

ACTS
OF THE
Fifty-Eighth
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1967
First Extraordinary Session, 1968
Regular Session, 1968

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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.

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June 20, 1968

C. A. BLANKENSHIP, Clerk
House of Delegates

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LEGISLATURE OF WEST VIRGINIA
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

District	Name	Address
First	Chester R. Hubbard (R) •William Tompos (D)	Wheeling Weirton
Second	John E. Carrigan (R) •C. Dick Montgomery (D)	Moundsville New Martinsville
Third	•J. Frank Deem (R) Jack L. Miller (R)	Harrisville Parkersburg
Fourth	V. K. Knapp (R) •Randall A. Taylor (D)	Hurricane Point Pleasant
Fifth	•C. H. McKown (D) Lyle A. Smith (D)	Wayne Huntington
Sixth	•Glenn D. Hatcher (D) Noah E. Floyd (D)	War Williamson
Seventh	Lloyd G. Jackson (D) •David W. Mullins (D)	Hamlin Logan
Eighth	•Paul J. Kaufman (D) John T. Poffenbarger (R)	Charleston Charleston
Ninth	•Tracy W. Hylton (D) †Bernard L. Crawford (D)	Mullens Beckley
Tenth	•R. E. Barnett (D) Ray E. Sawyers (D)	Bluefield Hinton
Eleventh	•Howard W. Carson (D) John H. Bowling, Jr. (D)	Fayetteville White Sulphur Spgs.
Twelfth	Carl E. Gainer (D) •E. Hans McCourt (D)	Richwood Webster Springs
Thirteenth	Walter A. Holden (D) •Wm. R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	•O. G. Hedrick (D) William A. Moreland (D)	Fairmont Morgantown
Fifteenth	J. Kenton Lambert (R) •Dallas Wolfe (R)	Parsons Rowlesburg
Sixteenth	•Mrs. Betty H. Baker (D) Clarence E. Martin, Jr. (D)	Moorefield Martinsburg
Seventeenth	•W. T. Brotherton, Jr. (D) Neal A. Kinsolving (R)	Charleston Charleston

(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

County	Name	Address
Barbour	Kenneth Auvil (D)	Belington
Boone	Thomas G. Goodwin (D)	Seth
	Dennie Lee Hill (D)	Madison
Braxton	Paul S. Moyers (D)	Burnsville
Brooke	Mino R. D'Aurora (D)	Follansbee
	Martin Ragan (D)	Wellsburg
Cabell	John M. Bobbitt (R)	Huntington
	Mike Casey (D)	Huntington
	Hugh A. Kincaid (D)	Huntington
	Robert R. Nelson (D)	Huntington
	Mrs. Freda N. Paul (D)	Huntington
Clay	Mrs. Jody G. Smirl (R)	Huntington
	Lane Ellis (D)	Clay
Fayette	Ethel L. Crandall (D)	Gauley Bridge
	Robert K. Holliday (D)	Oak Hill
	T. E. Myles (D)	Fayetteville
Hampshire	James B. Cookman (D)	Romney
Hancock	George G. Griffith (D)	Weirton
	Callie Tsapis (D)	Weirton
Harrison	Carmine J. Cann (D)	Clarksburg
	Donald L. Kopp (D)	Clarksburg
	C. P. Marsteller (D)	Eridgeport
	H. Laban White (D)	Clarksburg
Jackson	B. Noel Poling (R)	Ripley
Jefferson	Thornton W. Wilt (D)	Harpers Ferry
Kanawha	Ivor F. Boiarsky (D)	Charleston
	Walter W. Carey (R)	Charleston
	Russell L. Davisson (R)	St. Albans
	Si Galperin, Jr. (D)	Charleston
	James Clay Jeter (R)	Charleston
	Cleo S. Jones (R)	Charleston
	Lon Clark Kinder, Sr. (R)	Charleston
	Leo G. Kopelman (R)	East Bank
	Alfred A. Lilly (R)	Charleston
	Eric Nelson (R)	Charleston
	Thomas E. Potter (R)	Charleston
	John D. Rockefeller, IV (D)	Charleston
George K. W. Woo (D)	South Charleston	
Paul Zakaib, Jr. (R)	Charleston	
Lewis	Fred L. Mulneix (R)	Weston
Lincoln	H. Leon Hager (D)	Hamlin
Logan	W. N. Anderson (D)	Logan
	Earl B. Hager (D)	Logan
	Ervin S. Queen (D)	Logan
Marion	Nick Fantasia (D)	Kingmont
	J. E. Watson (D)	Fairmont
	W. R. Wilson (D)	Fairmont
Marshall	Robert C. Polen (R)	Moundsville
	Roy H. Rogerson (R)	Moundsville
Mason	Brereton C. Jones (R)	Point Pleasant

(*) Elected January 31, 1967, to succeed Don Yoak, Spencer, resigned.

County or District	Name	Address
McDowell	Corbett Church (D)	Yukon
	Wilfred L. Dickerson (D)	Kimball
	Chester M. Matney (D)	Welch
	Fred G. Wooten (D)	Coalwood
Mercer	James C. Cain (D)	Bluefield
	Clarence C. Christian, Jr. (D)	Princeton
	Charles E. Lohr (D)	Princeton
	†Paige Wooldridge (D)	Bluefield
Mineral	Robert D. Harman (R)	Keyser
Mingo	Robert L. Simpkins (D)	Meador
	T. I. Varney (D)	Matewan
Monongalia	Charles S. Armistead (D)	Morgantown
	Clifford B. Hoard (D)	Morgantown
	Harry U. Howell (D)	Morgantown
Monroe	William Marion Shiflet (D)	Union
Nicholas	D. R. Frazer (D)	Richwood
Ohio	George F. Beneke (R)	Wheeling
	Fred A. Grewe, Jr. (R)	Wheeling
	George H. Seibert (R)	Wheeling
	Frederick P. Stamp, Jr. (R)	Wheeling
	Robert C. Halbritter (R)	Kingwood
Preston	Kenneth C. Ranson (R)	Liberty
Raleigh	Lewis N. McManus (D)	Beckley
	Edward M. Payne, III (D)	Beckley
	Robert B. Sayre (R)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
Randolph	Earl H. Stalnaker (D)	Elkins
Roane	Gene M. Ashley (R)	Amma
Summers	Davis W. Ritter (D)	Hinton
Taylor	Samuel A. Morasco (D)	Grafton
Upshur	Kenneth E. Queen (R)	Buckhannon
Wayne	Clayton C. Davidson (D)	Huntington
	Robert K. Flanagan (D)	Ceredo
Webster	Albert L. Sommerville, Jr. (D)	Webster Springs
Wetzel	Mrs. Herbert Schupbach (D)	New Martinsville
Wood	Robert W. Burk, Jr. (R)	Vienna
	J. C. Butcher (R)	Parkersburg
	Spencer K. Creel (R)	Parkersburg
	William P. A. Nicely (R)	Parkersburg
	Charles E. Allen (D)	Mullens
Wyoming	J. Paul England (D)	Pineville
	Wallace L. Files (R)	Martinsburg
1st District: Berkeley, Morgan	Robert M. Steptoe (D)	Martinsburg
2nd District: Grant, Tucker	Larkin B. Ours (R)	Dorcas
3rd District: Hardy, Pendleton	Thomas J. Hawse (D)	Moorefield
4th District: Greenbrier, Pocahontas	Richard H. Bowman (D)	Rainelle
	Thomas C. Edgar (D)	Hillsboro
5th District: Doddridge, Tyler	Forrest M. Buck (R)	Sistersville
6th District: Pleasants, Ritchie	J. C. Powell (R)	St. Marys
7th District: Calhoun, Gilmer, Wirt	Billy Brown Burke (D)	Glenville

(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, Marsteller, McManus, Morasco, Myles, Watson, Wilt, Beneke, Buck, Burk, Nicely, Potter, Queen (of Upshur), Seibert and Stamp.

Subcommittee Chairmen

Banking—Mr. Frazer
Insurance—Mr. Marsteller

CONSTITUTIONAL REVISION

Steptoe (*Chairman*), Armistead (*Vice Chairman*), Auvil, Casey, Christian, Fantasia, Hill, Holliday, Marsteller, Matney, Morasco, Myles, Queen (of Logan), Shiflet, Tsapis, Watson, Wooten, Beneke, Butcher, Davisson, Jones (of Kanawha), Rogerson, 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

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, Stepoe, Nicely and Seibert.

JUDICIARY

Watson (*Chairman*), Stepoe (*Vice Chairman*), Anderson, Armistead, Cain, Casey, Marsteller, 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 Chairman

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 Chairman

Railroads—Mr. Christian

RULES

White (*Chairman*), Boiarsky, Cann, Hill, Myles, Payne, Stepoe, 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."

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1967

REGULAR SESSION

CHAPTER 1

(House Bill No. 1146—By Mr. Steptoe)

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

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

1 Every such action shall be brought by and in the name
2 of the personal representative of such deceased person
3 who has been duly appointed in this state, or in any
4 other state, territory or district of the United States,
5 or in any foreign country, and the amount recovered
6 in every such action shall be recovered by said personal
7 representative and be distributed in accordance here-
8 with. Where the personal representative was duly ap-
9 pointed in another state, territory or district of the United
10 States, or in any foreign country, such personal repre-
11 sentative shall, before the action is heard, post bond, with
12 a corporate surety thereon authorized to do business in
13 this state, in a penal sum to be determined by the court,
14 conditioned that such personal representative shall pay
15 all costs adjudged against him and that he shall comply
16 with the provisions of the third paragraph of this sec-
17 tion. In every such action the jury may award such
18 damages as they deem fair and just, not exceeding ten
19 thousand dollars, and the amount recovered shall be
20 distributed to the parties and in the proportion pro-
21 vided by law for the distribution of personal estate left
22 by persons dying intestate. In addition, the jury may
23 award such further damages, not exceeding the sum of
24 one hundred thousand dollars, as shall equal the finan-
25 cial or pecuniary loss sustained by the dependent dis-
26 tributee or distributees of such deceased person, and shall
27 be distributed as though part of the decedent's estate
28 to decedent's dependent distributees in the proportions
29 provided by the laws of descent and distribution.

30 In every such action and in addition to the damages
31 awarded pursuant to the foregoing provisions hereof,
32 the personal representative of the deceased shall be en-
33 titled to recover the reasonable funeral expenses of such
34 deceased person and the reasonable hospital, medical
35 and other expenses incurred as a result of the wrongful
36 act, neglect or default of the defendant or defendants
37 which resulted in death.

38 In its verdict the jury shall set forth separately the
39 amount of damages, if any, awarded by it for reasonable
40 funeral, hospital, medical and said other expenses in-
41 curred as a result of the wrongful act, neglect or default
42 of the defendant or defendants which resulted in death,
43 and any such amount recovered for such expenses shall
44 be so expended by the personal representative. Except
45 as provided in the preceding sentence, the amount re-
46 covered in accordance with the provisions of this section
47 shall not be subject to any debts or liabilities of the de-
48 ceased.

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

51 The provisions of this section shall not apply to actions
52 brought for the death of any person occurring prior to the
53 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.

1 No person, including a person licensed to practice
2 medicine or dentistry, who in good faith renders emer-
3 gency care at the scene of an accident, without remuner-
4 ation, shall be liable for any civil damages as the result
5 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:

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

11 (b) Promote and encourage the organization of such
12 societies and associations as have for their object the
13 improvement and development of the state's agricultural,

14 horticultural and kindred interests, especially in pro-
15 duction, processing for market and distribution;

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

20 (d) Induce the investment of capital in, and immi-
21 gration into, this state by the dissemination of informa-
22 tion relative to the soil, climate, health, natural resources,
23 market opportunities and advantages of the state;

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

27 (f) Take charge of the museum of the department of ag-
28 riculture, collect, preserve and exhibit therein specimens
29 of agricultural, horticultural and kindred products, prod-
30 ucts of the forest, minerals, flora and fauna of the state;

31 (g) Publish and distribute from time to time such
32 reports and bulletins concerning agriculture, horticulture
33 and kindred subjects as may be of value to the farmers
34 of the state, and, as conditions may demand, publish a
35 handbook giving the resources of the several counties
36 of the state, the varieties of soil and products, both min-
37 eral and vegetable, and the adaptability of the different
38 sections of the state to the different branches of agricul-
39 ture, horticulture and kindred interests;

40 (h) Submit a biennial report to the governor and Leg-
41 islature containing such information as to the operations
42 of the department as may be helpful to the agricultural
43 interests of the state, together with an itemized state-
44 ment of all receipts and disbursements during the bi-
45 ennial period covered thereby, and giving the name of
46 every person employed during such period, the time
47 employed, and the amount paid each employee;

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

51 (j) Promulgate and adopt rules, regulations and stand-
52 ards for the purpose of carrying out the requirements of
53 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.

§19-2A-14. Testing and inspection of livestock for infectious diseases; fees; records.

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

12 At any public market where livestock is received, sold,
13 offered or exposed for sale for purposes other than slaugh-
14 ter, the same shall be inspected for livestock diseases by
15 a licensed and accredited veterinarian or by a livestock
16 inspector approved by the commissioner and working un-
17 der the direct supervision of the veterinary director of the
18 animal health division, which veterinarian and livestock

19 inspector shall be employed by the commissioner of agri-
20 culture and shall have authority to carry out the provi-
21 sions of this section and enforce the provisions of article
22 nine, chapter nineteen of the code of West Virginia, one
23 thousand nine hundred thirty-one.

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

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

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

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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 Vir-
ginia, 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; oxy-
gen content; warehouse numbers; conditions; standards;
air component determinations; hearings; subpoenas; in-
junctions; 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

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.
6. CA warehouse numbers; issuance and use.
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.

§19-5A-1. Purpose and construction.

1 The purpose of this article is to regulate controlled
 2 atmosphere storage warehouses, for controlling the condi-
 3 tion and maturity of fresh fruits and vegetables, so that
 4 upon removal therefrom they may be designated as CA
 5 stored.

§19-5A-2. Definitions.

1 (a) "Department" means the department of agricul-
 2 ture of the state of West Virginia.

3 (b) "Commissioner" means the commissioner of agri-
 4 culture of the state of West Virginia or his duly author-
 5 ized representatives.

6 (c) "Controlled atmosphere storage" or "CA" means
 7 any storage warehouse consisting of one or more rooms
 8 in any one facility in which atmospheric gases are con-
 9 trolled in their amount and in degrees of temperature for
 10 the purpose of controlling the condition and maturity of
 11 any fresh fruits and vegetables in order that upon re-
 12 moval therefrom they may be designated as having been
 13 exposed to controlled atmosphere.

14 (d) "Person" means an individual, firm, partnership,
15 corporation, cooperative, company, society or association
16 and each officer, agent or employee thereof and shall
17 import either the singular or plural as the case may be.

§19-5A-3. Commissioner to enforce article; rules and regulations; cooperation with other authorities.

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

6 (b) The commissioner is hereby authorized and em-
7 powered to cooperate with the federal government and
8 any agencies, departments, and instrumentalities thereof,
9 the state of West Virginia and any agencies, departments
10 or political subdivisions thereof, and any other state or
11 commonwealth and any agencies, departments or political
12 subdivisions thereof, in order to carry out the effective
13 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.

1 No person shall engage in the business of operating a
2 controlled atmosphere storage warehouse unless he shall
3 have first obtained a license from the commissioner so
4 to do, which license remains unsuspended and unrevoked.
5 Application for such license shall be made on forms pre-
6 scribed by the commissioner and shall be accompanied
7 by a fee required in this section. When a person operates
8 two or more CA storage warehouses not on the same
9 premises in this state, a separate license shall be re-
10 quired for each such storage warehouse. Each license
11 shall expire on the thirtieth day of June next following
12 its issuance, and the annual fee for each such license
13 shall be twenty-five dollars. Before issuing any license
14 required by the provisions of this section, the commis-
15 sioner shall inspect the applicant's CA storage ware-
16 house and if the commissioner is satisfied that the ware-
17 house is properly equipped and is in conformity with the
18 provisions of this article and any rules and regulations

19 promulgated by the commissioner, he shall issue the
20 license. Each applicant for a license shall specify the
21 name of the person applying for the license, the principal
22 business address, name of the person domiciled in this
23 state authorized to receive and accept service and legal
24 notices of all kinds, the storage capacity of the controlled
25 atmosphere storage warehouse by cubic capacity or
26 volume, kind of fruits or vegetables for which the ap-
27 plicant intends to provide controlled atmosphere storage,
28 and any other information prescribed by the commis-
29 sioner as necessary in carrying out the provisions of this
30 article.

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

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

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

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

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

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

4 No person in this state shall place, stamp, mark or
5 cause to be placed, stamped or marked the letters "CA"
6 or a similar designation in conjunction with a number or
7 numbers upon any container or subcontainer of any fruits

8 or vegetables, or imply that such fruits and vegetables
9 have been subjected to controlled atmosphere conditions
10 unless the commissioner has inspected such fruits and
11 vegetables and issued a state lot number in conjunction
12 with a certificate stating their quality and condition, that
13 they were stored in a warehouse licensed under the pro-
14 visions of this article and met the requirements of the
15 article and regulations promulgated thereunder: *Pro-*
16 *vided*, That if such fruits and vegetables are not allowed
17 to enter the channels of commerce within two weeks of
18 such inspection or subsequent similar inspection by the
19 commissioner the letters "CA" and the state lot number
20 shall be eradicated by the licensee.

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

1 The commissioner shall adopt regulations:

2 (a) Prescribing the maximum amount of oxygen that
3 may be retained in a sealed controlled atmosphere ware-
4 house.

5 (b) Prescribing the maximum period of time in which
6 the oxygen content shall be reduced to the amount pre-
7 scribed under subdivision (a) of this section.

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

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

1 The licensee shall make air component determinations
2 as to the percentage of carbon dioxide, oxygen and tem-
3 perature at least once each day. A record of such deter-
4 minations shall be kept on a form prescribed by the
5 commissioner for a period of at least one year and shall
6 include the following:

7 (a) Full name and address of licensee.

8 (b) Number and storage capacity of the warehouse.

9 (c) Date of sealing of the warehouse.

10 (d) Date of opening of the warehouse.

11 (e) A daily record of the date and time of tests in-
12 cluding the percentage of carbon dioxide, oxygen and the
13 temperature.

14 (f) Any records required by the commissioner to ful-
15 fill the provisions of this article.

§19-5A-9. Minimum condition and maturity standards.

1 The commissioner shall establish minimum condition
2 and maturity standards for fruits and vegetables which
3 are to be designated as "CA" stored.

**§19-5A-10. Subpoena power; production of books, records, etc.;
enjoining violation; admissibility of inspection cer-
tificates.**

1 The commissioner shall have subpoena power to com-
2 pel the attendance of witnesses and/or the production of
3 books, records or documents anywhere in the state in a
4 hearing affecting the authority or privilege granted by a
5 license issued under the provisions of this article and
6 may bring an action to enjoin the violation or threatened
7 violation of any provision of this article or of any regu-
8 lation adopted pursuant to this article in a court of record
9 in the county in which violation occurs or is about to
10 occur, notwithstanding the existence of any other remedy
11 of law. Official inspection certificates issued by the com-
12 missioner shall be received in all courts of this state as
13 prima facie evidence as statements of facts contained
14 therein.

§19-5A-11. Unlawful acts; penalties.

1 It shall be unlawful for any person to sell, offer for
2 sale, hold or transport for sale any fruits or vegetables
3 represented as having been exposed to controlled atmo-
4 sphere storage or to use any terms or form of words or
5 symbols of similar import unless such fruits and vege-
6 tables have been stored in a controlled atmosphere storage
7 which meets the requirements of this article and the
8 regulations adopted hereunder. Any person violating the
9 provisions of this article or the regulations adopted here-
10 under shall be guilty of a misdemeanor, and, upon con-
11 viction thereof, shall for the first offense be fined not less

12 than fifty dollars nor more than two hundred fifty dollars
 13 and upon conviction of each subsequent offense shall be
 14 fined not less than two hundred fifty dollars nor more
 15 than five hundred dollars.

§19-5A-12. Article cumulative and nonexclusive; severability.

1 The provisions of this article shall be cumulative and
 2 nonexclusive and shall not affect any other remedy. If
 3 any section or provision of this article shall be adjudged
 4 invalid or unconstitutional, such adjudication shall not
 5 affect the validity of the article as a whole or any sec-
 6 tion, provision or part thereof not adjudged invalid or
 7 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, chapter 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-
 2 ject to dismissal by him at any time, such consulting vet-
 3 erinarians as may be necessary from time to time to assist
 4 him in discharging the duties imposed upon him by this
 5 article. Each consulting veterinarian shall be registered
 6 as required by article ten, chapter thirty of this code, and

7 shall receive a per diem, and actual expenses, to be de-
8 termined by the commissioner, for the time actually en-
9 gaged in carrying out the directions of the commissioner,
10 which per diem and expenses shall be paid out of the cur-
11 rent appropriation made for the enforcement of this
12 article.

13 Whenever any incorporated city of this state shall have
14 in its employ any veterinary sanitary officer engaged in
15 the inspection of meat, milk or animals, and such officer
16 is a registered veterinarian as aforesaid, the commissioner
17 may appoint such city veterinary sanitary officer a con-
18 sulting veterinarian, but such officer shall not be entitled
19 to compensation or expenses from both the state and city
20 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 thou-
sand 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.

§19-9-14. Establishment of special quarantine.

The commissioner or his authorized agent shall have the
2 power to establish and maintain a special quarantine,
3 whenever any domestic animal shall be affected with or
4 exposed to any communicable disease, or whenever he
5 deems it necessary to have any animal examined or tested.

6 When a special quarantine is established, the commis-
7 sioner, or his agent, shall post on the building, structure,
8 pen, coop, car, vessel, vehicle, field, or enclosure, wherein
9 the animal or animals quarantined are confined or con-
10 tained, a notice declaring the quarantine and containing a
11 description of the animal or animals and of the premises
12 where quarantined. Such quarantine may continue for
13 such time as the commissioner, or his agent, may deem
14 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.
- 31. Certificate of appraisal.

