seal and alter the same at pleasure;

4 3. To contract to acquire and to acquire, in the name of the commission or of the state, by purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;

5 4. To acquire, hold and dispose of personal property for its corporate purposes;

6 5. To make bylaws for the management and regulation of its affairs;

7 6. With the consent of the attorney general of the state of West Virginia to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;

8 7. To appoint officers, agents and employees, and fix their compensation;

9 8. To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by, this article;

10 9. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interest will be best served;

11 10. To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to
32 acquire or construct a warehouse, including office space
33 therein, in Kanawha county for the West Virginia
34 alcohol beverage control commissioner, and equip and
35 furnish the same; and to acquire or construct buildings and
36 additions to buildings (and equip and furnish the same),
37 including remodeling, renovation and repair, as may be
38 required for the safety and care of patients, guests and
39 inmates at hospitals under the jurisdiction and super-
40 vision of the department of mental health and at insti-
41 tutions under the jurisdiction and supervision of the com-
42 missioner of public institutions; and to formulate and
43 program plans for the orderly and timely capital im-
44 provement of all of said hospitals and institutions and
45 the state capitol buildings; and to construct a building or
46 buildings in Kanawha county to be used as a general
47 headquarters by the department of public safety to ac-
48 commodate that department’s executive staff, clerical
49 offices, technical services, supply facilities and dormitory
50 accommodations; and to establish one or more systems
51 or complexes of buildings and projects under control
52 of the commission and, subject to prior agreements with
53 holders of bonds previously issued, to change the same
54 from time to time, in order to facilitate the issuance and
55 sale of bonds of different series on a parity with each
56 other or having such priorities between series as the
57 commission may determine;
58 11. To maintain, construct and operate a project au-
59 thorized hereunder;
60 12. To charge rentals for the use of all or any part of
61 a project or building at any time financed, constructed,
62 acquired or improved in whole or in part with the pro-
63 ceeds of sale of bonds issued pursuant to this article,
64 subject to and in accordance with such agreements with
65 bondholders as may be made as hereinafter provided;
66 13. To issue negotiable bonds and to provide for the
67 rights of the holders thereof;
68 14. To enter on any lands and premises for the pur-
69 pose of making surveys, soundings and examinations;
70 15. To invest in United States government obligations,
71 on a short-term basis, any surplus funds which the com-
mission may have on hand pending the completion of any project or projects;
16. To do all things necessary or convenient to carry out the powers given in this article.
The rights and powers set forth in subdivision ten of this section shall not be construed as in derogation of any rights and powers now vested in the West Virginia alcohol beverage control commissioner, the department of mental health or the commissioner of public institutions.

§5-6-4. Deposit and disbursement of funds of commission; security for deposits; audits.

All moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia, who shall not commingle said moneys with any other moneys, but shall deposit them in a separate bank account or accounts. The moneys in said accounts shall be impressed with and subject to the lien or liens thereon in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in said accounts shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make such requisition. All deposits of such moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such security for such deposits. The state auditor and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its financial standing.

§5-6-6. Contracts with commission to be secured by bond; competitive bids required for contracts exceeding two thousand dollars.
The commission shall construct the project pursuant to a contract or contracts. Every such contract shall be secured
by a bond meeting the requirements of section thirty-nine, article two, chapter thirty-eight of this code.

No contract or contracts for the construction, remodeling, renovation or repair of any building or buildings or any approaches, structures or facilities incidental thereto, or for the equipping and furnishing of any building or buildings, when the anticipated expenditure therefor will exceed the sum of two thousand dollars, shall be entered into except upon the basis of competitive sealed bids. Such bids shall be obtained by public notice soliciting such bids published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any such contract is to be performed. The publication shall be completed at least fourteen days prior to the final date for the submission of bids. The commission may in addition to such publication also solicit sealed bids by sending requests by mail to prospective bidders. The contract shall be awarded to the lowest responsible bidder, unless any and all bids are rejected, in which event new bids shall be sought by again publishing notice as aforesaid. Any bid, with the name of the bidder, shall be entered on a record and each record, with the successful bid indicated thereon, shall, after the award of any contract, be open to public inspection in the office of the secretary of the commission.

§5-6-7. Commission empowered to issue state building revenue bonds; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

The commission is hereby empowered to raise the cost of a project, as defined hereinabove, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in such special fund, except such part of the proceeds of sale of any bonds to be used to pay the cost of a project, for
the payment of the principal of and interest on bonds
issued pursuant to this article, such pledge to apply
equally and ratably to separate series of bonds or upon
such priorities as the commission shall determine. Such
bonds shall be authorized by resolution of the commis-
sion which shall recite an estimate by the commission
of such cost, and shall provide for the issuance of bonds
in an amount sufficient, when sold as hereinafter pro-
vided, to produce such cost, less the amount of any funds,
grant or grants, gift or gifts received, or in the opinion
of the commission expected to be received from the
United States of America or from any other source. The
acceptance by the commission of any and all such funds,
grants and gifts, whether in money or in land, labor or
materials, is hereby expressly authorized. All such bonds
shall have and are hereby declared to have all the quali-
ties of negotiable instruments. Such bonds shall bear
interest at not more than six percent per annum, payable
semiannually, and shall mature in not more than twenty-
five years from their date or dates, and may be made re-
deeimal at the option of the state, to be exercised by the
commission, at such price and under such terms and condi-
tions as the commission may fix prior to the issuance of
such bonds. The commission shall determine the form
of such bonds, including coupons to be attached thereto
to evidence the right of interest payments, which bonds
shall be signed by the chairman and secretary of the
commission, under the great seal of the state, attested
by the secretary of state, and the coupons attached
thereto shall bear the facsimile signature of said chair-
man of the commission. In case any of the officers whose
signatures appear on the bonds or coupons issued as
hereinbefore authorized shall cease to be such officers
before the delivery of such bonds, such signatures shall
nevertheless be valid and sufficient for all purposes the
same as if they had remained in office until such delivery.
The commission shall fix the denominations of said bonds,
the principal and interest of which shall be payable at
the office of the treasurer of the state of West Virginia,
at the capitol of said state, or, at option of the holder,
at some bank or trust company in the city of New York
to be named in the bonds in such medium as may be
determined by the commission. The said bonds and
interest thereon shall be exempt from taxation by the
state of West Virginia, or any county or municipality
therein. The commission may provide for the registra-
tion of such bonds in the name of the owner as to prin-
cipal alone, and as to both principal and interest under
such terms and conditions as the commission may de-
termine, and shall sell such bonds in such manner as it
may determine to be for the best interest of the state,
taking into consideration the financial responsibility of
the purchaser, and the terms and conditions of the pur-
chase, and especially the availability of the proceeds of
the bonds when required for payment of the cost of the
project, such sale to be made at a price not lower than a
price which, computed upon standard tables of bond
values, will show a net return of not more than six per-
cent per annum to the purchaser upon the amount paid
therefor. The proceeds of such bonds shall be used solely
for the payment of the cost of the project for which bonds
were issued, and shall be deposited and checked out as
provided by section four of this article, and under such
further restrictions, if any, as the commission may pro-
vide. If the proceeds of bonds issued for a project shall
exceed the cost thereof, the surplus shall be paid into the
fund hereinafter provided for payment of the principal
and interest of such bonds. Such fund may be used for
the purchase of any of the outstanding bonds payable
from such fund at the market price, but at not exceeding
the price, if any, at which such bonds shall in the same
year be redeemable, and all bonds redeemed or purchased
shall forthwith be cancelled, and shall not again be issued.
Prior to the preparation of definitive bonds, the commis-
sion may, under like restrictions, issue temporary bonds
with or without coupons, exchangeable for definitive
bonds upon the issuance of the latter. Notwithstanding
the provisions of sections nine and ten, article six, chapter
twelve of this code, revenue bonds issued under the
authority herein granted shall be eligible as investments
for the workmen's compensation fund, teachers' retire-
ment fund, department of public safety death, disability
and retirement fund, West Virginia public employees’
retirement system and as security for the deposit of all
public funds. Such revenue bonds may be issued without
any other proceedings or the happenings of any other
conditions or things than those proceedings, conditions
and things which are specified and required by this ar-
ticle, or by the constitution of the state. The aggregate
amount of all issues of bonds outstanding at one time for
all projects authorized hereunder shall not exceed twenty-
seven million five hundred thousand dollars including the
renegotiation, reissuance or refinancing of any such bonds.
No bonds or other obligations shall be issued or incurred
hereunder, unless and until the Legislature by concurrent
resolution has approved the purpose and amount of each
separate project.

CHAPTER 11
(Com. Sub. for House Bill No. 260—By Mr. Speaker, Mr. White
and Mr. Nicely)

[Passed February 8, 1968; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article four-d,
authorizing county, municipal and county-municipal
building commissions; relating to their powers and duties;
and authorizing such commissions to issue revenue bonds.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended by
adding thereto a new article, designated article four-d, to
read as follows:
ARTICLE 4D. COUNTY, MUNICIPAL, AND COUNTY-MUNICIPAL BUILDING COMMISSIONS.

§8-4D-1. Commissions authorized.

Any county or municipality, or any county and one or more municipalities, or any two or more municipalities within any county or counties, or any combination thereof, may create and establish respectively a county building commission, a municipal building commission, or a county-municipal building commission (hereinafter referred to as commission or commissions). Such commissions may be formed by an order or ordinance, as appropriate, by each governmental body establishing the same.

§8-4D-2. Commissions are public corporations.

Each commission, when created, shall be a public corporation and shall have perpetual existence.

§8-4D-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

All property, powers and duties and the management and control of each commission shall be vested in a board consisting of representatives appointed by the governmental body or bodies creating and establishing such commission. In the case of a county building commission or a municipal building commission such board shall consist of not less than three nor more than five members and in the case of a county-municipal building commission each participating county shall appoint three members...
and each participating municipality shall appoint two members. All members of any board shall be appointed for terms of five years. Prior to making the initial appointments to the board, the governmental body or bodies shall make such initial appointments so that approximately one fifth of the total number of members of the board shall be appointed for a term of one year, approximately one fifth of the total number of members of the board shall be appointed for a term of two years, approximately one fifth of the total number of members of the board shall be appointed for a term of three years, approximately one fifth of the total number of members of the board shall be appointed for a term of four years, and approximately one fifth of the total number of members of the board shall be appointed for a term of five years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

If any member of any board dies, resigns or for any reason ceases to be a member of the board, the governmental body which such member represented shall appoint another person to fill the unexpired portion of the term of such member. No more than two thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office or employment under the United States of America, the state of West Virginia, any county or political subdivision thereof, or of any political party. All members of any board shall be residents of the county or municipality appointing them. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.


Each commission is empowered to:

(a) Sue and be sued;

(b) Contract and be contracted with;

(c) Adopt, use and alter a common seal;
(d) Make and adopt all necessary, appropriate and lawful bylaws, rules and regulations pertaining to its affairs;

(e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;

(f) (1) Acquire, purchase, own and hold any property, real, personal or mixed, and (2) acquire, equip, construct, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter referred to as facilities);

(g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the United States of America, or any agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;

(h) Sell, encumber or dispose of any property, real, personal or mixed;

(i) Issue negotiable bonds, notes, debentures, or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;

(j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article four-a of this chapter, and each commission is hereby declared to be a “municipal authority” within the definition of that term as used in said article four-a;

(k) Exercise the power of eminent domain in the manner provided in chapter fifty-four of this code for business corporations, for the purposes set forth in subdivision (f) of this section, which purposes are hereby declared public purposes for which private property may be taken;
(l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper; and

(m) Do all things reasonable and necessary to carry out the foregoing powers.

§8-4D-5. Indebtedness of commission.

1 No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public or governmental bodies shall apply to the indebtedness of a commission. No indebtedness of any nature of a commission shall constitute an indebtedness of any county or municipality creating and establishing such commission or a charge against any property of said counties or municipalities. No obligation incurred by any commission shall give any right against any member of the county court of said counties or any member of the governing board or body of any municipality or any member of the board of any commission. The rights of creditors of any commission shall be solely against the commission as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

§8-4D-6. Disposition of surplus of commission.

1 If a commission should realize a surplus over and above the amount required for the maintenance, improvement and operation of its facilities and for meeting all required payments on its obligations, it shall set aside such a reserve for future operations, improvements and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due; and after all such recognized and established obligations have been paid and discharged in full, each commission shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the governmental bodies creating and establishing such commission in direct proportion to their financial contribution.
§8-4D-7. Property, bonds and obligations of authority exempt from taxation.

Each commission shall be exempt from the payment of any taxes or fees to the state or any political subdivisions thereof and to any municipality therein. The property of each commission shall be exempt from all county and municipal taxes. Bonds, notes, debentures and other evidences of indebtedness of each commission are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxes.

§8-4D-8. Contributions to the authority; funds and accounts of the authority; reports; audits.

Contributions may be made to each commission from time to time by the governing body or bodies creating and establishing it, and any other persons, firms or corporations that may desire to do so. All funds received by each commission shall be deposited in such bank or banks as the board may determine and shall be withdrawn therefrom in such manner as the board may direct. Each commission shall keep strict account of all of its receipts and expenditures and shall quarterly report to the counties, municipalities, persons, firms or corporations which have made contributions to it. Such report shall contain an itemized account of the commission's receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the end of the quarter. Within sixty days after the end of each fiscal year, the board shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year and publish the same as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be each county in which the commission's facilities are located. The books, records and accounts of each commission shall be subject to audit and examination by the state tax department of West Virginia and by other proper public officials or bodies in the manner provided by law.
§8-4D-9. Authority to transfer property to commission.

1 Any county or municipality is hereby authorized and empowered to transfer and convey to a commission which it has created and established either alone or with another governmental body, property of any kind, heretofore acquired by said county or municipality, to carry out the purposes of said commission.

§8-4D-10. Sale of property by commission.

1 In the event a majority of the governmental bodies contributing funds to a commission shall so direct in writing and if all indebtedness of said commission has been paid in full, the commission shall sell all or any part of its properties and assets so directed and distribute the proceeds thereof among the governmental bodies creating and establishing it in direct proportion to their financial contributions to the commission.


1 Each commission shall subscribe to the workmen’s compensation fund of the state of West Virginia and pay all necessary premiums therein, to the end that all eligible employees of such commission shall be covered by workmen’s compensation.

§8-4D-12. Liberal construction.

1 The provisions of this article are hereby declared to be remedial and shall be liberally construed to effect the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in county courts and municipal corporations by any constitutional, statutory or charter provisions which they or either of them may now have, or may hereafter acquire or adopt.


1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
AN ACT to amend and reenact sections eight and nineteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rules of the civil service commission, certain preferences for veterans under such rules, and certain political activities of civil service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

Section 29-6-8. Rules of commission.
29-6-19. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

§29-6-8. Rules of commission.

1 The present merit system council rules shall be transformed into the temporary rules of the civil service commission and shall continue in effect until the director of personnel prepares and submits to the civil service commission new rules for the classified service.
2 Such new rules shall be filed and made effective in conformity with the provisions of chapter twenty-nine-a of this code. Amendments thereto may be made in the same manner. The new rules shall provide:
3 (1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in
the same class. After such classification has been ap-
proved by the commission, the director shall allocate the
position of every employee in the classified service to
one of the classes in the plan. Any employee affected
by the allocation of a position to a class shall, after filing
with the director of personnel a written request for re-
consideration thereof in such manner and form as the
director may prescribe, be given a reasonable opportunity
to be heard thereon by the director. The interested
appointing authority shall be given like opportunity to
be heard.

(2) For a pay plan for all employees in the classi-
ified service, after consultation with appointing authori-
ties and the state fiscal officers, and after a public hear-
ing held by the commission. Such pay plan shall be-
come effective only after it has been approved by the
governor after submission to him by the commission.
Amendments to the pay plan may be made in the same
manner. Each employee shall be paid at one of the rates
set forth in the pay plan for the class of position in which
he is employed. The principle of equal pay for equal
work in the several agencies of the state government
shall be followed in the pay plan as established hereby.

(3) For open competitive examinations to test the
relative fitness of applicants for the respective positions.
Such examinations need not be held until after the
rules have been adopted, the service classified and a
pay plan established, but shall be held not later than one
year after this article takes effect. Such examinations
shall be announced publicly at least fifteen days in
advance of the date fixed for the filing of applications
therefor, and may be advertised through the press, radio
and other media. The director may, however, in his
discretion, continue to receive applications and examine
candidates long enough to assure a sufficient number
of eligibles to meet the needs of the service; and may
add the names of successful candidates to existing eligible
lists in accordance with their respective ratings.

Veterans who present proof of at least one year’s hon-
orable service to the United States in either of the world
wars, the Korean war or the Vietnam conflict shall be entitled to an additional five points on any examination and disabled veterans shall be entitled to an additional ten points. Provided, however, That no such additions shall be made where a veteran fails to pass the examination.

(4) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance and his score on written examination, when such examination is practicable. In filling vacancies an effort should be made to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For the establishment of eligible lists for appointment and promotion, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority must make his selection from the top five names on the appropriate list of eligibles.

(6) For the rejection of candidates or eligibles who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination, or where in the judgment of the commission there is reasonable doubt of the loyalty of the candidate or allegiance to the nation.

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete.

(8) For provisional employment without competitive examination when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed, except during the first
year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(9) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(10) For layoffs by reason of lack of funds or work, or abolition of a position, or material change in duties or organization, and for reemployment of employees so laid off, giving consideration in both layoffs and reemployment to performance record and seniority in service.

(11) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the director.

(12) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The commission and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.
§29-6-19. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

(a) No person shall be appointed or promoted to, or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(d) No employee in the classified service or member of the commission or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or hold any paid elective public office, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(f) Any officer or employee in the state service who violates any of the foregoing provisions of this section
shall forfeit his office or position, and for one year shall be ineligible for any office or position in the state service.

(g) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances, nonpartisan activities or issues, and other similar questions or activities shall not be deemed to be prohibited by the foregoing provisions of this section.

CHAPTER 13

(Senate Bill No. 77—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed February 8, 1968; in effect from passage. 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:

§1. Finding and declaring certain claims against the state road commission; department of commerce; adjutant general; department of health; and department of welfare, 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 court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims versus the State Road Commission:

(1) Southern Coals Corporation $ 3,099.67

(2) Charleston Concrete Floor Co. 14,500.02
<table>
<thead>
<tr>
<th></th>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>(3) Roy L. Warner</td>
<td>640.16</td>
</tr>
<tr>
<td>15</td>
<td>(4) Buckeye Union Casualty Co. and Melvin O'Brien</td>
<td>39,775.00</td>
</tr>
<tr>
<td>17</td>
<td>(5) C. J. Langenfelder and Sons</td>
<td>269,116.08</td>
</tr>
<tr>
<td>18</td>
<td>(6) John Robbins</td>
<td>759.00</td>
</tr>
<tr>
<td>19</td>
<td>(7) Hubert Fowler</td>
<td>859.00</td>
</tr>
<tr>
<td>20</td>
<td>(8) Kenton Meadows Company</td>
<td>28,535.00</td>
</tr>
<tr>
<td>21</td>
<td>(9) Mountain State Construction Co.</td>
<td>67,288.99</td>
</tr>
<tr>
<td>22</td>
<td>(10) Louis Anslie</td>
<td>2,853.37</td>
</tr>
<tr>
<td>23</td>
<td>(11) Mary Jane Hurley</td>
<td>75.00</td>
</tr>
<tr>
<td>24</td>
<td>(12) Clarence E. Dotson</td>
<td>87.55</td>
</tr>
<tr>
<td>25</td>
<td>(13) Russell Collins</td>
<td>453.10</td>
</tr>
<tr>
<td>26</td>
<td>(14) Russell Collins</td>
<td>50.00</td>
</tr>
<tr>
<td>27</td>
<td>(15) Sam D. Calhoun</td>
<td>30.90</td>
</tr>
<tr>
<td>28</td>
<td>(16) Marshall Neely</td>
<td>125.73</td>
</tr>
<tr>
<td>29</td>
<td>(17) State Farm Mutual Automobile Insurance Co. on behalf of James E. Keene</td>
<td>24.81</td>
</tr>
<tr>
<td>31</td>
<td>(18) Ott Brown</td>
<td>68.25</td>
</tr>
<tr>
<td>32</td>
<td>(19) Emmett Buchanan</td>
<td>102.40</td>
</tr>
<tr>
<td>33</td>
<td>(20) John L. Wood</td>
<td>1,450.00</td>
</tr>
<tr>
<td>34</td>
<td>(21) Geo. C. and Audra H. Hendershott</td>
<td>350.79</td>
</tr>
<tr>
<td>35</td>
<td>(22) Delos Tenney</td>
<td>225.00</td>
</tr>
<tr>
<td>36</td>
<td>(23) James D. Clark</td>
<td>70.15</td>
</tr>
<tr>
<td>37</td>
<td>(24) Clifford Biller</td>
<td>124.00</td>
</tr>
<tr>
<td>38</td>
<td>(25) Harry L. Miller</td>
<td>36.00</td>
</tr>
<tr>
<td>39</td>
<td>(26) Armco Steel Corporation</td>
<td>11,697.34</td>
</tr>
</tbody>
</table>

(b) Claims versus the Department of Commerce:

<table>
<thead>
<tr>
<th></th>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>(1) Irving Bowman, etc., and Fred Wiedersum, et al, etc.</td>
<td>23,582.15</td>
</tr>
</tbody>
</table>

(c) Claims versus the Adjutant General:

<table>
<thead>
<tr>
<th></th>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>(1) Alice and Shual Sargis</td>
<td>3,277.11</td>
</tr>
</tbody>
</table>

(d) Claims versus the Department of Health:

<table>
<thead>
<tr>
<th></th>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>(1) Biggs-Johnston-Withrow</td>
<td>4,400.00</td>
</tr>
</tbody>
</table>

(e) Claims versus the Department of Welfare:

<table>
<thead>
<tr>
<th></th>
<th>Claim Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>48</td>
<td>(1) Remington-Rand Office Systems Division, Sperry Rand Corporation</td>
<td>13,245.37</td>
</tr>
</tbody>
</table>
(f) Claims versus the Department of Welfare:
(1) Charles R. McElwee ............................... 2,700.00

(g) Claims versus the Department of Welfare:
(1) W. A. Abbitt Company ............................ 212,511.35

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payment to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

No claimant shall be paid until all taxes, indebtedness or other sums due and owing to the state, if any, have been paid and a release secured therefor: Provided, That in the claim styled "(g) Claims versus the Department of Welfare: (1) W. A. Abbitt Company" that said claim shall be paid according to the following schedule:

W. A. Abbitt Company ........................................... $ 87,903.78
Asbestos and Insulating Co. ................................. 11,490.38
Worth Sturgeon ............................................. 11,344.86
Harris Brothers Roofing Co. ................................. 12,290.65
B & N Plumbing & Heating Co. ....................... 31,875.38
Floor Fashions, Inc. ....................................... 7,925.61
Hunt Electric Co. ........................................... 34,198.83
Bernard O. Meeker ........................................ 7,458.60
E. E. Moore ................................................. 1,190.12
R. W. O'Dell ................................................. 2,062.14
Elbert A. Swain ........................................... 2,196.00
R. B. Wyatt & Sons, Inc. .................................. 2,575.00

The above firms at the time of payment shall furnish the state releases for their labor and materials furnished in the renovation by W. A. Abbitt Company of the Conlon Bakery Building in 1964.
CHAPTER 14

(Com. Sub. for Senate Bill No. 43—By Mr. Brotherton and Mr. Floyd)

[Passed February 8, 1968; in effect ninety days 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-b, relating to disclosure by legislators, public officers, agents, servants and employees in the executive branch of state government and employees and judges in the judicial branch of state government; providing for the suspension of any person other than a constitutional officer until the required written statement under oath is filed; providing penalties and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 6B. CONFLICTS OF INTEREST—LEGISLATORS, PUBLIC OFFICERS, AGENTS, SERVANTS, EMPLOYEES AND JUDGES.

ARTICLE 1. DISCLOSURE.

Section

6B-1-1. Statements to be filed by members of the Legislature and certain officers and employees; suspension for noncompliance; report of statements filed; forms for statements; exceptions.

6B-1-2. Criminal penalty.

6B-1-3. Severability.

§6B-1-1. Statements to be filed by members of the Legislature and certain officers and employees; suspension for noncompliance; report of statements filed; forms for statements; exceptions.

1 In the year one thousand nine hundred sixty-nine and 2 every calendar year thereafter, every person who is or 3 was at any time during the preceding calendar year, a 4 member of the Legislature, an officer, agent, servant or
employee in the executive branch of state government
or an employee or judge in the judicial branch of state
government, shall, between January one and January fif-
teen in each year file with the clerk of the Senate if a
member of that body, with the clerk of the House of
Delegates if a member of that body, with the secretary
of state if an officer, agent, servant or employee in the
executive branch of state government and with the clerk
of the supreme court of appeals if an employee or judge
of the judicial branch of state government, a written
statement under oath of:

1. The name of every corporation, firm, association,
   partnership or sole proprietorship, in which he, his
   spouse, or his unemancipated minor child or children
   own either in his or their own name or beneficially at
   least ten percent of such business entity, which is then
   furnishing or which within the previous calendar year has
   furnished to the state, commodities or printing as those
   terms are defined in section one, article one, chapter five-a
   of this code.

2. The name of each person, corporation, firm, part-
nership or other business association in, for, or of which
   he is an officer, director, agent, attorney, representative,
   employee, partner or employer, and which to his actual
   knowledge is then furnishing or within the previous
   calendar year has furnished to the state, commodities or
   printing as those terms are defined in section one, article
   one, chapter five-a of this code.

3. Any other interest or relationship which might
   reasonably be expected to be particularly affected by leg-
  islative action or in the public interest should be disclosed.

Those persons to whom the provisions of subdivisions
(1), (2) and (3) above are not applicable shall file a
written statement under oath to that effect, such state-
ment to be filed within the time and with the appropriate
official as above specified.

Any person other than a constitutional officer who shall
fail or refuse to file a written statement under oath as
required under subdivisions (1), (2) or (3) above or the
preceding paragraph hereof shall by operation of law be
automatically suspended without pay from his office, position or employment, as the case may be, in, with or by the government of this state, until such statement is filed.

On or before January thirty-first of each year the clerk of the Senate, the clerk of the House of Delegates, the secretary of state and the clerk of the supreme court of appeals shall prepare a report containing the statements for the previous calendar year required to be filed pursuant to this section. Copies of such reports shall be open to public inspection in their respective offices, and shall be retained for a period of five years after the date of the preparation thereof. Each house may adopt rules to implement the provisions of this section, insofar as they relate to members of the Legislature.

The clerk of the Senate, the clerk of the House of Delegates, the secretary of state and the clerk of the supreme court of appeals shall prepare forms for such written statements and distribute the same to those persons who are required to file such written statements with him: Provided, That the provisions of this article shall not apply to persons receiving hourly compensation under the Aid to Dependent Children of Unemployed Parents Program, to persons receiving compensation under the Foster Grandparents Program and to volunteer fire fighters compensated from state funds.

§6B-1-2. Criminal penalty.

Any person who shall intentionally file a false statement shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than six months nor more than one year.

§6B-1-3. Severability.

If any provision of this article or its application to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.
CHAPTER 15
(Senate Bill No. 104)

[Passed February 8, 1968; 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 of West Virginia, amending section fifty-one, article six thereof, relating to the annual budget generally, the budget bill and supplementary appropriation bills.

Be it enacted by the Legislature of West Virginia:

MODERN BUDGET AMENDMENT.

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-eight, which proposed amendment is as follows:

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

“ARTICLE VI. THE LEGISLATURE.

1 "Section 51. Budget and Supplementary Appropriation Bills.—The Legislature shall not appropriate any money out of the treasury except in accordance with provisions of this section.

2 "Subsection A—Appropriation Bills

3 "(1) Every appropriation bill shall be either a budget
bill, or a supplementary appropriation bill, as hereinafter provided.

"Subsection 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 each 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 classi-
fied, in such form and detail as the governor shall deter-
mine 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 Leg-
islature, 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 pre-
siding 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 modifica-
tion of or a substitute for any item of the bill the amend-
ment 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 in-
creasing or decreasing any item therein: Provided, That
no item relating to the judiciary shall be decreased, and
except as otherwise provided in this constitution, the
salary or compensation of any public officer shall not be
increased or decreased during his term of office: Pro-
vided further, That the Legislature shall not increase
the estimate of revenue submitted in the budget with-
out the approval of 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.

“Subsection C—Supplementary Appropriation Bills

“(7) Neither house shall consider other appropriations
until the budget bill has been finally acted upon by both
houses, and no such other appropriations 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.

"Subsection 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 such an extension of a 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) Every budget bill or supplementary appropria-
tion bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the governor. The governor may veto the bill, or he may disapprove or reduce items or parts of items contained therein. If he approves he shall sign it and thereupon it shall become a law. The bill, items or parts thereof, disapproved or reduced by the governor, shall be returned with his objections to each house of the Legislature.

"Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

"A bill, item or part thereof, which is not returned by the governor within five days (Sundays excepted) after the bill has been presented to him shall become a law in like manner as if he had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the secretary of state, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the governor, in which case it shall become law to the extent not disapproved by the governor.

"(12) 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.

"(13) 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.

"(14) 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."

Sec. 2. Amendment to Be Known as the "Modern
Budget Amendment"; Summary of Purpose.—In accord-
ance with the provisions of section thirteen, article six,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, said proposed
amendment is hereby designated as the "Modern Bud-
get Amendment," and the purpose of the proposed amend-
ment is summarized as follows: "To improve and sim-
plify the budget making process by vesting in one person,
the chief executive, the responsibility for preparing the
state budget for consideration by the Legislature."

Sec. 3. Publication of Proposed Amendment by Gover-
nor.—The governor shall cause the said proposed amend-
ment, with the proper designation and the summary of
the purpose for the same as hereinbefore adopted and
stated, to be published one time at least three months
before such election in some newspaper in every county
in which a newspaper is printed, and the cost of such
advertising, determined in accordance with the provi-
sions of section three, article three, chapter fifty-nine of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, shall in the first instance, if
found necessary by him, be paid out of the governor's
contingent fund and be afterwards repaid to such fund
by appropriation of the Legislature.