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

- 1 Whenever, to prevent the spread of any communicable
- 2 disease, which cannot be cured or controlled by isolation

3 and adequate or proper veterinary treatment, it shall be
4 deemed necessary by the commissioner or any of his
5 agents to cause any animal found to be infected with or
6 directly exposed to any infectious, contagious, or com-
7 municable disease, which cannot be cured or controlled
8 by isolation and adequate or proper veterinary treat-
9 ment, to be killed, and the owner of such animal shall
10 desire to receive indemnity therefor, he shall be required
11 by the commissioner before the appraisal and slaughter
12 of the animal to execute an agreement that he will thor-
13 oughly clean and disinfect all premises that may have
14 been infected by such animal in such manner as the com-
15 missioner may prescribe, and, in case such animal is tu-
16 berculous, that he will have his entire herd of bovine
17 animals tested with tuberculin by the commissioner or
18 his agent at such times as the commissioner may desig-
19 nate, and will not admit to his herd any bovine animal
20 that has not given a negative reaction to the test. Such
21 agreement shall be in duplicate, one copy to be retained
22 by the signer, and in such form as the commissioner shall
23 prescribe, and shall be signed by the owner or his agent,
24 and shall be effective for a period of two years from
25 the date thereof. All such animals, for which indemnity
26 is claimed by the owner, shall be appraised before being
27 slaughtered, and the owners indemnified as hereinafter
28 provided: *Provided, however,* That any animal infected
29 with rabies may be slaughtered by the owner or any per-
30 son authorized to do so without such agreement and ap-
31 praisal first being had, and if the disease is caused by
32 the bite of a dog, the animal shall be appraised and com-
33 pensation therefor obtained as provided in article twenty
34 of this chapter.

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

1 The commissioner or his agent shall act as appraiser
2 and appraise each infected or directly exposed animal
3 within five days prior to the date of slaughter, basing
4 the amount upon the class and market value of the
5 animal at the time of the appraisal, whether for breed-
6 ing purposes or for milk or meat production. Animals
7 reacting to any approved test, but not exhibiting any

8 physical evidence of disease, shall be appraised without
9 considering the presence of a diseased condition, but
10 animals exhibiting any physical evidence of disease shall
11 be appraised as infected animals: *Provided, however,*
12 That where indemnities are claimed for directly exposed
13 animals slaughtered on account of being infected with
14 rabies, appraisement shall be based on the value of the
15 animal before it became infected. The amount of appraisal
16 for a nonregistered equine animal shall not exceed
17 seventy-five dollars, for a registered equine animal one
18 hundred dollars, for a nonregistered bovine animal one
19 hundred and fifty dollars, for a registered bovine animal
20 two hundred and fifty dollars, for a nonregistered swine
21 twenty-five dollars, for a registered swine forty dollars,
22 for a nonregistered sheep ten dollars, and for a registered
23 sheep twenty-five dollars. If the amount of appraisal
24 of any animal, as determined by the appraiser is not
25 satisfactory to the owner of the animal, a written notice
26 of such fact setting forth the reason for complaint shall
27 be made at once to the appraiser. The amount of the
28 appraisal shall then be determined by arbitrators, one
29 to be appointed by the appraiser and one by the owner
30 of the animal. If these arbitrators are not able to agree
31 as to the amount of appraisal, a third arbitrator shall
32 be appointed by them, whose decision shall be final.
33 Each arbitrator shall be paid one dollar for each appraise-
34 ment of five or less than five animals, and two dollars
35 if more than five animals are appraised. Compensation
36 for the arbitrators appointed by the owner and the ap-
37 praiser shall be paid by the party appointing such arbi-
38 trator, and in case a third arbitrator is chosen, such arbi-
39 trator shall be paid by the party against whom the deci-
40 sion is made.

§19-9-31. Certificate of appraisal.

1 When the animal is to be slaughtered, the commissioner
2 or his agent shall make and deliver to the owner a cer-
3 tificate of appraisal which may cover any number of
4 animals belonging to the same owner, showing the age
5 and description of each animal found to be infected or
6 directly exposed, the name and place of test, if any,
7 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 horticulture, 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 relating thereto; defining the powers and duties of the commissioner of agriculture relating thereto; providing penalties; 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; eradication 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.

7. Infected or infested nursery stock, articles or materials subject to seizure, etc.
8. Right of entry on premises.
9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.
10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.
11. Nursery stock brought into state to carry inspection certificate.
12. Disposition of fees collected.
13. Inspection of plants, etc., by commissioner upon request; certificate stating results of inspection.
14. Permit required to sell, transport, etc., plant pests.
15. Information to be furnished and inspection allowed upon request of commissioner.
16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.
17. Severability.

§19-12-1. Title.

This article shall be known by the short title of "The
2 Plant Pest Act."

§19-12-2. Definitions.

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

- 5 (a) "Department" means the department of agricul-
6 ture of the state of West Virginia.
- 7 (b) "Commissioner" means the commissioner of agri-
8 culture of the state of West Virginia and his duly au-
9 thorized representatives.
- 10 (c) "Agent" means any person soliciting orders for
11 nursery stock under the partial or full control of a nurs-
12 eryman or dealer.
- 13 (d) "Dealer" means any person not a grower of nurs-
14 ery stock, who buys, receives on consignment or other-
15 wise acquires and has in his possession nursery stock for
16 the purpose of offering or exposing for sale, reselling, re-
17 shipping or distributing same. Each separate location
18 shall constitute a dealership.
- 19 (e) "Nursery" means any grounds or premises on or
20 in which nursery stock is being propagated or grown for
21 sale or distribution, including any grounds or premises
22 on or in which nursery stock is being fumigated, treated,
23 packed or stored or otherwise prepared or offered for
24 sale or movement to other localities.

25 (f) "Nurseryman" means and includes any person who
26 owns, leases, manages or is in charge of a nursery.

27 (g) "Nursery stock" means all trees, shrubs and
28 woody vines, including ornamentals, bush fruits, grape-
29 vines, fruit trees and nut trees, whether cultivated, native
30 or wild, and all buds, grafts, scions, fruit pits and cuttings
31 from such plants. It also means sod, including sod plugs
32 and sod-producing plants, and such herbaceous plants,
33 including strawberry plants, narcissus plants and narcis-
34 sus bulbs as the commissioner declares by regulation to be
35 so included whenever he considers control of the move-
36 ment of such plants and bulbs necessary for the control
37 of any destructive plant pest. Florists' or greenhouse
38 plants for inside culture or use, unless declared other-
39 wise by the commissioner, as herein authorized, shall not
40 be considered nursery stock, except that all woody plants,
41 whether greenhouse or field grown, if for outside plant-
42 ing, are hereby defined as nursery stock.

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

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

52 (j) "Plant pest" means any living stage of: Any in-
53 sects, mites, nematodes, slugs, snails, protozoa or other
54 invertebrate animals, bacteria, fungi, other parasitic
55 plants or reproductive parts thereof, viruses or any or-
56 ganisms similar to or allied with any of the foregoing,
57 or any infectious substances, which can directly or in-
58 directly injure or cause disease or damage in any plants
59 or parts thereof, or any processed, manufactured or other
60 products of plants.

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

64 (l) "Regulated article" means any article of any char-

65 acter, as described in the quarantine or other order of the
66 commissioner carrying or capable of carrying a pest.

67 (m) "Certificate" means a document issued or author-
68 ized by the commissioner indicating that a regulated ar-
69 ticle is not contaminated with a pest.

70 (n) "Permit" means a document issued or authorized
71 by the commissioner to provide for a movement of regu-
72 lated articles to restricted destinations for limited han-
73 dling, 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
2 the powers and duties imposed upon him by this article
3 for the purpose of protecting agricultural, horticultural
4 and other interests of the state from plant pests or other
5 insects and for this purpose he is hereby authorized and
6 empowered to promulgate such rules and regulations as
7 are necessary to effectively eradicate, suppress or control
8 plant pests or other insects or to retard the dissemination
9 of plant pests or other insects as far as may be practical
10 and to employ or contract with such persons as may be
11 appropriate.

(b) The commissioner is hereby authorized and em-
12 powered to cooperate with the federal government and
13 any agencies, departments and instrumentalities thereof,
14 the state of West Virginia and any agencies, departments
15 or political subdivisions thereof and any other state or
16 commonwealth and any agencies, departments or political
17 subdivisions thereof, in order to carry out the effective
18 administration of this article.

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

The commissioner shall cause detection and abundance
2 surveys to be made for plant pests or other insects of a
3 highly injurious nature that may be present in the state
4 to determine the necessity for establishing control prac-
5 tices. When the commissioner determines that a new and
6 dangerous plant pest or other insect exists within the
7 state or that an established pest requires control and the

8 nature of the pest dictates immediate action, he shall pro-
9 ceed with a plan of eradication or suppression.

§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 regula-
2 tions under which he may proceed to eradicate or sup-
3 press and prevent the dissemination of plant pests or
4 other insects as far as may be practical and such rules
5 and regulations as are necessary to carry out the purpose
6 of this article. Any person violating any of the provisions
7 of this article or any rules or regulations promulgated
8 thereunder may be enjoined from continuing such viola-
9 tion or violations upon proper application to the circuit
10 court of any county, and a judge thereof shall not require
11 a bond as a condition precedent to the issuance of the
12 injunction.

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

The commissioner shall have power to establish and
2 maintain quarantines and to adopt other orders and rules
3 and regulations concerning the planting, exposing, sale
4 and transportation of all plants or plant products and
5 regulated articles capable of carrying plant pests of a
6 highly injurious nature in any living stage within this
7 state. The commissioner shall also have the power to
8 prescribe like rules and regulations pertaining to all
9 plants or plant products entering this state. The commis-
10 sioner shall have the authority to rescind quarantines
11 and other orders when he determines the need or prac-
12 ticability 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
2 delivery of, destroy, stop sale, to seize, to treat or to order
3 returned to point of origin, at the owner's expense, any
4 nursery stock or any article or material whatsoever trans-
5 ported or moved within this state or being transported
6 into this state from any place outside thereof, if such
7 nursery stock, article or material is found by him to be

8 infested or infected with any dangerous plant pest or other
9 insect or is in violation of any part of this article whether
10 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 commis-
2 sioner is hereby invested with authority, during reason-
3 able working hours, to enter upon any public or private
4 premises, except private residences, to examine and
5 sample all plants and trees, soil, articles, and substances
6 which are suspected of being infested or infected with
7 dangerous plant pests or other insects in discharge of the
8 duties prescribed by this article. No person shall obstruct
9 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 reg-
istration fees.**

It shall be unlawful for any nurseryman, dealer or
2 agent to expose or offer for sale, sell, deliver or give away
3 any plants or parts of plants commonly known as nursery
4 stock unless such person shall have first secured from the
5 commissioner a certificate of registration. The commis-
6 sioner may refuse, suspend or cancel any certificate upon
7 satisfactory evidence that any of the provisions of this
8 article or rules and regulations governing the sale of nurs-
9 ery stock within this state have been violated. The com-
10 missioner shall for each certificate of registration issued
11 and for each renewal thereof, collect an annual registra-
12 tion fee in the amount of ten dollars for each nurseryman,
13 twenty dollars for each dealer and two dollars for each
14 agent of such nurseryman or dealer. All certificates or
15 registration shall expire on the thirtieth day of June next
16 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
2 subject to inspection. It shall be the duty of the com-
3 missioner to provide for the annual inspection, or oftener
4 if necessary, of all nurseries within the state.

5 The commissioner may order the owner or any person
6 in charge of any infested or infected nursery stock or
7 other material, article or host plants, including soil, to
8 take such necessary measures as will eradicate or control
9 the said infestation or infection as he may deem neces-
10 sary or proper. Such owner or person in charge shall
11 carry out the order of the commissioner within the period
12 of time designated in the order. If such owner or person
13 in charge shall refuse or fail to carry out any such order,
14 the commissioner may cause to be performed such eradi-
15 cation or control measures as are required by the order
16 which shall be at the expense of the owner or person in
17 charge.

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

It shall be unlawful to deliver, transport or ship within
2 this state, nursery stock which has not been inspected in
3 accordance with the provisions of this article and which
4 does not carry an inspection certificate attached to each
5 carload, truckload, box, bale, package or item, or to de-
6 liver, ship, send or bring any such nursery stock into this
7 state from any place outside thereof, unless there is at-
8 tached to each carload, truckload, box, bale, package or
9 item, in a conspicuous place, a valid certificate of inspec-
10 tion issued by the proper official of the state, territory,
11 district or country from which it was shipped, sent or
12 brought, showing that such nursery stock, including soil,
13 was found to be free from plant pests at the time of in-
14 spection.

15 Nursery stock brought into the state under an inspec-
16 tion certificate, as above required, may be sold and moved
17 under the certificate of a registered West Virginia nurs-
18 eryman or dealer or agent, but this shall not preclude in-
19 spection at any time within the state.

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

The commissioner shall deposit all fees collected by him
2 under the provisions of this article, into the state treasury
3 to the credit of a special fund, which funds shall be ex-
4 pended by the commissioner for the enforcement of this
5 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
2 products or any other substance, material or thing may
3 apply to the commissioner for a special inspection for the
4 purpose of determining the presence of plant pests which
5 might prevent the movement or use of same. The ex-
6 penses incurred in making the inspection shall be paid
7 by the person making such request. The commissioner
8 may comply with such request and shall issue to the per-
9 son requesting an inspection a certificate stating the re-
10 sults of the inspection.

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

No person shall sell, barter, expose, offer for sale or
2 move, transport, deliver, ship or offer for shipment into
3 or within this state any plant pest or other insects in any
4 living stage without first obtaining a permit from the com-
5 missioner. Such permit shall be issued only after it has
6 been determined that the plant pests or other insects are
7 not injurious, are generally present already or are for
8 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
2 plants or plant products or articles or substances sus-
3 pected of being infested or infected with dangerous pests
4 in his possession to present same for inspection and to
5 give full information as to the origin, number and destina-
6 tion of same, and it shall be a misdemeanor for such per-
7 son to refuse to give the information upon request or to
8 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 arti-
2 cle, or the rules or regulations adopted thereunder, shall
3 be deemed guilty of a misdemeanor, and, upon conviction
4 thereof, shall be fined not less than ten dollars nor more
5 than one hundred dollars.

6 It shall be the duty of the prosecuting attorney of the

- 7 county in which the violation occurred to represent the
8 department of agriculture, to institute proceedings and to
9 prosecute the person charged with such violation.

§19-12-17. 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 other provisions or applications
4 of the article which can be given effect without the in-
5 valid provision or application and to this end the pro-
6 visions 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.
6. Duties and authority of commissioner of agriculture.
8. Violations and prosecutions.

§19-16-1. Definitions.

- 1 When used in this article:
- 2 (a) "Commissioner" means the commissioner of agri-
3 culture of the state of West Virginia or his duly author-
4 ized representatives;

5 (b) The term "person" shall include any individual,
6 partnership, corporation, company, society or associa-
7 tion;

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

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

18 (e) The term "seed potato" shall refer to the Irish
19 potato (*Solanum tuberosum*);

20 (f) The term "weed seeds" shall include the seeds of
21 all plants generally recognized as weeds within this
22 state;

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

31 (1) "Prohibited weed seeds" are the seeds of peren-
32 nial weeds such as not only reproduce by seed, but also
33 spread by underground roots or stems, and which when
34 established are highly destructive and difficult to control
35 in this state by ordinary cultural practice;

36 "Prohibited weed seeds" in this state are the seeds of
37 dodder (*Cuscuta* spp.), quack grass (*Agropyron repens*),
38 Johnson grass (*Sorghum halapense*), Canada thistle (*Car-
39 duus arvensis*), perennial sow thistle (*Sonchus arvensis*);

40 (2) "Noxious weed seeds" are the seeds of such weeds
41 as are very objectionable in fields, lawns or gardens of
42 this state, but can be controlled by good cultural prac-
43 tice. "Noxious weed seeds" in this state are the seeds
44 of wild onion (*Allium vineale*), hawk weed (*Hieracum*

45 spp.), buckhorn (*Plantago lanceolata*), English charlock
46 or wild mustard (*Brassica arvensis*), corn cockle (*Agro-*
47 *stemma gilthago*), ox-eye daisy (*Chrysanthemum leucan-*
48 *themum*), Indian mustard (*Brassica juncea*), star thistle
49 (*Centurea solstitialis*), wild carrot (*Daucus carota*), horse
50 nettle (*Solanum carolinense*), field pepper grass (*Lepidium*
51 *compestre*), wild morning glory (*Ipomoea purpurea*), bind-
52 weed (*Convolvulus arvensis*);

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

57 (i) The term "advertisement" means all representa-
58 tion, other than those on the label, disseminated in any
59 manner or by any means, relative to seed within the
60 scope of this article.

§19-16-2. Label requirements.

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

7 (a) For agricultural and forest seeds:

8 (1) Commonly accepted name of

9 (a) Kind and variety of each agricultural or forest
10 seed component in excess of five per cent of the whole,
11 and the percentage by weight of each in order of its pre-
12 dominance. Where more than one component is required
13 to be named, the word "mixture" or the word "mixed"
14 shall be shown conspicuously on the label.

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

18 (2) Lot number or other lot identification.

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

22 (4) Percentage by weight of all weed seeds.

23 (5) The name and approximate number of each kind
24 of noxious weed seed: (a) Per ounce in *Agrostis* spp.,
25 *Poa* spp., Rhodes grass, Bermuda grass, timothy, orchard
26 grass, fescues, alsike and white clover, reed, canary grass,
27 Dallas grass, ryegrass, foxtail millet, alfalfa, red clover,
28 sweet clovers, lespedezas, smooth brome, crimson clover,
29 *Brassica* spp., flax, *Agropyron* spp., and other agricul-
30 tural seeds of similar size and weight, or mixtures within
31 this group.

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

37 All determinations of noxious weed seeds shall be sub-
38 ject to tolerances and methods of determination pre-
39 scribed in the rules and regulations under this article.

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

43 (7) Percentage by weight of inert matter.

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

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

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

54 (10) For agricultural or forest seeds which germinate
55 less than the standard last established by the commis-
56 sioner under this article, the label shall show in addition
57 to the previous requirements of this section, the words
58 "germination below standard" in not less than eight
59 point type.

60 (b) For vegetable seeds:

61 (1) Name of kind and variety;

62 (2) For seeds which germinate less than the standard
63 last established by the commissioner under this article:

64 (a) Percentage of germination, exclusive of hard seed;

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

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

72 (c) For seed potatoes:

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

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

1 Every producer or distributor of agricultural, forest
2 or vegetable seeds or seed potatoes who shall sell, offer
3 or expose for sale or distribution in this state any seeds,
4 shall before the same is offered or exposed for sale
5 obtain from the commissioner a certificate of registration
6 showing that he has registered with the commissioner
7 to sell seeds in West Virginia. The commissioner shall
8 have full power and is hereby authorized and required
9 to cancel and withdraw any certificate upon satisfactory
10 evidence that any provisions of this article or any rules
11 and regulations covering the sale of any seed have been
12 violated. The commissioner shall not issue any certificate
13 of registration except upon filing with the commissioner
14 an application for a certificate of registration, such ap-
15 plication shall be on a form prescribed by the commis-
16 sioner which shall include a consent for the commissioner
17 or his agent to inspect and audit all sales invoices and
18 records and shall include, but not be limited to, the
19 following: The name and address of the seedsman, im-

20 porter, dealer, or agent, or other person, firm or corpo-
21 ration selling, offering or exposing for sale or distribution
22 any seeds in this state; a list of the seeds to be offered
23 for sale, and accompanied by a registration fee of one
24 dollar. Certificates so issued by the commissioner shall
25 become null and void on December thirty-first next after
26 date of issue unless sooner revoked as herein provided.

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

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

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

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

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

54 (1) Payment of the fee levied in paragraph (c) shall
55 be based on a statement under oath in due form of law
56 which shall be filed with the commissioner on or before
57 the fifteenth day of each month for the preceding month
58 in which seed potatoes were bought or distributed, sold
59 or offered for sale.

60 (d) For vegetable seeds in primary consumer pack-
61 ages containing not more than eight ounces net: One
62 dollar per sampler unit.

63 (1) Payment of the fee levied in paragraph (d) shall
64 be through the purchase of seed stamps from the com-
65 missioner which seed stamps shall be attached to each
66 and every display unit in a conspicuous place.

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

71 (1) Payment of the fee levied in paragraph (e) shall
72 be through the purchase of seed stamps from the com-
73 missioner which stamps shall be attached to the primary
74 consumer container before such seed is offered or exposed
75 for sale or distribution.

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

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

§19-16-4. Prohibitions.

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

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

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

12 (3) Pertaining to which there has been a false or
13 misleading advertisement;

14 (4) Containing prohibited weed seeds, subject to
15 tolerances and methods of determination prescribed in
16 the rules and regulations under this article;

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

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

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

25 (2) To disseminate any false or misleading advertise-
26 ment concerning agriculture, forest, vegetable or potato
27 seed in any manner or by any means;

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

30 (4) To fail to comply with a "stop sale" order.

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

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

4 (1) To establish germination standards for agricul-
5 tural, forest and vegetable seeds;

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

15 (3) To prescribe and adopt rules and regulations gov-
16 erning the methods of sampling, inspecting, analysis, tests
17 and examination of agricultural, forest and vegetable
18 seed, and the tolerances to be followed in the adminis-
19 tration of this article, which shall be in general accord
20 with officially prescribed practice in interstate commerce,

21 and such other rules and regulations as may be neces-
22 sary to secure the efficient enforcement of this article.

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

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

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

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

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

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

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

§19-16-8. Violations and prosecutions.

1 Any person violating any of the provisions of this article
2 shall be deemed guilty of a misdemeanor, and, upon con-
3 viction thereof, shall be fined not less than twenty-five
4 dollars nor more than two hundred fifty dollars for the
5 first offense, and not less than two hundred dollars nor
6 more than five hundred dollars for each subsequent offense.

7 When the commissioner shall find that any person has
8 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, designated 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
2 section six of this article, the county court of each county
3 may contract with or reimburse any private incorporated
4 society or association with respect to the care, mainte-
5 nance, 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 vac-
2 cinating each animal to furnish vaccine of a type capable
3 of establishing and maintaining immunity for a period
4 of not less than twenty-four months and he shall charge
5 and collect a fee of one dollar fifty cents for each animal
6 vaccinated, if done at a clinic established by a county
7 court or, if vaccinated at any other place, he shall charge
8 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

33 shall not exceed the average assessed value of like animals
34 or poultry, or if no like animal or poultry is assessed,
35 then not to exceed the fair market value as determined
36 by the county court.

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

—c—

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.]

AN ACT to amend and reenact 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, relating to air pollution control, the declaration of policy and purpose, the definitions of certain terms used in the article, the composition of the air pollution control commission, the expenses and compensation of the members of said commission, certain functions of the commission, the appointment of a director of the commission and the compensation and expenses of such director; authorizing the director to make and enter cease and desist orders; authorizing an appeal from any such order to the commission; expressly making the administrative procedures act applicable; providing penalties; and providing for injunctive relief.

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
 2 and the purpose of this article to achieve and maintain
 3 such levels of air quality as will protect human health and
 4 safety, and to the greatest degree practicable, prevent in-
 5 jury to plant and animal life and property, foster the com-
 6 fort and convenience of the people, promote the economic
 7 and social development of this state and facilitate the en-
 8 joyment of the natural attractions of this state.

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

§16-20-2. Definitions.

The terms used in this article are defined as follows:

2 The term "person" shall mean any and all persons, nat-
 3 ural or artificial, including any municipal, public or pri-
 4 vate corporation organized or existing under the laws of
 5 this or any other state or country, and any firm, partner-
 6 ship or association of whatever nature.

7 The term "commission" shall mean the air pollution
8 control commission, and the term "commissioner" shall
9 mean a member of said commission.

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

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

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

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

**§16-20-4. Air pollution control commission—Composition; ap-
pointment and terms of members; vacancies; compensa-
tion and expenses of members; organization and per-
sonnel; appointment of director; records; meetings.**

The "Air Pollution Control Commission," heretofore
2 created, shall continue in existence as an agency of the
3 state but on and after the effective date of this act shall
4 consist of seven members, including the state director of
5 health and the commissioner of agriculture, who shall be
6 members ex officio, and five other members to be ap-
7 pointed by the governor with the advice and consent of the
8 senate, two of whom shall be representative of indus-
9 tries engaged in business in this state, and three of whom
10 shall be representative of the public at large. The three
11 appointed members of the commission in office on the
12 effective date of this act shall, unless sooner removed, con-
13 tinue to serve until their terms expire and until their suc-
14 cessors have been appointed and have qualified. On or
15 before June fifteen, one thousand nine hundred sixty-
16 seven, the governor shall appoint one member to serve
17 until June thirty, one thousand nine hundred seventy, and
18 one member to serve until June thirty, one thousand nine

19 hundred seventy-one, or until their successors have been
20 appointed and have qualified. As the terms of the three
21 appointed members of the commission in office on the
22 effective date of this act expire and as the terms of the two
23 members to be appointed by the governor on or before
24 June fifteen, one thousand nine hundred sixty-seven, ex-
25 pire, members shall be appointed for overlapping terms
26 of five years, so that one term expires each year, or until
27 their successors have been appointed and have qualified.
28 Any vacancy in the office of an appointed member of the
29 commission shall be filled by appointment by the gover-
30 nor for the unexpired term of the appointed member
31 whose office shall be vacant.

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

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

46 At its first meeting the commission shall elect from its
47 membership a chairman, and at the first meeting in each
48 fiscal year thereafter the commission shall elect from its
49 membership a chairman to act during such fiscal year.
50 At similar times the commission shall appoint a secretary,
51 who need not be a member of the commission. The com-
52 mission shall appoint and employ a director and such
53 personnel as may be required, whose duties shall be de-
54 fined by the commission and whose compensation, to be
55 fixed by the commission, shall be paid out of the state
56 treasury, upon the requisition of the commission, from
57 moneys appropriated for such purposes.

58 The commission may establish rules for the regulation

59 of its affairs and the conduct of all proceedings before it.
60 All proceedings of the commission shall be entered in a
61 permanently bound record book, properly indexed, and
62 the same shall be carefully preserved. Copies of orders
63 entered by the commission, as well as copies of papers or
64 documents filed with it, or the records of proceedings be-
65 fore the commission, shall be attested by the secretary of
66 the commission. The commission shall meet at such times
67 and places as may be agreed upon by the commissioners,
68 or upon the call of the chairman of the commission or any
69 two commissioners, all of which meetings shall be general
70 meetings for the consideration of any and all matters
71 which may properly come before the commission.

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

If, from any investigation made by him or from any
2 complaint filed with him, the director shall be of the
3 opinion that a person is violating the provisions of this
4 article, or any rules and regulations promulgated pur-
5 suant thereto, he shall make and enter an order directing
6 such person to cease and desist such activity. The director
7 shall fix a reasonable time in such order by which such
8 activity must stop or be prevented. The order shall con-
9 tain the findings of fact upon which the director deter-
10 mined to make and enter such order.

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

14 Any person upon whom a copy of such final order has
15 been served may appeal such order to the air pollution
16 control commission in the manner hereinafter provided.
17 The person so appealing shall be known as the appellant
18 and the director shall be known as the appellee. Such
19 appeal shall be perfected by filing a notice of appeal, on
20 the form prescribed by the commission for such purpose,
21 with the commission within fifteen days after the date
22 upon which the appellant received a copy of the order.
23 The notice of appeal shall set forth the order complained

24 of and the grounds upon which the appeal is based. The
25 filing of such notice of appeal shall stay the effect of the
26 order complained of until final determination thereof is
27 made by the commission. A copy of the notice of appeal
28 shall be filed by the commission with the director within
29 eight days after the notice of appeal is filed with the com-
30 mission.

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

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

48 Any such appeal hearing shall be conducted by a quo-
49 rum of the commission. For the purpose of conducting
50 any such appeal hearing, any member of the commission
51 and the secretary thereof shall have the power and au-
52 thority to issue subpoenas and subpoenas duces tecum in
53 the name of the commission, in accordance with the pro-
54 visions of section one, article five, chapter twenty-nine-a
55 of this code. All subpoenas and subpoenas duces tecum
56 shall be issued and served within the time and for the
57 fees and shall be enforced, as specified in section one,
58 article five of said chapter twenty-nine-a, and all of the
59 said section one provisions dealing with subpoenas and
60 subpoenas duces tecum shall apply to subpoenas and sub-
61 poenas duces tecum issued for the purpose of an appeal
62 hearing hereunder.

63 Any such hearing shall be held within twenty days after

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

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

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

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

Any person who shall fail or refuse to comply with any
2 final order made and entered hereunder to correct a statu-
3 tory air pollution within the time fixed by such order, or
4 any extension of time granted by the commission, shall
5 be subject to a penalty of not more than one thousand
6 dollars for each day that such failure or refusal continues
7 after such time has expired, which penalty may be re-
8 covered in a civil action brought by the commission in the
9 name of the state of West Virginia in the circuit court of
10 any county wherein such person resides or is engaged in
11 the activity complained of. The amount of the penalty
12 shall be fixed by the court without a jury. The amount
13 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 article 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 members 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 otherwise:
- 3 (1) "Compact" means the interstate compact on air
- 4 pollution;
- 5 (2) "Commission" means the Ohio-West Virginia in-
- 6 terstate air pollution control commission.

§29-1G-2. Enactment of compact.

- 1 The "Interstate Compact on Air Pollution" is hereby
- 2 ratified, enacted into law, and entered into by the state
- 3 of West Virginia, with the state of Ohio legally joining
- 4 therein in accordance with its terms, in the form sub-
- 5 stantially as follows:

6 **INTERSTATE COMPACT ON AIR POLLUTION**

- 7 The contracting states solemnly agree that:

Article I.

- 1 The party states to this compact hereby provide for
- 2 the control of the interstate movement of air pollutants
- 3 through the establishment of an interstate agency with
- 4 powers to prevent, abate, and control interstate air pol-
- 5 lution.

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

- 11 The party states recognize that no single standard for
- 12 outdoor atmosphere is applicable to all areas within the
- 13 two party states due to such variables as population den-
- 14 sities, topographic and climatic characteristics, and exist-
- 15 ing or projected land use and economic development. The

16 guiding principle of this compact is that air pollution orig-
17 inating within a party state shall not be injurious to
18 human health or welfare, animal or plant life, or prop-
19 erty, or interfere with the enjoyment of life or property,
20 in the other party state.

Article II.

1 As used in this compact "air pollution" means and shall
2 be limited to the discharge into the air by the act of man
3 of substances (liquid, solid, gaseous, organic or inor-
4 ganic) in a locality, manner and amount as to be injur-
5 ous to human health or welfare, animal or plant life,
6 or property, or which would interfere with the enjoy-
7 ment of life or property.

Article III.

1 The party states hereby create the Ohio-West Vir-
2 ginia interstate air pollution control commission, here-
3 after called "the commission."

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

10 Two of the members from each state shall be chosen
11 from appropriate state agencies, one of whom is the officer
12 responsible for air pollution control, and one of whom is
13 the director of health. Three other members shall be cho-
14 sen, one of whom is experienced in the field of municipal
15 government, one of whom is experienced in the field of in-
16 dustrial activities, and one of whom represents the public.

17 Except for the commissioners who shall be appointed
18 by virtue of the offices which they hold and who may
19 be commissioners during their continuance in office, the
20 term of each commissioner shall be five years. How-
21 ever, the commissioner experienced in the field of municipi-
22 pal government, the commissioner experienced in the
23 field of industrial activities, and the commissioner ap-
24 pointed to represent the public shall be appointed, one
25 for an initial term of one year, one for an initial term

26 of two years, and one for an initial term of three years.
27 As the term of each such initial appointee expires,
28 the successor to fill the vacancy created by such expired
29 term shall be appointed for a term of five years.

30 Vacancies on the commission shall be filled for
31 the unexpired term in the same manner as appoint-
32 ments to full terms.

33 Each commissioner of each party state shall be en-
34 titled to one vote in the commission. No action of the
35 commission shall be binding unless taken at a meet-
36 ing in which a majority of the commissioners from each
37 party state are present and unless a majority of those
38 present at the meeting from each party state concur,
39 but any action not binding for such a reason may be
40 ratified within thirty days by the concurrence of a
41 majority of the commissioners of each party state. In
42 the absence of any commissioner, his vote may be cast
43 by another commissioner of his state if such commis-
44 sioner casting the vote shall have a written proxy in
45 such form as may be required by the commission. Any
46 tie or stalemate resulting from the above voting shall
47 be decided by a majority vote of the commissioners
48 from each separate state voting as a unit and the vote
49 of a representative selected by the secretary of the
50 United States department of health, education, and wel-
51 fare, who shall cast the deciding vote.

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

54 The commission shall elect annually, from among
55 its members, a chairman and vice chairman. The com-
56 mission shall appoint an executive director who shall
57 act as secretary, and who, together with such other
58 commission personnel as the commission may determine,
59 shall be bonded in such amount or amounts as the com-
60 mission may require.

61 Notwithstanding the civil service, personnel, or other
62 merit systems laws of any of the party states, the com-
63 mission shall appoint, remove or discharge, and fix the
64 compensation of such personnel as may be necessary
65 for the performance of the commission's functions. To

66 the extent practicable, terms and conditions of employ-
67 ment for members of the staff of the commission shall
68 be similar to those pertaining to comparable employees
69 of the individual party states.

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

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

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

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

104 The commission shall have power to formulate and
105 adopt rules and regulations and perform any act which
106 it may find necessary to carry out the provisions of this

107 compact, and to amend such rules and regulations. All
108 such rules and regulations shall be filed in the office
109 of the commission for public inspection and copies of
110 such rules and regulations shall be filed in the office
111 in each party state in which rules and regulations of
112 state agencies are filed and shall thereafter be made
113 available to interested persons upon request.

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

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

Article IV.

1 The commission may, whenever it finds air pollution
2 which originates in one of the party states and has an
3 adverse effect in the other party state, make a report
4 recommending measures for the prevention, abatement,
5 or control of any such air pollution. Copies of such re-
6 port shall be furnished to all existing state and local
7 air pollution control agencies with jurisdiction over the
8 source or sources of air pollution identified in the report.
9 In preparing any such report, the commission may confer
10 with any appropriate national, regional, or local plan-
11 ning body, and any governmental agency authorized to
12 deal with matters relating to air pollution problems and
13 may conduct such hearings and investigations as it may
14 deem appropriate. The commission may consult with
15 and advise the states and local governments, corpora-
16 tions, persons, or other entities with regard to the adop-
17 tion of programs and the installation of equipment and
18 works for the prevention, abatement, or control of air
19 pollution. For the enforcement of this compact the com-
20 mission may also establish standards consistent with the
21 provisions of this compact and any standards which may
22 be adopted by the party states.

23 Before any report of the commission which speci-
24 cally identifies a particular industrial or other installa-
25 tion, structure, or facility as a source of air pollution
26 becomes final, the commission shall give the owner or
27 operator of such installation, structure, or facility notice
28 by certified mail of the anticipated adoption of such
29 report and shall afford the owner or operator of the in-
30 stallation, structure, or facility not less than ten days
31 after the mailing of such notice to file with the com-
32 mission its written objections thereto. If no such objec-
33 tions are filed with the commission within such speci-
34 fied period, the report shall become final. If such ob-
35 jections are filed with the commission within such speci-
36 fied period, the commission shall afford such owner or
37 operator not less than ten days from its receipt of such
38 objections to discuss with the commission the findings,
39 conclusions, and recommendations of the report before
40 it is finally adopted by the commission.

41 Within a reasonable time after the commission fur-
42 nishes a report to the appropriate existing state and local
43 air pollution control agencies pursuant to this Article
44 and, if the recommendations made in such report for
45 the prevention, abatement, or control of air pollution
46 from a specific source or sources have not been imple-
47 mented, or if the appropriate state or local air pollution
48 control agencies have not taken sufficient action to pre-
49 vent, abate, or control the air pollution, the commis-
50 sion may, after a duly conducted and constituted hear-
51 ing, on due notice issue an order or orders upon any mu-
52 nicipality, corporation, person, or other entity causing or
53 contributing to interstate air pollution. At any such hear-
54 ing evidence may be received and a finding made on
55 whether, in fact, interstate air pollution exists and on
56 the sources of such pollution. Any such order or orders
57 may prescribe a timetable for the abatement or con-
58 trol of the air pollution involved. Any such order shall
59 become final and binding unless a petition for review of
60 the same shall be filed and prosecuted pursuant to the
61 provisions of Article V of this compact.

62 In a party state, any court of general jurisdiction
63 in any county in which the air pollution originates or

64 any United States district court for the district in which
65 such pollution originates shall entertain and determine
66 any action or proceeding brought by the commission to
67 enforce an order against any municipality, corporation,
68 person, or other entity domiciled or located within such
69 state and whose discharge of air pollution takes place
70 within or adjoining such state, or against any employee,
71 department, or subdivision of such municipality, cor-
72 poration, person, or other entity, and shall entertain and
73 determine any petition for review pursuant to the pro-
74 visions of Article V of this compact.

Article V.

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

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

22 Any party state or person aggrieved by any order
23 made by the commission shall be entitled to a judicial
24 review thereof. Such review may be had by filing a
25 verified petition in any of the appropriate courts referred
26 to in Article IV, setting out such order and alleging
27 specifically that said order is:

- 28 (a) Arbitrary, capricious, an abuse of discretion, or
29 otherwise not in accordance with law; or
- 30 (b) Contrary to constitutional right, power, privilege,
31 or immunity; or
- 32 (c) In excess of authority or jurisdiction conferred
33 by this compact or statutes in implementation hereof; or
- 34 (d) Without observance of procedure required by
35 law; or
- 36 (e) Not within the purposes of this compact; or
- 37 (f) Unsupported by the weight of the evidence.

38 The petition for review shall be filed within thirty-
39 five days after receipt of written notice that such order
40 has been issued. Written notice of the filing of a petition
41 for review and a copy of said petition shall be personally
42 served upon the commission. Any party or person filing
43 a petition for review shall, within fifteen days thereafter,
44 secure from the commission a certified copy of the tran-
45 script of any hearing or hearings held in connection with
46 the issuance of the order, review of which is sought, and
47 shall file the same with the clerk of the court in which the
48 action or proceeding for review is pending. An exten-
49 sion of time in which to file a transcript shall be granted
50 by said court in which such action or proceeding for re-
51 view is pending for good cause shown. Inability to ob-
52 tain a transcript within the specified time shall be good
53 cause. Failure to file a transcript within the period of
54 fifteen days, or to secure an extension of time therefor,
55 shall be cause for the dismissal of the petition for re-
56 view by the court or on petition of any party of record
57 to the original action or proceeding. Where more than
58 one person may be aggrieved by the order, only one
59 proceeding for review may be had and the court in which
60 a petition for review is first properly filed shall have
61 jurisdiction.

62 The court may, for good cause shown, admit and con-
63 sider additional evidence bearing upon the issue or issues
64 before it.

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

Article VI.

1 The commission may establish one or more advisory
2 and technical committees composed of such as the fol-
3 lowing: Private citizens, expert and lay personnel, rep-
4 resentatives of industry, labor, commerce, agriculture,
5 civic associations, and officials of local, state, and fed-
6 eral government, as it may determine, and may cooperate
7 with and use the services of any such committee and
8 the organizations which they represent in furthering
9 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
3 party state or any of their subdivisions to enact and
4 enforce laws or ordinances for the prevention, abatement,
5 or control of air pollution within their respective bor-
6 ders.
7 (b) Limit or otherwise affect the powers of either
8 party state to enter into a compact or compacts with
9 other states for the prevention, abatement, or control
10 of interstate air pollution.
11 (c) Prevent or restrict either party state or any sub-
12 division thereof in requiring or prescribing measures
13 of air pollution prevention, abatement, or control in ad-
14 dition to those which may be required by either party
15 state or the commission acting pursuant to this compact.

Article VIII.

1 The commission shall submit to the governor or
2 designated officer or officers of each party state a budget
3 of its estimated expenditures for such period as may
4 be required by the laws of that state for presentation
5 to the legislature thereof.
6 Each of the commission's budgets of estimated ex-
7 penditures shall contain specific recommendations of the
8 amount or amounts to be appropriated by each of the
9 party states. Aside from such support as may be avail-
10 able to the commission pursuant to Article III, the cost

11 of operating and maintaining the commission shall be
12 borne equally by the party states.

13 The commission may meet any of its obligations in
14 whole or in part with funds available to it under Arti-
15 cle III of this compact: *Provided*, That the commission
16 takes specific action setting aside such funds prior to
17 the incurring of any obligation to be met in whole or
18 in part in this manner. Except where the commission
19 makes use of funds available to it under Article III,
20 the commission shall not incur any obligations prior to
21 the allotment of funds by the party states adequate to
22 meet the same.

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

27 The commission shall keep accurate accounts of all
28 receipts and disbursements. The receipts and disburse-
29 ments of the commission shall be subject to the audit
30 and accounting procedures established under its rules and
31 regulations. However, all receipts and disbursements of
32 funds handled by the commission shall be audited yearly
33 by a certified or licensed public accountant and the re-
34 port of the audit shall be included in and become a part
35 of the annual report of the commission.

36 The accounts of the commission shall be open at any
37 reasonable time for inspection by duly constituted offi-
38 cers of the party states and by any persons authorized
39 by the commission.

40 Nothing contained herein shall be construed to pre-
41 vent commission compliance with laws relating to audit
42 or inspection of accounts by or on behalf of any govern-
43 ment contributing to the support of the commission.

Article IX.

1 This compact shall become effective when enacted
2 into law by the states of Ohio and West Virginia
3 and approved by the Congress of the United States. The
4 compact shall continue in force and remain binding upon
5 each party state until expressly repealed by either party

6 state, but no such repeal shall take effect until one year
7 after the enactment of the statute repealing this compact.

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

Article X.

1 The provisions of this compact shall be reasonably and
2 liberally construed. The provisions of this compact shall
3 be severable and if any phrase, clause, sentence, or pro-
4 vision is declared to be contrary to the constitution of
5 either state or of the United States, or the applicability
6 thereof to any government, agency, person, or circum-
7 stance is held invalid, the validity of the remainder of
8 this compact and the applicability thereof to any gov-
9 ernment, agency, person, or circumstance shall not be
10 affected.

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

1 In pursuance to article three of said compact, there shall
2 be five members of the "Ohio-West Virginia Interstate
3 Air Pollution Commission" from the state of West Vir-
4 ginia. The governor, by and with the advice and consent
5 of the senate, shall appoint three persons as three of such
6 commissioners, each of whom shall be a resident and citi-
7 zen of this state. Said three commissioners shall be per-
8 sons, one of whom is experienced in the field of municipal
9 government, one of whom is experienced in the field of
10 industrial activities, and one of whom represents the pub-
11 lic. The term of one of said three commissioners first
12 appointed shall be one year, of another shall be two years,
13 and of the other shall be three years. As the term of each
14 such initial appointee expires the successor to fill the va-
15 cancy created by such expired term shall be appointed by
16 the governor, by and with the advice and consent of the
17 senate, for terms of five years each. Each commissioner

18 shall hold office until his successor shall be appointed and
19 qualified. Vacancies occurring in the office of any such com-
20 missioner from any reason or cause shall be filled by ap-
21 pointment by the governor, by and with the advice and
22 consent of the senate, for the unexpired term. The fourth
23 commissioner from this state shall be the state director
24 of health, ex officio, and the fifth commissioner
25 from this state shall be the director of the air pollution
26 control commission, ex officio, and the term of any such
27 ex officio commissioner shall terminate at the time he
28 ceases to hold said office, and his successor as a commis-
29 sioner shall be his successor as said state director of health
30 or director of the air pollution control commission.
31 These five commissioners, acting jointly with like officers
32 from the other party state, shall promulgate rules and
33 regulations to carry out more effectively the terms of the
34 compact. The commissioners shall cooperate with all
35 departments, agencies, and officers of and in the govern-
36 ment of this state and its subdivisions in facilitating the
37 proper administration of the compact and all such de-
38 partments, agencies, and officers shall cooperate with the
39 commissioners.

§29-1G-4. Appropriation.

1 The Legislature may appropriate such funds as it deems
2 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
2 shall be held to be unconstitutional or invalid, such un-
3 constitutionality or invalidity shall not affect the remain-
4 der 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.
8. Powers of authorities generally.
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.
16. Participation.
17. Sale of property.
18. Employees to be covered by workmen's compensation.
19. Liberal construction of article.
20. Provisions severable.

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

- 1 Any two or more contiguous counties or municipalities
- 2 located therein, of this state, however such municipali-
- 3 ties were created, and whether such municipalities are
- 4 operating under a legislative charter, home rule charter,
- 5 or general law only, are hereby authorized to create and
- 6 establish one or more authorities for the purpose of
- 7 acquiring, equipping, constructing, maintaining and oper-
- 8 ating a regional airport or airports, as the case may be:
- 9 *Provided*, That no such county or municipality shall
- 10 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 ticipating county court and one member from each par-
10 ticipating 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.

§8-11A-8. Powers of authorities generally.

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;

26 (7) To purchase, own, hold, sell and dispose of per-
27 sonal property and to sell, lease or otherwise dispose of
28 any real estate which it may own;

29 (8) To borrow money and execute and deliver nego-
30 tiable notes, mortgage bonds, other bonds, debentures
31 and other evidences of indebtedness therefor, and give
32 such security therefor as shall be requisite, including
33 giving a mortgage or deed of trust on its airport prop-
34 erties and facilities in connection with the issuance of
35 mortgage bonds;

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

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

47 (11) To apply for, receive and use loans, grants, dona-
48 tions, technical assistance and contributions from any
49 regional or area commissions that may be established;
50 and

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

§8-11A-9. Indebtedness of authorities.