Sec. 4. Form of Ballot; Election.—For the purpose of
enabling the voters of the state to vote on the question
of this proposed amendment to the constitution and any
other proposed amendments to the constitution which
may be submitted at the said general election to be held
in the year one thousand nine hundred sixty-eight, 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 under the heading
CONSTITUTIONAL AMENDMENTS

No. 1. Modern Budget Amendment

☐ For Ratification.

☐ Against Ratification.

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. 5. 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 to 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-eight, 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:

"Amendment No. 1. Modern Budget Amendment

"For ratification __________ votes.

"Against ratification __________ votes.

"Given under our hands this ______ day of ______________, one thousand nine hundred sixty-eight."

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 the 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 certificates of election of the members of the Legis-
lature are laid before them; and as soon as the result
of said election in the county upon the question of such
ratification or rejection is ascertained, two certificates
of such result shall be made out and signed by said com-
missioners as a board of canvassers, in the form or to
the following effect:

"We, the board of canvassers of the county of _____,
having carefully and impartially examined the returns
of the election held in said county, in each district thereof,
on the ______ day of _______, one thousand nine hun-
dred sixty-eight, do certify that the result of the election
in said county, on the question of the ratification or re-
jection of the proposed amendment is as follows:

"Amendment No. 1. Modern Budget Amendment
"For ratification ______ votes.
"Against ratification ______ votes.
"Given under our hands this _____ day of ________,
one thousand nine hundred sixty-eight."

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

Sec. 6. Proclamation of Result of Election by Gover-
nor.—On the twenty-fifth day after the election is held,
or as soon thereafter as practicable, the said certificates
shall be laid before the governor, whose duty it shall be
to ascertain therefrom the result of said election in the
state, and declare the same by proclamation published
in one or more newspapers printed at the seat of gov-
ernment. If a majority of the votes cast at said election
upon said question be for ratification of said amendment,
the proposed amendment so ratified shall be in force and
effect from and after the time of such ratification, as part
of the constitution of the state.

CHAPTER 16
(Senate Bill No. 136)

[Passed February 8, 1968; 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 of West
Virginia, authorizing the issuing and selling of state road
bonds in an amount not exceeding three hundred fifty
million dollars.

Be it enacted by the Legislature of West Virginia:

ROADS DEVELOPMENT AMENDMENT.

Section
1. Submitting an amendment to the state constitution.
2. Amendment to be known as the “Roads Development Amendment”;
   statement of purpose.
3. Publication of proposed amendment by governor.
4. Form of ballot; election.
5. Certificates of election commissioners; canvass of vote; certifying
   result.
6. Proclamation of result of election by governor.

§1. Submitting an amendment to the state constitution.

1. That the question of the ratification or rejection of an
2. amendment to the constitution of West Virginia, proposed
3. in accordance with the provisions of section two, article
4. fourteen of said constitution, shall be submitted to the
5. voters of the state at the next general election, to be held
6. in the year one thousand nine hundred sixty-eight, which
7. proposed amendment is as follows:
“The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred fifty million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction of free state roads and highways provided for by this constitution and the laws enacted thereunder. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.”

§2. Amendment to be known as the “Roads Development Amendment”; statement of purpose.

1 In accordance with the provisions of section thirteen, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said proposed amendment is hereby designated as the “Roads Development Amendment,” and the purpose of the proposed amendment is summarized as follows: “To authorize the Legislature to issue and sell state bonds not exceeding in the aggregate $350,000,000 for the development of the Appalachian Highway System and a network of modern roads and highways throughout the state of West Virginia.”

§3. Publication of proposed amendment by governor.

1 The governor shall cause the said proposed amendment, with the proper designation and the summary of the purpose for the same as hereinbefore adopted and stated, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, and the cost of such advertising, determined in accordance with the provisions of section three, article three, chapter fifty-nine of the code of
§4. Form of ballot; election.

For the purpose of enabling the voters of the state to vote on the question of this proposed amendment to the constitution and any other proposed amendments to the constitution which may be submitted at the said general election to be held in the year one thousand nine hundred sixty-eight, 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 under the heading reading "Ballot on Constitutional Amendment(s)," in the second position under said heading, the following:

No. 2. Roads Development Amendment.

☐ For the amendment
☐ Against the 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.

§5. 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 to 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-eight, 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:

"Amendment No. 2. Roads Development Amendment.
"For the amendment ______ votes.
"Against the amendment ______ votes.
"Given under our hands this____ day of______, one thousand nine hundred sixty-eight."

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 the 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 certificates of election of the members of the Legislature are laid before them; and as soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the form or to the following effect:

"We, the board of canvassers of the county of______, having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the____ day of______, one thousand nine hundred sixty-eight, do certify that the result of the election in said county, on the question of the ratification
or rejection of the proposed amendment is as follows:

"Amendment No. 2. Roads Development Amendment.

"For the amendment .......... votes.
"Against the amendment .......... votes.

"Given under our hands this .......... day of .................,
one thousand nine hundred sixty-eight."

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

§6. Proclamation of result of election by governor.

1 On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed at the seat of government, the cost of such publication to be determined in accordance with the provisions of section three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect from and after the time of such ratification as part of the constitution of the state.
three), five-(thirty-five), five-(forty-two) and five-(fifty-four), article one; sections one-(four), one-(fourteen), one-(fifteen), one-(sixteen), one-(twenty-two), one-(twenty-three), one-(twenty-eight), one-(forty-three), one-(forty-six), one-(forty-nine), one-(fifty), one-(fifty-five), two-(four), two-(nine), two-(ten), two-(thirteen), two-(fourteen), two-(twenty), two-(twenty-one), two-(twenty-seven), two-(forty), two-(forty-three), two-(forty-seven), two-(fifty-one), two-(fifty-two), three-(four), three-(ten), three-(thirteen), three-(fourteen), three-(twenty), three-(twenty-one), three-(twenty-seven), three-(forty), three-(forty-three), three-(forty-seven), three-(fifty-one), three-(fifty-two), four, five, five-(four), five-(ten), five-(fourteen), five-(sixteen), five-(twenty-two), five-(twenty-three), five-(twenty-nine), five-(thirty-one), five-(forty-three), five-(forty-six), five-(fifty), five-(fifty-five), six, six-(four), six-(ten), six-(fourteen), six-(fifteen), six-(twenty-two), six-(twenty-three), six-(forty), six-(forty-three), six-(forty-nine) and six-(fifty), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five-(four), five-(fifteen), five-(sixteen), five-(twenty-three), five-(thirty-one), five-(forty), five-(forty-three), five-(forty-six), five-(fifty), five-(fifty-five), five-(fifty-nine) and five-(fifty-five), article two, chapter eleven of said code, all relating to salaries of certain county officers and assistants, and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections five-(four), five-(fourteen), five-(sixteen), five-(twenty-three), five-(thirty-three), five-(thirty-five), five-(forty-two) and five-(fifty-four), article one; sections one-(four), one-(fourteen), one-(fifteen), one-(sixteen), one-(twenty-two), one-(twenty-three), one-(twenty-eight), one-(forty-three), one-(forty-six), one-(forty-nine), one-(fifty), one-(fifty-five), two-(four), two-(nine), two-(ten), two-(thirteen), two-(fourteen), two-(twenty), two-(twenty-one), two-(twenty-seven), two-(forty), two-(forty-three), two-(forty-seven), two-(fifty-one), two-(fifty-two), three-(four), three-(ten), three-(thirteen), three-(fourteen), three-(twenty),
three-(twenty-one), three-(twenty-seven), three-(twenty-nine),
three-(forty), three-(forty-three), three-(forty-seven), three-
(fifty-two), four, five, five-(four), five-(ten), five-(fourteen),
five-(sixteen), five-(twenty-two), five-(twenty-three), five-
(twenty-nine), five-(forty-three), five-(forty-six), five-(fifty),
five-(fifty-five), six, six-(four), six-(ten), six-(fourteen), six-
(fifteen), six-(twenty-two), six-(twenty-three), six-(forty),
six-(forty-three), six-(forty-nine) and six-(fifty), article
seven, chapter seven of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; and that sections
five-(four), five-(ten), five-(fourteen), five-(sixteen), five-
(twenty-two), five-(twenty-three), five-(twenty-nine), five-
(thirty-one), five-(forty-three), five-(forty-six), five-(fifty),
five-(fifty-four) and five-(fifty-five), article two, chapter
eleven of said code, be amended and reenacted, all to read as
follows:

Chapter
7. County Courts and Officers.
11. Taxation.

CHAPTER 7. COUNTY COURTS AND OFFICERS.

Article
1. County Courts Generally.
7. Salaries; Deputies and Assistants and Their Salaries.

ARTICLE 1. COUNTY COURTS GENERALLY.

Section
7-1-5(4), etc. Compensation of county commissioners of Braxton,
Hampshire, Hardy, Logan, Monongalia, Pendleton,
Ritchie and Wyoming counties.

§7-1-5(4). Compensation of county commissioners—Braxton
county.
1 For the county of Braxton, the president of the court
2 one hundred twenty-five dollars and the other members
3 of the court one hundred dollars per month.

§7-1-5(14). Same—Hampshire county.
1 For the county of Hampshire, the president of the
2 court one hundred seventy-five dollars and the other
3 members of the court one hundred fifty dollars per month.

§7-1-5(16). Same—Hardy county.
1 For the county of Hardy, one hundred thirty-five dol-
2 lars per month.
§7-1-5(23). Same—Logan county.
1 For the county of Logan, the president of the court
2 three hundred fifty dollars and the other members of
3 the court three hundred dollars per month.

§7-1-5(33). Same—Monongalia county.
1 For the county of Monongalia, not to exceed four hun-
2 dred dollars per month.

§7-1-5(35). Same—Pendleton county.
1 For the county of Pendleton, the president of the court
2 one hundred dollars and the other members of the court
3 eighty-five dollars per month.

§7-1-5(42). Same—Ritchie county.
1 For the county of Ritchie, not less than one hundred
2 twenty-five dollars per month nor more than one hundred
3 fifty dollars per month.

§7-1-5(54). Same—Wyoming county.
1 For the county of Wyoming, the president of the court
2 three hundred dollars and the other members of the
3 court two hundred seventy-five dollars per month.

ARTICLE 7. SALARIES; DEPUTIES AND ASSISTANTS AND
THEIR SALARIES.

§7-7-1(4). Salary of sheriff—Braxton county.
1 For the county of Braxton, five thousand eight hundred
2 dollars.
§7-7-1(14). Same—Hampshire county.
1 For the county of Hampshire, five thousand two hundred dollars.

§7-7-1(15). Same—Hancock county.
1 For the county of Hancock, six thousand dollars.

§7-7-1(16). Same—Hardy county.
1 For the county of Hardy, four thousand eight hundred dollars.

§7-7-1(22). Same—Logan county.
1 For the county of Logan, eight thousand six hundred dollars.

§7-7-1(23). Same—Lincoln county.
1 For the county of Lincoln, six thousand four hundred dollars.

§7-7-1(28). Same—Mineral county.
1 For the county of Mineral, not less than six thousand nor more than seven thousand dollars.

§7-7-1(43). Same—Ritchie county.
1 For the county of Ritchie, not less than four thousand eight hundred dollars nor more than six thousand dollars.

§7-7-1(46). Same—Taylor county.
1 For the county of Taylor, not less than five thousand nor more than five thousand five hundred dollars.

§7-7-1(49). Same—Upshur county.
1 For the county of Upshur, five thousand four hundred dollars.

§7-7-1(50). Same—Wayne county.
1 For the county of Wayne, seven thousand two hundred dollars.

§7-7-1(55). Same—Wyoming county.
1 For the county of Wyoming, eight thousand dollars.

§7-7-2(4). Salary of county clerk—Braxton county.
1 For the county of Braxton, five thousand six hundred dollars.
§7-7-2(9). Same—Doddridge county.
1 For the county of Doddridge, four thousand two hundred dollars.

§7-7-2(10). Same—Fayette county.
1 For the county of Fayette, eight thousand five hundred dollars.

§7-7-2(13). Same—Hampshire county.
1 For the county of Hampshire, five thousand two hundred dollars.

§7-7-2(14). Same—Hancock county.
1 For the county of Hancock, not less than six thousand five hundred dollars nor more than eight thousand dollars.

§7-7-2(20). Same—Lincoln county.
1 For the county of Lincoln, six thousand dollars.

§7-7-2(21). Same—Logan county.
1 For the county of Logan, eight thousand six hundred dollars.

§7-7-2(27). Same—Mineral county.
1 For the county of Mineral, not less than six thousand nor more than seven thousand dollars.

§7-7-2(40). Same—Ritchie county.
1 For the county of Ritchie, not less than four thousand eight hundred dollars nor more than six thousand dollars.

§7-7-2(43). Same—Taylor county.
1 For the county of Taylor, not less than four thousand two hundred nor more than four thousand eight hundred dollars.

§7-7-2(47). Same—Wayne county.
1 For the county of Wayne, seven thousand two hundred dollars.

§7-7-2(51). Same—Wood county.
1 For the county of Wood, seven thousand six hundred dollars.

§7-7-2(52). Same—Wyoming county.
1 For the county of Wyoming, eight thousand dollars.
§7-7-3(4). Salary of circuit clerk—Braxton county.
1 For the county of Braxton, five thousand two hundred
dollars.

§7-7-3(10). Same—Fayette county.
1 For the county of Fayette, eight thousand five hun-
dred dollars.

§7-7-3(13). Same—Hampshire county.
1 For the county of Hampshire, three thousand six hun-
dred dollars.

§7-7-3(14). Same—Hancock county.
1 For the county of Hancock, not less than six thousand
2 five hundred dollars nor more than eight thousand dollars.

§7-7-3(20). Same—Lincoln county.
1 For the county of Lincoln, six thousand dollars.

§7-7-3(21). Same—Logan county.
1 For the county of Logan, eight thousand six hundred
dollars.

§7-7-3(27). Same—Mineral county.
1 For the county of Mineral, not less than six thousand
2 two hundred fifty dollars nor more than seven thousand
3 dollars.

§7-7-3(29). Same—Monongalia county.
1 For the county of Monongalia, seven thousand two
2 hundred dollars.

§7-7-3(40). Same—Ritchie county.
1 For the county of Ritchie, not less than four thousand
2 two hundred dollars nor more than four thousand eight
3 hundred dollars.

§7-7-3(43). Same—Taylor county.
1 For the county of Taylor, not less than four thousand
2 two hundred nor more than four thousand eight hun-
dred dollars.

§7-7-3(47). Same—Wayne county.
1 For the county of Wayne, seven thousand two hun-
dred dollars.
§7-7-3(52). Same—Wyoming county.
1 For the county of Wyoming, eight thousand dollars.

§7-7-4. Salaries of joint clerks of county and circuit courts.
1 The annual compensation of the clerks of the courts
2 in the counties where both the office of the clerk of the
3 county court and the clerk of the circuit court are held
4 by the same person shall be as follows: Hardy county,
5 six thousand five hundred dollars; Grant county, six
6 thousand dollars; Pendleton county, six thousand five
7 hundred dollars.

§7-7-5. Salaries of prosecuting attorneys.
1 The annual compensation of the prosecuting attorney
2 in each county, including the compensation provided
3 by law for his services as attorney for boards of educa-
4 tion and other administrative boards and officers in the
5 county, shall, on and after January one, one thousand
6 nine hundred sixty-nine, be in the amounts set forth
7 in sections five-(one), to five-(fifty-five), inclusive, of
8 this article: Provided, That such prosecuting attorney
9 shall not serve as attorney for any other political sub-
10 divisions of this state for compensation to be paid there-
11 for.

§7-7-5(4). Same—Braxton county.
1 For the county of Braxton, four thousand eight hun-
2 dred dollars.

§7-7-5(10). Same—Fayette county.
1 For the county of Fayette, nine thousand dollars.

§7-7-5(14). Same—Hampshire county.
1 For the county of Hampshire, three thousand six hun-
2 dred dollars.

§7-7-5(16). Same—Hardy county.
1 For the county of Hardy, three thousand dollars.

§7-7-5(22). Same—Lincoln county.
1 For the county of Lincoln, six thousand dollars.

§7-7-5(23). Same—Logan county.
1 For the county of Logan, ten thousand dollars.
§7-7-5(29). Same—Mineral county.
1 For the county of Mineral, not less than six thousand
2 nor more than seven thousand dollars.

§7-7-5(43). Same—Ritchie county.
1 For the county of Ritchie, not less than three thousand
2 six hundred nor more than five thousand dollars.

§7-7-5(46). Same—Taylor county.
1 For the county of Taylor, not less than five thousand
2 nor more than five thousand five hundred dollars.

§7-7-5(50). Same—Wayne county.
1 For the county of Wayne, eight thousand one hun-
2 dred dollars.

§7-7-5(55). Same—Wyoming county.
1 For the county of Wyoming, eight thousand dollars.

§7-7-6. Assistants, stenographers and clerks for prosecuting
attorney—Appointment and salaries; when court may
appoint attorney to prosecute.
1 The prosecuting attorneys of the several counties of
2 the state may, with the assent of the county courts
3 of their respective counties, entered of record, appoint
4 to assist them in the discharge of their official duties
5 for and during their respective terms of office, the num-
6 ber of practicing attorneys, stenographers and clerks
7 set forth in sections six-(one) through six-(fifty-five),
8 inclusive, of this article. Each such assistant prose-
9 cuting attorney shall take the same oath and may
10 perform the same duties as his principal. Each
11 assistant shall serve at the will and pleasure of
12 his principal and may be removed from office by
13 the circuit court of the county in which he is appointed
14 for any cause for which his principal might be removed.
15 If in any case the prosecuting attorney and his assist-
16 ant be unable to act, or if in the opinion of the court
17 it would be improper for him or his assistant to act,
18 the court shall appoint some competent practicing attor-
19 ney to act in such case. The court shall certify to the
20 county court the performance of such service when com-
21 pleted and recommend to the county court a reasonable
allowance for such attorney for such service, and such sum, when allowed by the county court, shall be paid out of the county treasury. No provision of this section shall be construed to prohibit the employment by any person of a competent attorney or attorneys to assist in the prosecution of any person or corporation charged with crime.

The county courts of the several counties shall compensate the assistant prosecuting attorneys, stenographers and clerks of their respective counties in accordance with the following annual salary provisions:

1. In counties for which definite salaries are fixed by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, such definite salaries shall be paid.

2. In counties for which minimum and maximum salary limits are fixed by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, the salaries shall be fixed and paid within such limits.

3. In the counties for which salaries are not fixed and limited by provisions of sections six-(one) through six-(fifty-five), inclusive, of this article, reasonable salaries shall be fixed and paid by the respective county courts.

Such salaries and compensation shall be paid monthly, semimonthly or otherwise as provided by law. In any case wherein provision is not made in this article for payment of the salary of an assistant prosecuting attorney, the principal shall pay and compensate such assistant for services rendered. The compensation and salaries to be paid assistant attorneys as provided in this article shall include compensation provided by law for such assistant’s services as attorney for the county board of education and other administrative boards and officers of his county: Provided, That no such assistant prosecuting attorney shall serve as attorney for any other political subdivisions of this state for compensation to be paid therefor.

§7-7-6(4). Same—Braxton county.

For the county of Braxton, one assistant attorney; one
COUNTY COURTS AND COUNTY OFFICERS

§7-7-6(10). Same—Fayette county.
For the county of Fayette, one assistant attorney, eight thousand five hundred dollars; one stenographer at a salary to be fixed by the county court.

§7-7-6(14). Same—Hampshire county.
For the county of Hampshire, one assistant attorney, two thousand four hundred dollars; one stenographer, two thousand four hundred dollars.

§7-7-6(15). Same—Hancock county.
For the county of Hancock, one assistant attorney, five thousand four hundred dollars; one stenographer, not less than three thousand six hundred nor more than four thousand two hundred dollars.

§7-7-6(22). Same—Lincoln county.
For the county of Lincoln, one assistant attorney or one stenographer or one clerk, four thousand dollars; one stenographer or one clerk, not more than four thousand two hundred dollars.

§7-7-6(23). Same—Logan county.
For the county of Logan, first assistant attorney, at eight thousand dollars; second assistant attorney, at six thousand five hundred dollars; one stenographer, not more than four thousand eight hundred dollars; second stenographer, not more than four thousand eight hundred dollars.

§7-7-6(40). Same—Putnam county.
For the county of Putnam, one assistant attorney, not more than three thousand dollars; one stenographer, not less than three thousand six hundred dollars nor more than four thousand dollars.

§7-7-6(43). Same—Ritchie county.
For the county of Ritchie, one assistant attorney, not less than one thousand six hundred dollars nor more than three thousand six hundred dollars; one stenographer, not less than one thousand six hundred dollars nor more than three thousand six hundred dollars.
§7-7-6(49). Same—Upshur county.
1 For the county of Upshur, one assistant attorney, not
2 more than one thousand two hundred dollars; one stenog-
3 rapher, not more than one thousand eight hundred dol-
4 lars.

§7-7-6(50). Same—Wayne county.
1 For the county of Wayne, one assistant attorney, six
2 thousand dollars; one stenographer, four thousand five
3 hundred dollars.

CHAPTER 11. TAXATION.

ARTICLE 2. ASSESSORS.

Section
11-2-5(4), etc. Annual salaries of assessors of Braxton, Fayette,
Hampshire, Hardy, Lincoln, Logan, Mineral, Monon-
galia, Ritchie, Taylor, Wayne, Wood and Wyoming
counties.

1 For the county of Braxton, five thousand dollars.

§11-2-5(10). Same—Fayette county.
1 For the county of Fayette, eight thousand five hun-
2 dred dollars.

1 For the county of Hampshire, four thousand five hun-
2 dred dollars.

§11-2-5(16). Same—Hardy county.
1 For the county of Hardy, four thousand five hundred
2 dollars.

§11-2-5(22). Same—Lincoln county.
1 For the county of Lincoln, six thousand dollars.

§11-2-5(23). Same—Logan county.
1 For the county of Logan, eight thousand six hundred
2 dollars.

1 For the county of Mineral, not less than six thousand
2 nor more than seven thousand dollars.

1 For the county of Monongalia, seven thousand two
2 hundred dollars.
§11-2-5(43). Same—Ritchie county.
1 For the county of Ritchie, not less than four thousand
2 six hundred dollars nor more than six thousand dollars.

1 For the county of Taylor, not less than four thousand
2 two hundred nor more than four thousand eight hundred
3 dollars.

1 For the county of Wayne, seven thousand two hun-
2 dred dollars.

§11-2-5(54). Same—Wood county.
1 For the county of Wood, six thousand dollars.

1 For the county of Wyoming, eight thousand dollars.

Severability.

If any section, provision, clause or phrase of this act or
the application thereof to any person or circumstance is held
unconstitutional or invalid, such unconstitutionality or invalid-
ity shall not affect other sections, provisions, clauses or phrases
or applications of the act, and to this end each and every sec-
tion, provision, clause or phrase is declared to be severable.

CHAPTER 18

(House Bill No. 342)

[Passed February 6, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of
West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section three-n, relating to the adoption of county building
and housing codes by county courts of counties having
greater than two hundred thousand population.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COURTS GENERALLY.

§7-1-3n. Authority of certain counties as to building and hous-
ing codes.

1 In addition to all other powers and duties now con-
ferred by law upon county courts, county courts of coun-
ties having a population of more than two hundred
thousand persons as determined by the most recent
official census conducted by the United States of Amer-
ica are hereby authorized and empowered, by order duly
entered of record, to adopt building and housing
codes establishing and regulating minimum building and
housing standards for the purpose of improving the
health, safety and welfare of its citizens. Such codes
may be adopted either for the entire county, or for any
portion or portions of such county which may constitute
an effective area or areas for such purposes, without the
necessity of adopting such codes for any other portion
of such county. Notwithstanding any other provision
of this section to the contrary, no such code shall apply
to or affect any territory within the boundaries of any
municipal corporation which has adopted and in effect
a housing and building code, unless and until such
municipal corporation so provides by ordinance.

CHAPTER 19

(Senate Bill No. 46—By Mr. McCourt and Mr. Gainer)

[Passed February 7, 1968, in effect from passage. Approved by the Governor.]
sponsibilities; providing for an advisory commission and specifying its duties and responsibilities; and authorizing the transfer to such division of certain data-processing activities and equipment, and certain personnel and funds utilized for data-processing purposes.

Be it enacted by the Legislature of West Virginia:

That chapter five-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 seven, to read as follows:

ARTICLE 7. INFORMATION SYSTEM SERVICES DIVISION.

Section
5A-7-1. Definitions.
5A-7-2. Division created; purpose; use of facilities; rules and regulations.
5A-7-3. Director and deputy director; appointment and qualifications.
5A-7-4. Civil service system applicable to division.
5A-7-5. Advisory commission created; composition; appointment and terms of members; chairman; meetings; powers, duties and responsibilities; compensation and expenses of members.
5A-7-6. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.
5A-7-7. Special fund created; payments into fund; charges for services; disbursements from fund.
5A-7-8. Confidential records.

§5A-7-1. Definitions.
1 Unless the context in which used clearly requires a different meaning, as used in this article:
2 (a) “Division” means the information system services division established in section two hereof;
3 (b) “Director” means the director of the information system services division;
4 (c) “Commission” means the state information system advisory commission;
5 (d) “Commissioner” means the commissioner of the department of finance and administration;
6 (e) “Data-processing equipment” means: (1) Any equipment having stored program capabilities; (2) any equipment designed to handle punch cards, magnetic tape or other electronic input-output devices; or (3) any other similar equipment specified by the director.
§5A-7-2. Division created; purpose; use of facilities; rules and regulations.

1. There is hereby created an information system services division in the department of finance and administration for the purpose of establishing, developing and improving data-processing functions in the various state agencies, for promulgating standards in the utilization of data-processing equipment and for promoting the more effective and efficient operation of all branches of state government. The facilities of the division shall be available, subject to rules and regulations established by the commissioner and approved by the governor, to the legislative, executive and judicial branches of state government. Such rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§5A-7-3. Director and deputy director; appointment and qualifications.

1. The division shall be under the supervision and control of a director. After selection through open competitive examination and upon recommendation of the civil service system, the commissioner shall appoint a director of the division. The selection and appointment shall be in conformity with civil service rules. The commissioner may also select, through the civil service system, a deputy director to assist the director in administering and coordinating the data-processing systems and functions of the division. The director must have extensive knowledge in the principles and practices of the administration of government, preferably West Virginia government. The deputy director must have extensive knowledge of computer and data-processing operations, capabilities and capacity, and of the procedures and techniques used in conducting highly complex systems analyses.

§5A-7-4. Civil service system applicable to division.

1. The division shall be a member of the state civil service system and all appointments of the division shall be a part of the classified service under the civil service system.
An advisory commission to the division is hereby created and shall be composed of six members, three of whom shall serve ex officio and three of whom shall be appointed as herein provided. The ex officio members shall be the state auditor, state treasurer and the commissioner. The governor shall appoint the remaining three with the advice and consent of the Senate. The members of the commission appointed by the governor shall be one representative from West Virginia University and two representatives from private industry, shall be citizens and residents of the state, and selected with special reference to their training and experience. The appointed members shall serve at the will and pleasure of the officer making their appointment, except the two members from private industry shall serve four-year overlapping terms.

The commissioner shall serve as chairman of the commission.

Meetings of the commission shall be upon call of the chairman or a majority of the members thereof.

The commission shall serve the division in an advisory capacity only and exercise no executive power whatever and shall have the following duties:

(1) To advise the director as to all data-processing proposals to be submitted by the director to the governor;
(2) At the time of submission of data-processing proposals to the governor, to report to the governor its conclusions concerning such proposal and any additions, modifications, or adjustments it may care to suggest;
(3) To advise the director concerning such studies or research as it may consider appropriate; and
(4) To advise the director in the preparation of studies designed to provide long-range data-processing plans for state agencies.

Members of the commission shall receive no compensa-
§5A-7-6. Powers and duties of division generally; review of
findings by governor; authority of governor to order
transfer of equipment and personnel; professional
staff.

The division shall be responsible for the planning of an
informational and analytical system for use by all
branches of state government. The division shall also
evaluate the economic justification, system design and
suitability of equipment and systems used in state govern-
ment. The director shall report to the commissioner.

The governor shall review such findings and recom-
mendations, and is hereby authorized to order the trans-
fer, in whole or in part, to the division from any other
department or agency of state government, except the
Legislature, the judiciary and the board of governors of
West Virginia University, of all data-processing activities,
equipment, and personnel utilized for data-processing
purposes: Provided, That any such transfer shall not be
effective until ninety days following the entry of the
transfer order by the governor. The director shall be
responsible for the development of a professional staff to
supervise and train personnel to carry out the technical
work of the division.

§5A-7-7. Special fund created; payments into fund; charges for
services; disbursements from fund.

For the operation of the division, there is hereby created
in the state treasury a special revolving fund to be known
and designated as the “Information System Services
Fund.” This fund shall consist of appropriations made by
the Legislature, funds transferred in accordance with the
provisions of section six of this article, funds received for
data-processing services rendered to other agencies, de-
partments and units of state and local government, and
funds received from the federal government or any
agency or department thereof, which federal funds the
division is hereby authorized to receive. Each agency,
department or unit of state or local government served
by the information system services division is hereby
authorized and directed to transmit to the division for
deposit in said special fund the charges made by the
agency for data-processing services rendered, such charges
to be those fixed in a schedule or schedules prepared by
the director and approved by the governor. Disburse-
ments from the fund shall be made in accordance with
an approved expenditure schedule as provided by article
two, chapter five-a of this code and shall be made under
the direct supervision of the commissioner.

§5A-7-8. Confidential records.
1 Under no circumstances whatever shall the head of any
2 state department or agency deliver to the division any
3 records required by law to be kept confidential, but such
4 head may extract information from such records for data
5 processing by such division, provided the integrity of such
6 confidential records is fully protected.

CHAPTER 20
(House Bill No. 226—By Mr. Watson and Mr. Jones, of Mason)

[Passed January 23, 1968; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section sixteen, article one,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to election
of state officers.