1 Each authority may incur any proper indebtedness
2 and issue any obligations and give any security therefor
3 which it may deem necessary and advisable in connec-
4 tion with carrying out its purposes as hereinbefore men-
5 tioned.

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

13 property of any county or municipality. The rights of
14 creditors of an authority shall be solely against the author-
15 ity as a corporate body and shall be satisfied only out
16 of property held by it in its corporate capacity.

§8-11A-10. Agreements in connection with obtaining funds.

1 Each authority may, in connection with obtaining
2 funds for its purposes, enter into any agreement with
3 any person, firm or corporation, including the federal
4 government, or any agency or subdivision thereof, con-
5 taining such provisions, covenants, terms and conditions
6 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
2 in connection with the exercise of its powers herein con-
3 ferred, to take or acquire any lands, structures or build-
4 ings or other rights, either in fee or as easements, for
5 the purposes herein set forth, the authority may pur-
6 chase the same directly or through its agents from the
7 owner or owners thereof, or failing to agree with the owner
8 or owners thereof, the authority may exercise the power
9 of eminent domain in the manner provided for condem-
10 nation proceedings in chapter fifty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one,
12 as theretofore and hereafter amended, and such purposes
13 as hereby declared to be public uses for which private
14 property may be taken or damaged: *Provided*, That
15 under no circumstances shall an authority have the right
16 of immediate entry.

**§8-11A-12. Property, bonds and obligations of authorities ex-
empt from taxation.**

1 Each authority shall be exempt from the payment of
2 any taxes or fees to the state or any subdivisions thereof
3 or to any officer or employee of the state or of any sub-
4 division thereof.

5 The property of each authority shall be exempt from
6 all local and municipal taxes. Bonds, notes, debentures
7 and other evidence of indebtedness of the authority are
8 declared to be issued for a public purpose and to be public

9 instrumentalities, and, together with interest thereon,
10 shall be exempt from taxes.

§8-11A-13. Authorities may lease facilities.

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

§8-11A-14. Disposition of surplus of authorities.

1 If an authority should realize a surplus, whether from
2 operating the airport or leasing it for operation, over
3 and above the amount required for the maintenance, im-
4 provement and operation of the airport and for meeting
5 all required payments on its obligations, it shall set aside
6 such reserve for future operations, improvements and
7 contingencies as it shall deem proper and shall then ap-
8 ply the residue of such surplus, if any, to the payment
9 of any recognized and established obligations not then
10 due, and after all such recognized and established ob-
11 ligations have been paid off and discharged in full, the
12 authority shall, at the end of each fiscal year, set aside
13 the reserve for future operations, improvements and
14 contingencies, as aforesaid, and then pay the residue of
15 such surplus, if any, to the counties and municipalities
16 in direct proportion to their financial contribution.

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

1 Contributions may be made to authorities from time to
2 time by the counties and municipalities and persons,
3 firms or corporations that shall desire to do so. All such
4 funds and all other funds received by an authority shall
5 be deposited in such bank or banks as the authority may
6 direct and shall be withdrawn therefrom in such manner
7 as the authority may direct. Each authority shall keep
8 strict account of all of its receipts and expenditures and
9 shall each quarter make a quarterly report to the coun-
10 ties and municipalities which have made contributions,
11 and such report shall contain an itemized account of its

12 receipts and disbursements during the preceding quarter.
13 Such report shall be made within sixty days after the
14 termination of the quarter. Within sixty days after the
15 end of each fiscal year, each authority shall make an
16 annual report containing an itemized statement of its
17 receipts and disbursements for the preceding year, and
18 such annual report shall be published as a Class II-0
19 legal advertisement in compliance with the provisions
20 of article three, chapter fifty-nine of this code, and the
21 publication area for such publication shall be the counties
22 and municipalities, as provided in section one. The books,
23 records and accounts of each authority shall be subject
24 to audit and examination by the office of the state tax
25 commissioner of West Virginia and by any other proper
26 public official or body in the manner provided by law.

§8-11A-16. Participation.

1 The counties and municipalities or any one or more
2 of them, jointly or severally, are hereby authorized
3 and empowered to appoint members of the said au-
4 thorities and to contribute to the cost of acquiring, con-
5 structing, equipping, maintaining and operating the said
6 regional airports and appurtenant facilities.

7 Any of the counties or municipal corporations as pro-
8 vided in section one are hereby authorized and empowered
9 to transfer and convey to the authorities property of
10 any kind heretofore acquired by the counties or municipi-
11 pal corporations for airport purposes.

§8-11A-17. Sale of property.

1 In the event a majority of the counties and municipal-
2 ities contributing to the funds of an authority shall so
3 determine the authority shall make sale of all or any part
4 of its properties and assets and distribute the proceeds
5 thereof among those counties and municipalities contrib-
6 uting to its funds.

**§8-11A-18. Employees to be covered by workmen's compensa-
tion.**

1 All employees of each authority eligible thereto shall
2 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.

§8-11A-20. Provisions severable.

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, manufacture 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

1. General Provisions.
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
- 2 liquors, in this state:
- 3 (1) Shall be sold only in sealed packages, except by
- 4 organizations licensed under authority of article seven
- 5 of this chapter.

6 (2) Shall not be sold for consumption on the prem-
7 ises where sold, except as authorized by article seven
8 of this chapter.

9 (3) Shall be manufactured only by persons licensed
10 under the provisions of this chapter.

11 (4) Shall not be consumed or sold for consumption
12 in a public place.

§60-1-4. Sales to be made by or through West Virginia alcohol beverage control commissioner.

1 Alcoholic liquors shall be sold at wholesale and retail
2 in this state only by or through the West Virginia alco-
3 hol beverage control commissioner or retail agencies
4 established by him or any predecessor commissioners or
5 commission, except as authorized by article seven of this
6 chapter.

ARTICLE 3. SALES BY COMMISSIONER.

Section

1. Sales at retail and wholesale.
17. Regulations as to handling and depositing of moneys collected; monthly remittances.

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

1 The sale of alcoholic liquors at wholesale and retail
2 in this state shall be a state monopoly, except for retail
3 sales made by authority of article seven of this chapter.
4 Alcoholic liquors shall be sold at retail only through
5 the state stores, agencies of the West Virginia alcohol
6 beverage control commissioner, and may be sold by private
7 clubs holding a license issued under the provisions of
8 article seven of this chapter.

9 The commissioner may sell such liquors at wholesale
10 to persons licensed to purchase at wholesale as provided
11 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
2 and the state treasurer, shall prescribe regulations for
3 the handling and depositing of all moneys collected by
4 the commissioner. All receipts accruing to and avail-
5 able for the general revenue fund as profits from the

6 commissioner and the license fee and additional sales tax
7 imposed by the provisions of this chapter shall be re-
8 mitted by the commissioner to the state treasury monthly
9 within fifteen days next after the end of each calendar
10 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.
16. Severability.
17. Repealer.

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

1 The Legislature of West Virginia, having carefully
2 considered the provisions of section forty-six of article
3 six of the constitution of this state and all of the matters
4 giving rise to the enactment thereof and having fur-
5 ther considered the operations of private clubs as
6 defined in this article, hereby determines and finds that
7 such private clubs are not saloons or other public places
8 in which the sale and consumption of intoxicating liquors
9 are required to be prohibited by the provisions of said
10 section forty-six of article six of said constitution; but,
11 to the contrary, are private places in which such sale
12 and consumption of intoxicating liquors are constitu-
13 tionally permitted and authorized.

§60-7-2. Definitions.

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

3 (a) "Private club" means any corporation or unin-
4 corporated association which either (1) belongs to or is
5 affiliated with a nationally recognized fraternal or vet-
6 erans organization, which is operated exclusively for
7 the benefit of its members, which pays no part of its
8 income to its shareholders or individual members, which
9 owns or leases a building or other premises, to which
10 club are admitted only duly elected or approved dues
11 paying members in good standing of such corporation
12 or association and their guests while in the company of
13 a member and to which club the general public is not
14 admitted, and which club maintains in said building
15 or on said premises a suitable kitchen and dining facility
16 with related equipment for serving food to members and
17 their guests, or (2) is a nonprofit social club, which is
18 operated exclusively for the benefit of its members,
19 which pays no part of its income to its shareholders or
20 individual members, which owns or leases a building or
21 other premises, to which club are admitted only duly
22 elected or approved dues paying members in good stand-
23 ing of such corporation or association and their guests
24 while in the company of a member and to which club
25 the general public is not admitted, and which club main-
26 tains in said building or on said premises a suitable
27 kitchen and dining facility with related equipment for
28 serving food to members and their guests, or (3) is or-
29 ganized and operated for legitimate purposes, which has
30 at least one hundred duly elected or approved dues pay-
31 ing members in good standing, which owns or leases a
32 building or other premises, to which club are admitted
33 only duly elected or approved dues paying members
34 in good standing of such corporation or association and
35 their guests while in the company of a member and to
36 which club the general public is not admitted, and which
37 club maintains in said building or on said premises a
38 suitable kitchen and dining facility with related equip-
39 ment and employs a sufficient number of persons for
40 serving meals to members and their guests.

41 (b) "Licensee" means the holder of a license to op-
42 erate a private club granted under the provisions of this
43 article, which license shall remain unexpired, unsus-
44 pended and unrevoked.

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

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

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

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

1 Notwithstanding any other provisions of this code to
2 the contrary, licensees are hereby authorized to sell
3 alcoholic liquors, other than in sealed packages, for con-
4 sumption on the premises of said licensee, to its mem-
5 bers and their guests in accordance with the provisions
6 of this article, and such licensees are further authorized
7 to keep and maintain on their premises a supply of said
8 alcoholic liquors in such quantities as may be appropriate
9 for the conduct of operations thereof.

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

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

4 (1) The name of the applicant;

5 (2) If such applicant be an unincorporated associa-
6 tion, the names and addresses of the members of its
7 governing board;

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

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

13 (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

10 withhold the granting or refusal to grant such license
11 for a period not to exceed thirty days. If it shall appear
12 that such applicant is a bona fide private club, of good
13 reputation in the community in which it shall operate
14 and that there is no false statement contained in such
15 application, the commissioner shall issue a license author-
16 izing the applicant to sell alcoholic liquors as provided in
17 section three of this article, and otherwise shall refuse to
18 issue such license.

19 (b) Upon refusal to issue such license the commis-
20 sioner shall make and enter an order denying such appli-
21 cation, which denial and refusal shall be final unless a
22 hearing is requested in accordance with the provisions
23 of section thirteen of this article. When such refusal or
24 denial becomes final the commissioner shall forthwith
25 refund to the applicant his fees and bond accompanying
26 said application.

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

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

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

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

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

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

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

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

10 (4) For a licensee having six hundred or more mem-
11 bers—one thousand five hundred dollars.

12 (b) The fee for any such license issued following the
13 first day of January of any year and to expire on the
14 thirtieth day of June of such year shall be one half of
15 that prescribed by subsection (a) of this section six.

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

§60-7-7. Municipal fee.

1 Municipal corporations of this state are hereby author-
2 ized to levy a fee for revenue purposes only upon any
3 licensee whose premises are situate within such munici-
4 pality, which fee shall not exceed the amount of the li-
5 cense fee levied by the state under the provisions of
6 section six of this article. Such municipal corporations
7 are hereby authorized and empowered to enact and adopt
8 ordinances necessary for the collection and enforcement
9 of such fee.

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

1 In addition to all fees and taxes imposed by this code,
2 each licensee shall pay to the commissioner an additional
3 sales tax in the amount of one dollar twenty-five cents
4 for each one fifth of a gallon of alcoholic liquor, except
5 beer and wine, and sixty cents for each one fifth of a gal-
6 lon of wine which additional sales tax shall be paid at
7 the time of the purchase of each such one fifth of a
8 gallon from the commissioner: *Provided*, That, notwith-
9 standing any other provisions of this code to the con-
10 trary, no municipal corporation in this state shall have
11 any authority to impose a sales tax on the sale of alco-
12 holic liquor by a licensee, or upon the purchase of said
13 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.

1 There is hereby created in the office of the West Vir-
2 ginia alcohol beverage control commissioner a state
3 advisory board composed of three members to be ap-

4 pointed by the governor, by and with the advice and
5 consent of the senate, to advise the commissioner con-
6 cerning the administration of the provisions of this
7 article. The board shall be known and designated as the
8 West Virginia alcoholic beverage control licensing ad-
9 visory board. Not more than two members of the board
10 shall belong to the same political party. The board shall
11 select one of its members as chairman. The members
12 shall serve at the will and pleasure of the governor.
13 Any vacancies shall be filled in the same manner as
14 original appointments are made. No member of the
15 board shall be a candidate for, or hold, any other public
16 office or trust, nor shall he be a member of any political
17 committee, nor shall he serve as an election official, nor
18 shall he engage in any political activity, other than to
19 vote, in behalf of, or in opposition to, any candidate,
20 political party or public issue involved in any election.
21 Any violation by a member of any of the provisions of
22 the preceding sentence shall automatically vacate his
23 membership on the board. Members of the board shall
24 take and subscribe to the oath prescribed in section five,
25 article four of the constitution. Each member of the
26 board shall receive a per diem allowance not to exceed
27 twenty-five dollars for each day or any part thereof
28 actually and necessarily spent in the discharge of his
29 duties as a member of such board, and shall be entitled to
30 reimbursement for any reasonable and necessary ex-
31 penses actually incurred in the performance of his duties
32 as a member of said board. Any requisition for expenses
33 shall be accompanied by a sworn and itemized statement,
34 which shall be filed with the auditor and permanently
35 preserved as a public record. The board shall meet in
36 the office of the commissioner at such times as the com-
37 missioner and board may determine to be necessary. A
38 majority of the members of the board shall constitute a
39 quorum.

40 The board shall be an advisory body to the commis-
41 sioner, and as such shall advise him as to the issuance,
42 refusal or denial, or the suspension or revocation of any
43 license sought or held in accordance with the provisions
44 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 reason-
4 able times for the purpose of inspecting the same, and
5 determining the compliance of said licensee with the
6 provisions of this article;

7 (c) To promulgate such reasonable rules and regula-
8 tions as may be necessary for the execution and enforce-
9 ment of the provisions of this article, which may include
10 but shall not be limited to the hours during which
11 licensees may sell alcoholic liquors, and the use, handling,
12 service and sale of such alcoholic liquors. Such rules and
13 regulations shall be promulgated in accordance with the
14 provisions of article three of chapter twenty-nine-a of
15 the code in like manner as if said article three of said
16 chapter twenty-nine-a was set forth in extenso in this
17 subdivision;

18 (d) To issue subpoenas and subpoenas duces tecum
19 for the purposes of conducting hearings under the pro-
20 visions of section thirteen of this article, which subpoenas
21 and subpoenas duces tecum shall be issued in the time,
22 for the fees, and shall be enforced in the manner, speci-
23 fied in section one, article five of chapter twenty-nine-a
24 of this code with like effect as if said section one was
25 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
2 by them from the West Virginia alcohol beverage con-
3 trol commissioner at prices established by such com-
4 missioner for sales of such alcoholic liquors to the public
5 generally. The commissioner shall prepare and cause
6 to be affixed a distinctive marker, stamp or other desig-
7 nation to each bottle of alcoholic liquor purchased by a
8 licensee, which marker, stamp or other designation shall
9 remain on such bottle at all times while it is in the pos-
10 session of the licensee.

§60-7-12. Certain acts of licensee prohibited; penalties.

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

4 (1) Sell or offer for sale any alcoholic liquors other
5 than from the original package or container;

6 (2) Authorize or permit any disturbance of the peace;
7 obscene, lewd, immoral or improper entertainment, con-
8 duct or practice;

9 (3) Sell, give away, or permit the sale of, gift to, or
10 the procurement of any alcoholic liquors, for any minor,
11 mental incompetent, or person who is physically incapac-
12 itated due to the consumption of alcoholic liquor, or the
13 use of drugs;

14 (4) Sell, give or dispense alcoholic liquors in or on
15 any licensed premises or in any rooms directly connected
16 therewith, between the hours of two o'clock a. m. and
17 one o'clock p. m. on any Sunday;

18 (5) Permit the consumption by, or serve to, on the li-
19 censed premises, any alcoholic liquors, covered by this ar-
20 ticle, to any person under the age of twenty-one years; or

21 (6) With the intent to defraud, alter, change or mis-
22 represent the quality, quantity or brand name of any
23 alcoholic liquor.

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

28 (c) Any person who violates any of the foregoing
29 provisions shall be guilty of a misdemeanor, and, upon
30 conviction thereof, shall be punished by a fine of not
31 less than fifty dollars nor more than five hundred dollars,
32 or by imprisonment in the county jail for a period not
33 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.

1 (a) The commissioner may on his own motion, or shall
2 on the sworn complaint of any person, conduct an inves-
3 tigation to determine if any provisions of this article
4 have been violated by any licensee. The commissioner
5 may suspend or revoke any licensee's license if he finds
6 that such licensee has violated any provision of this
7 article, or if he finds the existence of any ground on
8 which a license could have been refused, if such licensee
9 were then applying for the same, and if the commissioner
10 shall find that a licensee has wilfully violated any provi-
11 sion of this article he shall revoke such licensee's license.
12 Upon final conviction of a licensee, or any employee
13 thereof acting within the scope of his employment, of
14 any violation of any municipal ordinance or statute of
15 the state of West Virginia relating to the regulation and
16 control of alcoholic liquors, gambling, prostitution, or
17 the sale, possession or distribution of narcotics or danger-
18 ous drugs, before any justice of the peace, municipal
19 court or court of record, the commissioner shall forth-
20 with revoke the licensee's license. Such revoked license
21 shall not be reissued or reinstated for a period of one
22 year from the date of such revocation. The location used
23 by the licensee whose license shall have been revoked
24 shall not be used or occupied by any other licensee dur-
25 ing said one-year period, and the commissioner shall
26 not issue a new license to any applicant to use said
27 premises during the period of one year from the date
28 of revocation.

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

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

40 (d) Any applicant or licensee, as the case may be,
41 adversely affected by such order shall have a right to a

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

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

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

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

81 (h) The judgment of a circuit court reviewing such
82 order of the commissioner shall be final unless reversed,

83 vacated or modified on appeal to the supreme court of
84 appeals in accordance with the provisions of section one,
85 article six, chapter twenty-nine-a of this code.

86 (i) Legal counsel and services for the commissioner
87 in all such proceedings in any circuit court and the
88 supreme court of appeals shall be provided by the at-
89 torney general or his assistants and in any proceedings
90 in any circuit court by the prosecuting attorney of that
91 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
2 article or upon the revocation of a license in accord-
3 ance with section thirteen of this article, which con-
4 viction or revocation has become final, the licensee
5 or former licensee, as the case may be, shall forfeit his
6 bond required by section four of this article. The penal
7 sum of said bond shall forthwith be paid to the state
8 treasurer to be credited to the general revenue fund of
9 this state. Such sum may be collected by an action at
10 law or other appropriate remedy.

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

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

§60-7-16. Severability.

1 If any article, section, subsection, provision, clause or
2 phrase of this chapter or the application thereof to any
3 person or circumstance is held unconstitutional or in-
4 valid, such unconstitutionality or invalidity shall not
5 affect other articles, sections, subsections, provisions,
6 clauses or phrases or applications of the chapter, and to
7 this end each and every article, section, subsection,
8 provision, clause and phrase of this chapter is declared

9 to be severable. The Legislature hereby declares that it
 10 would have enacted the remaining articles, sections, sub-
 11 sections, provisions, clauses and phrases of this chapter
 12 even if it had known that any articles, sections, sub-
 13 sections, provisions, clauses and phrases thereof would
 14 be declared to be unconstitutional or invalid, and that
 15 it would have enacted this chapter even if it had known
 16 that the application thereof to any person or circum-
 17 stance would be held to be unconstitutional or invalid.

§60-7-17. Repealer.

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

3

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
2 or return of service, upon a challenge of the sufficiency
3 of a pleading or the venue of the circuit court, upon the
4 sufficiency of a motion for summary judgment where such
5 motion is denied, or a motion for judgment on the plead-
6 ings, upon the jurisdiction of the circuit court of a person
7 or subject matter, or upon failure to join an indispen-
8 sable party, in any case within the appellate jurisdiction
9 of the supreme court of appeals, may, in the discretion of
10 the circuit court in which it arises, and shall, on the joint
11 application of the parties to the suit, in beneficial interest,
12 be certified by it to the supreme court of appeals for its
13 decision, and further proceedings in the case stayed until
14 such question shall have been decided and the decision
15 thereof certified back. The forms of the certificates of such
16 questions, as well as the time and manner of the hearing
17 and notice thereof and the portion of the record to be sent
18 up, shall be as prescribed by the supreme court of appeals.
19 Entry of such certificate or the fact that it has been made,
20 upon the record of the case in the trial court, shall
21 be sufficient notice to the parties that the questions in-
22 volved are on application for hearing and determination
23 by the appellate court. Attested copies of the portions of
24 the record of the case or cause necessary to a determina-
25 tion of the questions so certified shall forthwith be pre-
26 sented to the supreme court of appeals together with the
27 question certified, and if the court be of the opinion that
28 the rulings of the lower court ought to be reviewed, the
29 case or cause shall be docketed for hearing without
30 further notice to the parties; but if the court be of the
31 opinion that there has been no error in the rulings, it shall
32 refuse to docket the case or cause, and the action of the
33 court in refusing to docket same shall then be certified
34 forthwith to the lower court.

CHAPTER 18

(Com. Sub. for Senate Bill No. 50—By Mr. Carson, Mr. President)

[Passed March 14, 1967; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

Section

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

Section 1. General Policy.—The purpose of this act is to 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:

- 2 “Board” shall mean the board of public works;
- 3 “Spending Unit” shall mean the department, agency or institution to which an appropriation is made;
- 5 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.
- 9 “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 2 this act, unless otherwise specifically directed, shall be ap- 3 propriated and expended according to the provisions of 4 chapter 12, article 3 of the code of West Virginia, or accord- 5 ing to any law detailing a procedure specifically limiting 6 that article.

TITLE 2. APPROPRIATIONS.

Section

1. Appropriations from general revenue.

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13. Total appropriations.
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Section 1. Appropriations from General Revenue.—From 2 the state fund, general revenue, there is hereby appropriated 3 conditionally upon the fulfillment of the provisions set forth 4 in chapter 5, article 4 and chapter 5-A, article 2 of the code of 5 West Virginia, the following amounts, as itemized, for ex- 6 penditure during the fiscal year one thousand nine hundred 7 sixty-eight.

LEGISLATIVE

1—Senate

Acct. No. 101

	Fiscal Year 1967-68
1 Salaries of Members	\$ 54,000.00
2 Compensation and per diem of officers and	
3 employees	100,000.00
4 Mileage of Members	3,000.00
5 Current Expenses and Contingent Fund.....	200,000.00
6 To pay Clerk of the Senate for compiling	
7 and publishing the West Virginia Blue Book,	
8 the distribution of which shall be made by	
9 the office of the Clerk of the Senate and	
10 shall include seventy-five copies for each	
11 member of the Legislature and two copies	
12 to each classified and approved High and	
13 Junior High School and one to each Ele-	
14 mentary School within the state	10,000.00

15	To pay cost of printing the 1967 edition of Blue	
16	Book	50,000.00
17	Drafting Service	12,000.00
18	The appropriations for the Senate for the fiscal	
19	year 1966-67 are to remain in full force and	
20	effect, and are hereby reappropriated to	
21	June 30, 1968.	
22	Any balances so reappropriated may be trans-	
23	ferred and credited to the 1967-68 accounts.	
24	Upon the written request of the Clerk of the	
25	Senate the State Auditor shall transfer	
26	amounts between items of the total appro-	
27	priation in order to protect or increase the	
28	efficiency of the service.	
29	The Clerk of the Senate is authorized to draw	
30	his requisitions upon the Auditor, payable	
31	out of the contingent fund of the Senate,	
32	for any bills for supplies and services that	
33	may have been incurred by the Senate and	
34	not included in the appropriation bill, and	
35	for bills for supplies and services incurred	
36	after adjournment, and for the necessary	
37	operation of the Senate offices, the requisition	
38	for same to be accompanied by the bills	
39	to be filed with the Auditor.	

2—House of Delegates

Acct. No. 102

1	Salaries of Members	\$ 153,000.00
2	Compensation and per diem of officers and	
3	employees	115,000.00
4	Mileage of Members	5,000.00
5	Current Expenses and Contingent Fund	190,000.00
6	Drafting Service	12,000.00
7	The appropriations for the House of Delegates	
8	for the fiscal year 1966-67 are to remain in	
9	full force and effect, and are hereby re-	
10	appropriated to June 30, 1968.	
11	Any balances so reappropriated may be trans-	
12	ferred and credited to the 1967-68 accounts.	

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

18 The Clerk of the House of Delegates, with
19 approval of the Speaker, is authorized to
20 draw his requisitions upon the Auditor,
21 payable out of the contingent fund of the
22 House of Delegates, for any bills for supplies
23 and services that may have been incurred
24 by the House of Delegates, and not included
25 in the appropriation bill, for bills for serv-
26 ices and supplies incurred in preparation
27 for the opening of the session and after ad-
28 journment, and for the necessary operation
29 of the House of Delegates offices, the requis-
30 ition for same to be accompanied by bills
31 to be filed with the Auditor.

32 For duties imposed by law and by the House of
33 Delegates, including the salary allowed by
34 law as keeper of the rolls, the Clerk of the
35 House of Delegates shall be paid a salary of
36 \$1,175.00 per month, payable from the contin-
37 gent fund of the House of Delegates, and the
38 Clerk may employ a secretary and a clerk at
39 a salary to be determined by the Speaker of
40 the House of Delegates.

41 The House Committee on Rules, with the ap-
42 proval of the Speaker, is hereby authorized
43 to expend from the House Contingent Fund
44 an amount, not to exceed the sum of
45 \$20,000.00, for the purpose of altering, fur-
46 nishing and renovating that part of the
47 Capitol assigned to the use of the House, and
48 the Clerk of the House is hereby author-
49 ized to draw his requisition upon the State
50 Auditor, payable out of the appropriation
51 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-

9 quisition for warrants in payment of salaries
 10 in the form of payrolls, making deductions
 11 therefrom as required by law, for taxes and
 12 other items. The appropriation for Judges'
 13 Retirement System is to be transferred to
 14 the Judges' Retirement Fund, in accordance
 15 with the law relating thereto, upon requisition
 16 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
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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	
20	part of this appropriation may be trans-	
21	ferred 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 Coor-	
26	dination at the close of the fiscal year	
27	1966-67 is hereby reappropriated for ex-	
28	penditure during the fiscal year 1967-68	
29	to match and aid Federal Programs.	

9—Department of Personnel

Acct. No. 121

1	Personal Services	\$ 48,048.00
2	Current Expenses	9,560.00
3	Equipment	2,000.00
4	Total	\$ 59,608.00

FISCAL

10—Auditor's Office—General Administration

Acct. No. 150

1	Salary of State Auditor	\$ 18,000.00
2	Other Personal Services	425,240.00
3	Current Expenses	125,000.00
4	Equipment	10,000.00
5	Microfilm Program	7,500.00
6	Total	\$ 585,740.00

11—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer	\$ 17,500.00
2	Other Personal Services	144,615.00
3	Current Expenses	22,000.00
4	Equipment	7,500.00
5	Total	\$ 191,615.00

12—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	25,000.00
2	Current Expenses		1,000.00
3	Equipment		9,150.00
4	Total	\$	35,150.00

13—*State Tax Department*

Acct. No. 180

1	Personal Services	\$	2,197,786.00
2	Current Expenses		620,000.00
3	Equipment		28,600.00
4	Total	\$	2,846,386.00

5 Above appropriation includes amounts hereto-
 6 fore made available for administration and
 7 enforcement of Cigarette Tax and Store and
 8 General Licenses Division.

14—*State Tax Department*

Acct. No. 185

1	Property Appraisal	\$	250,000.00
2	Any balance remaining in the 1964-65, 1965-		
3	66 and 1966-67 appropriations "Property		
4	Appraisal" at the close of the fiscal year		
5	1966-67 is hereby reappropriated for ex-		
6	penditure during the fiscal year 1967-68.		

15—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner	\$	13,000.00
2	Salaries of Board Members—Board of Proba-		
3	tion and Parole		27,000.00
4	Other Personal Services		378,839.00
5	Current Expenses		143,325.00
6	Equipment		5,000.00
7	Total	\$	567,164.00

16—Department of Finance and Administration

Acct. No. 210

1	Personal Services	\$ 725,617.00
2	Current Expenses	325,000.00
3	Repairs and Alterations	125,000.00
4	Equipment	17,000.00
5	Postage	130,000.00
6	Records Management	34,000.00
7	Office of State Emergency Planning	25,000.00
8	Transportation Division—Vehicles	150,000.00
9	State Agency Surplus Property	26,250.00
10	Total	\$ 1,557,867.00

11 The Workmen's Compensation Commission,
 12 Department of Welfare, Public Service
 13 Commission, Department of Natural Re-
 14 sources, Department of Motor Vehicles,
 15 State Road Commission, State Health De-
 16 partment and State Tax Department—
 17 Income Tax Division, shall reimburse the
 18 Postage appropriation of the Department of
 19 Finance and Administration monthly for all
 20 meter service. Any spending unit operating
 21 from Special Revenue or receiving reim-
 22 bursement for postage costs from the Fed-
 23 eral Government shall refund to the Postage
 24 account of the Department of Finance and
 25 Administration such amounts. Should this
 26 appropriation for Postage be insufficient to
 27 meet the mailing requirements of the State
 28 spending units as set out above, any excess
 29 postage meter service requirements shall be
 30 a proper charge against the units, and each
 31 spending unit shall refund to the Postage
 32 appropriation of the Department of Finance
 33 and Administration any amounts required
 34 for that Department for postage in excess
 35 of this appropriation.

36 Any unexpended balance remaining in the
 37 "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
 6 the State in controversies or legal proceed-
 7 ings 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
15 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 Com-		
3	mission 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
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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.		
3	102, 1965 Regular Session of the Legisla-		
4	ture.		

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
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26—*State Board of Education—Vocational Division*

Acct. No. 293

1	To implement Vocational Education Act of		
2	1963 P.L. 88-210	\$	600,000.00
3	Manpower training		100,000.00
4	Total	\$	700,000.00
5	Any unexpended balance remaining in this		
6	appropriation at the close of the fiscal		
7	year 1966-67 is hereby reappropriated for		
8	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		
3	appropriation at the close of the fiscal year		
4	1966-67 is hereby reappropriated for expen-		
5	diture 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		
2	Fund	\$	94,700,000.00
3	To be transferred to the General School Fund		
4	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 Instruc-		
7	tion" may be expended to provide instruc-		
8	tion, care and maintenance for educable		
9	persons who have multiple handicaps and		
10	for whom the state provides no facilities.		

30—Department of Education—Textbook Aid
Acct. No. 297

1	Textbooks for Schools	\$ 300,000.00
2	To be distributed according to chapter fifty-	
3	one, acts of the Legislature, regular session,	
4	one thousand nine hundred thirty-nine.	

31—Teachers Retirement Board
Acct. No. 298

1	Benefit Fund—Payments to Retired Teachers..\$	4,830,000.00
2	Employers' Accumulation Fund—To match	
3	contributions of members	3,525,000.00
4	Expense Fund	35,000.00
5	Total	\$ 8,390,000.00

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

1	Total Unclassified	\$ 20,000.00
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33—West Virginia University
Acct. No. 300

1	Personal Services	\$ 14,640,000.00
2	Current Expenses	2,200,000.00
3	Repairs and Alterations	600,000.00
4	Equipment	1,200,000.00
5	Oak Wilt Control Research	10,000.00
6	State aid to students of Veterinary Medicine...	36,000.00
7	Office of Research and Development	175,000.00
8	Bureau for Coal Research	150,000.00
9	National Youth Science Camp	65,600.00
10	Forestry Products	72,000.00
11	Appalachian Center—Third Phase	122,000.00
12	Educational TV Program	180,000.00
13	Regional Research Institute	70,000.00
14	Title I	130,000.00
15	To match Federal Funds under the Higher	
16	Education Act of 1965—PL89-329.	
17	West Virginia University Centennial Prepara-	
18	tion	40,000.00
19	Parkersburg Branch College	56,491.00
20	Total	\$ 19,747,091.00

21 The above appropriation for "Parkersburg
 22 Branch College" is to be used in accordance
 23 with Senate Bill No. 78, 1967 Regular Ses-
 24 sion of the Legislature.

25 Out of the above appropriation for Personal
 26 Services, the sum of \$8,500.00 shall be
 27 used only for the employment of a Spray
 28 Specialist who shall be stationed only at
 29 West Virginia University Farm at Kearneys-
 30 ville, and \$7,200.00 for the employment of a
 31 Labor Specialist.

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

1 Total.....\$ 350,000.00

2 The above appropriation is to be used in ac-
 3 cordance with Senate Bill No. 79, 1967 Regu-
 4 lar Session of the Legislature.

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

1	Personal Services	\$ 621,400.00
2	Current Expenses	85,000.00
3	Repairs and Alterations	48,100.00
4	Equipment	66,000.00

5 Total.....\$ 820,500.00

36—*Marshall University*
 Acct. No. 320

1	Personal Services	\$ 4,945,900.00
2	Current Expenses	412,700.00
3	Repairs and Alterations	237,700.00
4	Equipment	310,500.00
5	Flood Wall Assessment	3,200.00
6	Experimental Projects in Teacher Education...	40,000.00
7	Educational TV Program	125,000.00
8	Branch Colleges	63,239.00

9 Total.....\$ 6,138,239.00

10 The above appropriation for "Branch Colleges"
 11 is to be used in accordance with Senate Bill
 12 No. 80, 1967 Regular Session of the Legis-
 13 lature.
 14 Any unexpended balance remaining in the
 15 appropriation "Educational TV Program" at
 16 the close of the fiscal year 1966-67 is hereby
 17 reappropriated for expenditure during the
 18 fiscal year 1967-68.

37—*Fairmont State College*

Acct. No. 321

1	Personal Services	\$ 2,019,700.00
2	Current Expenses	125,000.00
3	Repairs and Alterations	50,000.00
4	Equipment	87,500.00
5	Total	\$ 2,282,200.00

38—*Glenville State College*

Acct. No. 322

1	Personal Services	\$ 1,116,102.00
2	Current Expenses	85,000.00
3	Repairs and Alterations	45,000.00
4	Equipment	62,500.00
5	Community Development and Research	15,500.00
6	Total	\$ 1,324,102.00

39—*West Liberty State College*

Acct. No. 323

1	Personal Services	\$ 1,760,000.00
2	Current Expenses	140,000.00
3	Repairs and Alterations	93,000.00
4	Equipment	107,000.00
5	Branch College	30,270.00
6	Total	\$ 2,130,270.00

7 The above appropriation for "Branch College"
 8 is to be used in accordance with Senate
 9 Bill No. 80, 1967 Regular Session of the
 10 Legislature.

40—*Shepherd College*

Acct. No. 324

1	Personal Services	\$ 1,016,167.00
2	Current Expenses	115,000.00
3	Repairs and Alterations	50,000.00
4	Equipment	99,500.00
5	Total	\$ 1,280,667.00

41—*Concord College*

Acct. No. 325

1	Personal Services	\$ 1,660,000.00
2	Current Expenses	135,000.00
3	Repairs and Alterations	40,000.00
4	Equipment	113,000.00
5	Center for Economic Action	30,000.00
6	Total	\$ 1,978,000.00
7	Any unexpended balance remaining in the	
8	appropriation "Center for Economic Action"	
9	at the close of the fiscal year 1966-67 is	
10	hereby reappropriated for expenditure dur-	
11	ing the fiscal year 1967-68.	

42—*West Virginia Institute of Technology*

Acct. No. 327

1	Personal Services	\$ 1,750,000.00
2	Current Expenses	145,000.00
3	Repairs and Alterations	75,000.00
4	Equipment	150,000.00
5	Total	\$ 2,120,000.00

43—*West Virginia State College*

Acct. No. 328

1	Personal Services	\$ 2,187,897.00
2	Current Expenses	200,000.00
3	Repairs and Alterations	90,000.00
4	Equipment	92,500.00
5	Total	\$ 2,570,397.00

44—Bluefield State College

Acct. No. 329

1	Personal Services	\$	800,000.00
2	Current Expenses		85,000.00
3	Repairs and Alterations		60,000.00
4	Equipment		70,000.00
5	Total	\$	1,015,000.00

45—West Virginia State College—4-H Camp

Acct. No. 330

1	Personal Services	\$	18,500.00
2	Current Expenses		5,000.00
3	Repairs and Alterations		7,000.00
4	Equipment		4,500.00
5	Total	\$	35,000.00

46—West Virginia Schools for the Deaf and Blind

Acct. No. 333

1	Personal Services	\$	750,020.00
2	Current Expenses		176,430.00
3	Repairs and Alterations		40,700.00
4	Equipment		70,850.00
5	Total	\$	1,038,000.00

47—State FFA-FHA Camp and Conference Center

Acct. No. 336

1	Personal Services	\$	36,910.00
2	Current Expenses		8,200.00
3	Repairs and Alterations		8,000.00
4	Equipment		8,500.00
5	Total	\$	61,610.00

48—Department of Archives and History

Acct. No. 340

1	Personal Services	\$	56,815.00
2	Current Expenses		13,000.00
3	Equipment		14,000.00

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

53—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$	62,580.00
2	Current Expenses		45,000.00
3	Repairs and Alterations		10,000.00
4	Equipment		1,400.00
5	Total	\$	118,980.00

54—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$	890,000.00
2	Current Expenses		525,000.00
3	Repairs and Alterations		63,000.00
4	Equipment		33,200.00
5	Total	\$	1,511,200.00

55—*Medium Security Prison*

Acct. No. 376

1	Personal Services	\$	508,152.00
2	Current Expenses		200,000.00
3	Repairs and Alterations		20,000.00
4	Equipment		25,000.00
5	Total	\$	753,152.00

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

56—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	68,000.00
2	Current Expenses		43,000.00
3	Repairs and Alterations		14,000.00
4	Equipment		6,500.00
5	Total	\$	131,500.00

57—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services _____	\$ 280,000.00
2	Current Expenses _____	194,300.00
3	Repairs and Alterations _____	35,000.00
4	Equipment _____	8,500.00
5	Total _____	\$ 517,800.00

HEALTH AND WELFARE

58—*State Health Department*

Acct. No. 400

1	Personal Services _____	\$ 550,000.00
2	Current Expenses _____	120,000.00
3	Equipment _____	19,000.00
4	Cancer Control and Treatment _____	150,000.00
5	Tuberculosis Field Clinic and Nursing Service _____	10,000.00
6	Out-Patient Pneumothorax Treatment _____	20,000.00
7	Local Health Services _____	600,000.00
8	Dental Clinics _____	45,000.00
9	Heart Disease Control _____	30,000.00
10	Maternal and Child Health-	
11	mobile Medical Examination Clinic _____	57,500.00
12	Radiological Health _____	18,000.00
13	Mobile Chest X-Ray _____	39,000.00
14	Hospital and Medical Facilities Construction	
15	Program _____	17,500.00
16	Solid Wastes _____	24,000.00
17	Total _____	\$ 1,700,000.00

59—*Commission of Postmortem Examinations*

Acct. No. 401

1	Total _____	\$ 50,000.00
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60—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services _____	\$ 213,696.00
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 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

1	Personal Services	\$ 4,919,828.00
2	Current Expenses	1,398,000.00
3	Equipment	31,000.00
4	Public Assistance Grants (Classified Aid)	9,300,000.00
5	Includes grants for persons in mental and	
6	tubercular hospitals.	
7	Aid to Crippled Children	620,000.00
8	Medical Services and M.A.A.	5,000,000.00
9	Conservation of Vision and Prevention of	
10	Blindness	40,000.00
11	Child Welfare Services	200,000.00
12	General Relief and Boarding Care	1,340,000.00
13	Social Security Matching Fund	300,000.00
14	Prescription Drugs for Medically Indigent Age	
15	65 and over	1,100,000.00
16	Title XIX—Medical Assistance for Eligible	
17	18-21 Age Group	1,043,000.00
18	Total	\$ 25,291,828.00

62—State Agency on Aging

Acct. No. 406

1	Total	\$ 36,500.00
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63—Department of Mental Health

Acct. No. 410

1	Personal Services	\$ 590,978.00
2	Current Expenses	136,522.00

3	Equipment	17,500.00
4	Research and Training	30,000.00
5	Civil Service Costs	65,000.00
6	Division of Health Education	20,000.00
7	Day Care Center	60,000.00
8	Commission on Mental Retardation	18,000.00
9	Total	\$ 938,000.00

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

64—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$ 1,572,346.00
2	Current Expenses	365,100.00
3	Repairs and Alterations	67,700.00
4	Equipment	37,300.00
5	Total	\$ 2,042,446.00

65—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$ 2,942,962.00
2	Current Expenses	1,034,878.00
3	Repairs and Alterations	165,000.00
4	Equipment	106,546.00
5	Total	\$ 4,249,386.00

66—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$ 1,393,565.00
2	Current Expenses	569,505.00
3	Repairs and Alterations	80,000.00
4	Equipment	52,090.00
5	Total	\$ 2,095,160.00

67—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$ 1,978,980.00
2	Current Expenses	796,291.00

3	Repairs and Alterations	104,750.00
4	Equipment	76,700.00
5	Total	\$ 2,956,721.00

68—*Lakin State Hospital*
Acct. No. 423

1	Personal Services	\$ 947,896.00
2	Current Expenses	304,200.00
3	Repairs and Alterations	117,800.00
4	Equipment	89,500.00
5	Total	\$ 1,459,396.00

69—*Barboursville State Hospital*
Acct. No. 424

1	Personal Services	\$ 496,000.00
2	Current Expenses	169,800.00
3	Repairs and Alterations	46,660.00
4	Equipment	16,720.00
5	Total	\$ 729,180.00

70—*Fairmont Emergency Hospital*
Acct. No. 425

1	Personal Services	\$ 215,440.00
2	Current Expenses	106,985.00
3	Repairs and Alterations	40,000.00
4	Equipment	13,100.00
5	Total	\$ 375,525.00

71—*Welch Emergency Hospital*
Acct. No. 426

1	Personal Services	\$ 307,480.00
2	Current Expenses	175,300.00
3	Repairs and Alterations	45,000.00
4	Equipment	22,500.00
5	Total	\$ 550,280.00

72—Hopemont State Hospital

Acct. No. 430

1	Personal Services	\$ 779,238.00
2	Current Expenses	333,410.00
3	Repairs and Alterations	30,500.00
4	Equipment	33,500.00
5	Total	\$ 1,176,648.00

73—Pinecrest Sanitarium

Acct. No. 431

1	Personal Services	\$ 1,016,000.00
2	Current Expenses	500,000.00
3	Repairs and Alterations	33,000.00
4	Equipment	20,000.00
5	Total	\$ 1,569,000.00

74—Denmar State Hospital

Acct. No. 432

1	Personal Services	\$ 683,660.00
2	Current Expenses	247,475.00
3	Repairs and Alterations	37,250.00
4	Equipment	31,615.00
5	Total	\$ 1,000,000.00

75—Berkeley Springs Sanitarium

Acct. No. 436

1	Personal Services	\$ 58,000.00
2	Current Expenses	10,000.00
3	Repairs and Alterations	9,000.00
4	Equipment	3,000.00
5	Total	\$ 80,000.00

76—State Board of Education—Rehabilitation Division

Acct. No. 440

1	Personal Services	\$ 417,140.00
2	Current Expenses	47,895.00
3	Rehabilitation Center	349,887.00
4	Case Services	476,965.00

5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind	21,000.00
7	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
 12 Forest Festival, Alpine Festival, Governor's
 13 Conference on Wood Utilization, and West
 14 Virginia Historical Drama Association shall

15 be expended only upon authorization of the
 16 Commerce Commissioner and in accordance
 17 with the provisions of chapter 5-A of the
 18 code of West Virginia.

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

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

31 Industrial Development Revolving Fund may
 32 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

2 Out of the above appropriation the sum of
 3 \$8,750.00 may be made available for West
 4 Virginia's membership in The Council of
 5 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

84—Ohio River Valley Water Sanitation Commission

Acct. No. 474

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

85—Southern Regional Education Board

Acct. No. 475

1	West Virginia's contribution to Southern Re-	
2	gional Education Board _____	\$ 49,000.00
3	To be expended upon requisition of the Gov-	
4	ernor.	