Be it enacted by the Legislature of West Virginia:
That section sixteen, article one, chapter three of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.
§3-1-16. Election of state officers.
1 At the general election to be held in the year one
2 thousand nine hundred sixty-eight, and in every fourth
3 year thereafter, there shall be elected a governor, secre-
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4 tary of state, treasurer, auditor, attorney general, and
5 commissioner of agriculture. At the general election in
6 the year one thousand nine hundred sixty-eight, and in
7 every second year thereafter, there shall be elected a
8 member of the state Senate for each senatorial district,
9 and a member or members of the House of Delegates of
10 the state from each county or each delegate district. At
11 the general election to be held in the year one thousand
12 nine hundred sixty-eight, and in every twelfth year there-
13 after, there shall be elected one judge of the supreme
14 court of appeals, and at the general election to be held
15 in the year one thousand nine hundred seventy-two, and
16 in every twelfth year thereafter, two judges of the
17 supreme court of appeals, and at the general election
18 to be held in the year one thousand nine hundred seventy-
19 six, and in every twelfth year thereafter, two judges of
20 the supreme court of appeals.

CHAPTER 21

(House Bill No. 227—By Mr. Watson and Mr. Jones, of Mason)

[Passed January 23, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article one,
chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the time
of appointment and the beginning of the term of ballot
commissioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally;
vacancies.

1 In each county in the state, the clerk of the circuit
court while holding such office, and two persons by him
3 appointed, one from each of the two political parties
which cast the largest and second largest number of votes in the state at the last preceding general election, shall constitute a board of ballot commissioners, of which board the said clerk shall be chairman. It shall be the duty of the clerk of said court to notify the chairman of the respective county executive committees of such two parties, at least five days before making such appointments, of the time and place of making the same, and if at any time after such notice is given, and before or on the day so fixed for making such appointments, the chairman of either of said committees shall designate, in writing, a member of such party as ballot commissioner having the qualifications of a voter, he shall be appointed. Ballot commissioners shall be appointed between the fifteenth and thirtieth days of January in each year in which a general election is to be held, for a term of two years beginning on the first day of February next ensuing: Provided, That in the year one thousand nine hundred sixty-eight, such ballot commissioners shall be appointed between the first and the tenth days of February, for a term beginning on the eleventh day of February of said year and ending on the thirty-first day of January, one thousand nine hundred seventy. They shall perform the duties of such commissioners at all general, special and primary elections held in the county or any magisterial district thereof during their term of office. A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed compliance with the five-day notice provision.

CHAPTER 22

(House Bill No. 228—By Mr. Watson and Mr. Jones, of Mason)

[Passed January 24, 1968; in effect ninety days from passage. Approved by the Governor.] AN ACT to amend and reenact section twenty-three, article one, chapter three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, requiring county courts to provide voting precincts with heat, drinking water and light in addition to necessary election equipment and supplies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-23. County court to arrange polling places and equipment; requirements.

The county court in each county, before each election, shall secure, in each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two nor more than five.

CHAPTER 23

(House Bill No. 229—By Mr. Watson and Mr. Jones, of Mason)

[Passed January 23, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications of election commissioners and clerks.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-29. Same—Qualifications; nonpartisan or public question elections.

No person shall be eligible to be appointed as a commissioner of election or as a poll clerk in any election precinct who is not a qualified voter in the magisterial district in which such precinct is situated; or who has anything of value bet or wagered on the result; or who is a candidate to be voted for at the ensuing election; or who is addicted to drunkenness; or who is not of good character and standing; or who has served or acted in the capacity of deputy sheriff within six months prior to the date of holding any such primary or general election.

Whenever a nonpartisan or public question election is to be conducted separate and apart from a primary or general election, the provisions of this article relating to the selection, appointment and qualifications of commissioners of election and poll clerks shall govern and control, except that persons duly registered as “independent” or as adherents to a political party or group other than the two majority political parties then recognized, when otherwise qualified to be election officials, may be appointed commissioners of election and poll clerks for the conduct of such nonpartisan and public question elections.

CHAPTER 24

(House Bill No. 330—By Mr. Rockefeller and Mr. Armistead)

[Passed February 7, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, nine, eleven, sixteen, twenty-two and thirty-six, article two, chapter
three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section nine, article six, of said chapter, all relating to the review, cancellation and reinstatement of the voter registration of persons who have failed to vote within a specified period, to the powers and duties of the secretary of state as the chief registration official of the state, to the completion date of a biennial or quadrennial checkup, to the removal of registration records from the custody of the county court to comply with a subpoena duces tecum issued by the chief registration official of the state, to the cancellation of voter registrations of persons shown to be deceased by certificates of death, to the imposition of penalties for a wilful delay, neglect or refusal to perform duties imposed by the rules, regulations or directions promulgated or issued by the chief registration official of the state, and to the preservation of poll books following elections.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Registration of Voters.

6. Conduct and Administration of Elections.

ARTICLE 2. REGISTRATION OF VOTERS.

Section

3-2-3. Registration, cancellation and reinstatement.
3-2-9. Election rules; powers and duties of secretary of state; exercise of powers by appointees.
3-2-11. Appointment of registrars; qualifications and duties.
3-2-16. Custody of registration records; public inspection.
3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons.
3-2-36. Neglect of duty by registration officers; penalties.

§3-2-3. Registration, cancellation and reinstatement.

1 A permanent registration system shall hereby be established which shall be uniform throughout the state
and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is properly transferred according to the provisions of section twenty-seven of this article, unless his registration is cancelled as provided in this article.

Within one hundred and twenty days following any election, the clerk of the county court shall, as evidenced by the presence or absence of signatures on the poll books for such election, correct any errors or omissions on the voter registration records appertaining to such election resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter; and, within the same time period following each state-wide primary and general election and at the same time that such checkup is made as is by this paragraph required, the clerk shall cancel the registration of each person who has failed to vote at least once during a period covering two state-wide primary and general elections as indicated by his registration record. Any person who has had his registration for that reason cancelled shall, by letter, be given proper notice thereof by the clerk of the county court, to the effect that in order to vote he must register again or execute and file, not later than twenty-nine days before the next primary or general election, with the clerk, an affidavit, the form of which shall be prescribed by the secretary of state, stating that he desires to be reinstated as a qualified voter at the same address and the clerk shall replace the registration card of the voter in the registration records. A blank form of such affidavit shall be included with and accompany the aforesaid notice to the voter.

§3-2-9. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

The secretary of state shall be the chief registration official of the state. He shall have authority, upon
consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this article. It shall be the duty of all registration officials to abide by such rules, regulations and orders, which shall include:

(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations, or directions necessary to standardize and make effective the administration of the provisions of this article.

It shall be his further duty to advise with registration officials; to furnish to the registration officials a sufficient number of indexed copies of the current registration laws of West Virginia and the administrative orders and rules and regulations issued or promulgated thereunder; to investigate the administration of registration laws, frauds, and irregularities in any registration; to report violations of registration laws to the appropriate prosecuting officials, and to prepare an annual report of registration.

The secretary of state shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of this article, or the rules, regulations and directions promulgated or issued hereunder by the secretary of state as the chief registration official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production
of papers, books, records, registration records and other evidence.

All powers and duties vested in the secretary of state under this article may be exercised by appointees of the secretary of state at his discretion, but the secretary of state shall be responsible for their acts.

§3-2-11. Appointment of registrars; qualifications and duties.

The county court of each county shall, not less than eighteen nor more than twenty weeks prior to the date of a state-wide primary election, appoint two competent persons, for one or more but not to exceed ten voting precincts in the county, to act as registrars for the purpose of making a biennial or quadrennial checkup required by this article. No person shall be eligible to appointment as a registrar, or in any way act as such, if he has been convicted of a felony or if he holds any elective or appointive office, or is a public employee, under the laws of this state or of the United States; or cannot read or write the English language; or is a candidate to be voted for at such election. If any such registrar shall fail or refuse to serve or is properly dismissed, the vacancy shall be filled either by the county court or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his duties, shall take an oath that he will perform the duties of the office to the best of his ability, which oath shall be filed in the office of the clerk of the county court.

An equal number of such registrars shall be selected from the two political parties which at the last preceding election, cast the highest number and next highest number of votes in the county in which the election is to be held. The county court shall, at least four weeks prior to making such appointment, request the county executive committee of each of the said two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county court shall, if such lists are submitted, appoint the respective registrars.
therefrom, and shall notify each registrar of his appointment. Every such list so presented shall be filed and preserved for one year by the clerk of such court in his office. Any and every act performed by any registrar under the provisions of this article shall be void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county court, or some person designated by him, concerning the performance of their duties.

Immediately following such instruction the clerk of the county court shall deliver to the registrar a copy of the laws and regulations relating to registration of voters and all necessary forms and other supplies, including a certified list of all registered voters within the precinct or precincts for which such registrars were appointed, upon such form as may be prescribed by the secretary of state. Such registrars shall thereupon proceed together to make a house-to-house canvass in their precincts for the purpose of making the biennial or quadrennial checkup required by section twenty-one of this article. Each biennial or quadrennial checkup subsequent to the year one thousand nine hundred sixty-eight shall be completed at least sixty days before the state-wide primary election following the appointment of the registrars. In making such checkup the registrars shall not again register any person who is already registered in such precinct, but shall determine whether or not such person is duly registered and qualified to vote therein.

§3-2-16. Custody of registration records; public inspection.

The registration records shall not be removed from the custody of the county court except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the secretary of state under the authority of section nine of this article. The registration records shall be open for public inspection under reasonable regulations prescribed by the county court.
§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons.

The clerk of the county court may register any qualified person as a voter by having him fill in and complete the prescribed voter registration form and having him sign same under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct, or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

Within fifteen days following receipt by the clerk from the state registrar of vital statistics or from the local registrar of vital statistics of a certificate of death which has occurred in his county or of a person who last resided prior to death in his county, the clerk of the county court shall cancel the voter registration, if any, of the person shown to be deceased by such certificate.

For purposes of making certain that the voter registration records of the various counties do not contain voter registration of persons who are deceased, the clerks of the county courts shall prior to September one, one thousand nine hundred sixty-eight, review each certificate of death received by him from the state registrar of vital statistics or from the local registrar of vital statistics since January one, one thousand nine hundred sixty-four, and shall cancel the voter registration, if any, of each person shown to be deceased by any such certificate and whose voter registration has not previously been cancelled. Between September one and September fifteen, one thousand nine hundred and sixty-eight, each clerk of a county court shall certify to the secretary of state, as the chief registration official of the state, that he has performed the duty required by this paragraph.

If found necessary, the county court may order and direct the clerk of the county court to maintain additional office hours in the evening or at other proper times and places for accommodation of voter registration.
§3-2-36. Neglect of duty by registration officers; penalties.

1 Any registrar or clerk of the county court or their authorized deputies or any other persons upon whom a duty is laid by the Permanent Registration Law, or the rules, regulations or directions promulgated or issued by the secretary of state as the chief registration official of the state, who shall wilfully delay, neglect, or refuse to perform such duty, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; recounts; preservation and subsequent destruction of ballots, records, etc.

1 The commissioners of the county court shall be ex officio a board of canvassers, and, as such, shall keep in a well-bound book, marked “election record,” a complete record of all their proceedings in ascertaining and declaring the result of every election in their respective counties. They shall convene as such canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, poll books, registration records, tally sheets and certificates have been placed shall lay the same before them for examination. They may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem proper, to procure correct returns and ascertain the true result of the election in their county; but in such case all the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record. They may adjourn from time to time, but no longer than absolutely necessary, and, when a majority of the commissioners are not present, their meeting shall stand adjourned until the next day, and so from
day to day, until a quorum be present. The board shall proceed to open each sealed package of ballots so laid before them, and, without unfolding them, count the number in each package and enter the same upon their record. The ballots shall then be again sealed up carefully in a new envelope, and each member of the board shall write his name across the place where such envelope is sealed. After canvassing the returns of the election, the board shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots, and recount the same; but in such case they shall seal the same again, along with the envelope above named, and the clerk of the county court and each member of the board shall write his name across the place or places where it is sealed, and endorse in ink, on the outside: “Ballots of the election held at precinct No. .......... , in the district of .......... , and county of .......... , on the .......... day of .......... .” Every candidate who demands such recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election be not changed by such recount; but the amount of such bond shall in no case exceed three hundred dollars. When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, poll books, tally sheets, and precinct certificates with the clerks of the county and circuit courts for whom they were received, who shall carefully preserve the same for sixty days, and if there be no contest pending as to any such election, and their further preservation be not required by any order of a court, such ballots, poll books, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there be such contest pending, then they shall be so destroyed as soon as the contest is ended: Provided, That the poll books shall be preserved until such time as the clerk
of the county court has completed the duties imposed
upon him by section three, article two of this chapter.
If the result of the election be not changed by such re-
count, the costs and expenses thereof shall be paid by
the party at whose instance the same was made.

CHAPTER 25
(Senate Bill No. 100—By Mr. Carrigan)

[Passed February 7, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time of registration prior to election; changes.

Be it enacted by the Legislature of West Virginia:

That section thirty, article two, 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 2. REGISTRATION OF VOTERS.

§3-2-30. Time of registration prior to election; changes.

1 No person may vote in an election when he has regis-
tered or his voter registration has been altered, amended
or corrected within a period of twenty-nine days next
preceding such election, but this inhibition shall not
prevent, during such period of twenty-nine days, addi-
tional registrations and changes in voter registrations with
reference to future elections. If, during such period of
twenty-nine days preceding an election, a voter is regis-
tered or his voter registration is altered, amended or
corrected, he shall not be permitted or qualified to vote
at such election.
CHAPTER 26

(House Bill No. 231—By Mr. Watson and Mr. Jones, of Mason)

[Passed January 24, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recording and disposition of absent voters' ballots.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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:

ARTICLE 4. VOTING MACHINES.

§3-4-20. Recording and disposition of absent voters' ballots.

1 When absent voters' ballots have been voted and delivered to the election board of any precinct, the election commissioners shall as time permits proceed to determine the legality of such ballots as prescribed in article six of this chapter. Without unfolding the absent voters' ballots determined to be legal, the election commissioners shall shuffle and intermingle the same so as to preserve the secrecy of the ballots to the fullest extent practicable, and prior to the close of the polls and before sealing the operating lever and unlocking the counter compartment, shall record such ballots on the voting machine. Such recording of absent voters' ballots shall be done by one of the election commissioners and the act of casting such votes shall be performed in the presence, and under the careful observation and full view, of all members of the precinct election board, and the votes as indicated by the voting pointers shall not be registered until each member of such board is satisfied that the arrangement of such voting pointers fully carries out the intent of the voter as shown by the cross marks on the paper ballot.

21 After completion of the count, absentee ballots shall
AN ACT to amend and reenact section one, article four-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections two and three, all relating to the preservation of the governor's mansion.

Be it enacted by the Legislature of West Virginia:

That section one, article four-a, chapter five-a 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 two new sections, designated sections two and three, all to read as follows:

ARTICLE 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

There is hereby created the governor's mansion advisory committee. The commissioner of finance and administration, the director of archives and history and the wife of any governor during his term of office or the designated representative of such governor shall be ex officio members of the committee. In addition, the governor shall appoint three additional members of the committee, one to be a curator in the field of fine arts, one to
be an interior decorator who is a member of the American Institute of Decorators, and one to be a building contractor. The appointive members of the committee shall serve for a term of four years: Provided, That the initial term of such members shall commence July first, one thousand nine hundred sixty-seven, and end June thirty-first, one thousand nine hundred seventy. The members of the committee shall serve without compensation but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties. The governor shall designate from the committee a chairman to serve for a term of one year. The commissioner of finance and administration shall serve as secretary. The committee shall meet upon the call of the chairman annually and may meet at such other times as may be necessary for the performance of its functions.

The committee shall be charged with the following responsibilities:

1. To make recommendations to the governor for the maintaining, preserving and replenishing of all articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art used or displayed in the state rooms of the governor's mansion, which state rooms shall consist of the front hall, the reception room, the ballroom and its sitting room, the state dining room, the front upstairs hall and the music room;

2. To make recommendations to the governor as to the decor and arrangements best suited to enhance the historic and artistic values of the mansion in keeping with the architecture thereof and of such articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art, which recommendations shall be considered by the governor in decorating said mansion; and

3. To invite interested persons to attend its meetings or otherwise to assist in carrying out its functions.

All departments, boards, agencies, commissions, officials and employees of the state are hereby authorized to cooperate with and assist the committee in the performance of its functions and duties whenever possible. As soon after the close of each fiscal year as possible, the com-
mittee shall make an annual report to the governor and the Legislature with respect to its activities and responsibilities.

§5A-4A-2. Office of governor's mansion director created; duties and responsibilities.

There is hereby created the office of governor's mansion director, who shall be qualified by background and experience for such a position and shall be appointed by the governor to serve at the will and pleasure of the governor. The mansion director shall be charged with the following duties and responsibilities: To protect and preserve all articles of furniture, fixtures, table linens, silver, china, crystal and objects of art displayed in the state rooms in the mansion. The mansion director shall assist the first lady in the scheduling of state government functions and entertainment at the mansion.


The state rooms of the mansion shall be used for official state government functions and entertainment: Provided, That tours of the state rooms of the mansion shall be permitted, and the mansion director shall assist in the scheduling of said tours and prescribe rules and regulations governing same.

The outgoing governor and his family shall vacate the private rooms of the mansion at least seven days prior to the inauguration of a new governor so that the mansion may be made suitable for the change in occupancy.
amended, by adding thereto a new section, designated
section nine-a, relating to defining a public water supply
and the regulation of the bacteriological, chemical and
physical qualities of water supplied by a public water
supply system.

Be it enacted by the Legislature of West Virginia:

That article one, chapter sixteen of the code of West Vir­
ginia, 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 1. STATE DEPARTMENT OF HEALTH.

§16-1-9a. Public water supply defined; regulation of the
bacteriological, chemical and physical qualities of
water supplied by a public water supply system.

1 A public water supply is any water supply or system
2 subject to regulation and control of the public service
3 commission of this state, or which supplies or offers to
4 supply water to the general public.
5 The state board of health shall prescribe by regulation
6 the bacteriological limits to which all public water sup­
7 plies shall conform. The state board of health in the case
8 of any public water supply serving two hundred or more
9 customers, may prescribe reasonable regulations limiting
10 the chemical and physical qualities of such water.
11 All regulations permitted under this section shall be
12 promulgated in accordance with the provisions of article
13 three, chapter twenty-nine-a of this code.

CHAPTER 29

(House Bill No. 274—By Mr. Kincaid and Mr. Ranson)

[Passed February 2, 1968; in effect from passage. Approved by the Governor.]
adding thereto a new article, designated article four-c, relating to the creation of interstate regional planning commissions, definition of regions, qualifications of members of commissions, prescribing powers and duties of commissions, authorizing county courts and municipalities to enter into interstate regional planning agreements with other political subdivisions of any states bordering on West Virginia and providing for contributions to the cost of maintaining such planning commissions.

Be it enacted by the Legislature of West Virginia:

That chapter 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 four-c, to read as follows:

ARTICLE 4C. INTERSTATE REGIONAL PLANNING COMMISSION.

Section

8-4C-1. Creation of commission; state may be ex officio member.
8-4C-2. Definition of region.
8-4C-3. Membership and organization of commission; reports and audits.
8-4C-4. Powers and duties of an interstate regional planning commission.
8-4C-5. Appropriations, receipts and expense.

§8-4C-1. Creation of commission; state may be ex officio member.

Any county of this state or any municipality thereof or any two or more counties or municipalities, or any combination thereof, may cooperate with political subdivisions of other states bordering on West Virginia for the purpose of creating by an agreement, an interstate regional planning commission, whenever such political subdivisions comprise a region which would benefit from cooperative planning. The agreement entered into by the several political subdivisions shall specify the extent of the region included within the jurisdiction of the interstate planning commission, fix the membership comprising the commission; the terms of office and method of appointment of the members thereof, the duration of the commission, the method for terminating the commission, the method of disposal of all property belonging to the commission, and the distribution of the proceeds;
and the apportionment of the costs of maintaining the planning commission to be borne respectively by the various political subdivisions included within the agreement, such apportionment to be based on the population of the various participating political subdivisions. Any such agreement shall be executed on behalf of a county by the county court or tribunal in lieu thereof, as the case may be, and on behalf of any municipality by the governing body thereof.

The state of West Virginia may be an ex officio member of any such interstate regional planning commission formed under the provisions of this article. The commissioner of commerce or a representative designated by him shall represent the state in the deliberations of any interstate regional planning commission or its agencies or instrumentalities but the state of West Virginia shall not be a voting member of any interstate regional planning commission or any agency or instrumentality thereof.

§8-4C-2. Definition of region.

The term "region," as used in this article, shall mean a specific metropolitan interstate area designated by the proper federal agency pursuant to the Demonstration Cities and Metropolitan Development Act of 1966 and any amendments thereto, as well as all other interstate areas which would benefit from cooperative planning. Before any area in this state is included within an interstate region for interstate planning, it shall be approved by the commissioner of the department of commerce: Provided, That no territory within any municipality or county not having a planning commission shall be included in the interstate area.

§8-4C-3. Membership and organization of commission; reports and audits.

Any member of an interstate regional planning commission may hold any other public office, appointive or elective, if not prohibited by some other statute or constitutional provision, and a member thereof may also serve as a member of a county, municipal or regional planning commission. The members of the commission shall serve without compensation but may be reimbursed
for all reasonable and necessary expenses actually in-
curred in the discharge of their duties on the commis-
sion. The commission shall elect its own chairman or
other officers from among its members and shall establish
its own rules and bylaws, schedule of meetings and such
committees with such powers as it may deem necessary
to carry on its work.

Any such commission shall make a quarterly report to
the county court or tribunal in lieu thereof of each
county and to the governing body of each municipality
contributing to the financial support of such commissi-

tion containing an itemized account of its receipts and dis-
bursements during the preceding quarter. Such report
shall be made within thirty days after the end of each
quarter. At the end of each fiscal year, any such com-
mission shall arrange for an independent audit of its
financial affairs and within thirty days after the end
of such fiscal year, such commission shall furnish a copy
of the report of such audit to any such county court,
tribunal or governing body and shall cause a copy
thereof to be published as a Class I legal advertisement
in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be each county and municipality which
contributed to the financial support of such commission.

§8-4C-4. Powers and duties of an interstate regional planning
commission.

(a) An interstate regional planning commission may
make studies, maps, plans and reports relative to the
region and shall recommend procedures and policies to
the appropriate authorities, based on physical, social,
economic, and governmental conditions and trends, to pro-
mote the coordinated development of the region and the
general health, welfare, convenience, and prosperity of
the people of the region. Such planning and coordination
may reflect the following planning criteria:

(1) Goals, objectives, standards, and principles for the
development of the region;

(2) The distribution and intensity of general land use
and open space;
The general circulation pattern for the region, including land, water and air transportation and communication facilities, and continuing comprehensive transportation planning;

(4) The general location, character, and extent of public and private works and facilities which are of area-wide or regional, as distinguished from purely local, concern;

(5) Long-range programming and financing of capital projects and facilities.

(b) The commission shall:

(1) Review plans and proposals for projects and programs of interstate or regional significance which may be proposed by others;

(2) Review and make recommendations concerning administrative and regulatory measures to implement area-wide or regional plans;

(3) Review and make recommendations concerning effective utilization of such federal and state assistance as may be available on a regional basis or as may have a regional impact;

(4) Collect, analyze, and report on statistics and other information concerning traffic, housing, population, and social, economic, and physical conditions of the region;

(5) Make recommendations to governmental bodies within such region for such actions as are necessary and proper to further the coordinated development of the region;

(6) Conduct necessary investigations and research and cooperate with other public and private agencies or persons to conduct such investigations or research on planning problems affecting the region.

§8-4C-5. Appropriations, receipts and expense.

(a) Any political subdivision which becomes a member of any interstate regional planning commission may contract annually with said interstate regional planning commission to pay a proportionate part of the expense
which is properly chargeable to the planning services rendered to such political subdivision, and any funds budgeted for interstate planning may be paid over by the local political subdivision to the interstate regional planning commission.

(b) An interstate regional planning commission may accept and use funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of any adjoining state, and from any county, municipal corporation, or other political subdivision of this or any adjoining state, including county, regional, municipal, or other planning commissions of this or any adjoining state, or from private sources, or services from departments, agencies, or instrumentalities of this state, and may contract with respect thereto and provide such information and reports as may be necessary to secure such financial or other aid. Within the amounts thus agreed upon and appropriated or otherwise received, any commission may employ such engineers, planners, consultants, and other employees as are necessary and may rent or own such space and make such purchases as it deems necessary to its use.

CHAPTER 30

(House Bill No. 209—By Mr. Boiarsky and Mr. Watson)

[Passed January 30, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investment of public funds and classes of securities in which funds may be invested.

Be it enacted by the Legislature of West Virginia:

That section eleven, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-11. Purchase, sale or exchange of securities; restrictions.

1 The board shall not invest more than five percent of each fund placed with it for investment in any bonds, notes or debentures of any one corporation meeting the requirements of subdivision (e) of section nine of this article; nor shall the board invest more than fifty percent of each separate fund placed with it for investment in bonds, notes or debentures of corporations meeting the requirements of subdivision (e) of section nine of this article.

2 Securities purchased or held under the provisions of this article may be sold or exchanged for other securities: Provided, That (1) no security shall be purchased, sold or exchanged without the concurrence of a majority of all members of the board, (2) no security shall be purchased at a price above, nor sold or exchanged at a price below, its prevailing fair market value, (3) no security shall be purchased, sold, or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto, (4) no security shall be received in exchange which does not comply with the requirements of section nine or ten of this article, and (5) the board shall not engage in any arbitrage practices.

CHAPTER 31

(Senate Bill No. 114—By Mr. Brotherton)

[Passed February 7, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right to counsel in proceedings concerning juveniles, certain mandatory advice with respect thereto, the appointment of
such counsel under certain circumstances and the payment by the state to attorneys so appointed of a fixed maximum fee.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter forty-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. JUVENILE COURTS.

§49-5-13. Same—Right to counsel; mandatory advice with respect thereto; appointment of counsel; payment by state of fee for appointed attorney.

In any proceeding under the provisions of this article, the child shall have the right to be represented by counsel, and the child and his parents, his guardian, his custodian, or any other person standing in loco parentis to him, or the person named in the petition, must be informed at the outset of the child's right to be represented by counsel, and if neither the child nor any other of the aforementioned persons can pay for the services of counsel, that counsel will be appointed to represent the child. Upon the presentation to the court or judge thereof of a written request for the appointment of counsel and an affidavit by the child, or by his parents, the guardian of his person, his custodian, or any other person standing in loco parentis to him, or by the person named in the petition, showing that neither the child nor any other of the aforementioned persons can pay for the services of counsel, the court or judge, upon being satisfied as to the truth of the information set forth in the affidavit, shall, by order entered of record, appoint an attorney at law to represent the child in any proceeding under the provisions of this article, and may, in the exercise of discretion, by order entered of record, allow any attorney so appointed a fee in an amount not to exceed fifty dollars. Any such fee shall be paid by the state auditor in the same manner as fees for appointed counsel are paid in felony cases.
AN ACT to amend and reenact section nine, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration indexes of the department of motor vehicles and providing for the use of magnetic recording devices within that department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-9. Act of registration and record thereof; registration indexes.

1 The department shall file each application received and
2 when satisfied as to the genuineness and regularity there-
3 of, and that the applicant is entitled to register such
4 vehicle and to the issuance of a certificate of title shall
5 register the vehicle therein described and keep a record
6 thereof in suitable books, on index cards, or by means of
7 magnetic recording devices as follows:

8 (1) Under a distinctive registration number assigned
9 to the vehicle;
10 (2) Alphabetically, under the name of the owner;
11 (3) Under the manufacturer's serial or identification
12 number if available, otherwise any other identifying
13 number of the vehicle; and
14 (4) In the discretion of the department, in any other
15 manner it may deem desirable.
AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from motor vehicle registration fees for certain motor vehicles owned by certain disabled veterans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Exemptions from registration fees.

1. The United States government, the state, or any political subdivision thereof, shall be exempted from the payment of any fee on account of registration of any vehicle owned or operated by the United States government, the state, or any political subdivision thereof, as the case may be. The proper representative of the federal government, the state, or any such political subdivision thereof, shall make, or cause to be made, on the form provided for that purpose, an application for registration of such vehicle so owned and operated, and the registration plate or plates issued for such vehicle shall be displayed or caused to be displayed as provided in this chapter. Fire apparatus owned by the United States government, the state, or any political subdivision thereof, or by an incorporated volunteer fire department organized for protection of community property shall be exempt from all the provisions of this article, pertaining to the payment of registration fees.

2. Any ambulance used exclusively for charitable purposes, for which use there is no charge, shall be exempt from the payment of all registration fees required by this
22 article. Any disabled veteran owning an automobile
23 under the provisions of Public Law 663 of the 79th Con-
24 gress of the United States or Public Law 187 of the 82nd
25 Congress of the United States, or Public Law 77 of the
26 90th Congress of the United States shall be exempt from
27 the payment of any fee on account of registration of any
28 vehicle owned by such disabled veteran. This exemption
29 shall not apply to such disabled veterans owning vehicles
30 used for hire, but such exemption shall be in force and
31 effect for such passenger car vehicles owned by such
32 disabled veterans during their natural life.

CHAPTER 34

(House Bill No. 311—By Mr. Speaker, Mr. White, and Mr. Davisson)

(Passed February 1, 1968; in effect July 1, 1968. Approved by the Governor.)

AN ACT to amend and reenact section seven, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to written reports of accidents and providing for approved forms for such reports.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, 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 4. ACCIDENTS.

§17C-4-7. Written reports of accidents.

1 (a) The driver or the attorney or agent of such driver,
2 of a vehicle involved in an accident occurring on the
3 public highways of this state resulting in bodily injury
4 to or death of any person or total property damage to
5 an apparent extent of one hundred dollars or more shall,
6 within five days after such accident, forward a written
7 report of such accident to the department of motor
8 vehicles.
(b) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(c) Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department. The department shall prepare a form for such accident report and, after approval of such form by the commissioner, the superintendent of the department of public safety and the state road commissioner, shall supply copies of such form to police departments, sheriffs and other appropriate law-enforcement agencies. Every accident report required under the provisions of this subsection (c) shall be made on such form.