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	
2	Education Compact _____	\$ 4,750.00
3	To be used in accordance with House Bill No.	
4	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

4	Aerial Markers	1,000.00
5	Civil Air Patrol Expenses	8,000.00
6	Total	\$ 47,000.00

90—*West Virginia Nonintoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$ 148,800.00
2	Current Expenses	60,000.00
3	Equipment	1,200.00
4	Total	\$ 210,000.00

91—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 101,000.00
2	Current Expenses	30,000.00
3	Equipment	1,000.00
4	Total	\$ 132,000.00

AGRICULTURE

92—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$ 17,000.00
2	Other Personal Services	641,922.00
3	Current Expenses	255,000.00
4	Equipment	15,000.00
5	Total	\$ 928,922.00

93—*Department of Agriculture—Soil Conservation*

Acct. No. 512

1	Personal Services	\$ 89,835.00
2	Current Expenses	40,000.00
3	Watershed Program	100,000.00
4	Total	\$ 229,835.00

94—*Department of Agriculture—Marketing and Research*
Acct. No. 513

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

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 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.	

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 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.	

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
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 1966-	
21	67 is hereby reappropriated for expenditure	
22	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

3	Repairs and Alterations	67,000.00
4	Equipment	311,000.00
5	Total	\$ 3,887,062.00

101—Adjutant General—State Militia
Acct. No. 580

1	Personal Services	\$ 73,800.00
2	Current Expenses	100,000.00
3	Repairs and Alterations	7,000.00
4	Equipment	2,600.00
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances	85,000.00
7	Property Maintenance	45,600.00
8	State Armory Board	786,000.00
9	Total	\$ 1,100,000.00

102—Department of Civil and Defense Mobilization
Acct. No. 581

1	Personal Services	\$ 38,400.00
2	Current Expenses	10,000.00
3	Equipment	4,300.00
4	Total	\$ 52,700.00

103—Auditor's Office—Social Security
Acct. No. 582

1	To match contributions of state employees for	
2	social security	\$ 2,300,000.00
3	The above appropriation is intended to cover	
4	the state's share of social security costs for	
5	those spending units operating from Gen-	
6	eral Revenue Fund and General School	
7	Fund Appropriations. The State Road	
8	Commission, Department of Motor Vehicles,	
9	Workmen's Compensation Commission,	
10	Public Service Commission, and other de-	
11	partments operating from Special Revenue	
12	Funds and/or Federal Funds shall pay	
13	their proportionate share of the social secur-	
14	ity cost for their respective divisions.	

- 15 Any unexpended balance remaining in this
 16 appropriation at the close of the fiscal year
 17 1966-67 is hereby reappropriated for ex-
 18 penditure 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		
2	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		
2	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		
2	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		
2	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		
2	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		
2	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	
3	aid in payment of interest and principal on	
4	outstanding road bonds and may be trans-	
5	ferred to the State Road Fund upon the	
6	requisition of the Governor.	

Sec. 2. Appropriations from Other Funds.—From the 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-	
2	gram	\$ 99,020,500.00
3	Federal-Aid Construction—ABC Program	28,395,000.00
4	Appalachian Program	29,780,000.00
5	Interstate Maintenance	1,586,500.00
6	Special Maintenance and State Construction—	
7	Expressway and Trunkline	9,485,500.00
8	Special Maintenance and State Construction—	
9	Feeder and State Local Service	10,696,500.00
10	Expressway and Trunkline	6,555,000.00
11	Feeder and State Local Service	6,555,000.00
12	Emergency Operations—Snow and Ice Con-	
13	trol—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 avail-
 20 able for expenditure, the balances and all
 21 revenues and income of the State Road Fund,
 22 including the proceeds from the sale of
 23 bonds, for the maintenance, construction
 24 and reconstruction of state roads and for
 25 other purposes in accordance with the pro-
 26 visions of chapter 17, code of West Virginia,
 27 one thousand nine hundred thirty-one, as
 28 amended.

29 Funds in excess of amounts herein appropri-
 30 ated may be made available by budget
 31 amendment upon request of the Road Com-
 32 missioner and approval of the Board of
 33 Public Works.

34 The State Road Commissioner shall have the
 35 authority to operate revolving funds within
 36 the state road fund for the operation and
 37 purchase of various types of equipment
 38 used directly and indirectly in the construc-
 39 tion and maintenance of roads and for the
 40 purchase of inventories of materials and
 41 supplies: *Provided, however,* That the op-
 42 eration of such revolving funds shall not
 43 cause expenditures in excess of the fore-
 44 going appropriations.

45 There is hereby appropriated, within the
 46 above line items, sufficient moneys for the
 47 payment of claims, accrued or arising dur-
 48 ing this budgetary period, to be paid in ac-
 49 cordance with chapter 14, article 2, sections
 50 7 and 8, code of West Virginia, one thou-
 51 sand nine hundred thirty-one, as amended.

123—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	998,600.00
2	Current Expenses		451,400.00
3	Equipment		30,000.00
4	Purchase of License Plates		240,000.00
5	Social Security Matching Fund		40,300.00
6	Public Employees Retirement Matching Fund		47,000.00
7	Total	\$	1,807,300.00

124—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	202,500.00
2	Current Expenses		69,000.00
3	Equipment		4,000.00
4	Social Security Matching Fund		8,300.00
5	Total	\$	283,800.00

125—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	62,892.00
2	Current Expenses		16,000.00
3	Equipment		1,500.00
4	Total	\$	80,392.00

126—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	71,900.00
2	Current Expenses		17,600.00

3	Equipment	3,500.00
4	Vocational Aid	410,000.00
		<hr/>
5	Total.....	\$ 503,000.00

127—Department of Education—Veterans Education

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 25,380.00
2	Current Expenses	5,800.00
		<hr/>
3	Total.....	\$ 31,180.00

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

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

128—Department of Education

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$ 18,000.00
2	Other Personal Services	439,284.00
3	Current Expenses	120,000.00
4	Equipment	3,950.00
5	National Defense Education Act	198,270.00
6	State-wide Testing Program	176,000.00
7	Experimental Projects	16,480.00
		<hr/>
8	Total.....	\$ 971,984.00

9 Any part or all of the appropriation for
10 "National Defense Education Act" may be
11 transferred to a Special Revenue Fund for
12 the purpose of matching Federal Funds for
13 this program.

129—*State Board of School Finance*
Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	29,100.00
2	Current Expenses		10,210.00
3	Total	\$	39,310.00

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

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	69,375.00
2	Current Expenses		18,000.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		300,000.00
5	Total	\$	387,375.00

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

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$	61,000.00
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132—*Department of Education*
Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home	\$	25,000.00
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133—*Treasurer's Office*
Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1	Abandoned and Unclaimed Property—Trust		
2	and Expense Fund	\$	25,000.00

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

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	32,000.00
2	Current Expenses		17,650.00

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 col-	
8	lections 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

1	Personal Services	\$	101,100.00
2	Current Expenses		13,130.00
3	Equipment		17,000.00
4	Social Security Matching Fund		4,450.00
5	Public Employees Retirement Matching Fund		5,120.00
			140,800.00
6	Total	\$	140,800.00

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

1	Personal Services	\$	175,800.00
2	Current Expenses		36,200.00
3	Equipment		5,000.00
4	Social Security Matching Fund		6,893.00
5	Public Employees Retirement Matching Fund		8,707.00
			232,600.00
6	Total	\$	232,600.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections made by the Department of
 10 Agriculture as provided by law. It is the 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.

139—*State Committee of Barbers and Beauticians*
 Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	56,917.00
2	Current Expenses		32,000.00
3	Equipment		888.00
4	Social Security Matching Fund		2,500.00
5	Public Employees Retirement Matching Fund		2,900.00
6	Total	\$	95,205.00

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.

140—*Public Service Commission*
 Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	42,000.00
2	Other Personal Services		431,619.00
3	Current Expenses		49,770.00
4	Equipment		6,440.00
5	Social Security Matching Fund		12,884.00
6	Public Employees Retirement Matching Fund		21,587.00
7	Total	\$	564,300.00

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

12 of the above appropriation \$5,000.00 may
 13 be transferred to the State Water Resources
 14 Commission of the Department of Natural
 15 Resources for use in cooperation with the
 16 U. S. Geological Survey in a program of
 17 stream gauging.

141—*Public Service Commission—Motor Carrier Division*
 Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 244,600.00
2	Current Expenses	69,210.00
3	Equipment	4,860.00
4	Social Security Matching Fund	6,940.00
5	Public Employees Retirement Matching Fund	10,900.00
		<hr/>
6	Total.....	\$ 336,510.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 receipts collected for or by the Public Serv-
 10 ice Commission pursuant to and in the exer-
 11 cise of regulatory authority over motor car-
 12 riers as authorized by law.

142—*Department of Natural Resources*
 Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 1,202,620.00
2	Current Expenses	520,149.00
3	Repairs and Alterations	74,050.00
4	Equipment	257,240.00
		<hr/>
5	Total.....	\$ 2,054,059.00

6 The total amount of this appropriation shall be
 7 paid from Special Revenue Fund out of fees
 8 collected by the Department of Natural Re-
 9 sources. Expenditures shall be limited to the
 10 amounts appropriated except for Federal
 11 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

1	Personal Services	\$ 128,302.00
2	Current Expenses	55,980.00
3	Repairs and Alterations	5,000.00
4	Equipment	13,100.00
5	Social Security Matching Fund	818.00
6	Total	\$ 203,200.00

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

1	Salary of Commissioner	\$ 14,000.00
2	Other Personal Services	3,500,238.00
3	Current Expenses	859,200.00
4	Repairs and Alterations	35,000.00
5	Equipment	60,000.00
6	Social Security Matching Fund	143,184.00
7	Public Employees Retirement Matching Fund	175,763.00
8	Total	\$ 4,787,385.00

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

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

17 There is hereby appropriated from liquor
18 revenues, in addition to the above appro-
19 priation, the necessary amount for the pur-
20 chase 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
7 be paid from Special Revenue Fund sup-
8 ported by participating agencies as provided
9 by law.

10 The Board of Public Works is hereby au-
11 thorized to make available by budget
12 amendment, upon request of the Civil
13 Service Commission, funds in excess of the
14 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.	

19	Bluefield State College	
20	Basic Science Building	\$ 2,100,000.00
21	Land Acquisition	70,000.00
22	Renovation-Conley Hall	150,000.00
23	Total	\$ 2,320,000.00
24	Concord College	
25	Health P.E. Building	\$ 2,170,000.00
26	Land Acquisition	125,000.00
27	Total	\$ 2,295,000.00
28	Fairmont State College	
29	Science Building	\$ 2,130,000.00
30	Glenville State College	
31	Academic Building	\$ 2,000,000.00
32	Land Acquisition	100,000.00
33	Total	\$ 2,100,000.00
34	West Virginia Institute of Technology	
35	Library and Auditorium	\$ 1,800,000.00
36	Maintenance Building	100,000.00
37	Total	\$ 1,900,000.00
38	Marshall University	
39	Science-Engineering—Building	\$ 4,000,000.00
40	Communications Center	450,000.00
41	Land Acquisition	400,000.00
42	Total	\$ 4,850,000.00
43	Shepherd College	
44	Fine Arts Building	\$ 1,400,000.00
45	Maintenance and Storage Building	195,000.00
46	Buildings and Campus Improvement	180,000.00
47	Renovation Social Science Building	80,000.00
48	Total	\$ 1,855,000.00

49 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

55 West Virginia State College

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

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

59 Fairmont State College

60	Health, P.E. Building	\$ 1,000,000.00
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61 West Virginia Institute of Technology

62	Community and Technical College	\$ 1,000,000.00
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63 Total.....\$ 27,223,200.00

64 As required by law, the above projects are
65 listed in a stated order of priority. The ap-
66 propriation on lines 1 through 16 is to be
67 paid on a cash basis, and the costs of proj-
68 ects on lines 19 through 62 are to be paid
69 from the proceeds of revenue bonds issued
70 as authorized by law. It is intended that
71 only complete and usable units or projects
72 be constructed and then only in the listed
73 order of priority: *Provided, however,* That
74 whenever the amount in the Capital Im-
75 provement Fund, including both cash col-
76 lections and the proceeds of bonds sales,
77 shall be sufficient to cover all capital ex-
78 penditures authorized above, then the listed
79 projects shall be considered of equal priority
80 and all of them, or any one or more, may be
81 constructed as soon as plans can be pre-
82 pared and contracts let therefor.

83 The total amount of this appropriation shall
84 be paid from the nonrevolving Capital Im-

85 improvement Fund created by the 1959 Legis-
 86 lature, amended by the 1963 Legislature.
 87 Any unexpended balance remaining in this
 88 appropriation at the close of the fiscal year
 89 1966-67 is hereby reappropriated for ex-
 90 penditure during the fiscal year 1967-68.

148—*West Virginia University—Medical School*

Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

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

23 Total

\$ 9,997,100.00

24 Special funds in excess of the amounts hereby
 25 appropriated may be made available by
 26 budget amendment upon request of the
 27 Board of Governors of West Virginia Uni-
 28 versity and approval of the Board of Public
 29 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
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152—*Department of Finance and Administration*

Acct. No. 210

1	Records Management	\$	15,000.00
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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
2 Equipment to be used on the Wheeling
3 Campus\$ 12,050.00
4 The above appropriation is from proceeds of
5 sale of property at 2227 Chapline Street,
6 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
3 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

Acct. No. 420

1	Personal Services	\$	204,294.00
2	Current Expenses		74,800.00
3	Total	\$	279,094.00

161—Department of Labor

Acct. No. 450

1	Personal Services	\$	21,000.00
2	Current Expenses		13,000.00
3	Equipment		4,000.00
4	Total	\$	38,000.00

162—Department of Commerce

Acct. No. 465

1	Current Expenses	\$	4,000.00
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163—Department of Natural Resources

Acct. No. 565-11

1	Personal Services	\$	69,000.00
2	Current Expenses		50,000.00
3	Repairs and Alterations		3,000.00
4	Total	\$	122,000.00

164—West Virginia Alcohol Beverage Control

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total	\$	18,273.00
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Sec. 4. Awards for Claims Against the State.—From the 2 funds designated there are hereby appropriated for the remainder of the fiscal year 1966-67, and to remain in effect 4 until June 30, 1968, for payment of claims against the state, 5 the following amounts as itemized.

Claims versus Secretary of State

TO BE PAID FROM GENERAL REVENUE FUND

1	Johnson-Watson Printing Co.	\$	9,702.76
2	Casto & Harris, Inc.		2,711.13

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
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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
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Claims versus Department of Commerce

TO BE PAID FROM GENERAL REVENUE FUND

1 L. D. Van Osdol	\$	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

29	Nay Flesher, Jr. _____	47.90
30	U. Grant Stricklen _____	107.47
31	Delia G. Hesse _____	40.00
32	Edna E. Hines _____	20.00
33	Velma H. Lahman _____	77.10
34	John Graham _____	40.00
35	J. Otis Cook _____	57.15
36	Raymond Judy _____	167.40
37	Merlin B. Feaster _____	75.00
38	John S. Arnold, Jr. _____	161.00
39	Raymond E. DeBolt _____	51.97
40	Cluster M. Goodbar _____	184.29
41	Robert Vincent _____	15,000.00
42	Oliver W. Kitzmiller _____	108.00
43	Quayle R. Shupe _____	22.49
44	Mrs. Blanch Duling _____	240.24
45	Carl Lee White _____	25.00
46	A. H. Rigdon _____	1,655.44
47	Milton & Lucy Williams _____	480.00
48	Thelma V. Leasure _____	3,000.00
49	Giovino John & Rita Louise D'Aurora _____	1,000.00
50	Gabriel Harris & Evelyn Harris _____	32.17

Claims versus the Department of Motor Vehicles

TO BE PAID FROM STATE ROAD FUND

1	International Business Machines Corp. _____\$	29,250.87
2	R. L. Polk & Co. _____	21,846.35
3	Friden, Inc. _____	493.52
4	West Virginia Business Forms, Inc. _____	7,292.26
5	Joe L. Smith, Jr., Inc. _____	92.97
6	Remington Office Machines _____	231.61
7	Remington Records Retrieval _____	18,700.00
8	Lewis Chevrolet Company _____	113.89
9	Pitney-Bowes, Inc. _____	89.23
10	Xerox Corporation _____	924.61
11	Humble Oil & Refining Co. _____	226.34
12	National Cash Register Co. _____	731.40
13	Mrs. Bobbie Bayliss _____	38.58

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 un-
 2 expended balances, if any, in item 39, in the appropriations
 3 made by and under authority of Section 6 of the 1964 Budget
 4 Act and items I, II, III, V, XVI and XVII in the appropria-
 5 tions made by and under authority of Section 6 of the 1965
 6 Budget Act are hereby reappropriated from their respective
 7 dates of expiration to June 30, 1968.

8 Item III—Governor's Office as herein reappropriated may
 9 be used to match and aid Federal Programs, and any part
 10 of this appropriation may be transferred to any department
 11 for such purposes.

12 Item 151—Forestry Camp for Boys in the supplemental
 13 and deficiency appropriation in the 1966 Budget Act is
 14 deemed not to have expired in accordance with section
 15 twelve, article three, chapter twelve, code of West Virginia,
 16 one thousand nine hundred thirty-one, as amended.

Sec. 6. Special Revenue Appropriations.—There is hereby
 2 appropriated for expenditure during the fiscal year one thou-
 3 sand nine hundred sixty-eight appropriations made by gen-
 4 eral law from special revenue which are not paid into the
 5 state fund as general revenue under the provisions of chap-
 6 ter 12, article 2, section 2, of the code of West Virginia, one
 7 thousand nine hundred thirty-one: *Provided, however,* That
 8 none of the moneys so appropriated by this section shall be
 9 available for expenditure except in compliance with and in
 10 conformity to the provisions of chapter 12, articles 2 and 3,
 11 chapter 5, article 4 and chapter 5-A, article 2, of the code of
 12 West Virginia, unless the spending unit has filed with the

13 state director of the budget and the state auditor prior to the
14 beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all revenues
16 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 Marshall University the
8 sum of \$100,000.00 representing interest earned on construc-
9 tion funds in the hands of the State Sinking Fund Com-
10 mission for the purpose of purchasing additional land and/
11 or equipment, and/or for matching federal funds which
12 may become available, all for the purpose of improving
13 existing facilities at Marshall University.

Sec. 8. Appropriation for Refunding Erroneous Payments.
2 —Money that has been erroneously paid into the state treas-
3 ury 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 Sink-
10 ing 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
15 advanced funds, with interest at the rate carried by the
16 bonds 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 per cent*
5 of the total revenues collected. All such salaries and ex-
6 penses, authorized by law as aforesaid, shall be paid by the
7 Tax Commissioner through the state treasury out of gross
8 collections.

**Sec. 11. Appropriations to Pay Costs of Publications of
2 Delinquent Corporations.—**There is hereby appropriated out
3 of the state fund, general revenue, out of funds not other-
4 wise appropriated to be paid upon requisition of the auditor
5 and/or the Governor, as the case may be, a sum sufficient to
6 pay the cost of publication of delinquent corporations as pro-
7 vided by chapter 11, article 12, sections 75 and 77, of the code
8 of West Virginia.

Sec. 12. Appropriations for Local Governments.—There is
2 hereby appropriated for payment to counties, districts, and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due county, district, and municipal corporations
5 and which have been paid into the treasury:

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

Sec. 13. Total Appropriations.—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital outlay,
4 except as otherwise provided in Title I, Section 3.

Sec. 14. General School Fund.—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with chapter 18, article 9,
5 section 6, of the code of West Virginia.

TITLE 3. ADMINISTRATION.**Section**

1. Appropriations conditional.
2. Constitutionality.

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.

1 There is hereby created and established within the
 2 department of archives and history a division of historic
 3 road markers. The state historian and archivist shall
 4 be *ex officio* the director of the division, and is here-
 5 inafter referred to as the director.

§29-1-5. Same—Legislative determination and declaration of policy.

1 It is hereby declared as a matter of legislative deter-
 2 mination and policy:

3 (a) That the state of West Virginia, being richly en-
 4 dowed in historic achievement, should erect and maintain
 5 adequate and appropriate historic markers along its roads
 6 and highways to point out to tourists and identify for
 7 future generations the important role played by the state
 8 in the development of the United States of America.

9 (b) That since in past years several hundred historic
 10 road markers have been placed along the highways of the

11 state, many of which have only recently been repaired
12 and renovated, it is necessary to create an agency au-
13 thorized and empowered to preserve and maintain such
14 markers and to place such additional markers at appro-
15 priate places as shall be determined fitting and appro-
16 priate.

§29-1-6. Same—Powers and duties of director; assistance of state road commissioner; acceptance of gifts, donations, contributions, bequests or devises; publication of marker booklet.

1 The director shall be authorized and empowered to
2 purchase new historical road markers; replace old histori-
3 cal road markers; protect, preserve and display the Fair-
4 fax stones; purchase historical road markers for new
5 highways, and, with the consent of the West Virginia
6 turnpike commission, purchase historical road markers
7 for said turnpike; and formulate and prepare appropriate
8 copy for such markers.

9 The director shall determine the location of such mark-
10 ers, and it shall be the duty and responsibility of the
11 state road commissioner to handle the actual physical
12 placement thereof, the painting and repainting thereof
13 and the general maintenance of such markers. The cost
14 of such placement, painting and maintenance shall be
15 paid out of the appropriation made for such purposes.

16 The director is also authorized and empowered, with
17 the consent of the governor, to accept and receive gifts,
18 donations, contributions, bequests or devises of money,
19 security, or property, both real and personal, or any
20 interest therein; and said director may accept, receive
21 and administer same subject to any terms, limitations,
22 or restrictions placed thereon by the donor.

23 The director is authorized to publish and revise from
24 time to time a booklet entitled "West Virginia Historic
25 and Scenic Highway Markers," or any other document
26 deemed to be consistent with his powers and duties. The
27 director may establish a reasonable price for such book-
28 let or other document published and sell the same. Any
29 money received from the sale of such booklet or docu-
30 ments shall be deposited in the special fund hereinafter
31 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.
6. Rules and regulations.
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:

2 (a) To take such steps as may be deemed necessary and
3 appropriate to stimulate and encourage the study and
4 presentation of the performing and creative arts, and to
5 foster public interest in and support of the arts in this
6 state.

7 (b) To make such surveys, as may be deemed advis-
8 able, of public and private institutions within the state
9 engaged in the performing and creative arts, and to make
10 recommendations for appropriate action to enlarge the
11 state's resources in the performing and creative arts.

12 (c) To encourage and assist freedom of expression
13 in the performing and creative arts.

14 (d) To encourage the use of local resources for the
15 development and support of the arts.

16 (e) To promote and stimulate public understanding
17 and recognition of the importance of West Virginia cul-
18 tural institutions.

19 (f) To encourage and foster the growth and develop-
20 ment of local cultural institutions and agencies, both pub-
21 lic and private.

22 (g) To stimulate and facilitate the touring of profes-
23 sional and nonprofessional performances and exhibits
24 to local communities.

25 (h) To encourage and develop performances and ex-
26 hibits of the arts by teachers and students, and to en-
27 courage the practice as well as the teaching of the arts.

28 The council shall report in writing to the governor as
29 soon as possible after the close of each fiscal year. The
30 report shall contain a summary of the council's proceed-
31 ings and activities during the preceding fiscal year, and
32 such other information as may be deemed necessary and
33 useful.

§29-17-3. Council administrative personnel.

The council may employ an executive director and
2 such other personnel as may be deemed necessary to ac-
3 complish its objectives. All persons so employed by the
4 council shall be employed under the state civil service

5 system as provided in article six, chapter twenty-nine of
6 this code.

§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
2 public and private hearings and to enter into contracts
3 with individuals, organizations, and institutions for serv-
4 ices or endeavors furthering the objectives of the council's
5 programs; to accept gifts, grants and bequests of funds
6 from individuals, foundations, corporations, governmental
7 agencies, and other organizations or institutions; to make
8 and sign any agreements and to do and perform any acts
9 that may be necessary to carry out the purposes of this
10 article. The council may request and shall receive from
11 any department or agency of the state government such
12 assistance, information and advice as will enable it to
13 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
2 receive and disburse all funds made available to the state
3 government by the national endowment for the arts or
4 by any successor agency, or from any other similar federal
5 agency.

§29-17-6. Rules and regulations.

The council shall adopt rules and regulations concern-
2 ing the operation of the council, the functions and re-
3 sponsibilities of its officers and employees and such other
4 matters as may be necessary to carry out the purpose of
5 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
2 in this state and fostering public interest therein, the coun-
3 cil is hereby authorized, within the limits of available
4 funds, to make awards as premiums or prizes for exhibits
5 in either the performing or creative arts. Such awards
6 may be made either directly to the performer or artist,
7 or may be made in the form of grants to public or private

8 corporations or associations, local or otherwise, whose
9 objects and purposes are the encouragement and develop-
10 ment of the arts, and which are sponsoring or conducting
11 art exhibits, fairs or competition.

12 The council shall govern the granting and disposition of
13 such grants, premiums or prizes by general rules and reg-
14 ulations.

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.

1 Any banking institution or institutions, or institution
2 or institutions jointly with a national banking associa-
3 tion or associations, owning, leasing or renting, directly
4 or through a subsidiary corporation wholly owned by
5 it or them, computer, bookkeeping, or other like or sim-
6 ilar machines or equipment for its or their own business
7 operations, may contract for the sale of and sell the
8 services, use and products of the machines or equipment
9 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,
 2 ex officio, and four other members to be appointed by
 3 the governor, by and with the advice and consent of the

4 senate, to serve at the will and pleasure of the governor.
5 Of the four members thus appointed, one shall be an
6 employing barber, one an employee barber, one an em-
7 ploying beautician, and one an employee beautician.
8 Each member of the committee so appointed shall have
9 been engaged within this state in the practice of barber-
10 ing or beauty culture, as the case may be, for a period
11 of eight years immediately prior to his appointment,
12 and not more than two of the four members of the com-
13 mittee so appointed shall belong to the same political
14 party.

15 On or before the thirtieth day of June of each year the
16 governor shall appoint one member of the committee to
17 serve for a term of four years, to begin on the first day of
18 July. Any member of the committee shall be eligible
19 for reappointment.

20 The director of health shall be ex officio chairman of
21 the committee, and the enforcement of all rules and regu-
22 lations promulgated by the committee pertaining to sani-
23 tary conditions of barbering and beauty shops and per-
24 taining to the registration and qualifications of barbers,
25 beauticians and manicurists shall be under his supervision
26 and direction; no order, rule or regulation promulgated
27 by the committee shall be in force and effect until ap-
28 proved by the director of health. The committee shall
29 designate one of its members, or some other person, to act
30 as secretary of the committee, and it shall be the duty of
31 the secretary to perform such duties as may be prescribed
32 by the committee.

33 Each member of the committee, except the chairman,
34 shall receive as compensation a per diem of twenty-five
35 dollars for each day he is in attendance upon the sessions
36 of the committee, but such compensation for each member
37 shall not exceed the sum of five hundred dollars in any
38 calendar year. Each member shall be reimbursed for ac-
39 tual and necessary expenses incurred in the performance
40 of his duties, upon presentation of an itemized sworn
41 statement thereof.

42 The committee shall examine all applicants for certifi-
43 cates of registration and shall issue certificates to those

44 entitled thereto; collect examination and registration fees;
45 promulgate rules and regulations governing the operation
46 of barbershops, beauty shops, and schools of barbering and
47 beauty culture, including the prescribing of curriculums
48 and standards of instructions for such schools; promulgate
49 rules and regulations for the physical examination of bar-
50 bers, beauticians, manicurists, junior barbers and beau-
51 ticians, and students, and fix the standard form of report
52 of such examinations; establish and enforce sanitary regu-
53 lations in barbershops, beauty shops, and schools of bar-
54 bering and beauty culture; enforce all such rules and
55 regulations as are herein authorized; and do all other
56 things necessary to effectuate the purposes of this article
57 in the interest and protection of public health.

58 The director of health shall appoint not to exceed six
59 inspectors, who shall be registered barbers and beauti-
60 cians of this state, as herein provided, and it shall be
61 their duty to make frequent inspections of all barber and
62 beauty shops, and all schools of barbering and beauty
63 culture in this state, and to report all violations to the
64 director of health. The salaries and allowances for ex-
65 penses of such inspectors shall be that fixed and allowed
66 by the director of health and approved by the director
67 of the budget, pursuant to his power to classify employ-
68 ment 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
2 operated under the supervision and management of a
3 barber or beautician who is registered as such in this
4 state. Each barbershop in this state may employ at least
5 one junior barber therein. However, in shops regularly
6 employing more than three registered barbers only one
7 such junior barber may be employed for every three
8 such registered barbers, but in no event can more than
9 three such junior barbers be employed in any one barber-
10 shop, and each beauty shop shall have the right to employ
11 one junior beautician for each registered beautician
12 therein. No business or trade other than that of barbering
13 shall be conducted in a barbershop and no business or
14 trade other than that of beauty culture shall be con-
15 ducted in a beauty shop, except the display and/or sale
16 of commodities or other articles used in connection with
17 barbering or beauty culture, and no such barber or beauty
18 shop shall be operated in a store, dwelling house, or other
19 building or space used for any purpose other than bar-
20 bering or beauty culture unless such barber or beauty
21 shop is separated by stationary partitions extended from
22 floor to ceiling: *Provided*, That nothing herein contained
23 shall be construed as prohibiting a barbershop from car-
24 rying on the business of shoe shining or manicuring or
25 both shoe shining and manicuring. A suitable sign shall
26 be displayed at the main entrance of all barber and beauty
27 shops, plainly indicating the business conducted therein:

28 *Provided, however,* That no sign shall be displayed out-
 29 side any barber or beauty shop or inside the same, so as
 30 to be clearly visible from the outside and for the ostensi-
 31 ble purpose of attracting trade, which in any way adver-
 32 tises the prices to be charged in such barber or beauty
 33 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.

Section

1. Name of the state office building commission changed; members; chairman and secretary; expenses; powers and duties generally.
- §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

11 for said members to be appointed by the governor shall
12 be four years, except that the terms of office of the first
13 four members so appointed by the governor shall be for
14 one, two, three and four years, respectively. No more than
15 three of such members so appointed by the governor
16 shall be members of the same political party, nor shall
17 any of said members be members or employees of the
18 executive, legislative or judicial branches of government
19 of West Virginia or any political subdivision thereof. The
20 governor shall be chairman of the commission. The sec-
21 retary of state shall be a member of the commission and
22 serve as its secretary, but shall not have the right to
23 vote upon matters before the commission. All members
24 of the commission shall be citizens and residents of this
25 state. The members of the commission shall be paid or
26 reimbursed for their necessary expenses incurred under
27 this article, but shall receive no compensation for their
28 services as members or officers of the commission: *Pro-*
29 *vided, however,* That each member of the commission
30 appointed by the governor shall, in addition to such re-
31 imbursement for necessary expenses receive a per diem of
32 thirty-five dollars for each day or substantial portion
33 thereof that he is engaged in the work of the commission.
34 Such expenses and per diem shall be paid solely from
35 funds provided under the authority of this article, and
36 the commission shall not proceed to exercise or carry out
37 any authority or power herein given it to bind said
38 commission beyond the extent to which money has
39 been provided under the authority of this article. The
40 commission shall have the duties, powers and responsi-
41 bilities 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, chap-
ter 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
2 of a project, as defined hereinabove, by the issuance of
3 state building revenue bonds of the state, the principal
4 of and interest on which bonds shall be payable solely
5 from the special fund herein provided for such pay-
6 ment. Such bonds shall be authorized by resolution of
7 the commission which shall recite an estimate by the
8 commission of such cost, and shall provide for the issu-
9 ance of bonds in an amount sufficient, when sold as here-
10 inafter provided, to produce such cost, less the amount
11 of any funds, grant or grants, gift or gifts received, or
12 in the opinion of the commission expected to be received
13 from the United States of America or from any other
14 source. The acceptance by the commission of any and
15 all such funds, grants and gifts, whether in money or
16 in land, labor or materials, is hereby expressly author-
17 ized. All such bonds shall have and are hereby declared
18 to have all the qualities of negotiable instruments. Such
19 bonds shall bear interest at not more than five per cent

20 per annum, payable semiannually, and shall mature in
21 not more than twenty-five years from their date or dates,
22 and may be made redeemable at the option of the state,
23 to be exercised by the commission, at such price and
24 under such terms and conditions as the commission may
25 fix prior to the issuance of such bonds. The commis-
26 sion shall determine the form of such bonds, including
27 coupons to be attached thereto to evidence the right of
28 interest payments, which bonds shall be signed by the
29 chairman and secretary of the commission, under the
30 great seal of the state, attested by the secretary of state,
31 and the coupons attached thereto shall bear the facsimile
32 signature of said chairman of the commission. In case
33 any of the officers whose signatures appear on the bonds
34 or coupons issued as hereinbefore authorized shall cease
35 to be such officers before the delivery of such bonds, such
36 signatures shall nevertheless be valid and sufficient for
37 all purposes the same as if they had remained in office
38 until such delivery. The commission shall fix the de-
39 nominations of said bonds, the principal and interest of
40 which shall be payable at the office of the treasurer of
41 the state of West Virginia, at the capitol of said state,
42 or, at option of the holder, at some bank or trust com-
43 pany in the city of New York to be named in the bonds
44 in such medium as may be determined by the commis-
45 sion. The said bonds and interest thereon shall be exempt
46 from taxation by the state of West Virginia, or any county
47 or municipality therein. The commission may provide for
48 the registration of such bonds in the name of the owner as
49 to principal alone, and as to both principal and interest
50 under such terms and conditions as the commission may
51 determine, and shall sell such bonds in such manner as
52 it may determine to be for the best interest of the state,
53 taking into consideration the financial responsibility of
54 the purchaser, and the terms and conditions of the pur-
55 chase, and especially the availability of the proceeds
56 of the bonds when required for payment of the cost of
57 the project, such sale to be made at a price not lower than
58 a price which, computed upon standard tables of bond

59 values, will show a net return of not more than five
60 per cent per annum to the purchaser upon the amount
61 paid therefor. The proceeds of such bonds shall be used
62 solely for the payment of the cost of the project for which
63 bonds were issued, and shall be deposited and checked
64 out as provided by section four of this article, and under
65 such further restrictions, if any, as the commission may
66 provide. If the proceeds of bonds issued for a project
67 shall exceed the cost thereof, the surplus shall be paid
68 into the fund hereinafter provided for payment of the
69 principal and interest of such bonds. Such fund may be
70 used for the purchase of any of the outstanding bonds pay-
71 able from such fund at the market price, but at not exceed-
72 ing the price, if any, at which such bonds shall in the same
73 year be redeemable, and all bonds redeemed or pur-
74 chased shall forthwith be cancelled, and shall not again
75 be issued. Prior to the preparation of definitive bonds,
76 the commission may, under like restrictions, issue tem-
77 porary bonds with or without coupons, exchangeable
78 for definitive bonds upon the issuance of the latter. Reve-
79 nue bonds issued under the authority herein granted shall
80 be eligible as investments for the workmen's compen-
81 sation fund, teachers' retirement fund, department of
82 public safety death, disability and retirement fund,
83 West Virginia public employees' retirement system
84 and as security for the deposit of all public funds. Such
85 revenue bonds may be issued without any other pro-
86 ceedings or the happenings of any other conditions or
87 things than those proceedings, conditions and things
88 which are specified and required by this article, or
89 by the constitution of the state: *Provided*, That the
90 aggregate amount of all issues of bonds outstanding
91 at one time for all projects authorized hereunder shall
92 not exceed twenty-five million dollars including the re-
93 negotiation, reissuance or refinancing of any such bonds:
94 *Provided, however*, That no bonds or other obligations
95 shall be issued or incurred hereunder, unless and until
96 the Legislature by concurrent resolution has approved the
97 purpose and amount of each separate project.

CHAPTER 26

(Senate Bill No. 186—By Mr. Carson, Mr. President, and
Mr. Carrigan)

[Passed February 18, 1967; in effect ninety days from passage. Approved
by the Governor.]

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.
6. Judicial review.
7. Injunctive relief.
8. Penalties.
9. Severability.

§32-4-1. Definitions.

As used in this article:

- 2 (1) "Person" means any individual, partnership, asso-
- 3 ciation, joint-stock association, trust, or corporation, but

4 does not include the United States of America, any de-
5 partment, agency, commission or officer thereof, the state
6 of West Virginia, any department, agency, commission
7 or officer thereof, or any political subdivision of or any
8 municipality in this state;

9 (2) "Commissioner" means the commissioner of bank-
10 ing of this state;

11 (3) "Check" means any check, draft, money order, per-
12 sonal money order, or other instrument for the trans-
13 mission or payment of money;

14 (4) "Personal money order" means any instrument
15 for the transmission or payment of money in relation to
16 which the purchaser or remitter appoints or purports to
17 appoint the seller thereof as his agent for the receipt,
18 transmission, or handling of money, whether such instru-
19 ment be signed by the seller or by the purchaser or re-
20 mitter or some other person;

21 (5) "Securities" means all bonds, debentures or other
22 evidences of indebtedness (a) issued by the United States
23 of America or any agency thereof, or guaranteed by the
24 United States of America, or for which the credit of the
25 United States of America or any agency thereof is pledged
26 for the payment of the principal and interest thereof; and/
27 or (b) which are direct general obligations of this state, or
28 any other state if unconditionally guaranteed as to the
29 principal and interest by such other state and if such other
30 state has the power to levy taxes for the payment of the
31 principal and interest thereof and is not in default in the
32 payment of any part of the principal or interest owing by
33 it upon any part of its funded indebtedness; and/or (c)
34 which are general obligations of any county, school district
35 or municipality in this state issued pursuant to law and
36 payable from ad valorem taxes levied on all of the taxable
37 property located therein, if such county, school district or
38 municipality is not in default in the payment of any part
39 of the principal or interest on any debt evidenced by its
40 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
2 innocent persons in various states have suffered severe

3 financial losses as a result of financially irresponsible per-
4 sons engaging in the business of issuing and selling checks;
5 that many of these states have, following the discovery
6 of such losses, promptly enacted legislation to assure that
7 persons engaged in the business of issuing and selling
8 checks are financially responsible; and that it is impera-
9 tive that legislation be enacted to assure that persons
10 engaged in the business of issuing and selling checks in
11 this state are financially responsible. It is, therefore,
12 declared to be the public policy of this state that the busi-
13 ness of issuing and selling checks affects the general wel-
14 fare of this state and its individual citizens; and that
15 financial losses as aforesaid may best be prevented in
16 this state and the interests of the citizens of this state
17 best served by requiring persons now engaged or to be
18 engaged in the business of issuing and selling checks to
19 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
2 shall engage in the business of issuing and selling checks
3 as a service or for a fee or other compensation, unless (a)
4 the net worth of such person is at all times at least fifty
5 thousand dollars, computed according to generally ac-
6 cepted accounting principles and shown by financial
7 statements filed with and satisfactory to the commissioner,
8 and (b) such person either (1) keeps on deposit at all
9 times with the commissioner, or a bank in this state
10 designated by such person and approved for such pur-
11 pose by the commissioner, one hundred thousand dollars in
12 cash or securities satisfactory to the commissioner, or
13 (2) posts and maintains with the commissioner at all
14 times a surety bond in the penal sum of one hundred
15 thousand dollars, in form and with conditions satisfactory
16 to the commissioner and with corporate surety thereon
17 authorized to do business in this state and acceptable
18 to the commissioner. When securities are deposited as
19 aforesaid, the value of such securities must at all times
20 be one hundred thousand dollars, computed on the basis
21 of the principal amount or the market value thereof,
22 whichever is lower.

23 The deposit or bond, as the case may be, shall be for the
24 benefit and protection of the purchasers or holders of
25 checks sold in this state by the person making the deposit
26 or posting the bond as principal, and the commissioner or
27 any aggrieved person may by appropriate civil actions en-
28 force claims on any such check or checks against such de-
29 posit or bond. The aggregate liability of the surety in
30 no event shall exceed the principal sum of the bond. The
31 surety on such bond shall have a right to cancel such
32 bond upon giving thirty days' notice to the commissioner
33 and thereafter shall be relieved of liability for any breach
34 of condition occurring after the effective date of said
35 cancellation. So long as the person making a deposit is not
36 in violation of any of the provisions of this article, such
37 person shall be permitted to receive all interest and divi-
38 dends on said deposit, and shall have the right, with the
39 approval of the commissioner, to substitute other securi-
40 ties. If the deposit is made at a bank, any custodial fees
41 therefor shall be paid by the person making such deposit.
42 At the time any such deposit is made or any such bond
43 is posted, and annually thereafter, the person making such
44 deposit or posting such bond shall pay to the commis-
45 sioner a fee of one hundred dollars. All such fees shall
46 be deposited in the state treasury to the credit of the
47 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

5 the laws of this state or authorized to do business in this
6 state, or to the receipt of money by an incorporated tele-
7 graph company at any office or agency thereof for trans-
8 mission by telegraph.

§32-4-6. Judicial review.

Any person aggrieved by any action of the commission-
2 er under the provisions of this article may appeal such
3 action by filing a petition, at the election of such person,
4 in either the circuit court of Kanawha county, West Vir-
5 ginia, or with the judge thereof in vacation, or in the cir-
6 cuit court of the county in which such person resides or
7 does business, or with the judge thereof in vacation, with-
8 in ninety days after such action.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals. Any such appeal shall be sought in the
12 manner and within the time provided by law for appeals
13 from circuit courts in other civil cases.

§32-4-7. Injunctive relief.

Whenever it appears to the commissioner that any per-
2 son has been or is violating or is about to violate any pro-
3 vision of this article, the commissioner may apply in the
4 name of the state, to the circuit court of the county in
5 which the violation or violations or any part thereof has
6 occurred, is occurring or is about to occur, or the judge
7 thereof in vacation, for an injunction against such person
8 and any other persons who have been, are or are about to
9 be involved in any practices, acts or omissions, so in viola-
10 tion, enjoining such person or persons from any such
11 violation or violations. Such application may be made
12 and prosecuted to conclusion whether or not any such
13 violation or violations have resulted or shall result in
14 prosecution or conviction under the provisions of section
15 eight of this article.

16 Upon application by the commissioner, the circuit courts
17 of this state may by mandatory or prohibitory injunction
18 compel compliance with the provisions of this article.
19 The court may issue a temporary injunction in any case
20 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, 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, 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.
3. Definitions.
4. Creation of court of claims; appointment and terms of judges; vacancies.
5. Court clerk and other personnel.
6. Terms of court.
7. Meeting place of the court.
8. Compensation of judges; expenses.
9. Oath of office.
10. Qualifications of judges.
11. Attorney general to represent state.

12. General powers of the court.
13. Jurisdiction of the court.
14. Claims excluded.
15. Rules of practice and procedure.
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.

§14-2-3. Definitions.

For the purpose of this article:

- 2 "Court" means the state court of claims established by section four of this article.
- 4 "Claim" means a claim authorized to be heard by the court in accordance with this article.
- 6 "Approved claim" means a claim found by the court to be one that should be paid under the provisions of this article.
- 9 "Award" means the amount recommended by the court to be paid in satisfaction of an approved claim.
- 11 "Clerk" means the clerk of the court of claims.
- 12 "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.

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

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.

§14-2-9. Oath of office.

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
2 state in all claims coming before the court.

§14-2-12. General powers of the court.

The court shall, in accordance with this article, consider
2 claims which, but for the constitutional immunity of the
3 state from suit, or for some statutory restrictions, inhibi-
4 tions or limitations, could be maintained in the regular
5 courts of the state. No liability shall be imposed upon the
6 state or any state agency by a determination of the court
7 of claims approving a claim and recommending an award,
8 unless the claim is (1) made under an existing appropria-
9 tion, in accordance with section nineteen of this article,
10 or (2) a claim under a special appropriation, as provided
11 in section twenty of this article. The court shall consider
12 claims in accordance with the provisions of this article.

13 Except as is otherwise provided in this article, a claim
14 shall be instituted by the filing of notice with the clerk.
15 Each claim shall be considered by the court and if, after
16 consideration, the court finds that a claim is just and
17 proper, it shall so determine and shall file with the clerk
18 a brief statement of its reasons. A claim so filed shall be
19 an approved claim. The court shall also determine the
20 amount that should be paid to the claimant, and shall
21 itemize this amount as an award, with the reasons there-
22 for, in its statement filed with the clerk. In determining
23 the amount of a claim, interest shall not be allowed unless
24 the claim is based upon a contract which specifically pro-
25 vides for the payment of interest.

§14-2-13. Jurisdiction of the court.

The jurisdiction of the court, except for the claims ex-
2 cluded by section fourteen, shall extend to the following
3 matters:

4 1. Claims and demands, liquidated and unliquidated,
5 ex contractu and ex delicto, against the state or any of its
6 agencies, which the state as a sovereign commonwealth
7 should in equity and good conscience discharge and pay.

8 2. Claims and demands, liquidated and unliquidated,
9 ex contractu and ex delicto, which may be asserted in the

10 nature of set-off or counterclaim on the part of the state
11 or any state agency.

12 3. The legal or equitable status, or both, of any claim
13 referred to the court by the head of a state agency for an
14 advisory determination.

§14-2-14. Claims excluded.

The jurisdiction of the court shall not extend to any
2 claim:

3 1. For loss, damage, or destruction of property or for
4 injury or death incurred by a member of the militia or
5 national guard when in the service of the state.