CHAPTER 35

(Com. Sub. for Senate Bill No. 15—By Mr. Carson, Mr. President, and Mr. Brotherton)

[Passed February 8, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section two-a, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter seventeen-c by adding thereto a new article, designated article five-a, relating to implied consent to a chemical test to determine the alcoholic content of the blood of the operator of a motor vehicle arrested for driving a motor vehicle while under the influence of intoxicating liquor and the designation and administration of such a chemical test; relating to chemical test requested or de-
manded by arrested person; granting certain immunity from criminal and civil liability which might otherwise arise incident to the administration of such a chemical test; providing for suspension of such arrested person's operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive for refusal to submit to a designated chemical test; providing hearing and judicial review procedures; specifying certain presumptions with respect to and the evidentiary value of a chemical test as to intoxication; and providing for the payment of a fee for the cost of administering certain chemical tests.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. IMPLIED CONSENT FOR CHEMICAL TEST FOR INTOXICATION.

Section
17C-5A-1. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.
17C-5A-2. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.
17C-5A-3. Refusal to submit to tests; suspension of license or privilege: consent not withdrawn if person arrested is incapable of refusal.
17C-5A-4. Hearing procedures; judicial review.
17C-5A-5. Interpretation and use of chemical test.
17C-5A-6. Right to demand test.
17C-5A-7. Fee for withdrawing blood sample and making urine test; payment of fees.
17C-5A-8. Severability.

§17C-5A-1. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle upon the public streets or highways of this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a chemical test of either his blood, breath or urine for the purpose of determining the
alcoholic content of his blood whenever he shall be lawfully arrested by a law-enforcement officer as hereinafter defined for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor. The test shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public streets or highways while under the influence of intoxicating liquor. The law-enforcement agency by which such law-enforcement officer is employed shall designate which one of the aforesaid tests shall be administered: Provided, That if the test so designated is a blood test and the person so arrested refuses to submit to such blood test, then the law-enforcement officer making such arrest shall designate in lieu thereof, either a breath or urine test be administered, and notwithstanding the provisions of section three of this article, such refusal to submit to a blood test only shall not result in the suspension of the arrested person's operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive. The person arrested shall be told that his refusal to submit to the test finally designated as provided in this section, will result in the suspension of his operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive for a period of six months.

For the purposes of this article the term "law-enforcement officer" shall mean and be limited to (1) any member of the department of public safety of this state, (2) any sheriff and any deputy sheriff of any county, and (3) any member of a municipal police department under civil service in accordance with the provisions of article five-a, chapter eight of this code.

§17C-5A-2. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his
employment, acting at the request and direction of the
law-enforcement officer, may withdraw blood for the pur-
pose of determining the alcoholic content thereof. These
limitations shall not apply to the taking of a breath test
or a urine specimen. In withdrawing blood for the pur-
pose of determining the alcoholic content thereof, only
a previously unused and sterile needle and sterile vessel
may be utilized and the withdrawal shall otherwise be
in strict accord with accepted medical practices. A non-
alcoholic antiseptic shall be used for cleansing the skin
prior to venapuncture. The person tested may, at his
own expense, have a doctor of medicine or osteopathy,
registered nurse, or trained medical technician at the
place of his employment, of his own choosing, administer
a chemical test in addition to the test administered at
the direction of the law-enforcement officer. The failure
or inability of the person arrested to obtain an additional
test shall not preclude the admission into evidence at any
administrative or judicial proceeding of the results of the
test taken at the direction of the law-enforcement officer.
Upon the request of the person who is tested, full infor-
mation concerning the test taken at the direction of the
law-enforcement officer shall be made available to him.
No person who administers any such test upon the request
of a law-enforcement officer as herein defined, no hospital
in or with which such person is employed or is otherwise
associated or in which such test is administered, and no
other person, firm or corporation by whom or with which
such person is employed or is in any way associated, shall
be in anywise criminally liable for the administration of
such test, or civilly liable in damages to the person tested
unless for gross negligence or wilful or wanton injury.

§17C-5A-3. Refusal to submit to tests; suspension of license or
privilege; consent not withdrawn if person
arrested is incapable of refusal.

If any person under arrest as specified in section one of
this article refuses to submit to the test finally designated
in the manner provided in section one hereof, no test shall
be given, but the commissioner of motor vehicles, upon
receipt of a sworn statement of the law-enforcement
officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor, (3) such person refused to submit to the test finally designated in the manner provided in section one of this article, and (4) such person was told that his operator’s or chauffeur’s license, or junior or probationary operator’s license, or nonresident privilege to drive would be suspended for a period of six months if he refused to submit to the test finally designated in the manner provided in section one of this article, shall make and enter an order suspending such person’s operator’s or chauffeur’s license, or junior or probationary operator’s license, or nonresident privilege to drive for a period of six months. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested. No such suspension shall become effective until ten days after receipt of the copy of such order. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn his consent for a test of his blood, breath or urine as provided in section one of this article and the test may be administered although such person is not told that his failure to submit to the test will result in the suspension of his operator’s or chauffeur’s license, or junior or probationary operator’s license, or nonresident privilege to operate a motor vehicle for a period of six months.

A suspension hereunder shall run concurrently with the period of any suspension or revocation imposed in accordance with other provisions of this code and growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of intoxicating liquor and the subsequent refusal to undergo the test finally designated in accordance with the provisions of section one of this article.
§17C-5A-4. Hearing procedures; judicial review.

1. Upon the written request of a person whose operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive has been so suspended, the commissioner of motor vehicles shall afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of suspension. The hearing shall be before said commissioner or authorized deputy or agent of said commissioner, and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, except that in the case of a resident of this state the hearing shall be held in the county where the person resides unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county. Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or upon application of such person for good cause shown. For the purpose of conducting such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

The scope of such hearing shall be (1) whether the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle
upon the public streets or highways of this state while
under the influence of intoxicating liquor, (2) whether
such person was lawfully placed under arrest for the
offense of driving a motor vehicle upon the public streets
or highways of this state while under the influence of
intoxicating liquor, (3) whether such person refused to
submit to the test finally designated in the manner pro-
vided in section one of this article, and (4) whether such
person had been told that his operator's or chauffeur's
license, or junior or probationary operator's license, or
nonresident privilege to drive would be suspended for a
period of six months if he refused to submit to the test
finally designated in the manner provided in section one
of this article.

After such hearing and consideration of all of the testi-
mony, evidence and record in the case, the commissioner
shall make and enter an order affirming or rescinding
his earlier order of suspension. The commissioner shall
affirm his earlier order of suspension if he finds that (1)
the arresting law-enforcement officer had reasonable
grounds to believe such person had been driving a motor
vehicle upon the public streets or highways of this state
while under the influence of intoxicating liquor, (2) such
person was lawfully placed under arrest for the offense
of driving a motor vehicle upon the public streets or high-
ways of this state while under the influence of intoxicat-
ing liquor, (3) such person refused to submit to the test
finally designated in the manner provided in section one
of this article, and (4) such person had been told that his
operator's or chauffeur's license, or junior or probation-
ary operator's license, or nonresident privilege to drive
would be suspended for a period of six months if he re-
fused to submit to the test finally designated in the man-
ner provided in section one of this article. If the com-
missioner finds to the contrary with respect to any one
of the above issues, he shall rescind his earlier order of
suspension.

A copy of the commissioner's order made and entered
following the hearing shall be served upon such person
by registered or certified mail, return receipt requested.
During the pendency of any such hearing, the suspension
of the operator’s or chauffeur’s license, or junior or prob-

bationary operator’s license, or nonresident privilege to

drive of such person shall be stayed, and if the commis-
sioner has possession of such person’s operator’s or chauff-
feur’s license, or junior or probationary operator’s license,
the same shall be forthwith returned to him pending the
outcome of such hearing or any judicial review thereafter,
as hereinafter provided.

If the commissioner shall after hearing make and enter
an order affirming his earlier order of suspension, such
person shall be entitled to judicial review thereof. All
of the pertinent provisions of section four, article five,
chapter twenty-nine-a of this code shall apply to and
govern such review with like effect as if the provisions
of said section four were set forth in extenso in this
section. The judgment of the circuit court shall be final
unless reversed on appeal to the supreme court of appeals,
in accordance with the provisions of section one, article
six, chapter twenty-nine-a of this code, except that not-
withstanding the provisions of said section one, the
petition seeking such review must be filed with said
supreme court of appeals within thirty days from the date
of entry of the judgment of the circuit court. Notwith-
standing any provisions in said chapter twenty-nine-a
to the contrary, during the pendency of any appeal to
the circuit court or supreme court of appeals, the suspen-
sion of the operator’s or chauffeur’s license, or junior or
probationary operator’s license, or nonresident privilege
to drive of such person shall be stayed, pending the out-
come of such judicial review.

§17C-5A-5. Interpretation and use of chemical test.

Upon trial for the offense of driving a motor vehicle
on the public streets or highways of this state while
under the influence of intoxicating liquor, or upon the
trial of any civil or criminal action or proceeding arising
out of acts alleged to have been committed by any person
while driving a motor vehicle while under the influence
of intoxicating liquor, evidence of the amount of alcohol
in the person’s blood at the time of the arrest or of the
acts alleged, as shown by a chemical analysis of his blood,
breath or urine, is admissible, if the sample or specimen
was taken within two hours from and after the time of
arrest or of the acts alleged, and shall give rise to the
following presumptions or have the following effect:
(a) Evidence that there was, at that time, five hun-
dredths of one percent or less, by weight, of alcohol in
his blood, shall be prima facie evidence that the person
was not under the influence of intoxicating liquor;
(b) Evidence that there was, at that time, more than
five hundredths of one percent and less than ten hun-
dredths of one percent, by weight, of alcohol in the per-
son's blood shall be relevant evidence, but it is not to be
given prima facie effect in indicating whether the person
was under the influence of intoxicating liquor;
(c) Evidence that there was, at that time, ten hun-
dredths of one percent or more, by weight, of alcohol in his
blood, shall be admitted as prima facie evidence that the
person was under the influence of intoxicating liquor.

A chemical analysis of a person's blood, breath or urine,
in order to give rise to the presumptions or to have the
effect provided for in subdivisions (a), (b) and (c) of
this section, must be performed in accordance with meth-
ods and standards approved by the state department of
health. A chemical analysis of blood or urine to determine
the alcoholic content of blood shall be conducted by a
qualified laboratory or by the state police scientific lab-
oratory, of the criminal identification bureau of the de-
partment of public safety.

The provisions of this article shall not limit the intro-
duction in any administrative or judicial proceeding of
any other competent evidence bearing on the question of
whether the person was under the influence of intoxicat-
ing liquor.

§17C-5A-6. Right to demand test.
Any person lawfully arrested for driving a motor ve-
hicle on the public streets or highways of this state while
under the influence of intoxicating liquor and who is not tested at the direction of the arresting law-enforcement officer under the provisions of this article, or who is lawfully arrested as aforesaid by any other police officer, shall have the right to demand that a sample or specimen of his blood, breath or urine be taken within two hours from and after the time of arrest, and that a chemical test thereof be made. The analysis disclosed by such chemical test shall be made available to such arrested person forthwith with upon demand.

§17C-5A-7. Fee for withdrawing blood sample and making urine test; payment of fees.

A fee not exceeding five dollars shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of subsection (a) of section two, article five of this chapter, the county having venue of such charge shall pay said fee, and if said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of said county. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay said fee, and if said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of said municipality.

§17C-5A-8. Severability.

If any provision of this article or its application to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of this
CHAPTER 36

(House Bill No. 340—By Mr. Speaker, Mr. White, and Miss Tsapis)

[Passed February 7, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-h, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of officers of Class II cities.

Be it enacted by the Legislature of West Virginia:

That section ten-h, 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:

ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPAL CORPORATIONS, COUNCILS OR OFFICERS.

§8-4-10h. Salaries of officers of Class II cities.

1 Notwithstanding any provision of its existing charter to the contrary, the governing board of any Class II city, as defined in section four, article one, chapter eight-a of this code, shall have the authority to fix the salary of certain of its officers within the following limitations:

7 (1) The salary of the mayor shall not exceed seven thousand five hundred dollars.

9 (2) The salaries of the city manager, and the members of the council or governing body whose duties as prescribed by such existing charter include the supervision and administration of one or more departments of such Class II city, shall not exceed seven thousand dollars.

15 (3) The salaries of the members of the council or governing body whose duties as prescribed by such
existing charter do not include the supervision and
administration of one or more departments of such Class
II city, shall not exceed two thousand four hundred
dollars.

The authority granted by this section shall in no case
be construed to deprive any Class II city of any authority
under its existing charter to fix the salary of the officers
named above at a salary in excess of the limits imposed
by this section.

This section shall not be construed to prohibit a Class
II city from paying salaries to its mayor and city man-
ger in excess of the maximum salaries hereinabove
provided, if such city adopts a charter under the provi-
sions of the home rule act.

CHAPTER 37

(House Bill No. 316—By Mr. Speaker, Mr. White, and Mr. Potter)

[Passed February 7, 1968; in effect 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 thirty, authorizing and empowering the council
or similar governing body of any municipality to prohibit
by ordinance discrimination on the basis of race, creed,
color or national origin in the sale, purchase, lease or
rental of housing accommodations within the corporate
limits of such municipality and to impose by ordinance
fines for the violation of the provisions of any such
ordinance.

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 thirty, to
read as follows:


ARTICLE 4. POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPAL CORPORATIONS, COUNCILS OR OFFICERS.

§8-4-30. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.

The council or similar governing body of any municipality (however created, whether operating under a legislative charter, home rule charter or general law only, and notwithstanding any statutory or municipal charter provisions to the contrary) shall have the power and authority, by ordinance, to prohibit discrimination on the basis of race, creed, color or national origin in the sale, purchase, lease or rental of housing accommodations within the corporate limits of such municipality, and to impose fines for the violation of the provisions of any such ordinance.

CHAPTER 38

(House Bill No. 326—By Mrs. Smirl and Mr. Watson)

(Passed February 8, 1968; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section seven, article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article six-a of said chapter, all relating to residency requirements for firemen and policemen.

Be it enacted by the Legislature of West Virginia:

That section seven, article five-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article six-a of said chapter be amended and reenacted, all to read as follows:
ARTICLE 5A. CIVIL SERVICE FOR POLICE DEPARTMENTS.

§8-5A-7. Character and notice of examinations; qualifications of applicants; press representatives; posting eligible list.

All examinations for positions or promotions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the person or persons examined to discharge the duties of the employment sought by him or them. All examinations shall be open to all applicants who have fulfilled the preliminary requirements, stated in other sections of this article. All applicants for any position in the police department shall, as hereinafter stated, subject to regulations adopted by the civil service commission, be required to submit to a physical examination before being admitted to the regular examinations held by the commission. Said applicant shall have been a resident for one year next preceding the date of his application, of the city or municipality in which he seeks to obtain employment in the police department: Provided, That if the commission deems it necessary it may consider applicants who are not residents of the city or municipality but who have been residents of the county in which the city or municipality is situated for the same period of time. Adequate public notice of the time and place of every examination held under the provisions of this article, together with information as to the kind of position or place to be filled, shall be given at least one week prior to such examination. The said commission shall adopt reasonable regulations for permitting the presence of representatives of the press at the examinations. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed examinations for positions in police departments, under this article, and shall indicate thereon such appointments as may be made from said list.
ARTICLE 6A. PAID FIRE DEPARTMENTS.

§8-6A-7. Character and notice of examinations; qualifications of applicants; press representatives; posting eligible list.

All examinations for positions or promotions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have fulfilled the preliminary requirements, stated in other sections of this article. All applicants for any position in the fire department shall, as hereinafter stated, subject to regulations adopted by the civil service commission, be required to submit to a physical examination before being admitted to the regular examination held by the commission. Said applicant shall have been a resident for one year next preceding the date of his application, of the city or municipality in which he seeks to obtain employment on the fire department: Provided, That if the commission deems it necessary it may consider applicants who are not residents of the city or municipality but who have been residents of the county in which the city or municipality is situated for a period of at least one year. Adequate public notice of the time and place of every examination held under the provisions of this article, together with information as to the kind of position or place to be filled, shall be given at least one week prior to such examinations. The said commission shall adopt reasonable regulations for permitting the presence of representatives of the press at the examinations. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed examinations for positions in fire departments, under this article, and shall indicate thereon such appointments as may be made from said list.
AN ACT to amend and reenact sections two, five, six, seven, eight, nine and ten, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article fifteen by adding thereto a new section, designated section fourteen, all relating to employees' retirement and benefit funds of municipal corporations having a population in excess of fifteen thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EMPLOYEES' RETIREMENT AND BENEFIT FUND.


1 For the purpose of this article:
2 (a) "Prior service credit" shall mean the number of
3 years that the member has been in the service of the
4 city prior to the effective date of the retirement and
5 benefit fund.
6 (b) "Earned service credits" shall mean the number
7 of years that the member has contributed to the retire-
8 ment and benefit fund.
(c) "Total service credit" shall mean a total of all prior service credit and all earned service credit.
(d) "Fund" shall mean the employees' retirement and benefit fund.
(e) "Board" shall mean the board of trustees of the employees' retirement and benefit fund.
(f) "Member" shall mean an eligible employee of the city, who is a member of the employees' retirement and benefit fund.
(g) "Total disability in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the municipality or other employer, that shall be caused by injury sustained in the course of the operations usual to his employment, and shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the usual place of employment or elsewhere in connection with or in relation to his usual and customary employment.
(h) The pronoun "he" shall mean both masculine and feminine.
(i) "Mayor" shall mean the chief executive officer of the city.
(j) The term "actuarial equivalent" shall mean an annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund.
(k) "Salary" shall mean the amount earned by a member as an employee of a municipality: Provided, That to and including June thirty, one thousand nine hundred sixty-seven, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits, shall be four hundred dollars per month.
(l) "Average salary" shall mean the highest annual average rate of salary earnable by a member during a period of five consecutive years within the total service of the member subject to a maximum amount of four hundred dollars per month to and including June
§8-15-5. Prior, earned and total service credits; service breaks.

(1) For prior service, each participating employee, on the effective date, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund.

(2) Until June thirty, one thousand nine hundred sixty-seven, each member shall pay into the fund, six percent of his salary up to four hundred dollars a month. After June thirty, one thousand nine hundred sixty-seven, each member shall contribute six percent of his actual salary without limitations.

These contributions shall continue until such time as the member has thirty-five years of earned service credit; he shall continue to contribute to the fund until he retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of earned service credit.

A member who has prior service credit shall be entitled to full retirement payment when his prior service credit and his earned service credit totals thirty-five years of total service credit, if he has reached compulsory retirement age, or if he prior thereto becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies.

(3) In order to participate one hundred percent in the retirement fund the member must have a total service credit of thirty-five years which may consist of prior service credit or earned service credit, or both. At retirement, because of having reached the compulsory retirement age, the member shall participate in the fund only to the extent of his total service.

A person who is employed by the municipality at the time of the effective date of the fund and becomes a member of the fund shall be entitled to prior service credit even though such prior service was not continuous.
A person who is not employed by the municipality at the time of the effective date of the fund, but who has been employed in the past shall be entitled to prior service credit if he returns to the service within two years from the date of his termination of service and becomes a member of the fund within such two-year period.

A member upon separation from the service shall be entitled to withdraw his contributions without interest in lieu of any benefits to which he may be entitled. If such employee returns to the service of the municipality within two years and becomes a member of the fund, he shall be considered as a new employee and shall have forfeited all prior service credits unless he shall repay to the fund in cash at the time of reemployment the amount of money which he has withdrawn plus four percent interest compounded annually on said amount during the time he was separated from the service.

If however, the break in service of such member is more than two years, he shall not be entitled to any prior service credits nor shall he be entitled to redeposit withdrawals but he shall reenter the fund as a new member.


After the effective date of the fund any member of the fund who has at least ten years of total service credit shall receive a vested right in a retirement payment which he may exercise upon or after attainment of age sixty. When he has reached the age of sixty years he may, at his option, apply for a retirement payment as hereinafter provided.

Retirement for all members of the fund shall be compulsory at the age of sixty-five, subject to the following conditions:

The employee may be permitted to continue in the service if he so desires; if his services are still valuable to the municipality.

Whether an employee’s services are valuable at the age of sixty-five shall be determined by the appointing officer of the municipality. If he determines that such
services are valuable, his determination must be certified to the board for approval. If the board approves, the employee may continue in the service of the municipality. The appointing officer shall annually certify to the board relative to the ability and competency of all employees over age sixty-five. A member of the fund, upon retirement, shall be entitled to the following retirement payment:

For thirty-five years of total service credits to and including twenty-four years of total service credits, fifty percent of average salary plus one and two thirds percent of average salary per year of service for each year above twenty-three years.

Twenty-three years of total service credits, fifty percent of average salary: Provided, That if a member has twenty-three years of total service credits he shall be entitled to a minimum retirement payment of one hundred dollars per month.

Twenty-two years of total service credits, forty-nine percent of average salary.

Twenty-one years of total service credits, forty-eight percent of average salary.

Twenty years of total service credits, forty-seven percent of average salary.

Nineteen years of total service credits, forty-five percent of average salary.

Eighteen years of total service credits, forty-three percent of average salary.

Seventeen years of total service credits, forty-one percent of average salary.

Sixteen years of total service credits, thirty-nine percent of average salary.

Fifteen years of total service credits, thirty-six percent of average salary.

Fourteen years of total service credits, thirty-three percent of average salary.

Thirteen years of total service credits, thirty-one percent of average salary.
Twelve years of total service credits, twenty-nine percent of average salary.

Eleven years of total service credits, twenty-seven percent of average salary.

Ten years of total service credits, twenty-five percent of average salary.

With the condition that no optional benefit shall be effective if a member dies within thirty days after the filing of an application for retirement payment, a member may elect at least one year prior to retirement to receive a lesser retirement payment, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement payment shall be continued throughout the life of and paid to such person having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one half of his lesser retirement payment shall be continued throughout the life of and paid to such person having an insurable interest in his life as he shall have named in a written designation duly acknowledged and filed with the board.

The rate of retirement payment shall be prorated for any fractional part of the total service credit of an employee of less than a full year.


(1) If a member becomes disabled by bodily injury effected independently of all other causes and directly through accidental means while engaged in the course of his employment with the city and while in line of duty, and is totally and permanently disabled from performing any work for pay, whether for the municipality by which employed at date of disability or any other employer, he shall be entitled during the time of his disability to a retirement payment equal to fifty per-
10 cent of the rate of salary of the member at date of
disability: Provided, That the minimum payment shall
12 be one hundred dollars per month.

13 (2) If a member becomes disabled while an em-
14 ployee of the municipality after he has had at least ten
15 years of total service credits, and before he has reached
16 age sixty, but such disability is not incurred in the line
17 of duty during the course of his employment, he shall
18 be entitled to one half of the retirement payment pro-
19 vided for service retirement during the time of his dis-
20 ability: Provided, That he shall be entitled to a minimum
21 payment of fifty dollars per month and a maximum
22 payment of one hundred dollars per month.

23 (3) When a member has reached the retirement age
24 or has become so physically or mentally disabled as to
25 render him unfit for the performance of the duties of
26 the position he occupies and who has less than ten years’
27 service credits, he shall be entitled to an annuity which
28 shall be the actuarial equivalent of his total accumula-
29 tion account at the time of his retirement.

30 (4) The board of trustees of the employees’ retire-
31 ment and benefit fund shall order a periodic reexamina-
32 tion of members of the fund receiving disability retire-
33 ment payment prior to age sixty and if the disability
34 no longer exists the payments shall be discontinued.

1 (1) The beneficiaries of a member who dies after he
2 has had ten or more years’ total service credits, as herein-
3 after described, shall be entitled, for a period not to
4 exceed ten years, to a retirement payment in accordance
5 to the table contained in section six of this article. The
6 payments shall be made to the person having an insur-
7 able interest in his life, as he shall have nominated in a
8 designation filed with the board. If the beneficiary is a
9 widow, the marriage must have occurred at least one year
10 prior to the death of the member in order that the
11 widow may be eligible for a benefit under this para-
12 graph.

13 Upon death of a member prior to the completion of
14 ten years of total service, the designated beneficiary of
the member, or the estate of the member, shall be enti-
titled to a return of his total contributions to the fund,
without interest.

(2) Death benefits after retirement shall be the same
as death benefits before retirement except a widow shall
not be entitled to benefits unless she was married to the
member before the date of his retirement. Payment shall
be made for the remaining period of ten years dating from
the date of the member's retirement. If a widow of a
member remarries, her retirement payments shall be
terminated and shall not be resumed upon subsequent
change in her marital status.

(3) If a member dies as a result of personal injury
or disease arising out of and in the course of his employ-
ment with the city, or as the result of total disability
in line of duty, the surviving widow shall be entitled
during her widowhood to a benefit equal to thirty-three
and one third percent of the final rate of salary of the
member, subject to the maximum rate herein prescribed,
but not to exceed one hundred and twenty-five dollars
per month. In the event there be no widow, or if re-
marriage occurs before the youngest child attains age
eighteen, each child shall be entitled to twenty percent of
the member's final rate of salary, subject to a total pay-
ment to all children of fifty percent of salary, or one
hundred twenty-five dollars per month, whichever is
the lesser. If there be no widow or minor children, the
dependent father and/or mother, as the board shall de-
termine, shall each be entitled to one sixth of the de-
ceased employee's final salary, but the payment to either
parent shall not exceed fifty dollars per month.


The council or other governing body shall annually
provide sufficient funds in the budget, on an actuarially
funded basis, to provide for the funded requirements of
the employees' retirement and benefit fund for current
service of the employees over and above the amount
contributed by the members, plus an amount to pay the
cost of administration of the fund.
The municipality shall also contribute an amount required, at three and one half percent interest per annum, to amortize, over a period not to exceed forty years from July one, one thousand nine hundred sixty-seven, any unfunded accrued liability at that date.

§8-15-10. Investment of funds.

The board shall keep as an available sum for the purpose of making payments for retirement and other benefits and administration expense an amount estimated to meet such payments for a period not to exceed ninety days. It shall have full power in its sole discretion to invest and reinvest any moneys received by it in the following types of securities: (a) Direct obligations of the United States government or of the state of West Virginia; (b) direct obligations of any county, school district, or any municipality in the state of West Virginia; (c) bonds or debentures of any utility corporation, industrial corporation or railroad corporation organized under the laws of any state of the United States, rated "A" or better by any two security rating concerns provided interest shall have been paid by the corporation on its indebtedness for at least the ten years last past; and (d) federally insured mortgages under sections two hundred three and two hundred seven of the national housing act.

§8-15-14. Action by city required before new provisions are applicable.

Notwithstanding any other provision in this article to the contrary, the provisions of this article as amended and reenacted at the regular session of the Legislature in the year one thousand nine hundred sixty-eight shall not be applicable to any fund established by any city prior to the effective date of this section, unless and until such city shall by ordinance provide for the application thereof. In the absence of any such ordinance, any such fund shall be governed and controlled by and administered in accordance with the provisions of this article as they existed prior to the effective date of this section.
AN ACT to amend and reenact section eight, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to renewal licenses for nursing homes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.

§16-5C-8. License fees; amount, disposition.

1. An application fee in the amount of one hundred dollars for an original nursing home license shall be paid at the time application is made for such license. The license fee for renewal of license shall be four dollars per bed. The bed capacity for the holder of each license shall be determined by the board. All such license fees shall be due and payable to the board on or before June thirtieth of each year. Such fee and application shall be submitted to the secretary of the board who shall retain both the application and fee pending final action on the application. Thereafter, upon order of the auditor of the state, all such fees shall be transmitted to the state treasurer to be deposited to the credit of the general revenue fund: Provided, That the authorized expenses of the board are to be paid out of such fees.

CHAPTER 41

(Senate Bill No. 132—By Mr. Miller)

[Passed February 7, 1968; in effect from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated
section thirty-six-a, relating to the settling, signing and
certifying of bills of exceptions and certificates in lieu
thereof when the trial judge is physically or mentally
incapable of discharging the duties of his office or when
a vacancy exists in such office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. TRIAL.

§56-6-36a. Settling, signing and certifying bill of exceptions or
certificate in lieu thereof by judge other than
judge before whom case was tried.

1 In the event of the death or resignation of, or the
2 expiration of the term of office or a vacancy in the office
3 for any other cause of, the judge before whom a case was
4 tried, or in the event the trial judge becomes physically or
5 mentally incapable of discharging the duties of his office,
6 a bill of exceptions as provided for by section thirty-five
7 of this article or a certificate in lieu of a bill of exceptions
8 as provided for by section thirty-six of this article may
9 be settled, signed and certified by the successor in the
10 office of such judge or by any other judge authorized
11 in such case to perform the duties of the judge of such
12 court, and any bill of exceptions or certificate in lieu of a
13 bill of exceptions signed and certified as aforesaid shall
14 have the same effect as if signed and certified by the judge
15 before whom such was tried.

CHAPTER 42

(House Bill No. 318—By Mr. Steptoe and Mr. Stamp)

[Passed February 6, 1968; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section four, article one, chap­
ter thirty-eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the publication of a notice of sale under a trust deed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4. Notice of sale.

1 When any property is about to be sold under a trust deed, the trustee shall, unless it be otherwise provided in such trust deed, or in the opinion of the trustee the property to be sold be of less value than three hundred dollars, publish a notice of such sale as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the property is located. If, in the opinion of the trustee, the property be of less value than three hundred dollars, such notice of sale shall be posted at least twenty days prior thereto at the front door of the courthouse of the county in which the property to be sold is, and three other public places at least in the county, one of which shall be as near as the premises to be sold (in case the sale be of real estate) as practicable; and in all cases whether the notice be published or not, a copy of such notice shall be served on the grantor in such trust deed, or his agent or personal representative, if he or they be within the county, at least twenty days prior to the sale. Every notice of sale by a trustee under a trust deed shall show the following particulars: (a) The time and place of sale; (b) the names of the parties to the deed under which it will be made; (c) the date of the deed; (d) the office and book in which it is recorded; (e) the quantity and description of the land or other property, or both, conveyed thereby; and (f) the terms of sale.
AN ACT to amend and reenact sections two, fifteen, twenty-one, twenty-two, twenty-five, twenty-seven, twenty-nine and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees' retirement.

Be it enacted by the Legislature of West Virginia:

That sections two, fifteen, twenty-one, twenty-two, twenty-five, twenty-seven, twenty-nine and thirty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES' RETIREMENT ACT.

§5-10-2. 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;
(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees’ retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable in whole or in part by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation in whole or in part is paid by the federal government: Provided, That members of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate, members of the legislative body of any political subdivision and judges of the state court of claims shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;
(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means the average of the highest annual compensation received by a member during any period of five consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated. If he has less than five years of credited service, his final average salary shall be the average of the annual rate of compensation received by him during his total years of credited service. Final average salary for members of the Legislature means their actual compensation serving as a member of the Legislature multiplied by eight;

(16) "Accumulated contributions" means the sum of all amounts deducted from the compensations of a mem-
(17) "Regular interest" means such rate or rates of interest per annum, compounded annually, as the board of trustees shall from time to time adopt;

(18) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(19) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees shall from time to time adopt;

(20) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees shall from time to time adopt;

(22) The masculine gender shall include the feminine gender, and words of the singular number with respect to persons shall include the plural number, and vice versa.

§5-10-15. Military service credit.

Any member of the retirement system who entered or enters the active service of the armed forces of the United States during any period of compulsory military service shall receive credited service for said time spent in the armed forces of the United States, not to exceed five years if such member pays to the members' deposit fund the amount he may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment. In any case of doubt as to the period of service to be so credited a member, the board of trustees shall have final power to determine such period. During the period of such armed service and until his return to the employ of a participating
14 public employer, his contributions to the retirement
15 system shall be suspended and any balance remaining
16 to his credit in the members’ deposit fund shall be accu-
17 mulated at regular interest.

§5-10-21. Deferred retirement and early retirement.
1 (a) Any member, who has five or more years of cred-
2 ited service in force, of which at least three years are
3 contributing service, and who leaves the employ of a
4 participating public employer prior to his attainment of
5 age sixty years, for any reason except his disability re-
6 tirement or death, shall be entitled to an annuity com-
7 puted according to section twenty-two hereof, as the
8 said section was in force as of the date of his said sep-
9 aration from the employ of a participating public em-
10 ployer: Provided, That he does not withdraw his accu-
11 mulated contributions from the members’ deposit fund.
12 His 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
15 his attainment of age sixty-two years.
16 (b) Any member who qualifies for deferred retire-
17 ment benefits in accordance with subsection (a) of this
18 section, and has ten or more years of credited service
19 in force and who has attained age fifty-five as of the
20 date of his separation may, prior to the effective date
21 of his retirement, but not thereafter, elect to receive the
22 actuarial equivalent of his deferred retirement annuity
23 as a reduced annuity commencing on the first day of
24 any calendar month between his date of separation
25 and his attainment of age sixty-two years and payable
26 throughout his life.
27 (c) Any member who qualifies for deferred retire-
28 ment benefits in accordance with subsection (a) of this
29 section, and has twenty or more years of credited serv-
30 ice in force may elect to receive the actuarial equivalent
31 of his deferred retirement annuity as a reduced an-
32 nuity commencing on the first day of any calendar
33 month between his fifty-fifth birthday and his attain-
34 ment of age sixty-two years and payable throughout
35 his life.
§5-10-22. Retirement annuity.

Upon a member's retirement, as provided in this article, he shall receive a straight life annuity equal to one percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement: Provided, That after March one, one thousand nine hundred sixty-eight, all members retired and all members retiring shall receive a straight life annuity equal to one and five tenths percent of his final average salary multiplied by the number of years, and fraction of a year, of his credited service in force at the time of his retirement. In either event, upon his retirement he shall have the right to elect an option provided for in section twenty-four hereof. All annuity payments shall commence effective the first of the month following the month in which a member retires or a member dies leaving a beneficiary entitled to benefits and shall continue to the end of the month in which said retirant or beneficiary dies, and said annuity payments shall not be prorated for any portion of a month in which a member retires or retirant or beneficiary dies.

§5-10-25. Disability retirement.

Upon the application of a member, or his employing authority, a member who (1) is in the employ of a participating public employer, (2) has ten or more years of credited service, and (3) becomes totally and permanently incapacitated for duty in the employ of a participating public employer, by reason of a personal injury or disease, may be retired by the board of trustees if after a medical examination of the said member, made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member, the said medical committee reports, in writing, to the board that (1) the said member is physically or mentally totally incapacitated for duty in the employ of a participating public employer, (2) that such incapacity will probably be permanent, and (3) that the said member should be retired. In the event the two above-mentioned physicians do not agree in their findings, then the board of trustees may,
at its discretion, appoint a third physician to examine
said member and, based upon the third physician's report
in writing, the board may retire said member.

(b) A member with less than ten years of credited
service shall have the service requirement provided for
in subsection (a) above waived in the event (1) the board
of trustees finds his total and permanent disability to be
the natural and proximate result of a personal injury or
disease arising out of and in the course of his actual per-
formance of duty in the employ of a participating public
employer, and (2) he is in receipt of workmen's compen-
sation on account of such physical or mental disability.

(c) For those members retiring and those members
retired, as of March one, nineteen hundred and sixty-
three, he shall receive a straight life annuity computed
according to section twenty-two hereof and he shall have
the right to elect an option provided for in section twenty-
four hereof: Provided, however, That his straight life
annuity payable to his attainment of age sixty-five years
shall not be less than thirty-seven and five tenths percent
of his final average salary; and his said straight life an-
nuity payable from and after his attainment of age sixty-
five years shall not be less than fifteen percent of his final
average salary: Provided further, That his said annuity
shall be subject to section twenty-six hereof.

5-10-27. Nonduty death annuities.

(a) In the event any member who has ten or more
years of credited service, or any former member with
ten or more years of credited service and who is entitled
to a deferred annuity, pursuant to section twenty-one
hereof, may at any time prior to the effective date of his
retirement, by written declaration duly executed and filed
with the board of trustees, in the same manner as if he
were then retiring from the employ of a participating
public employer, elect option A provided for in section
twenty-four hereof, and nominate a beneficiary whom the
board finds to have had an insurable interest in the life
of said member. Prior to the effective date of his retire-
ment a member may revoke his said election of option A
and nomination of beneficiary and he may again prior to
his retirement elect the said option A and nominate a benefici-
ary as provided in this subsection. Upon the death of a mem-
ber who has an option A election in force, his benefici-
ary, if living, shall immediately receive an annuity com-
puted in the same manner in all respects as if the same mem-
ber had retired the day preceding the date of his death, notwith-
standing that he might not have attained age sixty years, and elected the said option A. If at the time of his retirement a member has an option A election in force, his said election of option A and nomination of beneficiary shall thereafter continue in force.

(b) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one hereof, (1) dies, and (2) leaves a widow, or in the case of a female member leaves a widower, the said widow or widower, as the case may be, shall immediately receive an annuity computed in the same manner in all respects as if the said member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age sixty or sixty-two years, as the case may be, (2) elected option A provided for in section twenty-four hereof, and (3) nominated his said widow or widower, as the case may be, as beneficiary.

(c) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one hereof (1) dies without leaving surviving him a spouse, but (2) leaves surviving him an infant child or children, and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, said infant child or children shall be entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though said member had retired as of the date of his decease and elected a straight life annuity, and the amount of said annuity reserve shall be paid in equal monthly installments to said member's infant child or children until said child or children attain age twenty-one or sooner marry or become emancipated; however,
in no event shall any child or children receive more than two hundred fifty dollars per month each. The said annuity payments shall be computed as of the date of the death of the said member and the amount of said annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of said deceased member’s final average salary.

§5-10-29. Members’ deposit fund; members’ contributions.

1 (a) The members’ deposit fund is hereby created. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members, and from which refunds of accumulated contributions shall be paid and transfers made as provided in this section.

(b) The contributions of a member to the retirement system shall be a sum of not less than three and five tenths percent of his annual compensations but not more than four and five tenths percent of his annual compensations, as determined by the board of trustees. The said contributions shall be made notwithstanding that the minimum salary or wages provided by law for any member shall be thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of a member’s compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him to a participating public employer, except as to benefits provided by this article.

(c) The officer or officers responsible for making up the payrolls for payroll units of the state government and for each of the other participating public employers shall cause the contributions, provided for in subsection (b) above, to be deducted from the compensations of each member in the employ of the participating public employer, on each and every payroll, for each and every payroll period, from the date the member enters the retirement system to the date his membership terminates. When deducted, each of said amounts shall be paid by the par-
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31 ticipating public employer to the retirement system; said
32 payments to be made in such manner and form, and in
33 such frequency, and shall be accompanied by such sup-
34 porting data, as the board of trustees shall from time to
35 time prescribe. When paid to the retirement system,
36 each of said amounts shall be credited to the members’
37 deposit fund account of the member from whose com-
38 pensations said contributions were deducted.

39 (d) In addition to the contributions deducted from the
40 compensations of a member, as heretofore provided, a
41 member shall deposit in the members’ deposit fund, by
42 a single contribution or by an increased rate of contri-
43 bution as approved by the board of trustees, the
44 amounts he may have withdrawn therefrom and
45 not repaid thereto, together with regular interest
46 from the date of withdrawal to the date of repay-
47 ment. In no case shall a member be given credit
48 for service rendered prior to the date he withdrew his
49 contributions or accumulated contributions, as the case
50 may be, until he returns to the members’ deposit fund
51 all amounts due the said fund by him.

52 (e) Upon the retirement of a member, or if a survivor
53 annuity becomes payable on account of his death, in either
54 event his accumulated contributions standing to his credit
55 in the members’ deposit fund shall be transferred to the
56 retirement reserve fund.

57 (f) In the event an employee’s membership in the
58 retirement system terminates and no annuity becomes
59 or will become payable on his account, any accumulated
60 contributions standing to his credit in the members’ de-
61 posit fund, unclaimed by the said employee, or his legal
62 representative, within three years from and after the
63 date his membership terminated, shall be transferred to
64 the income fund.

65 (g) Duly elected members of the Legislature who have
66 elected to become members of the retirement system,
pursuant to other sections of this article, shall contribute
to the retirement system thirty-six percent of their annual
compensation for serving as a member of the Legislature.
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§5-10-31. Employers' accumulation fund; employers' contributions.

1  (a) The employers' accumulation fund is hereby created. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

2  (b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system shall be determined, according to paragraphs one, two, three and four below, for the state as the state division, and for the other participating public employers as the public employer division.

3  (1) The participating public employers' contributions for members' current service shall be a percent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers during the members' future service will be sufficient to provide, at the time annuities will become payable on their account, the difference between the annuity reserves for the future service portions of the annuities to be paid and the present value of the members' future net contributions.

4  (2) The participating public employers' contributions for members' accrued service shall be a percent of the members' annual compensation which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for the accrued portions of the annuities to be paid on account of members.

5  (3) The participating public employers' contributions for annuities being paid retirants and beneficiaries shall be a percent of the members' annual compensations which will equal an amount which if paid annually by the participating public employers over a period of years, to be determined by the board of trustees, will amortize, at regular interest, the unfunded annuity reserves for annuities being paid retirants and beneficiaries.
AN ACT to amend and reenact section four, article thirteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reciprocal service under the public employees' and teachers' retirement systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PUBLIC EMPLOYEES' AND TEACHERS' RECIPROCAL SERVICE CREDIT ACT.

§5-13-4. Reciprocal service.

1 In the event a member leaves a position covered by the public system and within five years thereafter becomes employed in a position covered by the teacher system, or a member leaves the position covered by the teacher system and within five years thereafter becomes employed in a position covered by the public system, in either case, the following provisions shall apply, together with such rules and regulations as the board of trustees of the public system and the retirement board of the teacher system shall from time to time mutually agree upon.
(a) A member's reciprocal service credit in force shall be used to satisfy the service requirements for retirement under the state system from which he retires.

(b) If a member, who has reciprocal service credit in force, retires under the public system, he shall receive an annuity payable by the public system and an annuity payable by the teacher system. His public system annuity shall be based upon (1) the portion of his reciprocal service credit acquired as a member of the public system, and (2) his public final average salary. His teacher system annuity shall be based upon (1) the portion of his reciprocal service credit acquired as a member of the teacher system, and (2) his teachers' retirement allowance as provided by the teachers' retirement act. His teacher system annuity shall begin as of the date he retires under the public system, but in no case prior to the date he would have been eligible to retire under the teacher system if all his reciprocal service credit had been acquired as a member of the teacher system.

(c) If a member, who has reciprocal service credit in force, retires under the teacher system, he shall receive an annuity payable by the teacher system and an annuity payable by the public system. His teacher system annuity shall be based upon (1) the portion of his reciprocal service credit acquired as a member of the teacher system, and (2) his teachers' retirement allowance as provided by the teachers' retirement act. His public system annuity shall be based upon (1) the portion of his reciprocal service credit acquired as a member of the public system, and (2) his public final average salary. His public system annuity shall begin as of the date he retired under the teacher system, but in no case prior to the date he would have been eligible to retire under the public system if all his reciprocal service credit had been acquired as a member of the public system.

The provisions of this section, as amended, shall be retroactive to June eleventh, one thousand nine hundred sixty-five.
AN ACT to repeal article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compulsory retirement age.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article fixing compulsory retirement age.

1 Article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 46

(House Bill No. 244—By Mr. Speaker, Mr. White, and Mr. Hager, of Logan)

[Passed January 25, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the ascertainment and regulation by the public service commission of the quality of water supplied by a public water supply system in accordance with quality standards established by the state board of health.

Be it enacted by the Legislature of West Virginia:

That section 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.

§24-2-5. Supervision of public utilities licensed by municipalities, county courts or otherwise; right to enter premises, inspect and correct meters.

The commission shall have general supervision of all public utilities having authority under any charter or franchise of any city, town or municipality, county court, or tribunal in lieu thereof, or otherwise, to lay down and maintain wires, pipes, conduits, ducts or other fixtures in, over or under streets, highways or public places for the purpose of furnishing and distributing gas, or for furnishing and transmitting electricity for light, heat or power, or maintaining underground conduits, or ducts for electrical conductors, or for telephone purposes, and for the purpose of furnishing water, either for domestic or power purposes, and shall have general supervision of oil and gas pipelines, and shall have general supervision over any utility engaged in the transportation of coal and its derivatives and all mixtures and combinations thereof with any substance by pipelines.

The commission may ascertain the quality and quantity of water, or the quality and quantity of gas or electricity supplied by such utilities and examine the methods employed, and shall have power to order such improvements as will best promote the public interests. In ascertaining and regulating the quality of water, the commission shall use the quality standards established by the state board of health by regulations governing public water supplies.

The commission shall have power, through its members, inspectors, or employees to enter in, upon and to inspect the property, buildings, plants, fixtures, power-houses and offices of any such utilities or municipalities, and shall have power to examine the books and affairs to be investigated by it. The commission shall, when and as necessary, appoint inspectors of gas, electric and water meters. And, when such inspectors are required to act, it shall be their duty to inspect, examine, prove and ascertain the accuracy of any gas, electric, or water
meters used or intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished to, by or for the use of any person, firm or corporation, and, when found to be correct, or made correct, the inspector shall stamp or mark each of such meters with some suitable device, which device shall be recorded in the office of the commission. No public utility shall furnish or put in use any gas, electric or water meter which shall not have been inspected, proved and stamped or marked by an inspector of the commission: Provided, That in cases of emergency, gas, electric or water meters may be installed and used before being inspected, but notice thereof shall be immediately given to the public service commission by the public utility installing the same, and such meters shall be inspected, proved and stamped or marked, as soon thereafter as practicable. Every gas, electric and water utility shall provide and keep in and upon its premises suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas, electric and water meters furnished for use by it and by which apparatus every meter may and shall be tested on the written request of the consumer to whom the same shall be furnished, and in his presence if he so desires.

If any person, firm or corporation to or by whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested. If the same on being tested shall be found to be two percent from being correct, or shall be found to be to the prejudice of the user, the inspector shall order the owner of such meter forthwith to remove the same and to place instead thereof a correct meter. The expense of such inspecting and testing shall be borne by the owner if such meter be found to be incorrect by two percent or more. If the meter, on being so tested, shall be found to be correct or within two percent of being correct, the expense of such inspection and testing shall be borne by the user. A uniform charge and rule shall be fixed by the commission for this service: Provided, That nothing in this
chapter shall prevent the commission from changing and
modifying the method of inspecting meters and adopting
such rules and regulations therefor as to the commission
may seem just and proper.

CHAPTER 47
(Com. Sub. for Senate Bill No. 107—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed February 6, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of special license fees payable by certain public utilities and manner of determination of such fees by the state auditor.

Be it enacted by the Legislature of West Virginia:

That section six, article three, 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 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-6. Special license fee; "public service commission fund."

1 (a) All public utilities subject to the provisions of
2 this chapter shall pay a special license fee in addition
3 to those now required by law. The amount of such fees
4 shall be fixed by the auditor and levied by him upon each
5 of such public utilities according to the value of its
6 property as ascertained by the last assessment, and shall
7 be apportioned among such public utilities upon the
8 basis of such valuation, so as to produce a revenue of
9 two hundred thousand dollars per annum, which fees shall
10 be paid on or before the twentieth day of January in
11 each year. Such sum of two hundred thousand dollars,
12 together with that provided in subsection (b) hereof shall
be paid into the state treasury and kept as a special fund, designated "Public Service Commission Fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, so as to produce a revenue of four hundred thousand dollars per annum, in addition to such fees as may be fixed by the auditor under the provisions of subsection (a) hereof and which fees shall be paid on or before the first day of July in each year. Such sum of four hundred thousand dollars shall be paid into the state treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof.

CHAPTER 48

(House Bill 289—By Mr. Speaker, Mr. White, and Mr. Boiarsky)

[Passed February 5, 1968; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That chapter 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 five, to read as follows:

ARTICLE 5. ACQUISITION AND DISPOSITION OF REAL PROPERTY BY AND BETWEEN PUBLIC BODIES.

Section

§1-5-1. Legislative findings and purpose.

1 This article is enacted to facilitate and expedite the acquisition and disposition of real property by and between the state and its political subdivisions and county boards of education, and by and between political subdivisions and county boards of education of this state.

§1-5-2. Scope of article; public body defined.

The provisions of this article shall apply to the state of West Virginia, its agencies, departments, boards and commissions of whatever description, county courts or tribunals in lieu thereof, county boards of education, incorporated municipalities or any other political subdivisions.

For the purpose of this article, the term “public body” shall mean the state of West Virginia, or any agency,
Any public body is hereby authorized and empowered to acquire by purchase, transfer or exchange any real property owned by any other public body, and any public body is hereby authorized and empowered to dispose of by sale, transfer or exchange to or with any other public body any real property owned by it, any such acquisition or disposition to be upon such terms and conditions as may be agreed upon by and between the public bodies, taking into consideration (1) the lack of need for such property by the public body holding title thereto; (2) the need for such property by the public body desiring to acquire title thereto; and (3) the benefits to be derived by the public as a result of such acquisition or disposition: Provided, That any acquisition or disposition by the state, or any agency, department, board or commission thereof, must first be approved in writing by the board of public works. All conveyances of any such real property shall be by deed or deeds, as the case may be, in the manner provided by law for the conveyance of real property.

All acts or parts of acts which are inconsistent with the provisions of this article are hereby repealed to the extent of such inconsistency.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.
AN ACT to amend and reenact section one-a, article three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an annual audit of all state road commission receipts and expenditures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE ROAD FUND.

§17-3-1a. Annual audit to be made of receipts and expenditures of state road commission.

1 The Legislature acting through the joint committee on government and finance shall cause an annual audit to be made by a resident independent certified public accountant of all books, accounts and records relating to all receipts and expenditures of the state road commission which are not audited by the United States bureau of public roads or the United States general accounting office. The state road commissioner shall make available to such independent auditor or auditors performing such audit all of the commission’s books, accounts and records pertaining to all funds received and expended. The auditor or auditors performing such audit shall make available annually the audit report with copies thereof to the members of the Legislature, the governor, the state road commissioner, the secretary of state, the state treasurer, the attorney general and the state auditor; and the audit report shall be available to the public in the office of the secretary of state.

The Legislature acting through the joint committee on government and finance shall obtain the services of a
21 resident independent certified public accountant for this
22 purpose, the cost of which shall be payable out of funds
23 appropriated by the Legislature. Any audits of the funds
24 which have been made by any official auditing agency
25 of the United States government shall be accepted and
26 its work not duplicated.

CHAPTER 50

(House Bill No. 261—By Mr. Speaker, Mr. White, and Mr. Boiarasky)

[Passed January 30, 1968; in effect ninety days from passage. Approved by the
Governor.]

AN ACT authorizing the issuance and sale by the governor of
bonds of the state of West Virginia in an amount not
exceeding twenty million dollars during the fiscal year
ending June thirtieth, one thousand nine hundred sixty-nine, for the sole purpose of raising funds for the building
and construction of free state roads and highways as
provided for by the constitution and the laws enacted
thereunder; specifying the powers of and limitations upon
the governor in the issuance and sale of such bonds;
prescribing the duties of the auditor and treasurer with
respect to such bonds; providing for transfer and registra-
tion fees with respect to registered bonds and the dis-
position of such fees; providing for places of payment
of principal and interest on such bonds; exempting such
bonds from taxation by the state, or by any county, dis-
trict, or municipality thereof; setting forth the form of
coupon and registered bonds and coupons; stating what
moneys shall be paid into the state road sinking fund;
providing for the disposition and investment of the state
road sinking fund; providing a covenant between the state
and the bondholders; providing that the proceeds from
the sale of the bonds shall be paid into a separate and
distinct account in the state road fund and for expendi-
tures from such account; providing that the plates, etc.,
from which the bonds are produced or made shall be the
property of the state; providing for interim certificates
in lieu of permanent bonds; and declaring that all necessary expenses incurred in the execution of the act shall be paid out of the state road fund on warrants of the auditor drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

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. Covenants of state.
8. Sale by governor; minimum price.
9. Proceeds paid into separate account in state road fund; expenditures.
10. Plates, etc., property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

§1. Road bonds; amount; when may issue.

Bonds of the state of West Virginia of the par value not to exceed twenty million dollars during the fiscal year ending June thirtieth, one thousand nine hundred sixty-nine, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building and construction of free state roads and highways as provided for by the constitution and the laws enacted thereunder. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such time and bearing such date or dates as the governor may determine, based upon an examination of the state road commission’s yearly program which justifies the issuance by the governor of said bonds, and shall become due and payable serially in equal amounts beginning one year and ending twenty-five years from the date thereof.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for each such transfer a fee of fifty cents shall be charged
by and paid to the state of West Virginia, to the credit of the state road sinking fund. Bonds taken in exchange shall be cancelled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents shall likewise be charged by and paid to the state of West Virginia, to the credit of the state road sinking fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at some bank in the city of New York to be designated by the governor. The bonds shall bear interest at a rate not exceeding four and one half percent per annum, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be signed on behalf of the state of West Virginia, by the treasurer thereof, under the great seal of the state, and countersigned by the auditor of the state, and shall be in the following form or to the following effect, as nearly as may be, namely:

COUPON ROAD BOND

(Or registered road bond, as the case may be)

OF THE

STATE OF WEST VIRGINIA

$... No.__________
11 The state of West Virginia, under and by virtue of
12 authority of an amendment to the constitution, which
13 was proposed by House Joint Resolution No. 10, adopted
14 the seventh day of March, one thousand nine hundred
15 sixty-three, and was ratified by a vote of the people at
16 the general election on the third day of November,
17 one thousand nine hundred sixty-four, which is hereby
18 made a part hereof as fully as if set forth at length
19 herein, acknowledges itself to be indebted to and hereby
20 promises to pay to the bearer hereof (in case of a coupon
21 bond) or to ______________________ or assigns (the owner of
22 record, in case of registered bonds) on the ____ day of
23 ____________________, 19______, in lawful money of the United
24 States of America at the office of the treasurer of the
25 state of West Virginia at the capitol of said state, or
26 at the option of the holder at ______________________ bank
27 in the city of New York, the sum of __________ dollars,
28 with interest thereon at ________ percentum per annum
29 from the date, payable semiannually in like lawful
30 money of the United States of America at the treasurer's
31 office or bank aforesaid, on the first day of __________
32 and the first day of _______________ of each year, (and
33 in the case of coupon bonds) according to the tenor of
34 the annexed coupons bearing the facsimile signature
35 of the treasurer of the state of West Virginia, upon
36 surrender of such coupons. This bond (in case of a
37 coupon bond) may be exchanged for a registered bond
38 of like tenor upon application to the treasurer of the
39 state of West Virginia.
40 To secure the payment of the principal and interest
41 of this bond, the state of West Virginia covenants and
42 agrees with the holder as follows: (1) That this bond
43 shall constitute a direct and general obligation of the
44 state of West Virginia; (2) that the full faith and credit
45 of the state is pledged to secure the payment of the
46 principal and interest of this bond; (3) that an annual
47 state tax shall be collected in an amount sufficient to
48 pay as it may accrue the interest on this bond and the
49 principal thereof; and (4) that such tax shall be levied
50 in any year only to the extent that the moneys in the
51 state road fund irrevocably set aside and appropriated
for and applied to the payment of the interest on and
principal of this bond becoming due and payable in such
year are insufficient therefor.

This bond is hereby made exempt from any taxation
by the state of West Virginia, or by any county, district,
or municipal corporation thereof.

In testimony whereof, witness the signature of the
treasurer of the state of West Virginia, and the counter-
signature of the auditor of the state, hereto affixed
according to law, dated the ______ day of ____________,
one thousand nine hundred ________________, and the
seal of the state of West Virginia.

(SEAL)

Treasurer of the State of West Virginia

Countersigned:

Auditor of the State of West Virginia

§4. Form of coupon.
1 The form of coupon shall be substantially as follows,
to wit:
2
STATE OF WEST VIRGINIA
3 Bond No._________________________ Coupon No.__________
4 On the first day of ____________, 19________, the state
5 of West Virginia will pay to the bearer, in lawful money
6 of the United States of America, at the office of the
7 treasurer of the state, or at the option of the holder at
8 bank in the city of New York, the
9 sum of _________ dollars, the same being semi-
10 annual interest on Road Bond No. _________________.
11
Treasurer of the State of West Virginia
12
The signature of the treasurer to such coupon shall be
13 by his facsimile signature and the coupons shall be num-
14 bered in the order of their maturity, from number one
15 consecutively. The bonds and coupons may be signed
16 by the present treasurer and auditor, or by any of their
17 respective successors in office, and the bonds signed by
18 the persons now in the office may be sold by the governor
or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this bill shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and post-office address of the person, firm or corporation registered as the owner thereof.

§6. State road sinking fund sources used to pay bonds and interest; investment of remainder.

Into the state road sinking fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all money belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds.
hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

1 The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the building and construction of free state roads and highways, as herein provided, upon the recommendation of the state road commissioner, and after reviewing the program of the state road commission and subject to the limitations contained in section one hereof. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

1 The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account in the state road fund, and shall be used and appropriated solely for the building and construction of free state roads and highways provided for by the state constitu-
tion and the laws enacted thereunder. Except for such
sums necessary for current operating balances, such
account shall be invested and reinvested in short-term
obligations of the United States treasury: Provided, That
no such investment or reinvestment shall adversely affect
the current operating balances of such account.

§10. Plates, etc., property of state.
1 The plates, casts, dies or other forms from which the
2 bonds authorized by this act are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.
1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.
1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this act just as fully and com-
7 pletely as the permanent bonds.

§13. Payment of expenses.
1 All necessary expenses incurred in the execution of
2 this act shall be paid out of the state road fund on war-
3 rants of the auditor of the state drawn on the state
4 treasurer.

CHAPTER 51

(House Bill No. 256—By Mr. Auvil and Mr. Harman)

[Passed February 8, 1968; in effect July 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter eighteen of the code of West Virginia, one thousand
Be it enacted by the Legislature of West Virginia:

That section two, 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:

ARTICLE 7. TEACHERS.

§18-7-2. Salaries for teachers; basic salaries; advanced salaries.

For the purpose of this section, assistant superintendents, directors and supervisors of instruction, and elementary and secondary principals shall be defined as teachers. Salaries shall be defined as: (a) "Basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers. "Classification of certification" means the class or type of certificates issued by the state superintendent of schools under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (10), inclusive.

The column heads of the state minimum salary schedule, set forth below, are defined as follows:

(1) "Years experience" means the number of years taught by the teacher and allowed under each classification of the said state minimum salary schedule.

(2) "Fourth class" means all certificates previously identified as (a) "certificates secured by examination," (b) "other first grade certificates," and (c) "short course certificates."
(3) "Third class" means all certificates previously identified as (a) "standard normal certificates" and (b) "third class temporary (sixty-four semester hours) certificates."

(4) "Second class" means all certificates previously identified as "second class temporary certificates based upon the required ninety-six hours of college work."

(5) "B. A." means a bachelor's degree, from an accredited institution of higher education, which has been issued to, or for which the requirements for such have been met by, a person who qualifies for and holds a professional certificate or its equivalent.

(6) "B. A. +15" means a bachelor's degree as defined above plus fifteen hours of graduate work, from an accredited institution of higher education certified to do graduate work, in an approved planned program at the graduate level which requirements have been met by a person who qualifies for and holds a professional certificate or its equivalent under the above-defined bachelor's degree.

(7) "M.A." means a master's degree, earned in an institution of higher education approved to do graduate work, which has been issued to or the requirements for such have been met by a person who qualifies for and holds a professional certificate under the above-defined bachelor's degree.

(8) "M. A. +15" means the above-defined master's degree plus fifteen hours of graduate work, earned in an institution of higher education approved to do graduate work, if the person is qualified and holds a professional certificate or its equivalent.

(9) "M. A. +30" means the above-defined master's degree plus thirty graduate hours, earned in an institution approved to do graduate work, if the person holds or is qualified to hold a professional certificate or its equivalent.

(10) "Doctorate" means a doctor's degree, which is of the type normally associated with the educational system, from a university qualified and approved to con-
fer such a degree, if the person who holds or is qualified to hold such a degree meets the requirements for a professional certificate or its equivalent.

State Minimum Salary Schedule

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The state board of education shall establish the minimum salary schedule for teachers where specialized training may be required for vocational, technical and adult education and such other permits as may be authorized by said board.

No teacher holding a valid professional certificate shall have his salary reduced as a result of being assigned out of his teaching field by the superintendent, with the approval of the county board, pursuant to any authorization or regulation of the state board.

County boards of education in fixing the salaries of teachers shall use as a minimum the salaries in the
schedule set forth above as to classification of certification and of training and as to the years of experience, said schedule being based upon a ten-month employment term. For teachers employed for a longer or shorter term, or on a part-time basis, said minimum salary shall be in ratio to said schedule in accordance with the classification and experience of such teachers. Salaries under said schedule shall be uniform throughout the state as to certification classification, as to training, and as to experience.

County boards of education may establish for teachers local salary schedules which shall be in excess of the minimums scheduled by this section. Such county schedules shall be uniform throughout the county as to classification of certification, of training, and as to the experience of the teachers.

In addition thereto, said boards may fix higher salaries for teachers placed in special instructional assignments, or for those assigned to or employed for duties other than regular instructional duties, for teachers of one-teacher schools, for principals, and for other supervisory and administrative personnel; and may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day, as may be defined by the state board. Such additional salary increments or compensation shall conform to the regulations of the state board of education and such shall be uniform for all persons performing like duties within said county.

Upon the change of the certification or training classification of any teacher, his salary shall be made to comply with requirements of state schedules and of any county schedule, where such exist, based upon his new classification and allowable years of experience thereunder.

In determining the number of regular terms of school a teacher has taught, county boards of education shall credit as teaching experience: (1) Active work in educational positions other than teaching and (2) service in the armed forces of the United States provided the teacher
was under contract to teach at the time of his induction.
No teacher shall be given credit for more than one year of experience for any school year.
Any board of education failing to comply with the provisions of this section may be compelled to do so by mandamus.

CHAPTER 52
(Senate Bill No. 134—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed February 6, 1968; in effect July 1, 1968. Approved by the Governor.]

AN ACT to repeal section two-b, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a of said article, relating to sick-leave benefits for public school employees.

Be it enacted by the Legislature of West Virginia:

That section two-b, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section two-a of said article be amended and reenacted to read as follows:

ARTICLE 7. TEACHERS.

§18-7-2a. Sick-leave benefits for public school employees.
1 The county board of education shall establish and maintain in its annual general current expense-fund budget for fixed charges a separate item or items to be known as “public school employees' sick leave.” In allocating money to this item or items, the board shall budget for the first year of the sick-leave plan, hereinafter established, an amount to be estimated by the board of school finance as sufficient to pay full sick-leave benefits during such year; for the second year and each year thereafter, an amount which shall be not less than the amount required to pay full sick-leave benefits for the immediate preceding year.
12 If in any fiscal year funds, including transfers, are insufficient to pay the full amount of sick leave hereinafter provided, the unpaid claims shall be paid on or before the thirty-first day of August from the budget of the following fiscal year.

17 At the beginning of his employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one half days sick leave for each employment month or major fraction thereof in the employee’s employment term. Unused leave shall be accumulative to a total of sixty days and shall be transferable within the state.

24 A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other cause authorized or approved by the board, shall be paid his full salary during the period which he is absent, but not to exceed the total amount of sick leave to which he is entitled. Where the cause for sick leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term.

33 The board may establish reasonable regulations for reporting and verification of absence for causes; and if any error in reporting absences should occur it shall have authority to make necessary salary adjustments in the next pay after the employee has returned to duty or in the final pay if the absence should occur during the last month of his employment term. When such allowable absence does not directly affect the instruction of the pupils or when a substitute employee may not be required because of the nature of the work and the duration of the cause for the allowable absence of the regular employee, the administration, subject to board approval, may use its discretion as to the need for a substitute where limited absence may prevail. Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable.
CHAPTER 53

(Senate Bill No. 113—By Mr. Carson, Mr. President, and Mr. McKown)

[Passed February 8, 1968; in effect July 1, 1968. Approved by the Governor.]

AN ACT to amend article seven-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 twenty-six-b, relating to supplemental benefits for certain annuitants under the state teachers' retirement system.

Be it enacted by the Legislature of West Virginia:

That article seven-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 twenty-six-b, to read as follows:

ARTICLE 7A. STATE TEACHERS' RETIREMENT SYSTEM.

§18-7A-26b. Supplemental benefits for certain annuitants.

1 As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved by the retirement board prior to January one, one thousand nine hundred sixty-seven, shall receive a monthly amount equal to twenty-five cents multiplied by his total service credit.

CHAPTER 54

(House Bill No. 303—By Mr. Speaker, Mr. White, and Mr. Boiarsky)

[Passed February 7, 1968; in effect July 1, 1968. 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 twenty-two-a, relating to the guaranteed student loan program...
to provide financial assistance for students in higher education.

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 twenty-two-a, to read as follows:

ARTICLE 22A. GUARANTEED STUDENT LOAN PROGRAM.

Section
18-22A-1. Title of article.
18-22A-3. Commission authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.
18-22A-5. Title to property.
18-22A-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.
18-22A-8. Trust fund established; limitations on the use of the fund; duties of the treasurer in connection therewith.
18-22A-10. Severability.

§18-22A-1. Title of article.
1 This article may be known and cited as the "Guaranteed Student Loan Act of West Virginia."

1 As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:
2 (a) The words "act" or "undertaking" shall mean the official act of the commission in connection with the acquisition or disposition of all or any part of obligations or interest therein which the commission is authorized to buy or sell hereunder.
3 (b) The word "commission" shall mean the state commission on higher education created by article twenty-two of this chapter.
4 (c) The word "obligations" shall mean those evidences of debt which the commission may buy, sell, endorse or guarantee under the provisions of this article.
§ 18-22A-3. Commission authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.

In order to facilitate the education of residents in this state and promote the industrial and economic development of the state, the commission is hereby authorized and empowered to buy and sell obligations of students who are residents of West Virginia, who have been residents of this state for at least one year and who are students at state supported or private institutions of higher education or vocational schools accredited by a nationally recognized accrediting agency or by a state agency designated by the governor and representing loans made to such students who have met the requirements of financial need as determined by the commission, such loans having been made for the purpose of an education.

No act or undertaking of the commission shall be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the funds of the commission. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the state nor the commission shall be obligated to pay the same or the interest thereon except from revenues of the commission and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such act and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided for the purpose and no liability or obligation shall be incurred by the commission hereunder beyond the extent to which money shall have been provided under the provisions of this article.


The commission is hereby authorized and empowered:

(1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;
(2) To establish rules and regulations concerning its acts and undertakings;
(3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;
(4) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
(5) To employ in its discretion such employees as it may deem necessary to carry out its powers and duties as enumerated in this article;
(6) To receive and accept from any federal or private agency, corporation, association or person, grants to be expended in accomplishing the objectives of this article and to receive and accept from the state, from any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made;
(7) To sue and be sued as provided by law;
(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this article. Nothing in this article shall be construed to empower the commission to engage in the business of banking or insurance.

§18-22A-5. Title to property.
Title to any property acquired under the provisions of this article by the commission shall be taken and held in the name of the commission.

§18-22A-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.
With funds available to the commission for purposes other than the payment of compensation to personnel and the lease or rental of offices or equipment, the commission may acquire from any bank or other lending institution of this state a contingent interest in student
obligations; the total contingent interest of the com-
mission on all such obligations shall not exceed at any
one time a sum of twelve and one-half times the total
funds which the commission can employ to acquire such
contingent interests. When the commission acquires
any such contingent interest, it may require the pay-
ment to it of a portion of the interest payable upon
any such obligation. In each such acquisition, the com-
mission shall provide that at such time as the obliga-
tion becomes delinquent, the bank or other lending
institution shall notify the commission forthwith and
shall transfer forthwith to the commission, by assign-
ment or otherwise, an interest in such obligation equal
to the contingent interest of the commission therein.
The bank or other lending institution and the commis-
sion shall forthwith take such steps as may be necessary
to recover the balance due upon any such obligation,
and such recovery shall be apportioned between the
commission and the bank or other lending institution
as their respective interests may appear.

§18-22A-7. Terms of acquisitions.

1 The commission shall prescribe the terms, conditions
and limitations upon which it will acquire a contingent
or direct interest in any obligation and such terms, con-
ditions and limitations shall include, but without limiting
the generality hereof, the interest rate payable upon
such obligations, the maturities thereof, the terms for
payment of principal and interest, applicable life or
other insurance which may be required in connection
with any such obligation and who shall pay the premiums
thereon, the safekeeping of assets pledged to secure
any such undertaking, and any and all matters in con-
nection with the foregoing as will protect the assets of
the commission.

§18-22A-8. Trust fund established; limitations on the use of
the fund; duties of the treasurer in connection
therewith.

1 The appropriation made to the commission under this
article shall be used exclusively for the purpose of ac-
quiring contingent or vested rights in obligations which
it may acquire under this article, and such appropriation, payments, revenue and interest, as well as other income received in connection with such obligations, is hereby established as a trust fund. Such fund shall be used for the purposes of the commission other than maintenance and operation.

The maintenance and operating expenses of the commission shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The commission shall be the trustee of the trust fund hereby created and all investments to be made from the assets of such trust shall be made by the state treasurer in the manner provided by law. The state treasurer shall be the custodian of the assets of the commission. All payments from the accounts thereof shall be made by him upon warrants issued by the auditor upon vouchers signed by such persons as are designated by the commission. A duly attested copy of a resolution of the commission designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the state treasurer as his authority for issuing warrants upon such vouchers.


The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated.

§18-22A-10. Severability.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity 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.


The Legislature enacts this article to continue and encourage education of citizens of this state who are in need of financial assistance, such assistance and education be-
CHAPTER 55

(House Bill No. 315—By Mr. Speaker, Mr. White, and Mr. Boiarusky)

(Passed February 7, 1968; in effect ninety days 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 twenty-two-b, relating to the granting of scholarships by the state commission on higher education to qualified students from the state to attend approved institutions of higher education in the state, and providing for the administration of the article.

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 twenty-two-b, to read as follows:

ARTICLE 22B. STATE SCHOLARSHIP PROGRAM.

Section

18-22B-1. Declaration of public need for scholarship assistance; establishment of scholarship program.


18-22B-3. Scholarship program to be administered by state commission on higher education.


18-22B-5. Eligibility for a scholarship.

18-22B-6. Recipients and awards of scholarships.

§18-22B-1. Declaration of public need for scholarship assistance; establishment of scholarship program.

The Legislature declares that although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, and although the state now provides a limited scholarship program for students attending an institution
of higher education in West Virginia, there continues
to exist an underdevelopment of the state's human
talent and resources because of the inability of many
able but needy students to finance a higher educational
program.

The Legislature further declares that the state can
achieve its full economic and social potential only if
every individual has the opportunity to contribute to
the full extent of his capabilities and only if the state
assists in removing such financial barriers to his edu-
cational goals as may remain after the individual has
utilized all resources and work opportunities available
to him.

It is therefore the policy of the Legislature and the
purpose of this article to establish, within the limits
of appropriations made therefor from time to time
by the Legislature, a broad-scale state scholarship pro-
gram designed to guarantee that the most able and
needy students from all sectors of the state are given
the opportunity to continue their program of self-
 improvement in an approved institution of higher edu-
cation of their choice located in this state.


1. Notwithstanding the provisions of section one, article
one of this chapter, the following words when used
in this article shall have the meaning hereafter ascribed
to them unless the context clearly indicates a different
meaning:

(a) The term “commission” shall mean the state
commission on higher education.

(b) The term “approved institution of higher edu-
cation” shall mean Bluefield State College, Concord Col-
lege, Fairmont State College, Glenville State College,
Marshall University, Shepherd College, West Liberty
State College, West Virginia Institute of Technology,
West Virginia State College, West Virginia University,
including Potomac State College thereof, Alderson-
Broaddus College, Beckley College, Bethany College,
Davis and Elkins College, Greenbrier College for Women,
Morris Harvey College, Ohio Valley College, Salem Col-
18 legoe, West Virginia Wesleyan College and Wheeling
19 College, all in West Virginia, and any other institution
20 of higher education in this state, public or private,
21 approved by the commission.
22 (c) The term "approved high school" shall mean any
23 public high school located in the state and any public
24 or private secondary school whether designated as a
25 high school, academy, preparatory school or otherwise,
26 located within or without the state, which, in the
27 judgment of the West Virginia board of education, pro-
28 vides a course of instruction at the secondary level and
29 maintains standards of instruction substantially equi-
30alent to those of the public high schools located in the
31 state.
32 (d) The terms "scholarship" or "scholarship pro-
33 gram" shall mean a scholarship or the scholarship pro-
34 gram authorized and established by the provisions of
35 this article.

§18-22B-3. Scholarship program to be administered by state
commission on higher education.

1 The scholarship program established and authorized
2 by this article shall be administered by the state com-
3 mission on higher education.


1 Subject to the provisions of this article and within
2 the limits of appropriations made by the Legislature,
3 the commission is authorized and empowered: (1) To
4 prepare and supervise the issuance of public information
5 concerning the scholarship program; (2) to prescribe
6 the form and regulate the submission of applications
7 for scholarships; (3) administer or contract for the
8 administration of such examinations as may be prescribed
9 by the commission; (4) select qualified recipients of
10 scholarship grants; (5) award scholarships; (6) accept
11 grants, gifts, bequests and devises of real and personal
12 property for the purposes of the scholarship program;
13 (7) administer federal and state financial loan programs;
14 (8) cooperate with approved institutions of higher edu-
15 cation in the state and their governing boards in the
administration of the scholarship program; (9) make
the final decision pertaining to residency of an applicant
for scholarship or renewal of scholarship; (10) employ
or engage such professional, administrative, clerical and
other employees as may be necessary to assist the com-
mission in the performance of its duties and re-
responsibilities; (11) prescribe the duties and fix the
compensation of all such employees (which employ-
ees shall serve at the will and pleasure and under the
direction and control of the commission or its designated
representative); and (12) promulgate reasonable rules
and regulations not inconsistent with the provisions of
this article relating to the administration of the scholar-
ship program.

§18-22B-5. Eligibility for a scholarship.
1 A person shall be eligible for consideration for a
2 scholarship if:
3   (1) He is a citizen of the United States;
4   (2) He has been a resident of the state for one year
5      immediately preceding the date of his application for a
6      scholarship or a renewal of a scholarship;
7   (3) He meets the admission requirements of the
8      approved institution of higher education of his choice;
9   (4) He satisfactorily meets the qualifications of finan-
10      cial need, character and academic promise, as well as
11      academic achievement, as established by the commission.

§18-22B-6. Recipients and awards of scholarships.
1 The scholarship recipient shall be free to attend any
2 approved institution of higher education in this state.
3 The institution is not required to accept the scholar-
4 ship recipient for enrollment, but is free to exact com-
5 pliance with its own admission requirements, standards
6 and policies.
7 Scholarship grants shall be made to undergraduate
8 students only, and during the first year under this
9 article will be limited to freshmen students.
10 Each scholarship is renewable until the course of study
11 is completed, but not to exceed an additional three
12 academic years beyond the first year of the award.
These may not necessarily be consecutive years and the scholarship will be terminated if the student receives his degree in a shorter period of time. Qualifications for renewal will include maintaining satisfactory academic standing, making normal progress toward completion of the course of study and continued eligibility, as determined by the commission.

Scholarship awards shall be made without regard to the applicant’s race, creed, color, sex, national origin or ancestry; and in making scholarship awards, the commission shall provide a fair and equitable geographical distribution of the awards and shall treat all approved institutions of higher education in a fair and equitable manner.

The minimum scholarship award shall be one hundred dollars per academic year and the maximum scholarship award shall be six hundred dollars per academic year.

Payments of scholarships shall be made directly to the institution and may be used only for payment of tuition and fees charged generally by the institution to all students.

In the event that a scholarship recipient transfers from one approved institution of higher education to another, his scholarship shall be transferable only with the approval of the commission.

Should the recipient terminate his enrollment for any reason during the academic year, the unused portion of the scholarship shall be returned to the commission by the institution according to the institution’s own policy for issuing refunds.

CHAPTER 56

(House Bill No. 349—By Mr. Auvil and Mr. Seibert)

(Passed February 8, 1968; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section one-d, article one-a, chapter twenty-five of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to disposition and use of student union fees; issuance, etc., of revenue bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS.

§25-1A-1d. Disposition and use of student union fees; issuance, etc., of revenue bonds.

1 Wherever the term “student union building” is used in this section the same shall mean a student union building or a combination student union building and dining hall building; and wherever the term “building fund” is used in this section the same shall mean the respective special student union building funds created as provided in section one of this article for each state educational institution which has imposed student union fees pursuant to section one of this article, to be expended by the board of governors of West Virginia University for the benefit of West Virginia University and Potomac State College of West Virginia University, and by the West Virginia board of education for the benefit of the state educational institutions under its control.

The respective boards may make expenditures from such building funds at the various state educational institutions under their control to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes: (1) The construction and acquisition of new student union buildings. (2) The acquisition, renovation and improvement of existing buildings to be used as student union buildings. (3) The construction of additions, extensions and improvements to existing student union buildings. (4) The acquisition of furnishings and equipment for any existing student union buildings or student union buildings to be constructed.
or acquired, or the construction of any roads, utilities or other properties, real or personal, or for any other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such student union buildings. (5) The payment of the cost of the operation and maintenance of such student union buildings, subject however to any covenants or agreements made with the holders of revenue bonds heretofore or hereafter issued pursuant to this section or pursuant to section one of this article.

The respective boards, at their discretion, may use the moneys in such building funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such building funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such building funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis, or for the payment of the cost of operation and maintenance, or any part thereof, of such student union buildings, under such terms and conditions as shall be provided in the proceedings which authorized the issuance of such revenue bonds.

Such revenue bonds may be authorized and issued from time to time by the respective boards to finance in whole or in part the purposes at any state educational institution under their control provided for in this section in an aggregate principal amount not exceeding the amount which the respective boards shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such building funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the respective board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from
70 their respective dates; bear interest at such rate or
71 rates not exceeding six per centum per annum; be in
72 such form either coupon or registered, with such
73 exchangeability and interchangeability privileges; be
74 payable in such medium of payment and at such place
75 or places, within or without the state; be subject to
76 such terms of prior redemption at such prices not
77 exceeding one hundred six per centum of the principal
78 amount thereof; and shall have such other terms and
79 provisions as such respective board shall determine.
80 Such revenue bonds shall be signed by the governor
81 and by the president of the respective board authorizing
82 the issuance thereof, under the great seal of the state,
83 attested by the secretary of state, and the coupons
84 attached thereto shall bear the facsimile signature of
85 the president of such respective board. Such revenue
86 bonds shall be sold in such manner as the respective
87 board may determine to be for the best interests of
88 the state, such sale to be made at a price not lower
89 than a price which will show a net return of not more
90 than six per centum per annum to the purchaser upon
91 the amount paid therefor computed to the stated
92 maturity dates of such revenue bonds without regard to
93 any right of prior redemption.
94 Such respective boards may enter into trust agree-
95 ments with banks or trust companies, within or without
96 the state, and in such trust agreements or the resolutions
97 authorizing the issuance of such bonds may enter into
98 valid and legally binding covenants with the holders
99 of such revenue bonds as to the custody, safeguarding
100 and disposition of the proceeds of such revenue bonds,
101 the moneys in such building funds, sinking funds,
102 reserve funds, or any other moneys or funds; as to the
103 rank and priority, if any, of different issues of revenue
104 bonds issued by the same board for the same educational
105 institution under the provisions of this section; as to
106 the maintenance or revision of the amounts of such
107 student union fees, and the terms and conditions, if
108 any, under which any of such student union fees may
109 be reduced; and as to any other matters or provisions
110 which are deemed necessary and advisable by such
respective board in the best interests of the state and to enhance the marketability of such revenue bonds.

Any revenues or income derived from the operation of such student union buildings may, in the discretion of the respective boards, be used to pay the cost of the operation and maintenance of such student union buildings, or for the debt service on any bonds issued pursuant to this section or pursuant to any other law.

After the issuance of any of such revenue bonds, the student union fees at the state educational institution for which such revenue bonds were issued shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state, shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the student union fees pledged therefor as provided in this section.

The provisions of this section shall constitute an additional, alternative and complete authority for the exercise of the powers and the issuance of the bonds provided for in this section, but shall not prevent said respective boards from exercising similar or related powers or issuing bonds therefor under any other law or laws, but such respective boards, in exercising the powers and issuing the bonds provided for in this section, shall only be required to comply with the provisions of this section and shall not be required to comply with or be subject to the provisions of any other law or laws.
AN ACT to amend and reenact section five, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the early acquisition of real property in an urban renewal area prior to approval of an urban renewal plan, with the municipality or county court assuming responsibility for any loss that may arise in the event the real property is not made part of the urban renewal plan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. SLUM CLEARANCE.


1 An authority shall constitute a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

7 (a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations, not inconsistent with this article, to carry out the provisions of this article.

15 (b) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the community or communities within its area of operation.
(c) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(d) Within its area of operation, to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the authority may deem necessary to prevent a recurrence of slum or blighted areas or to effectuate the purposes of this article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to
borrow money and issue bonds and provide security for
loans or bonds; to insure or provide for the insurance of
any real or personal property or operations of the
authority against any risks or hazards, including the
to pay premiums on any such insurance; and to
enter into any contracts necessary to effectuate the pur-
poses of this article. No statutory provision with re-
spect to the acquisition, clearance or disposition of prop-
erty by other public bodies shall restrict an authority
or other public body exercising powers hereunder, in
such functions, unless the Legislature shall specifically
so state.

(e) To invest any funds held in reserves or sinking
funds or any funds not required for immediate disburse-
ment, in property or securities in which savings banks
may legally invest funds subject to their control; to re-
deam its bonds at the redemption price established therein
or to purchase its bonds at less than redemption price, all
bonds so redeemed or purchased to be cancelled.

(f) To acquire real property in an urban renewal
area prior to approval of an urban renewal plan, or
approval of any modifications of the plan, demolish and
remove any structure on the property, and pay all costs
related to the acquisition, demolition or removal, in-
cluding any administrative or relocation expense, pro-
vided it shall be deemed necessary by an authority, and
with the approval of the local governing body which shall
assume the responsibility to bear any loss that may arise
as the result of the exercise of the authority under this
section, in the event that the real property is not made part
of the urban renewal project.

(g) To borrow money and to apply for and accept
advances, loans, grants, contributions and any other form
of financial assistance from the federal government, the
state, county, municipality or other public body or from
any sources, public or private, for the purposes of this
article, to give such security as may be required and to
enter into and carry out contracts in connection therewith;
an authority, notwithstanding the provisions of any other
law, may include in any contract for financial assistance
with the federal government for a redevelopment project
such conditions imposed pursuant to federal law as the
authority may deem reasonable and appropriate and
which are not inconsistent with the purposes of this ar-
ticle.

(h) Acting through one or more commissioners or
other persons designated by the authority, to conduct ex-
aminations and investigations and to hear testimony and
take proof under oath at public or private hearings on any
matter material for its information; to administer oaths,
and to issue commissions for the examination of witnesses
who are outside of the state or unable to attend before
the authority, or excused from attendance; to make avail-
able to appropriate agencies or public officials (including
those charged with the duty of abating or requiring the

correction of nuisances or like conditions or of demolish-
ing unsafe or insanitary structures or eliminating slums
or conditions of blight within its area of operation) its
findings and recommendations with regard to any build-
ing or property where conditions exist which are danger-
ous to the public health, safety, morals or welfare.

(i) Within its area of operation, to make or have made
all surveys, appraisals, studies and plans (but not includ-
ing the preparation of a general plan for the community)
necessary to the carrying out of the purposes of this article
and to contract or cooperate with any and all persons or
agencies, public or private, in the making and carrying out
of such surveys, appraisals, studies and plans.

(j) To prepare plans and provide reasonable assist-
ance for the relocation of families displaced from a re-
development project area to permit the carrying out of
the redevelopment project, to the extent essential for
acquiring possession of and clearing such area or parts
thereof.

(k) To make such expenditures as may be necessary
to carry out the purposes of this article; and to make
expenditures from funds obtained from the federal gov-
ernment without regard to any other laws pertaining to
the making and approval of appropriations and expendi-
tures.

(l) To exercise all or any part or combination of
powers herein granted.
AN ACT to amend and reenact sections one, two, five, six, seven, nine, ten and fourteen, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the designation of state depositories, bond to be given by depositories, the sureties thereon, and periods thereof, the deposit of state funds in demand deposits, the deposit of state funds in time deposits, the payment of interest on time deposits, certain contracts with respect to time deposits, open account, the withdrawal under certain circumstances of funds placed on time deposit, open account, certain duties and authority of the board of public works with respect to depositories and depositors' agreements, certain reports by the state treasurer, the apportionment of time deposits among state depositories in each county, the transfer of funds from a state depository under certain circumstances, records to be maintained by the state treasurer concerning depository accounts, the investment of temporary surplus funds in certain bonds and obligations and the sale thereof, and the designation of depositories without the state.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five, six, seven, nine, ten and fourteen, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

Section
12-1-1. Designation of depositories; period of designation.
12-1-2. Bonds to be given by depositories; surety accepted thereon.
12-1-5. Demand deposits; time deposits; payment of interest on time deposits; time for payment of interest; contracts concerning time deposits, open account; withdrawal of funds placed on time deposit, open account.
12-1-6. Board of finance abolished; rules and regulations of the board of public works; depositors' agreements; reports showing depository balances.

12-1-7. Apportionment of time deposits.

12-1-9. Transfer of funds for emergency purposes; checks for disbursement of certain tax moneys.

12-1-10. Treasurer to keep accounts with depositaries.

12-1-14. When treasurer may invest temporary surplus and sell such investments; depositaries without the state.

§12-1-1. Designation of depositaries; period of designation.

1 The state board of public works shall designate the state and national banks in West Virginia which shall serve as depositaries for the deposit of state funds. Any such state or national bank desiring to be designated as a state depository shall, upon request to such board, be designated as a state depository, if such bank meets the requirements set forth in this chapter. Any such designation shall be for a period of one year.

§12-1-2. Bonds to be given by depositaries; surety accepted thereon.

1 Before allowing any money to be deposited with any depository the board of public works shall require such depository to give bond with good security to be approved by said board, in the penalty of not less than ten thousand dollars, payable to the state of West Virginia, conditioned for the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with such depository, or of any accrued interest on deposits, which bond shall expire on the thirtieth day of April next ensuing: Provided, That a surety bond accepted by the board of public works pursuant to subdivision (a) of this section, shall not expire, if, prior to April first of each year, such depository shall file with the board of public works, a certificate issued by the surety on such bond, certifying that such bond will remain in full force and effect for the period of one year subsequent to April thirtieth of the year in question.

18 The board of public works may accept as surety on, or for the faithful performance of the conditions of such bonds, the following:
(a) A surety, fidelity or indemnity company authorized to do business in this state and having a combined capital and surplus of not less than one million dollars, and all bonds so secured are here designated as surety bonds;

(b) Persons or corporations which are duly authorized to become surety for another, who are owners of property situate in this state of an aggregate assessed valuation as shown on the current assessment books equal to the penalty of the bond plus all liens or charges against such property, and all bonds so secured are here designated as personal bonds. Any person or any officer of any corporation becoming or offering to become surety on a personal bond may be required by the board of public works or the state treasurer to furnish to said board under oath in writing such data and documentary evidence as to the financial status of such surety as such board may request. Any person who shall knowingly make a false statement in the matter of supplying the information so requested as aforesaid shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars, and may, at the discretion of the court, be confined in the county jail for not exceeding one year;

(c) Collateral security consisting of bonds of the United States, and its possessions, of the federal land banks, of the home owners’ loan corporation, of the state of West Virginia or of any county, district or municipality of this state or other bonds or securities approved by the said board of public works. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of such bond may be permitted with the approval in writing of the treasurer of the state of West Virginia and three other members of the board of public works who shall report such withdrawal or substitution at the next meeting of the board. All depository bonds shall be recorded by the secretary of state in a book kept in his office for the purpose, and a copy of such record, certified by him, shall be prima facie evidence
of the execution and contents of such bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the state of West Virginia, and in the event actual possession of said securities shall be delivered to the treasurer, then he shall receipt therefor to the owner thereof. The said treasurer and his bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of said securities by said treasurer or any of his official employees, and for the loss thereof due to his negligence or the negligence of any of his official employees; and such securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of such securities with one or more banking institutions within or without the state of West Virginia and may contract with any such institution for safekeeping and exchange of any such collateral securities, and may prescribe the rules and regulations for handling and protecting the same, subject to the approval of the board of public works.

§12-1-5. Demand deposits; time deposits; payment of interest on time deposits; time for payment of interest; contracts concerning time deposits, open account; withdrawal of funds placed on time deposit, open account.

1 As much money as may be needed for current operational purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury in cash or in demand deposits with banks designated as depositaries in accordance with the provisions of section one of this article. The state treasurer shall apportion such demand deposits among such depositaries, giving due consideration to: (1) The activity of the various accounts maintained therein, (2) the reasonable value of the banking services rendered or to be rendered the state by such depositaries, and (3) the value and importance of such deposits to the economy of the
The state treasurer shall place in time deposits such state funds as are not needed for current operational purposes within a ninety-day period and as are not invested in accordance with the provisions of section fourteen of this article. For the purposes of this article, the term “time deposits” shall mean either (1) time deposits, open account, or (2) certificates of deposit. Notwithstanding the foregoing provisions of this paragraph, certificates of deposit may be purchased by the state treasurer only with the approval of the board of public works. A depository shall not be required to accept demand deposits in order to receive time deposits, nor shall a depository be required to accept time deposits in order to receive demand deposits.

The board of public works shall require the payment of interest by all state depositories on all state funds deposited therein in time deposits. The annual rate of interest on funds placed in time deposits, open account, and the annual rate of interest on funds placed in certificates of deposit shall be determined by the treasurer and may be adjusted by him from time to time according to the then prevailing rate of interest but shall be applied uniformly to all time deposits made on any given date, but any such rate shall not exceed the maximum permitted by applicable banking regulations or state law. The interest on time deposits, open account, shall be paid at such intervals as may be agreed upon by and between the state depository and the state treasurer. The state treasurer is authorized to execute contracts with the state depositories covering time deposits, open account. Subject to applicable banking regulations or state law, in the event of an emergency, the state treasurer is authorized to withdraw all or any portion of the funds placed on time deposit, open account on shorter notice than the contract provides and to forfeit such amount of accrued and unpaid interest as may be required.
§12-1-6. Board of finance abolished; rules and regulations of the board of public works; depositors' agreements; reports showing depository balances.

The board of finance is hereby abolished. On and after the effective date of this section, the board of public works shall have the authority to establish any rules and regulations that it may deem necessary or expedient to protect the interests of the state, its depositories and taxpayers.

The board shall also have the authority to enter into any depositors' agreements for the purpose of reorganizing or rehabilitating any state or national bank in which state funds are deposited, and for the purpose of transferring the assets, in whole or in part, of any such state or national bank to any other banking institution existing or to be formed, when, in the judgment of the board, the interests of the state will be promoted thereby, and upon condition that no right of the state to preferred payment be waived, and that the sureties on the depository bond, or so many thereof as in the opinion of the board are sufficient therefor, in writing consent to such participation on behalf of the state of West Virginia and agree that their liability as surety shall not in any way be affected thereby. The treasurer shall furnish said board of public works, and the president and minority leader of the Senate and the speaker and minority leader of the House of Delegates, not later than the tenth of each month, a statement showing the balances on the last day of the preceding month in each state depository.

§12-1-7. Apportionment of time deposits.

It shall be the duty of the treasurer to keep at all times in the state depositories in each county an equitable share of all of the state funds placed in time deposits. The total assessment of all property in each county for the preceding fiscal year shall be taken as the basis for such apportionment. If at any time the depositories of any county or counties in any senatorial district do not have sufficient bonds to cover their share of such time deposits, the treasurer shall prorate the surplus among all the other counties in said district having sufficient bonds. Nothing
in this section shall be construed as requiring the sinking funds and interest mentioned in section eight, article three, chapter thirteen of this code to be apportioned under the provisions of this section, but the same shall be deposited as provided in said section eight.

§12-1-9. Transfer of funds for emergency purposes; checks for disbursement of certain tax moneys.

Subject to applicable banking regulations or state law, the treasurer may transfer funds for emergency purposes whenever actually needed to pay the warrants drawn by the auditor upon the treasury or to equalize deposits, and he may draw checks upon any state depository for disbursement of the tax moneys collected by the state from the public utility companies for the counties, districts and municipalities. All checks drawn for transfer of funds shall have printed or stamped on the face of same “for transfer of funds only.”

§12-1-10. Treasurer to keep accounts with depositories.

The treasurer shall keep in his office a record showing the account of each depository, under which account entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal, and the balance on deposit.

§12-1-14. When treasurer may invest temporary surplus and sell such investments; depositories without the state.

Whenever the receipts of the treasury shall exceed the funds needed for current operational purposes and shall create a temporary surplus, and it appears that such surplus will continue for as much as one month, the state treasurer, with the approval in writing of the board of public works, may invest such surplus in bonds or obligations of the United States or for which both principal and interest are guaranteed by the United States, or general obligation bonds of the state of West Virginia or any political subdivision thereof; and the state treasurer may thereafter, with like approval of the board of public works, sell such investments in whole or in part, whenever it appears that a present need for such funds exists.
Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the board of public works may designate depositories without the state, and when such depositories without the state shall have qualified by giving bond of the character provided by subdivision (a) (surety company) or subdivision (c) (collateral) as prescribed in section two of this article, the state treasurer may deposit funds therein in like manner as funds are deposited in depositories within the state under this article.

CHAPTER 59

(House Bill No. 345)

[Passed February 7, 1968; in effect April 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section two, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rate of cigarette excise tax.

Be it enacted by the Legislature of West Virginia:

That section two, article seventeen, 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.

§11-17-2. Purpose of tax; ratio.

For the purpose of providing revenues for the general revenue fund of the state an excise tax is hereby levied and imposed on sales of cigarettes on and after midnight of the last day of March, one thousand nine hundred sixty-eight, at the rate of one and one half cents on each ten cigarettes or fractional part thereof. Only one sale of the same article shall be used in computing the amount of tax due hereunder.
AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the determination of the meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred sixty-eight, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred sixty-eight, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred sixty-eight, shall be given effect.
AN ACT to amend and reenact section five, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption from the corporation net income tax act of corporations exempt from federal income tax and insurance companies paying a tax on premiums to the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-5. Corporations exempt from tax.

1 The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

2 (a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

3 (b) Banks, banking associations, trust companies, building and loan associations, and savings and loan associations.

4 (c) Insurance companies which pay this state a tax upon premiums.

5 (d) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.
(e) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended.

(f) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred sixty-seven.

CHAPTER 62

(Com. Sub. for Senate Bill No. 24—By Mr. Carson, Mr. President, and Mr. Hubbard)

[Passed February 6, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to urban mass transportation systems and authorities; providing a short title, legislative findings and declaration of policy and definitions; providing for the creation of authorities, their members and officers, compensation, terms and votes of members; providing for meetings of boards of authorities, quorums, records and budgets; authorizing authorities to acquire, construct, reconstruct, complete, develop, improve, own, equip, operate and maintain urban mass transportation systems and prescribing other powers and duties; providing for contributions to be made to authorities; providing for the preparation of and adoption of transportation plans; providing procedures for the acquisition or construction of urban mass transportation systems; providing for the issuance of revenue bonds and for trust indentures, sinking funds and protection and enforcement of rights of bondholders in connection therewith; setting forth the authority of the public service commission of West Virginia with respect to authorities; providing that the indebtedness of authorities shall not con-
stitute the indebtedness of any participating government and exempting authorities and their bonds and other evidence of indebtedness and the interest thereon from taxation; providing for the protection of employees of existing urban mass transportation systems; providing a conflict of interest provision; providing for sealed bids for supplies, equipment and materials and the construction of facilities; making said bonds legal investments; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter 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 eighteen, to read as follows:

ARTICLE 18. URBAN MASS TRANSPORTATION SYSTEMS AND AUTHORITIES.

Section
8-18-1. Short title.
8-18-2. Legislative findings and declaration of policy.
8-18-4. Urban mass transportation authorities authorized; authorities to be public corporations.
8-18-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.
8-18-6. Compensation of members; expenses.
8-18-7. Meetings of authority; officers; employees; official bonds; records of authority public records.
8-18-8. Quorum; majority vote required.
8-18-11. Contributions to authorities; funds and accounts of authorities; reports; audit by state tax department.
8-18-12. Study and plan of operation; notice and hearing; adoption of transportation plan.
8-18-13. Resolution authorizing acquisition or construction of urban mass transportation systems.
8-18-16. Sinking fund; sinking fund commission; purchase of outstanding bonds.
8-18-17. Remedies of bondholders.
8-18-18. Authority and duty of public service commission.
8-18-19. Indebtedness of authorities.
8-18-22. Conflict of interest.
8-18-23. Competitive bids; publication of solicitations for sealed bids.
8-18-25. Article constitutes complete authority; liberal construction.
§8-18-1. Short title.

This article may be cited as the “Urban Mass Transportation Authority Act of 1968.”

§8-18-2. Legislative findings and declaration of policy.

The Legislature hereby finds and declares:

(a) That a significant part of the population of this state is located in expanding urban areas;

(b) That in certain of these areas there are no urban mass transportation systems and in others there are urban mass transportation systems which are inadequate or in imminent danger of becoming inadequate or in imminent danger of discontinuing such service;

(c) That the establishment and maintenance of adequate urban mass transportation systems in such areas is essential for preserving viable urban areas and further promoting the healthful, safe, orderly and economical development and expansion of such urban areas;

(d) That the creation of urban mass transportation authorities to establish and maintain urban mass transportation systems in such areas is for the welfare of the people of this state in general and of the participating governments in particular, and is a public purpose for which public money may be spent and private property acquired; and

(e) This article is enacted in view of these findings and shall be liberally construed in the light thereof.


As used in this article, unless a different meaning appears from the context:

(a) “Authority” means any urban mass transportation authority created pursuant to the provisions of this article;

(b) “Board” means the board of any urban mass transportation authority;

(c) “Contiguous counties” means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least
one other county, but does not require that each county

touch all of the other counties so combining;

(d) "Facilities and equipment" means all real and

personal property of every kind and character owned or

held by any urban mass transportation system for the

purpose of providing transportation by bus or rail or other

conveyance serving the public;

(e) "Governing body" means, as the case may be, either

(1) the council or other body exercising the powers com-

monly exercised by the council of a municipality or (2)

the county court created by article eight, section twenty-

two of the West Virginia constitution or a tribunal in

lieu of a county court;

(f) "Municipality" means a city, town or village

incorporated under the laws of West Virginia;

(g) "Participating government" means any county or

municipality establishing or participating in an urban

mass transportation authority;

(h) "Person" means any individual, firm, partnership,
corporation, company, association, or joint-stock associa-
tion, or the legal successor or successors thereof;

(i) "Project" means any undertaking of an authority;

(j) "Revenues" means the gross receipts derived di-

rectly or indirectly from or in connection with the opera-
tion by an authority of any urban mass transportation
system or systems and shall include, without limitation,
all fees, rates, fares, rentals or other income actually
received or receivable by or for the account of an author-
ity from the operation of the system, and any other
receipts from whatever source derived;

(k) "Service area of the authority" means and includes

an area commensurate with the area served by an exist-
ing system or systems acquired or to be acquired by an
authority, or if there be no existing system, the area
shall extend to and include an area to be defined in the
certificate of convenience and necessity issued by the
public service commission of West Virginia under the
applicable provisions of chapter twenty-four and chapter
twenty-four-a of this code;
(l) "System" means any urban mass transportation system;
(m) "Trust indenture" means a security instrument entered into by an authority pursuant to which bonds or notes are issued;
(n) "Urban area" means any area that includes a municipality or other built-up place which is appropriate for a system to serve commuters or others in the locality taking into consideration the local patterns and trends of growth;
(o) "Urban mass transportation system" means any common carrier of passengers for hire which operates equipment over regular routes within the service area of the authority; and
(p) The singular shall include the plural and the plural shall include the singular.

§8-18-4. Urban mass transportation authorities authorized; authorities to be public corporations.

Any county or municipality, or both, or any two or more contiguous counties, or any two or more municipalities within any county or contiguous counties, or any combination thereof, may create an urban mass transportation authority. Such authority shall be created upon the adoption, by the governing body of each participating government, acting individually, of an appropriate order or ordinance. Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

§8-18-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

The management and control of any authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments. Prior to making the initial appointments to the board, the governing bodies of the participating governments shall agree to make such initial appointments so that approxi-
mately one third of the total number of the members to be so appointed shall be appointed for a term of one year, approximately one third of such total number of the members shall be appointed for a term of two years and approximately one third of such total number of the members shall be appointed for a term of three years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of three years. The number of members representing each participating government shall be as agreed upon from time to time by the governing bodies of the said participating governments. Each member of the board shall have one vote on all matters coming before it. Any individual who is a resident of, or member of the governing body of, any participating government is eligible to serve as a member of the board. The governing body of each participating government shall inform the authority of its appointments or reappointments to the board by delivering to the authority a certified copy of the order or ordinance making the appointment or reappointment. If any member of the board dies, resigns, or for any other reason ceases to be a member of the board, the governing body of the participating government which such member represented shall appoint another individual to fill the unexpired portion of the term of such member.

§8-18-6. Compensation of members; expenses.

As compensation for his services on the board each member shall receive from the authority the sum of fifty dollars for each meeting actually attended. The total compensation paid to any member by the authority for any fiscal year shall not exceed in the aggregate the sum of six hundred dollars. Each member shall also be reimbursed by the authority for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

§8-18-7. Meetings of authority; officers; employees; official bonds; records of authority public records.

At its first meeting, to be held no later than sixty days from the creation of the authority as provided in
section four of this article, the board shall elect from its membership a president to act during the next ensuing fiscal year, or until his successor is elected and qualified. At that time, the board shall also elect a vice president, a secretary and a treasurer and such other officers as may be required, who need not be members of the board, whose duties shall be defined and whose compensation shall be fixed by the board and paid out of the funds of the authority. The treasurer, and such other officers and employees as the board shall direct, shall furnish bond for the use and benefit of the authority in such penal sum as may be fixed by the board and conditioned upon the faithful discharge by such treasurer and such other officers and employees so directed by the board of the duties of their respective offices or employment, and upon accounting for and paying over all moneys which may come into their possession by virtue of such office or employment. At its first meeting the board shall also fix the time and place for holding regular meetings, but it shall meet at least once in the months of January, April, July and October. Special meetings of the board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all the members, at least two days in advance of a special meeting, a written notice setting forth the time and place of the meeting and the matters to be considered at such meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting, or if all the members are present at the special meeting. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before an authority. All proceedings of the authority shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved by the secretary of the authority. All records of the authority shall be public records.

§8-18-8. Quorum; majority vote required.

1 A majority of the members of the board, which majority must include members from a majority of the
3 participating governments, shall constitute a quorum.
4 The vote of a majority of all members present at any
5 meeting of the board shall be necessary to take any action.

1 The board shall establish the beginning and ending of
2 its fiscal year, which period shall constitute its budget
3 year, and at least thirty days prior to the beginning of
4 the first full fiscal year after the creation of the authority
5 and annually thereafter the treasurer shall prepare and
6 submit to the board a tentative budget. Such tentative
7 budget shall be considered by the board, and, subject to
8 any revisions or amendments that may be determined
9 by said board, shall be adopted as the budget for the
10 ensuing fiscal year. No expenditures in excess of the
11 budget shall be made during such fiscal year unless
12 expressly authorized and directed by the board. It shall
13 not be necessary to include in such budget any statement
14 of necessary expenditures for annual interest or principal
15 payments on bonds or for capital outlays, but it shall
16 be the duty of the board to make provisions for their
17 payment as they become due.

1 Each authority is hereby given the power:
2 (a) To sue and be sued, implead and be impleaded;
3 (b) To have and use a seal and alter the same at
4 pleasure;
5 (c) To make and adopt all rules, regulations and by-
6 laws as may be necessary or desirable to enable it to ex-
7 ercise the powers and perform the duties conferred or
8 imposed upon it by this article;
9 (d) To employ, in its discretion, planning, architec-
10 tural and engineering consultants, attorneys, accountants,
11 construction, financial, transportation and traffic experts
12 and consultants, superintendents, managers, and such
13 other employees and agents as may be necessary in its
14 judgment, and to fix their compensation;
15 (e) To acquire by grant, purchase, gift, devise or lease
16 and to hold, use, sell, lease or otherwise dispose of real
and personal property of every kind and nature whatsoever, licenses, franchises, rights and interests necessary for the full exercise of its powers pursuant to the provisions of this article, or which may be convenient or useful for the carrying out of such powers;

(f) To acquire, construct, reconstruct, complete, develop, improve, own, equip, operate and maintain any system or systems, or any part thereof, including, without limitation, the power to acquire by purchase, lease, or gift all or any part of any licenses, franchises, rights, interests, engineering and technical studies, data or reports owned or held by any person and determined by its board to be necessary, convenient or useful to the authority in connection with the acquisition, construction, reconstruction, completion, development, improvement, ownership, equipping, operation or maintenance of any system or systems and to reimburse public utilities for relocation of any utility line or facility made necessary by the construction, reconstruction, completion, development, improvement, equipping, operation or maintenance of any system or systems;

(g) To acquire any land, rights or easements deemed necessary or incidental for the purposes of the authority by eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by business corporations;

(h) To enter into contracts and agreements which are necessary, convenient or useful to carry out the purposes of this article with any person, public corporation, state or any agency or political subdivision thereof and the federal government and any department or agency thereof, including, without limitation, contracts and agreements for the joint use of any property and rights by the authority and any person or authority operating any system, whether within or without the service area of the authority and contracts and agreements with any person or authority for the maintenance, servicing, storage, operation or use of any system or part thereof,
facility or equipment on such basis as shall seem proper
to its board;

(i) To enter into contracts and agreements for super-
tendence and management services with any person,
who has executive personnel with experience and skill
applicable to the superintendence and management of any
system, for the furnishing of its services and the services
of experienced and qualified personnel for the superin-
tendence and management of any system or any part
thereof, including, without limitation, superintendence
over personnel, purchases, properties and operations and
all matters relating thereto, and any revenue bond trust
indenture may require such contract. The personnel
whose services are to be so furnished under such
contract shall not include any member of the board,
any member of the immediate family of a member
of the board or any agents or employees of the author-
ity. No contract shall extend beyond a term of ten
years or such longer time as there are outstanding
any revenue bonds under a trust indenture which requires
such contract;

(j) To assume any lien indebtedness of any system
or part thereof acquired by it under the provisions of this
article;

(k) To execute security agreements, contracts, leases,
equipment trust certificates and any other forms of con-
tракts or agreements, granting or creating a lien, security
interest, encumbrance or other security in, on or to
facilities and equipment, containing such terms and
provisions as the board deems necessary;

(l) To apply for, receive and use grants, grants-
in-aid, donations and contributions from any source or
sources, including, but not limited to, the federal gov-
ernment and any agency or department thereof, and
a state government whose constitution does not pro-
hibit such grants, grants-in-aid, donations and contri-
butions, and any agency or department thereof, and
to accept and use bequests, devises, gifts and donations
from any person;

(m) To lease any system or any part thereof to, or
contract for the use of any system or any part thereof by, any person. A trust indenture may prohibit, limit or restrict the exercise of such power;

(n) To acquire for cash or in exchange for its bonds all or any part of any publicly or privately owned system or systems;

(o) To make or cause to be made either by itself or in cooperation with other persons or organizations, whether public or private, traffic surveys, population surveys and such other surveys and studies as it shall consider useful in the performance of its duties or the exercise of its powers under the provisions of this article and in connection therewith the authority may contract with any person or organization for such planning services;

(p) To enter into contracts and agreements with any public or private system either within or contiguous to its boundaries for the transfer of passengers between it and the system operating in territory contiguous to its boundaries;

(q) To fix and establish from time to time subject to the approval of the public service commission such fees, rates or other charges and routes, time schedules and standards of service as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by the authority, and reasonable reserves therefor, as the same shall become due, together with the cost of operation, administration, maintenance and repair of such system or systems in each year, together with all other payments required in each such year by the resolution which authorized the issuance of such bonds, or the trust indenture securing the same, including, without limitation, reasonable reserves or margins for any of such purposes. Every authority shall file and keep on file the information specified in section two, article six, chapter twenty-four-a of this code in the manner and form as therein provided;

(r) To issue revenue bonds of the authority for any of its purposes or projects and to refund its bonds, all as provided in this article;
(s) To encumber or mortgage all or any part of its facilities and equipment;

(t) To prepare plans for and assist in the relocation of persons displaced by the authority and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government; and

(u) To do any and all things necessary or convenient to carry out the powers given in this article unless otherwise forbidden by law.

The exercise of any of the powers herein granted is expressly made subject to the provisions of section eighteen of this article, wherever the same are applicable.

§8-18-11. Contributions to authorities; funds and accounts of authorities; reports; audit by state tax department.

Contributions may be made to authorities from time to time by the participating governments and by any other municipalities, counties, persons, firms or corporations that shall desire to do so. All such funds and all of the other funds received by any authority shall be deposited in a separate account in such bank or banks as its board may direct and shall be withdrawn therefrom only in such manner as its board may direct. Each authority shall keep strict account of all its receipts and expenditures and shall make a quarterly report to the participating governments which have made contributions to it and such report shall contain an itemized account of its receipts and disbursements, during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within ninety days after the end of each fiscal year, each authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding fiscal year, and any and all other information which the board may deem pertinent, to all of the participating governments. The books, records and accounts of each authority shall be subject to audit and examination by the state tax department of West Virginia.
§8-18-12. Study and plan of operation; notice and hearing; adoption of transportation plan.

1 The authority, as soon as practical after its organization, shall prepare a comprehensive plan with respect to a program for a unified or officially coordinated system as a part of a comprehensively planned development of the urban area within its service area. Said program, to the maximum extent feasible, shall provide for the participation of privately owned systems.

2 In the preparation of a comprehensive plan, an authority shall make careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions within its service area. The comprehensive plan shall be made for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of systems within the service area which, in accordance with present and future needs and resources, will best promote the health, safety and general welfare of the inhabitants of the service area, as well as the orderly and economical development and expansion of the service area.

3 Prior to the adoption of a comprehensive plan, the authority shall submit its tentative plan to the governing bodies of the participating governments and hold a public hearing in the service area on the plan. At least thirty days prior to the date set for hearing, the authority shall publish a notice of the time and place of the hearing as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the service area of the authority. After a public hearing has been held, the authority may by resolution adopt the comprehensive plan and may from time to time amend, supplement or change the comprehensive plan in the same manner in which it was adopted.

§8-18-13. Resolution authorizing acquisition or construction of urban mass transportation systems.

1 Before the authority shall acquire or construct any system, the authority shall adopt a proper resolution which shall include:
MASS TRANSPORTATION AUTHORITIES

4 (a) The estimated cost of the acquisition or construction
5 and all incidental expenses connected therewith;
6 (b) The probable sources of revenue and the estimated
7 amount thereof;
8 (c) The estimated cost of operation, administration,
9 maintenance and repair thereof;
10 (d) The proposed methods of financing; and
11 (e) Any other information which the authority shall
12 deem appropriate.
13 Such resolution shall also:
14 (a) Order the acquisition or construction of such
15 system;
16 (b) If appropriate, direct that revenue bonds in such
17 amount as the authority may deem necessary to pay all
18 or any part of the cost of acquisition or construction of
19 such system be issued pursuant to the provisions of this
20 article; and
21 (c) Set forth the amount of the principal of the in-
22 debtedness, the maximum term the bonds proposed to be
23 issued shall run before maturity and the maximum rate
24 of interest to be paid and such other details with respect
25 to the bonds and the trust indenture, if any, securing the
26 same as the authority may deem necessary or desirable.
27 Before such resolution shall become effective, the
28 authority shall submit such resolution to the governing
29 bodies of the participating governments and hold a
30 public hearing in the service area on the resolution. At
31 least thirty days prior to the date set for hearing, the
32 authority shall publish a notice of the time and place of
33 hearing as a Class II legal advertisement in compliance
34 with the provisions of article three, chapter fifty-nine of
35 this code, and the publication area for such publication
36 shall be the service area of the authority. At such hear-
37 ing all objections and suggestions shall be heard and
38 after the hearing has been held the authority shall take
39 such action as it shall deem proper.

1 The authority is hereby authorized to provide by reso-
2 lution, from time to time, for the issuance of revenue
bonds of the authority for the purpose of paying all or any part of the cost of acquiring, constructing or improving a system or systems, or any part thereof, or the facilities and equipment therefor, as the case may be, or for any other purpose or project authorized by the provisions of this article. The purposes for which revenue bonds may be issued may include the payment of all costs and estimated costs incidental to or connected with the accomplishment of such purpose or project including, without limitation, engineering, inspection, legal, fiscal agents, financial consultants and other fees, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period and for a period not to exceed two years thereafter, and expenses of all proceedings for the authorization, issuance and sale of the bonds.

The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, payable semiannually, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be at any bank or trust company within or without the state. The bonds shall be signed by the president of the authority or shall bear his facsimile signature, and the official seal of the authority, or a facsimile thereof, shall be impressed or imprinted thereupon and attested by the secretary of the authority, and any coupons attached to the bonds shall bear the facsimile signature of the president of the authority. All such signatures, countersignatures and seal may be printed, lithographed or mechanically reproduced, except that one of such signatures or countersignatures on the bonds shall be manually affixed, unless the resolution authorizing the issuance
of such bonds shall otherwise provide. If any officer
whose signature or countersignature or a facsimile of
whose signature or countersignature appears on bonds or
coupons ceases to be such officer before the delivery of
the bonds, his signature shall be as effective as if he had
remained in office until such delivery. The bonds may be
issued in coupon or in registered form, or both, as each
authority may determine and provision may be made
for the registration of any coupon bonds as to principal
alone, and also as to both principal and interest, for the
reconversion into coupon bonds of any bonds registered
as to both principal and interest, and for the interchange
of registered and coupon bonds. Notwithstanding the
form or tenor thereof, and in the absence of any express
recital on the face thereof that the bond is nonnegotia-
tible, all such bonds shall be, and shall be treated as,
negotiable instruments for all purposes except when
registered in the name of a registered owner.

The authority may exchange its bonds, in whole or
in part, for any system or systems, or any parts thereof,
or facilities and equipment therefor, or may sell its
bonds, in whole or in part, in such manner either at
public or private sale and for such price as it may deter-
mine will best effect the purposes of this article and
be for the best interest of the authority.

Prior to the preparation of definitive bonds, the au-
thority may, under like restrictions, issue interim receipts
or temporary bonds with or without coupons, exchange-
able for definitive bonds when such bonds shall have
been executed and are available for delivery. The au-
thority may also provide for the replacement of any
bonds which shall become mutilated or shall be destroyed
or lost.

The authority is hereby authorized to provide by reso-
lution, from time to time, for the issuance, sale or exchange
of revenue refunding bonds of such authority for the
purpose of refunding any bonds then outstanding which
shall have been issued under the provisions of this article,
including the payment of any redemption premium
thereon and any interest accrued or to accrue to the
date of redemption of such bonds, and the payment of
all expenses incidental thereto. The authority is further
authorized to provide by resolution, from time to time,
for the issuance, sale or exchange of revenue bonds of
such authority for the combined purpose of refunding
any bonds then outstanding, as herein provided, and
paying all or any part of the cost of any additional project
or projects. All provisions of this article applicable to
the issuance of revenue bonds are applicable to the
issuance of refunding bonds and to the sale or exchange
thereof.


1 In the discretion of the authority any bonds issued
under the provision of this article may be secured by a
trust indenture by and between such authority and a
corporate trustee, which may be any trust company or
bank having the powers of a trust company, within or
without the state, or any person in the United States hav-
ing power to enter into the same, including any federal
agency.

2 Any resolution authorizing the issuance of such bonds
or any trust indenture securing the same may contain
such provisions for protecting and enforcing the rights
and remedies of the bondholders and of the trustee as
the authority may deem necessary and proper and not in
violation of law, including provisions pledging all or any
part of the revenues of such authority or encumbering
all or any part of the facilities and equipment of such
authority to secure the payment of the bonds subject to
such agreements with bondholders as may then exist;
limiting the purpose to which the proceeds of sale of any
bonds then or thereafter to be issued may be applied;
defining the duties of such authority in relation to the ac-
quision, construction, improvement, maintenance, repair,
operation and insurance of any project or projects in
connection with which such bonds shall have been author-
ized; providing for the custody, safeguarding and applica-
tion of all moneys; limiting the issuance of additional
bonds; prescribing a procedure by which the provisions
of any trust indenture or contract with bondholders may
be amended or modified; requiring such authority to fix
and establish fees, rates or other charges and routes, time
schedules and standards of service as will provide
revenues in each year at least sufficient to pay the princi-
pal of and interest on all bonds issued by such authority
and reasonable reserves therefor as the same shall become
due, together with the cost of operation, administration,
maintenance and repair of such system or systems in
each year, including, without limitation, reasonable re-
erves or margins or sinking funds for any of such pur-
poses, subject to the provisions of section eighteen of this
article; defining the acts or omissions to act which shall
constitute a default in the duties of such authority to the
holders of its bonds and providing the rights and remedies
of such holders and of the trustee in event of default and
the manner and terms upon which such default may be
declared cured; vesting in a trustee such property rights,
powers and duties, in trust, as such authority may de-
determine; and such other additional provisions as such au-
thority may deem necessary or desirable for the security
of the holders of bonds issued under the provisions of this
article, notwithstanding that such other provisions are not
expressly enumerated in this section, it being the inten-
tion to grant the authority the power to make any and all
covenants or agreements necessary in order to secure
greater marketability for bonds issued under the pro-
visions of this article as fully and to the same extent as
such covenants or agreements could be made by a private
corporation rendering similar services and to grant such
authorities full and complete power to enter into any con-
tract, covenant or agreement with holders of bonds issued
under the provisions of this article not inconsistent with
this article or the constitution of the state of West Vir-

§8-18-16. Sinking fund; sinking fund commission; purchase of
outstanding bonds.

At or before the issuance of any bonds under the pro-
visions of this article, the authority shall, by resolution,
provide for a sinking fund for the payment of the bonds
and the interest thereon, and the payment of the charges
of banks or trust companies for making payment of such
bonds, and interest, out of the net revenues of said system, and, in this event, shall set aside and pledge a sufficient amount of the next revenues of the system, hereby defined to mean the revenues of the system remaining after the payment of the reasonable expense of operation, administration, maintenance and repair, such amount to be paid by such authority into the sinking fund at intervals, to be determined by resolution adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as provided in this article. Such required payments shall constitute a first charge upon all the net revenues of such authority. Prior to the issuance of any bonds, the authority may, by resolution, be given the right to use or direct the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. In addition to the payments into the sinking fund as herein set forth, the authority may at any time in its discretion, transfer all or any part of the balance of the net revenues, after reserving an amount deemed by such authority sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund.

The amounts of the balance of the net revenues as and when so set apart shall be remitted to the state sinking fund commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the resolution.
pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

§8-18-17. Remedies of bondholders.
1 Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust indenture securing the same, except to the extent the rights herein given may be restricted by such trust indenture, may, by civil action, mandamus or other proceeding, protect and enforce any and all rights under the laws of this state or granted under the provisions of this article or under the resolution authorizing the issuance of such bonds, or the trust indenture securing same, and may enforce and compel the performance of all duties required by this article or by such resolution or trust indenture to be performed by any authority or by any officer thereof.

§8-18-18. Authority and duty of public service commission.
1 Each authority which undertakes to engage in transporting passengers for hire by motor vehicles or other conveyances over regular routes shall be deemed a common carrier of passengers for hire and shall be subject to the jurisdiction and authority of the public service commission of West Virginia as provided in chapter twenty-four and chapter twenty-four-a of this code, to the same extent as any other common carrier of passengers for hire: Provided, That it shall be the mandatory duty of the public service commission to fix and establish, from time to time, such fees, rates or other charges and routes, time schedules and standards of service for each authority as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by that authority, and reasonable reserves therefor, as the same shall become due in each year, together with the cost of operation, administration, maintenance and repair of such system or systems in each year, together with all other payments required in each year by the
resolution which authorized the issuance of such bonds or the trust indenture securing the same, including reasonable reserves, margins or sinking funds for any of such purposes.

§8-18-19. Indebtedness of authorities.

Each authority may issue bonds, borrow money and incur any proper indebtedness and issue any other obligations as authorized by law or provided in this article. No such indebtedness or obligation incurred by any authority may give any right against any member of the governing body of any participating government, or any member of the board of any authority. No obligation or indebtedness of any nature of any authority shall constitute an indebtedness of any participating government or the governing body of any participating government, within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of any participating government or the governing body of any participating government, or be a charge against the general credit or taxing power of any participating government or the governing body of any participating government, and such fact shall be plainly stated on the face of any bonds issued by any authority. The rights of creditors of any authority shall be solely against the authority as a corporate body and shall be satisfied only out of revenues, moneys or property received or held by it in its corporate capacity.


It is hereby found, determined and declared that the creation of any authority and the carrying out of its purposes is in all respects for the benefit of the people of this state in general, and of the participating governments in particular, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, property, operations and activities, shall be exempt from the payment of any taxes or fees to the state or any of its
political subdivisions or to any officer or employee of the state or any of its political subdivisions, except the special assessment provided for in section six, article six, chapter twenty-four-a of this code. The revenue bonds and other evidence of indebtedness issued pursuant to the provisions of this article, and the interest thereon, shall be exempt from taxation, except inheritance and transfer taxes.


Whenever any authority acquires any existing system pursuant to the provisions of this article, the employees of such system shall be protected in the following manner:

(a) The employees of such system shall be retained to the fullest extent possible consistent with sound management, and if terminated or laid off shall be assured priority of reemployment;

(b) The individual employees who are retained shall be retained in positions the same as, or no worse than, their positions prior to the acquisition of such system;

(c) The rights, privileges and benefits of the employees under existing collective bargaining agreements shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such agreement;

(d) Collective bargaining rights shall be continued with respect to employees of any acquired system;

(e) The rights, privileges and benefits of the employees under any existing pension or retirement plan or plans shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such plan or plans;

(f) The owning authority shall provide paid training or retraining programs when necessary; and

(g) The authority owning a system, or any of the employees of any system owned by the authority, shall, in the case of any labor dispute relating to the terms...
and conditions of employment which is not settled through any established grievance procedure, have the right to submit the dispute to final and binding arbitration by a board of arbitration consisting of three arbitrators, one arbitrator to be chosen by the authority, one by the employee and the third to be chosen by the two arbitrators selected by the authority and the employee. A decision of a majority of the members of the board of arbitration shall be final and binding on the parties. The parties shall each pay the arbitrator of its own selection, and they shall jointly pay the third arbitrator and any other expenses connected with submitting such labor dispute to the board of arbitration.

In the event any authority acquires a system and (1) leases such acquired system or (2) enters into a management contract for superintendence and management services for the operation of such acquired system pursuant to any provision of this article, the lease or contract shall include terms and provisions insuring the protection specified in this section.

§8-18-22. Conflict of interest.

No member of any authority, nor any of its officers, employees, agents or consultants, shall have any interest in any firm, partnership, corporation, company, association or joint-stock association engaged in the business of providing public transportation in the area encompassed by the authority, or in the manufacture, sale or lease of passenger transportation equipment or facilities. No member of any authority nor any of its officers, employees, agents or consultants shall contract with the authority or be interested in, either directly or indirectly, any contract with such authority or in the sale of property, either real or personal, to such authority. The term “agents” as used in this section shall not be deemed for the purposes of this section to include any persons or authorities which lease from or contract for superintendence and management services with any authority for the operation, administration, maintenance or repair of any system.
§8-18-23. Competitive bids; publication of solicitations for sealed bids.

A purchase of or contract for all supplies, equipment and materials and the construction of facilities by any authority, when the expenditure required exceeds the sum of one thousand dollars, shall be based on competitive sealed bids. Such bids shall be obtained by public notice published as Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the service area of such authority. The last of such notices shall be published at least fourteen days next preceding the final date of submitting bids. The notice may also be published by any other advertising medium such authority may deem advisable. Such authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the office of such authority.


Bonds issued under the provisions of this article shall be legal investments for banking institutions, building and loan associations, and insurance companies organized under the laws of this state of their own funds.

§8-18-25. Article constitutes complete authority; liberal construction.

This article shall constitute full and complete authority for the creation of any authority and for carrying out the powers and duties of any such authority and for the issuance, sale or exchange of revenue bonds by such authority as provided in this article. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals shall be required in connection therewith except as may be presented by this article: Provided, That all applicable functions, powers, authorities and duties of the public service commission of West Virginia shall remain unaffected except as provided by this article.


If any provision of this article or the application thereof
to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 63
(House Bill No. 232—By Mr. Burke)

[Passed February 8, 1968; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county court of Gilmer county, in view of the special, individual, unusual and peculiar circumstances pertaining in Gilmer county, to make appropriations to the nonstock, nonprofit corporation, "The Gilmer County Medical Center, Inc.,” for a public purpose, subject to certain limitations and restrictions.

Be it enacted by the Legislature of West Virginia:

GILMER COUNTY MEDICAL CENTER.

§1. Legislative findings; authority of Gilmer county court to appropriate funds to medical center; limitations and restrictions.

(a) The Legislature hereby finds that in Gilmer county there is an urgent need for the building, furnishing and maintaining of medical facilities and for the attraction of medical personnel; that because of the lack of medical facilities and medical personnel, the students and faculty at Glenville State College, located at Glenville, Gilmer county, are without medical care; that by virtue of the concentration of persons at said Glenville State College, the need for medical facilities and medical personnel is special, individual, unusual and peculiar to Gilmer county; that a nonstock, nonprofit corporation, “The Gilmer County Medical Center, Inc.,” has been established for the purpose of building, furnishing and maintaining medical facilities and for the purpose of attracting medical personnel to Gilmer
county; that said corporation has by contributions from private persons, firms and corporations, acquired land for the erection of medical facilities; that the county court of Gilmer county desires to make contributions to such nonstock, nonprofit corporation so that the land may be used for the building, furnishing and maintaining of medical facilities and for the attraction of medical personnel; and that the support of such nonstock, nonprofit corporation for the general public is for the general welfare of the people of Gilmer county and is a public purpose. This act is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The county court of Gilmer county is hereby authorized and empowered, subject to the provisions and limitations set forth in subsections (c) and (d) of this act, to appropriate funds to the said "The Gilmer County Medical Center, Inc.," for such public purpose, if and only if such corporation (1) remains organized under the laws of this state as a nonstock, nonprofit corporation for the building, furnishing and maintaining of medical facilities and for the attraction of medical personnel, and contains in its charter a provision to the effect that its buildings, furnishings and facilities shall be devoted to the furnishing of medical services to the public, (2) contains in its charter a provision to the effect that no member, trustee or member of the board of directors (by whatever name the same may be called) of the corporation shall receive any compensation, gain or profit from such corporation, and (3) is operated in compliance with such charter provisions as aforesaid: Provided, That such funds may be expended and otherwise utilized only within Gilmer county. In any such case, the county court of Gilmer county and such corporation may agree for the appointment of additional members of the board of directors of such corporation (by whatever name the same may be called) by such county court, either as regular members or in an ex officio capacity.

(c) No funds appropriated by the county court of Gilmer county under the authority of this act shall
be disbursed by such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by such county court, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such county court, and shall in every event without demand make to such county court an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by the county court of Gilmer county under the authority of this act give rise to or create any indebtedness on the part of the county, such county court, any member of the county court or any county official or employee.

(e) If any provision of this act or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of this act, and to this end the provisions of this act are declared to be severable.

CHAPTER 64

(House Bill No. 283—By Mr. Wooldridge)

[Passed February 2, 1968; in effect July 1, 1968. Approved by the Governor.]

AN ACT to amend and reenact section four, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred twenty, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the salary of the judge of the intermediate court of Mercer county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-four, as last amended and reenacted by chapter two hundred twenty, acts
of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF MERCER COUNTY.

§ 4. Salary of judge.

1 The judge of said intermediate court shall receive for his services the sum of sixteen thousand five hundred dollars per annum to be paid out of the county treasury of said county of Mercer.

CHAPTER 65

(Senate Bill No. 105—By Mr. Deem and Mr. Miller)

[Passed February 7, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as amended and reenacted by chapter one hundred eighty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the salary of the judge of the intermediate court of Wood county.

Be it enacted by the Legislature of West Virginia:

That section five, chapter one hundred ninety-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, as amended and reenacted by chapter one hundred eighty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted to read as follows:

INTERMEDIATE COURT OF WOOD COUNTY.

§ 5. Salary of judge.

1 The judge of said court shall, for his services, receive the sum of fourteen thousand four hundred dollars per annum, payable monthly in installments, beginning on the first day of July, one thousand nine hundred sixty-
nine, which amount shall be provided for and paid by
the county court, out of the treasury of Wood county,
which provision as to salary shall not repeal the existing
provision until the said first day of July, one thousand
nine hundred sixty-nine. The county court shall an-
nually make provision by appropriate levy and appro-
priation for the payment of said salary.
RESOLUTIONS

(Only resolutions of general interest adopted during the session are included herein.)

HOUSE CONCURRENT RESOLUTION NO. 8
(By Mr. Steptoe and Mr. Ours)
[Adopted February 8, 1968]

Requesting and directing the Commission on Interstate Cooperation to direct a study of the proposed Potomac River Basin Compact.

WHEREAS, It is one of the functions of the Commission on Interstate Cooperation to facilitate the adoption of interstate compacts; and

WHEREAS, A study of the proposed Potomac River Basin Compact would furnish invaluable data on which to base the future possible adoption of such a compact by this Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Commission on Interstate Cooperation is hereby requested and instructed to direct a study of the proposed Potomac River Basin Compact; and, be it

Further Resolved, That the Commission on Interstate Cooperation report to the Legislature at its regular session, 1969, on its findings and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, negotiate such compact and prepare any such drafts of legislation be paid from the legislative appropriations to the Commission on Interstate Cooperation or the Joint Committee on Government and Finance. The said Commission shall obtain the advance approval of the Joint Committee on Government and Finance before incurring any expenses to be paid out of the appropriations to the Joint Committee on Government and Finance.

[ 1627 ]
Continuing the study by the Joint Committee on Government and Finance authorized by House Concurrent Resolution No. 17, Regular Session, 1967.

WHEREAS, The Legislature at its regular session in 1967 authorized the Joint Committee on Government and Finance to make a study of the Department of Mental Health and the office of the Commissioner of Public Institutions, including the institutions of said departments, their programs, needs and laws relating thereto, with particular emphasis on the total program, functions and total needs of all health, humane, penal and correctional institutions; and

WHEREAS, A study as authorized was made and numerous and comprehensive recommendations made to this session of the Legislature; and

WHEREAS, It is now the opinion of members of the Senate Committee on Public Institutions and the House Committee on Health and Welfare that in order to keep the Legislature informed as to the implementation of recommendations heretofore made and to keep abreast of other needs of these departments and institutions the study should be continued for another year; therefore, be it

Resolved by the Legislature of West Virginia:

That the study authorized by said H.C.R. No. 17 is continued until the convening of the regular session of the Legislature in the year 1969, with all the applicable provisions of said H.C.R. 17 to be in force and applicable to the continued study; and that the Joint Committee on Government and Finance make a report to the Legislature at its regular session in the year 1969, on its findings, conclusions and recommendations, together with drafts of proposed legislation that shall be necessary to carry its recommendations into effect.
HOUSE CONCURRENT RESOLUTION NO. 34
(By Mr. Speaker, Mr. White)
[Adopted February 7, 1968]

Directing the Joint Committee on Government and Finance
and the Commission on Interstate Cooperation to continue
certain studies.

WHEREAS, Certain studies referred to the Joint Committee on
Government and Finance and the Commission on Interstate
Cooperation by prior sessions of the Legislature have not been
completed and require additional study; therefore, be it

Resolved by the Legislature of West Virginia:

That the studies authorized by the following resolutions be
continued:

1. House Concurrent Resolution No. 14, adopted regular
session, 1967, relating to domestic relations;

2. Senate Concurrent Resolution No. 11, adopted regular
session, 1967, relating to election laws;

3. Senate Concurrent Resolution No. 11, adopted regular
session, 1957, and last continued by Senate Concurrent Resolu­
tion No. 20, adopted regular session, 1967, relating to institu­
tions of higher education;

4. Senate Concurrent Resolution No. 4, adopted regular ses­
sion, 1965, and continued by Senate Concurrent Resolution No.
20, adopted regular session, 1967, relating to municipal corpora­
tion laws;

5. House Concurrent Resolution No. 22, adopted regular
session, 1967, relating to the school foundation program for
public education;

6. House Concurrent Resolution No. 42, adopted regular
session, 1967, relating to the tax structure of West Virginia;

7. Senate Concurrent Resolution No. 23, adopted regular
session, 1967, relating to the water resources of West Virginia;

8. House Concurrent Resolution No. 8, adopted regular ses­
session, 1967, relating to vocational, technical and adult education;
and, be it
Further Resolved, That all provisions of said concurrent resolutions be continued in full force and effect; and, be it

Further Resolved, That all reports, together with findings, conclusions, recommendations, and any proposed drafts of legislation, be made to the Legislature at its regular session, 1969.

HOUSE CONCURRENT RESOLUTION NO. 35
(By Mr. Boiarovsky and Mr. Potter)
[Adopted February 7, 1968]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the educational program for exceptional children in West Virginia.

WHEREAS, It has long been recognized by West Virginians and by the Legislature that education is basic to the development, prosperity and well-being of the State and of her citizens; and

WHEREAS, The educational program of the State should include provisions for the proper educational development of all children in relation to their ability to be instructed and to learn; and

WHEREAS, The regular educational programs and facilities of the State are minimally effective and, in some cases, ineffective in training the exceptional children, including the blind, the partially-sighted, the deaf, the palsied, the epileptic, the defective in speech, the educable and trainable retarded, the mentally gifted, the socially or emotionally maladjusted, the delinquent, the tubercular, the malnourished, those with lowered vitality, those with minimal brain dysfunction, and those with other handicapping conditions; and

WHEREAS, The present provisions for the education of exceptional children allow county boards of education to organize special classes and to provide home-teaching and visiting-teacher services for the benefit of exceptional children but do not require the counties or the State to initiate and maintain programs of special education for exceptional children; and

WHEREAS, The present provisions for programs of special education, by their very nature, permit oversights and unnecessary
duplication of effort in the State's attempt to provide education for all; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance, with the cooperation of the West Virginia Commission on Mental Retardation, is directed to conduct a study of the educational programs established by the various counties for the instruction of exceptional children for the purpose of determining the need for and the availability and effectiveness of the programs of special education which have been established in West Virginia and the need and desirability of establishing a statewide mandatory educational program for exceptional children; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature at its regular session, one thousand nine hundred sixty-nine, on its findings and recommendations, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare reports, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION NO. 52
(Originating in the Committee on Rules)
[Adopted February 7, 1968]

Directing the Joint Committee on Government and Finance to conduct a study with respect to the development and establishment of meaningful and workable standards and specifications for bidding for use by the Department of Finance and Administration and with respect to the possible establishment of some type of administrative procedure for the hearing and disposition of complaints concerning the purchasing practices of the Department of Finance and Administration.
WHEREAS, The purchasing practices of the Department of Finance and Administration have been criticized and challenged generally and specifically with respect to the preparation of standards and specifications for bidding and the awarding of contracts; and

WHEREAS, It appears that legislative action may be necessary in order for meaningful and workable standards and specifications for bidding to be developed and established; and

WHEREAS, Under present law, those persons, firms and corporations who or which desire to do business with the State of West Virginia and who or which feel they have not been treated fairly in the bidding process or in the awarding of contracts have little if any recourse other than to institute appropriate legal proceedings in the courts of this State; and

WHEREAS, It may be feasible to establish some type of administrative procedure for the hearing and disposition of such complaints, such as by the creation of a purchasing review board composed of private citizens of impeccable reputation; and

WHEREAS, Such administrative procedure might result in a more expeditious and less expensive resolution of such complaints; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study to determine if legislative action is necessary for the development and establishment of meaningful and workable standards and specifications for bidding and to determine if some type of administrative procedure might be feasible for the hearing and disposition of complaints with respect to the purchasing practices of the Department of Finance and Administration, and, if said committee determines that some type of administrative procedure is feasible, develop a plan for the establishment of such administrative procedure; and, be it

Further Resolved, That the Joint Committee on Government and Finance make a report to the Legislature at its regular session in the year 1969, containing its findings, conclusions, recommendations and drafts of any proposed legislation deemed requisite to carry its recommendations into effect; and, be it
Further Resolved, That all expenses necessary to conduct such study, develop any such plan and prepare such report and any drafts or proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 64
(Originating in the Committee on the Judiciary)

[Adopted February 8, 1968]

Directing the Joint Committee on Government and Finance to make a study into the need and desirability of amending the laws of this State in order to provide for an increase in the supply of residential housing available for persons of low and moderate income and to coordinate and provide technical assistance to the public and private sectors of the economy in an effort to increase the supply of said housing, to continue the study made by the Governor's Task Force, the results of which are set forth in this report of housing and to draft appropriate legislation.

WHEREAS, Legislation has been introduced in the current session of the Legislature to provide for an increase in the supply of residential housing available to persons of low and moderate income and to coordinate and provide technical assistance to the public and private sectors of the economy in an effort to increase the supply of said housing; and

WHEREAS, It appears that legislation pertaining to this subject is desirable in the interest of the people of this State; and

WHEREAS, It further appears necessary to conduct additional study to determine the most economical and practicable means of accomplishing such stated purpose and to review and revise such proposals before such legislation is enacted; therefore, be it

Resolved by the Legislature of West Virginia:
That the Joint Committee on Government and Finance is hereby directed to make a comprehensive study into the adequacy of the supply of residential housing for persons of low and moderate income in this State, the most practical and economical methods, either public or private, by which the
need for such housing may be alleviated, taking into consideration the effect of such legislation on the home building and home financing industries of this State and the means for providing technical assistance to the public and sectors of the economy in an effort to increase the supply of said housing; and, be it

Further Resolved, That the Committee report to the regular session of the Legislature, 1969, on its findings, conclusions and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

Further Resolved, That the expense necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 15
(Originating in the Committee on Transportation)
[Adopted January 31, 1968]

Directing the Joint Committee on Government and Finance to conduct a study of all matters relating to the formation and enactment of a highway safety program in accordance with uniform standards promulgated by the Secretary of Transportation of the United States of America under the provisions of the Highway Safety Act of 1966, Public Law 89-564, 80 Stat. 731, and to make recommendations with respect thereto.

WHEREAS, The number and frequency of traffic accidents causing injury and death to the citizens of this State have been steadily increasing; and

WHEREAS, The Congress of the United States has enacted legislation authorizing standards to be promulgated to serve as guidelines under which states may enact legislation designed to prevent, or decrease the number of, such traffic accidents and such injuries and deaths; and

WHEREAS, It may be in the best interest of the general welfare, health and safety of the people of this State to provide a
program for highway safety in accordance with the legislation passed by the Congress of the United States and the standards promulgated pursuant thereto; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to conduct a study of all matters relating to the formation and enactment of a highway safety program in accordance with uniform standards promulgated by the Secretary of Transportation of the United States of America under the provisions of the Highway Safety Act of 1966, Public Law 89-564, 80 Stat. 731, with a view of determining what steps must be taken to effectively enact a highway safety program which will have minimum requirements in accordance with the said standards promulgated by the Secretary of Transportation; and, be it

Resolved further, That a final report containing the conclusions and recommendations of the Committee and any drafts of proposed legislation to carry such conclusions and recommendations into effect be submitted to the Legislature prior to the convening of its regular session, 1969; and, be it

Resolved further, That the expenses necessary to conduct such study and to prepare any such drafts of legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 24
(By Mr. Gainer and Mr. Bowling)
[Adopted February 3, 1968]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the scenic rivers of the State and to prepare a state policy defining the purposes, needs and methods for protecting the rivers of the State.

Whereas, Scenic rivers in West Virginia are one of its great natural assets and constitute an added tourist attraction for the State and are to be valued as a heritage by our citizens; and

Whereas, Many of these streams have great historic value as well as natural beauty; and
WHEREAS, The scenic and recreational values of these rivers are being jeopardized by lack of planning, commercial encroachment, pollution and litter; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to conduct a comprehensive study of the scenic rivers of this State, including the preparation of a statewide policy defining the purposes, needs and methods for the protection of such scenic rivers; and, be it

Resolved further, That the Committee submit its report to the regular session of the Legislature, 1969, on its findings, conclusions and recommendations, and policy statements, together with drafts of any proposed legislation to carry its recommendations into effect; and, be it

Resolved further, That the expenses to conduct such study, to prepare a report, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 36
(Originating in the Committee on Natural Resources)
[Adopted February 7, 1968]

Directing the Joint Committee on Government and Finance to conduct a comprehensive study of water and stream pollution.

WHEREAS, There have been numerous complaints concerning the pollution of the waters of this State, both underground and in streams; and

WHEREAS, There have been numerous claims and allegations made concerning the degree of pollution resulting from oil and gas wells, the operation of mines and quarries, the existence of slag and gob piles or other mine refuse, the operation and use of underground disposal wells and many other industrial activities; and

WHEREAS, There have also been many complaints and charges made that certain municipalities, through inadequate or improper sewage treatment, are polluting the streams of this State; and
WHEREAS, A definite and successful method must be estab-
lished for the prevention of water pollution and for the protec-
tion of our streams; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance con-
duct a comprehensive study into stream and water pollution, 
both surface and subsurface, and the degree to which stream 
pollution is caused by the operation of oil and gas wells, under-
ground disposal wells, quarries and coal mines, slag or gob 
piles or other mine refuse, and other industrial operations and 
activities, and any other causes of water or stream pollution, 
as well as methods for correcting and preventing stream pollu-
tion; and, be it

Resolved further, That the Joint Committee on Government 
and Finance make available for study by members of the Legis-
lature, appropriate governmental officers, departments and 
agencies and interested citizens and groups as far as possible 
in advance of the regular session of the Legislature, 1969, any 
legislation it determines to recommend as a result of this study, 
which legislation shall be ready for formal introduction on the 
first day of the regular session of the Legislature, 1969; and, 
be it

Resolved further, That the Committee submit its report to the 
regular session of the Legislature, 1969, on its findings, con-
clusions, and recommendations, together with drafts of any 
proposed legislation to carry its recommendations into effect; 
and, be it

Resolved further, That the expense necessary to conduct such 
study, to prepare a report, and to draft proposed legislation be 
paid from legislative appropriations to the Joint Committee on 
Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 37
(By Mr. Gainer and Mr. Carrigan)
[Adopted February 7, 1968]

Directing the Joint Committee on Government and Finance to 
make a comprehensive study of the State Division of Cor-
rection.
WHEREAS, There have been numerous complaints from the public, civic leaders, government officials and news media concerning the administration, policies and procedures of the Division of Correction; and

WHEREAS, The Division of Correction is responsible for the custody and rehabilitation of persons committed to institutions of the State for crime or delinquency, which custody and rehabilitation must be consistent with the protection of the community; and

WHEREAS, The Division of Correction has the responsibility for such tasks of major importance as: The care of all persons committed to penal or correctional institutions; the supervision of persons released on probation and placed in the charge of a state probation and parole officer; and the administration of other laws affecting the custody, control, treatment and employment of persons sentenced or committed for crime or delinquency to certain state institutions; and

WHEREAS, Critics of the Division of Correction cite the many escapes and violations of trust by prisoners let out of institutions and its rehabilitation policies; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a comprehensive study of the Division of Correction, which study is to include, but not be limited to, its operations, practices, policies, procedures, statutes governing said division and the administration thereof as related to: The care of all persons committed to penal or correctional institutions; the supervision of persons released on probation and placed in the charge of a state probation and parole officer; and the administration of other laws affecting the custody, control, treatment and employment of persons sentenced or committed for crime or delinquency to certain state institutions; and, be it

Resolved further, That the study include consideration of the necessity of statutory change; and, be it

Resolved further, That the Committee report to the regular session of the Legislature, one thousand nine hundred sixty-nine, on its findings, conclusions and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it
Resolved further, That the expense necessary to conduct such
study, to prepare a report and draft proposed legislation be
paid from legislative appropriations to the Joint Committee on
Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 38
(Originating in the Committee on Finance)
[Adopted February 8, 1968]

Approving the issuance of additional revenue bonds by the
State Building Commission of West Virginia in an amount
not to exceed seven million dollars for the purpose of
acquiring land for the construction of new state office
buildings and parking facilities and for the construction,
equipping and furnishing of same, and for all the plans and
specifications necessary and incident thereto.

WHEREAS, House Concurrent Resolution No. 55 was adopted
by the 1966 session of the Fifty-seventh Legislature, authorizing
the issuance of revenue bonds by the State Building Commis-
sion of West Virginia in an amount not to exceed eighteen mil-
lion dollars for the purpose embodied in “phase 2” in the “State
Capitol Master Plan, State of West Virginia,” January, 1966,
prepared by Zando, Martin and Milstead, architects and engi-
neers, and Boggs and Rehm, landscape architects and land
planners; and

WHEREAS, Engrossed Senate Bill No. 54 was enacted by the
1968 session of the Fifty-eighth Legislature, providing that the
aggregate amount of all issues of bonds outstanding at one time
by the State Building Commission of West Virginia for all
projects authorized by said act shall not exceed twenty-seven
million five hundred thousand dollars including the renegotia-
tion, reissuance or refinancing of any such bonds; and

WHEREAS, Said statute provides that no bonds or obligations
shall be issued in accordance with provisions of said act unless
and until the Legislature by concurrent resolution has ap-
proved the purpose and amount of each separate project; there-
fore, be it
Resolved by the Senate, the House of Delegates concurring therein:

That the issuance of additional revenue bonds by the State Building Commission of West Virginia in an amount not to exceed seven million dollars is hereby approved by the Legislature, which amount, when added to the amount of eighteen million dollars heretofore authorized by House Concurrent Resolution No. 55, 1966 session of the Fifty-seventh Legislature, shall not exceed the total aggregate amount of twenty-five million dollars of revenue bonds, the proceeds of which shall be expended for the purpose of acquiring the necessary land for the construction of new office buildings and parking facilities, and for the purpose of constructing, equipping and furnishing same, in accordance with existing plans and specifications furnished to the former State Office Building Commission of West Virginia, designated as “phase 2” in the “State Capitol Master Plan, State of West Virginia,” January, 1966, prepared by Zando, Martin and Milstead, architects and engineers, and Boggs and Rehm, landscape architects and land planners; and, be it

Resolved further, That the purpose for which said additional revenue bonds are to be issued is likewise hereby approved; and, be it

Resolved further, That the Clerk of the State Senate transmit a copy of this resolution to the Secretary of State of the State of West Virginia, the designated secretary of the State Building Commission of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 39
(Originating in the Committee on Finance)
[Adopted February 8, 1968]

Approving the issuance of additional revenue bonds by the State Building Commission of West Virginia in an amount not to exceed two million five hundred thousand dollars for the purpose of constructing a building or buildings in Kanawha County to be used as a general headquarters by the Department of Public Safety to accommodate that department’s executive staff, clerical offices, technical services, supply facilities and dormitory accommodations.
WHEREAS, Engrossed Senate Bill No. 54 was enacted by the 1968 session of the Fifty-eighth Legislature, providing that the aggregate amount of all issues of bonds outstanding at one time by the State Building Commission of West Virginia, for all projects authorized by said act shall not exceed twenty-seven million five hundred thousand dollars including renegotiation, reissuance or refinancing of any such bonds; and

WHEREAS, Said statute provides that no bonds or obligations shall be issued in accordance with provisions of said act unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the issuance of additional revenue bonds by the State Building Commission of West Virginia in an amount not to exceed two million five hundred thousand dollars is hereby approved by the Legislature, the proceeds of which shall be expended for the purpose of constructing a building or buildings in Kanawha County to be used as a general headquarters by the Department of Public Safety to accommodate the department's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and, be it

Resolved further, That the purpose for which said additional revenue bonds are to be issued is likewise hereby approved; and, be it

Resolved further, That the Clerk of the State Senate transmit a copy of this resolution to the Secretary of State of the State of West Virginia, the designated secretary of the State Building Commission of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 41
(Originating in the Committee on Rules)
[Adopted February 8, 1968]

Directing the Joint Committee on Government and Finance to make a study into the need and desirability of amending the laws of this State to provide for an increase in the allowable contract rate of interest.
WHEREAS, Legislation has been introduced in the current session of the Legislature to provide for an increase in the contract rate of interest allowable by the laws of this State; and

WHEREAS, This legislation has been strongly recommended by persons in the home building and financial segments of the community; and

WHEREAS, There has been no study of the economic impact of or need for such increase in the contract rate of interest and it is felt by the Legislature that such a study should be conducted before such far reaching legislation is enacted; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to make a comprehensive study into the adequacy of the present contract rate of interest allowed in this State, as well as the need and desirability of increasing the contract rate of interest and the economic impact which an increase in such contract interest rates would have on the State of West Virginia, in particular upon the home building and home financing industries, as well as its effect upon the citizens of this State; and, be it

Resolved further, That the Committee report to the regular session of the Legislature, 1969, on its findings, conclusions, and recommendations, together with drafts of any proposed legislation necessary to carry its recommendations into effect; and, be it

Resolved further, That the expense necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE JOINT RESOLUTION NO. 2

(By Mr. Carson, Mr. President)

[Adopted February 8, 1968]

Proposing an amendment to the Constitution of the State, authorizing the issuing and selling of state road bonds
in an amount not exceeding three hundred fifty million dollars.

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-eight, which proposed amendment is as follows:

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred fifty million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction of free state roads and highways provided for by this Constitution and the laws enacted thereunder. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column the chapter assigned to it.

Regular Session, 1967

HOUSE BILLS

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DISPOSITION OF BILLS ENACTED

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Regular Session, 1968

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First Extraordinary Session, 1968

S. B. No. 1—Congressional Districts 1
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  - Ch. 2  
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  - Ch. 2  
  - Page 3
- Wrongful death  
  - Who may bring; amount and distribution of damages; time for bringing action  
  - Ch. 1  
  - Page 1

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**Maintenance of patients**

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