6 2. For a disability or death benefit under chapter
7 twenty-three of this code.

8 3. For unemployment compensation under chapter
9 twenty-one-a of this code.

10 4. For relief or public assistance under chapter nine of
11 this code.

12 5. With respect to which a proceeding may be main-
13 tained against the state, by or on behalf of the claimant
14 in the courts of the state.

§14-2-15. Rules of practice and procedure.

The court shall adopt and may from time to time amend
2 rules of procedure, in accordance with the provisions of
3 this article, governing proceedings before the court. Rules
4 shall be designed to assure a simple, expeditious and in-
5 expensive consideration of claims. Rules shall permit a
6 claimant to appear in his own behalf or be represented by
7 counsel.

8 Under its rules, the court shall not be bound by the
9 usual common law or statutory rules of evidence. The
10 court may accept and weigh, in accordance with its evi-
11 dential value, any information that will assist the court
12 in determining the factual basis of a claim.

§14-2-16. Regular procedure.

The regular procedure for the consideration of claims
2 shall be substantially as follows:

3 1. The claimant shall give notice to the clerk that he
4 desires to maintain a claim. Notice shall be in writing and

5 shall be in sufficient detail to identify the claimant, the
6 circumstances giving rise to the claim, and the state
7 agency concerned, if any. The claimant shall not other-
8 wise be held to any formal requirement of notice.

9 2. The clerk shall transmit a copy of the notice to the
10 state agency concerned. The state agency may deny the
11 claim, or may request a postponement of proceedings to
12 permit negotiations with the claimant. If the court finds
13 that a claim is prima facie within its jurisdiction, it shall
14 order the claim to be placed upon its regular docket for
15 hearing.

16 3. During the period of negotiations and pending hear-
17 ing, the state agency, represented by the attorney general,
18 shall, if possible, reach an agreement with the claimant
19 regarding the facts upon which the claim is based so as to
20 avoid the necessity for the introduction of evidence at the
21 hearing. If the parties are unable to agree upon the facts
22 an attempt shall be made to stipulate the questions of fact
23 in issue.

24 4. The court shall so conduct the hearing as to disclose
25 all material facts and issues of liability and may examine
26 or cross-examine witnesses. The court may call witnesses
27 or require evidence not produced by the parties; may
28 stipulate the questions to be argued by the parties; and
29 may continue the hearing until some subsequent time to
30 permit a more complete presentation of the claim.

31 5. After the close of the hearing the court shall con-
32 sider the claim and shall conclude its determination, if
33 possible, within thirty days.

§14-2-17. Shortened procedure.

The shortened procedure authorized by this section shall
2 apply only to a claim possessing all of the following char-
3 acteristics:

4 1. The claim does not arise under an appropriation for
5 the current fiscal year.

6 2. The state agency concerned concurs in the claim.

7 3. The amount claimed does not exceed one thousand
8 dollars.

9 4. The claim has been approved by the attorney gen-

10 eral as one that, in view of the purposes of this article,
11 should be paid.

12 The state agency concerned shall prepare the record of
13 the claim consisting of all papers, stipulations and eviden-
14 tial documents required by the rules of the court and file
15 the same with the clerk. The court shall consider the
16 claim informally upon the record submitted. If the court
17 determines that the claim should be entered as an ap-
18 proved claim and an award made, it shall so order and
19 shall file its statement with the clerk. If the court finds
20 that the record is inadequate, or that the claim should not
21 be paid, it shall reject the claim. The rejection of a claim
22 under this section shall not bar its resubmission under the
23 regular procedure.

§14-2-18. Advisory determination procedure.

The governor or the head of a state agency may refer
2 to the court for an advisory determination the question
3 of the legal or equitable status, or both, of a claim against
4 the state or a state agency. This procedure shall apply
5 only to such claims as are within the jurisdiction of the
6 court. The procedure shall be substantially as follows:

7 1. There shall be filed with the clerk, the record of the
8 claim including a full statement of the facts, the conten-
9 tions of the claimant, and such other materials as the rules
10 of the court may require. The record shall submit specific
11 questions for the court's consideration.

12 2. The clerk shall examine the record submitted and
13 if he finds that it is adequate under the rules, he shall
14 place the claim on a special docket. If he finds the record
15 inadequate, he shall refer it back to the officer submitting
16 it with the request that the necessary additions or changes
17 be made.

18 3. When a claim is reached on the special docket, the
19 court shall prepare a brief opinion for the information and
20 guidance of the officer. The claim shall be considered in-
21 formally and without hearing. A claimant shall not be
22 entitled to appear in connection with the consideration
23 of the claim.

24 4. The opinion shall be filed with the clerk. A copy
25 shall be transmitted to the officer who referred the claim.

26 An advisory determination shall not bar the subsequent
27 consideration of the same claim if properly submitted by,
28 or on behalf of, the claimant. Such subsequent considera-
29 tion, if undertaken, shall be de novo.

§14-2-19. Claims under existing appropriations.

A claim arising under an appropriation made by the
2 Legislature during the fiscal year to which the appropria-
3 tion applies, and falling within the jurisdiction of the
4 court, may be submitted by:

5 1. A claimant whose claim has been rejected by the
6 state agency concerned or by the state auditor.

7 2. The head of the state agency concerned in order to
8 obtain a determination of the matters in issue.

9 3. The state auditor in order to obtain a full hearing
10 and consideration of the merits.

11 The regular procedure, so far as applicable, shall govern
12 the consideration of the claim by the court. If the court
13 finds that the claimant should be paid, it shall certify the
14 approved claim and award to the head of the appropriate
15 state agency, the state auditor, and to the governor. The
16 governor may thereupon instruct the auditor to issue his
17 warrant in payment of the award and to charge the
18 amount thereof to the proper appropriation. The auditor
19 shall forthwith notify the state agency that the claim has
20 been paid. Such an expenditure shall not be subject to
21 further review by the auditor upon any matter deter-
22 mined and certified by the court.

§14-2-20. Claims under special appropriations.

Whenever the Legislature makes an appropriation for
2 the payment of claims against the state, then accrued or
3 arising during the ensuing fiscal year, the determination
4 of claims and the payment thereof may be made in ac-
5 cordance with this section. However, this section shall
6 apply only if the Legislature in making its appropriation
7 specifically so provides.

8 The claim shall be considered and determined by the
9 regular or shortened procedure, as the case may be, and
10 the amount of the award shall be fixed by the court. The
11 clerk shall certify each approved claim and award, and

12 requisition relating thereto, to the auditor. The auditor
13 thereupon shall issue his warrant to the treasurer in
14 favor of the claimant. The auditor shall issue his warrant
15 without further examination or review of the claim ex-
16 cept for the question of a sufficient unexpended balance
17 in the appropriation.

§14-2-21. Periods of limitation made applicable.

The court shall not take jurisdiction of any claim,
2 whether accruing before or after the effective date of this
3 article, unless notice of such claim be filed with the clerk
4 within such period of limitation as would be applicable
5 under article two, chapter fifty-five of the code of West
6 Virginia, one thousand nine hundred thirty-one, as
7 amended, if the claim were against a private person, firm
8 or corporation and the constitutional immunity of the
9 state from suit were not involved; but the foregoing pro-
10 vision shall not be held to limit or restrict the right of
11 any person, firm or corporation who or which has a claim
12 against the state or any state agency, pending before the
13 attorney general on the effective date of this article, from
14 presenting such claim to the court of claims, nor shall it
15 limit or restrict the right to file such a claim as may be,
16 on the effective date of this article, pending in any court
17 of record as a legal claim and which, after such date, may
18 be adjudicated in such court to be invalid as a claim
19 against the state because of the constitutional immunity
20 of the state from suit.

§14-2-22. Compulsory process.

In all hearings and proceedings before the court, the
2 evidence and testimony of witnesses and the production
3 of documentary evidence may be required. Subpoenas
4 may be issued by the court for appearance at any desig-
5 nated place of hearing. In case of disobedience to a sub-
6 poena or other process, the court may invoke the aid of
7 any circuit court in requiring the evidence and testimony
8 of witnesses, and the production of books, papers and
9 documents. Upon proper showing, the circuit court shall
10 issue an order requiring witnesses to appear before the
11 court of claims; produce books, papers and other evidence;
12 and give testimony touching the matter in question. A

13 person failing to obey the order may be punished by the
14 circuit court as for contempt.

§14-2-23. Inclusion of awards in budget.

The clerk shall certify to the director of the budget, on
2 or before the twentieth day of November of each year, a
3 list of all awards recommended by the court to the Legis-
4 lature for appropriation. The clerk may certify supple-
5 mentary lists to the board of public works to include sub-
6 sequent awards made by the court. The board of public
7 works shall include all awards so certified in its proposed
8 budget bill transmitted to the Legislature.

§14-2-24. Records to be preserved.

The record of each claim considered by the court, in-
2 cluding all documents, papers, briefs, transcripts of testi-
3 mony and other materials, shall be preserved by the clerk
4 and shall be made available to the Legislature or any
5 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
2 shall collect and edit the approved claims, awards and
3 statements, and shall prepare them for publication and
4 submission to the Legislature in the form of an annual
5 report.

6 Claims and awards shall be separately classified as
7 follows:

8 1. Approved claims and awards not satisfied but re-
9 ferred to the Legislature for final consideration and ap-
10 propriation.

11 2. Approved claims and awards satisfied by payments
12 out of regular appropriations.

13 3. Approved claims and awards satisfied by payment
14 out of a special appropriation made by the Legislature to
15 pay claims arising during the fiscal year.

16 4. Claims rejected by the court with the reasons there-
17 for.

18 5. Advisory determinations made at the request of the
19 governor or the head of a state agency.

20 The court may include any other information or recom-
21 mendations pertaining to the performance of its duties.

22 The court shall transmit its annual report to the pre-
23 siding officer of each house of the Legislature. The an-
24 nual reports of the court shall be published by the clerk
25 as a public document.

§14-2-26. Fraudulent claims.

A person who knowingly and wilfully presents or at-
2 tempts to present a false or fraudulent claim, or a state
3 officer or employee who knowingly and wilfully partici-
4 pates or assists in the preparation or presentation of a
5 false or fraudulent claim, shall be guilty of a misde-
6 meanor. A person convicted, in a court of competent
7 jurisdiction, of violation of this section shall be fined not
8 more than one thousand dollars or imprisoned for not
9 more than one year, or both, in the discretion of such
10 court. If the convicted person is a state officer or em-
11 ployee, he shall, in addition, forfeit his office or position
12 of employment, as the case may be.

§14-2-27. Conclusiveness of determination.

Any final determination against the claimant on any
2 claim presented as provided in this article shall forever
3 bar any further claim in the court arising out of the re-
4 jected claim.

§14-2-28. Award as condition precedent to appropriation.

It is the policy of the Legislature to make no appropria-
2 tion to pay any claims against the state, cognizable by the
3 court, unless the claim has first been passed upon by the
4 court.

§14-2-29. Severability.

If any provision of this article or the application there-
2 of to any person or circumstance be held invalid, such
3 invalidity shall not affect other provisions or applications
4 of the article which can be given effect without the in-
5 valid provision or application, and to this end the pro-
6 visions 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
2 and recommendations reported to it by the attorney
3 general concerning various claims against the state and
4 agencies thereof, and in respect to each of the follow-
5 ing claims the Legislature adopts those findings of fact
6 as its own, and hereby declares it to be the moral obli-
7 gation of the state to pay each such claim in the amount
8 specified below, and directs the auditor to issue war-
9 rants for the payment thereof out of any fund appro-
10 priated and available for the purpose.

11	(a)	Claims versus the State Road Commission:	
12	(1)	Mrs. T. E. Williams	\$ 48.33
13	(2)	Carroll Eugene Luttrell	50.65
14	(3)	Archie V. Iddings, C. R. Iddings,	
15		R. M. Iddings, Billie Iddings	25.00
16	(4)	Mrs. Mildred J. Saul, Administratrix	
17		of the Estate of W. D. Saul	175.00
18	(5)	Eugene W. Collins	75.00
19	(6)	Harlan Collins	75.00
20	(7)	Bennie Cline Pennington	95.05
21	(8)	Noah Rose	300.00
22	(9)	Arthur Charles	200.00
23	(10)	Otis Skeans	82.19
24	(11)	Oscar L. Davis	19.65
25	(12)	Winnie L. Hearn	500.00
26	(13)	B. T. Reed	115.02
27	(14)	Manuel Sias	225.00
28	(15)	Ollie Jones	110.75
29	(16)	Edward E. Martin	27.82
30	(17)	Richard H. Ashby	45.34
31	(18)	Roy A. Harrison	56.99
32	(19)	Mrs. Jacob Moales	30.80
33	(20)	L. B. Hunt	100.00
34	(21)	C & O Railway Co.	822.42
35	(22)	Edwin L. Legg	594.00
36	(23)	Vernon G. Deese & Christina H.	
37		Deese	53.59
38	(24)	Charles E. Jordan	63.39
39	(25)	Alfred L. Cook	36.05
40	(26)	Larry M. Baker & Wilda B. Baker ..	900.00
41	(27)	Edward Hall	205.98
42	(28)	Albert W. Shughart	37.00
43	(29)	Nay Flesher, Jr.	47.90
44	(30)	U. Grant Stricklen	107.47
45	(31)	Delia G. Hesse	40.00
46	(32)	Edna E. Hines	20.00
47	(33)	Velma H. Lahman	77.10
48	(34)	John Graham	40.00
49	(35)	J. Otis Cook	57.15
50	(36)	Raymond Judy	167.40
51	(37)	Merlin B. Feaster	75.00

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
65	(b)	Claims versus the Department of Motor Vehicles:	
66	(1)	International Business Machines	
67		Corporation	29,250.87
68	(2)	R. L. Polk & Co.	21,846.35
69	(3)	Friden, Inc.	493.52
70	(4)	West Virginia Business Forms, Inc. ...	7,292.26
71	(5)	Joe L. Smith, Jr., Inc.	92.97
72	(6)	Remington Office Machines	231.61
73	(7)	Remington Records Retrieval	18,700.09
74	(8)	Lewis Chevrolet Company	113.89
75	(9)	Pitney-Bowes, Inc.	89.23
76	(10)	Xerox Corporation	924.61
77	(11)	Humble Oil & Refining Co.	226.34
78	(12)	National Cash Register Co.	731.40
79	(13)	Mrs. Bobbie Bayliss	38.58
80	(c)	Claims versus the Department of Natural Resources:	
81	(1)	Michael Lombard, an infant, through	
82		his mother, Mrs. Laretta D. Lombard	214.00
83	(2)	Appalachian Power Company	317.88
84	(3)	Point Towing Company	20,500.00
85	(d)	Claims versus Vocational Rehabilitation	
86		Division, State Board of	
87		Education:	
88	(1)	Herbert J. Thomas	
89		Hospital	161.40
90	(2)	Cooke & Pauley Funeral Home	65.75
91	(e)	Claims versus the Department of Health:	
92	(1)	Dr. Gerald R. Guine	7,890.87

93	(f)	Claims versus the Department of Mental Health:	
94	(1)	First National Bank of Philippi	3,200.00
95	(2)	Schering Corporation	27.86
96	(g)	Claims versus the State Tax Commissioner:	
97	(1)	Jackson Pipeline Construction Co.	5,521.37
98	(2)	Jones Motor Company, a corporation	366.84
99	(3)	Lewis J. Fucy, d/b/a Weston Stone	
100		Company	3,555.17
101	(4)	Pipeline Maintenance & Con-	
102		struction Company	5,198.05
103	(5)	John Murphy	5,400.00
104	(h)	Claims versus the Department of Welfare:	
105	(1)	Claudis Van Meter, owner of	
106		Van Meter's Cold & Dry Storage	1,400.00
107	(2)	R. W. Ashworth Construction, Inc.	54,862.02
108	(3)	Robert Larrabee	5,000.00
109	(4)	Fay M. Henson	1,170.00
110	(i)	Claims versus the Department of Welfare,	
111		to be paid out of the "Special County	
112		General Relief Fund":	
113	(1)	R. W. Ashworth Construction, Inc.	\$56,392.42
114	(2)	Tygart Realty, Inc.	2,500.00
115	(3)	M. O. Abdoney	6,600.00
116	(j)	Claims versus Department of Public Institutions:	
117	(1)	Kenneth E. & Audrey Getz, and	
118		Alma & Betty Green	90.00
119	(2)	Robert H. Doan	209.59
120	(k)	Claims versus Department of Commerce:	
121	(1)	L. D. Van Osdol	\$ 700.00
122	(2)	Elk Refining Company	20.00
123	(l)	Claims versus Secretary of State:	
124	(1)	Johnson-Watson Printing Co.	\$ 9,702.76
125	(2)	Casto & Harris, Inc.	2,711.13
126	(m)	Claims versus the Department of Mines:	
127	(1)	Laird Office Equipment Company	\$ 76.90
128	(n)	Claims versus West Virginia Board of Education:	
129	(1)	Continental Can Company, Inc.	\$ 5,974.82
130	(2)	Stuart-McMunn Company	6,750.00

131 The Legislature finds that the above moral obligations
132 and the appropriations made in satisfaction thereof shall
133 be the full compensation for all claimants, and that prior
134 to the payment to any claimant provided for in this
135 bill, the attorney general shall receive a release from
136 said claimant releasing any and all claims for moral
137 obligations arising from the matters considered by the
138 Legislature in the finding of the moral obligations and
139 the making of the appropriations for said claimant. The
140 attorney general shall deliver all releases obtained from
141 claimants to the department which the claim was allowed
142 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-

2 vided in section four hereof, shall sign, acknowledge and
3 file with the secretary of state an agreement, in the gen-
4 eral form prescribed by the secretary of state, in which
5 shall be set forth:

6 (a) The name of the corporation, which name shall
7 contain one of the words "association," "company," "cor-
8 poration," "club," "incorporated," "society," "union," or
9 "syndicate," or one of the abbreviations, "co." or "inc.";
10 but no name shall be assumed already in use by another
11 existing corporation of this state, or by a foreign corpora-
12 tion lawfully doing business in this state, or so similar
13 thereto, in the opinion of the secretary of state, as to
14 lead to confusion. The name desired by the incorpo-
15 rators may be reserved for a period of sixty days prior
16 to the formal filing of an application for incorporation.
17 In no case shall the period of reservation exceed sixty
18 days.

19 (b) The address, including the street name and street
20 number, if any, and the city, town or village, of its prin-
21 cipal office or place of business and the location of its
22 chief works, if any.

23 (c) The object or objects for which the corporation
24 is formed.

25 (d) If the corporation is to be authorized to issue only
26 one class of stock, the total number of shares of stock
27 which the corporation shall have authority to issue and
28 (1) the par value of each of such shares, or (2) a state-
29 ment that all such shares are to be without par value;
30 or, if the corporation is to be authorized to issue more
31 than one class of stock, the total number of shares of
32 all classes of stock which the corporation shall have
33 authority to issue and (1) the number of the shares of
34 each class thereof that are to have a par value and the
35 par value of each share of each such class, and/or (2)
36 the number of such shares that are to be without par
37 value, and (3) a statement of all or any of the designa-
38 tions and the powers, preferences and rights, and the
39 qualifications, limitations or restrictions thereof, which

40 are permitted by the provisions of section twenty-two
41 of this article in respect of any class or classes of stock
42 of the corporation and the fixing of which by the agree-
43 ment of incorporation is desired, and an express grant
44 of such authority as it may then be desired to grant to
45 the board of directors to fix by resolution or resolutions
46 any thereof that may be desired but which shall not
47 be fixed by such agreement. In each case the agreement
48 of incorporation shall also set forth the minimum amount
49 of capital with which the corporation will commence
50 business, which shall not be less than one thousand dol-
51 lars. The provisions of this subdivision (d) shall not
52 apply to corporations which are not organized for profit
53 and which are not to have authority to issue capital
54 stock. In the case of such corporations, the fact that they
55 are not to have authority to issue capital stock shall be
56 stated in the agreement of incorporation, and the condi-
57 tions of membership shall be stated therein.

58 (e) The full names and addresses, including street
59 and street numbers, if any, and the city, town or village,
60 of the incorporators, and, if a stock corporation, the num-
61 ber of shares subscribed by each.

62 (f) Whether or not the corporation is to have per-
63 petual existence. If not, the time when its existence is
64 to commence and the time its existence is to cease.

65 (g) The agreement may also contain any provision
66 which the incorporators may choose to insert for the
67 management of the business and for the conduct of the
68 affairs of the corporation, and any provisions creating,
69 defining, limiting and regulating the powers of the cor-
70 poration, the directors and the stockholders, or any class
71 of the stockholders, or, in the case of a corporation which
72 is to have no capital stock, of the members of such cor-
73 poration: *Provided*, That such provisions are not contrary
74 to the laws of this state.

75 (h) The agreement may also contain the following
76 provision in haec verba, viz:

77 Whenever a compromise or arrangement is proposed
78 between this corporation and its creditors or any class
79 of them and/or between this corporation and its stock-

80 holders or any class of them, any court of equitable juris-
81 diction within the state of West Virginia may, on the
82 application in a summary way of this corporation or of
83 any creditor or stockholder thereof, or on the applica-
84 tion of trustees in dissolution or of any receiver or re-
85 ceivers appointed for this corporation under the laws
86 of the state of West Virginia, order a meeting of the
87 creditors or class of creditors, and/or of the stockholders
88 or class of stockholders of this corporation, as the case
89 may be, to be summoned in such manner as the court
90 directs. If a majority in number representing three
91 fourths in value of the creditors or class of creditors,
92 and/or of the stockholders or class of stockholders of
93 this corporation, as the case may be, agree to any com-
94 promise or arrangement and to any reorganization of
95 this corporation as consequence of such compromise or
96 arrangement, such compromise or arrangement and such
97 reorganization shall, if sanctioned by the court to which
98 such application has been made, be binding on all the
99 creditors or class of creditors, and/or on all the stock-
100 holders or class of stockholders of this corporation, as
101 the case may be, and also on this corporation.

102 (i) The agreement may also contain such provisions
103 as may be desired limiting or denying to the stockholders
104 the preemptive right to subscribe to any or all addi-
105 tional issues of stock of the corporation of any or all
106 classes.

107 (j) The agreement may also contain provisions re-
108 quiring for any corporate action the vote of a larger
109 proportion of the stock or any class thereof than is re-
110 quired by this chapter.

111 (k) The agreement and all amendments to the charter
112 issued pursuant to such agreement shall contain a state-
113 ment of the name and address of the person who, or the
114 firm which, prepared such agreement or amendment.

115 The agreement of incorporation shall be acknowledged
116 by the incorporators before a notary public and trans-
117 mitted with the proper fees to, and shall be filed with,
118 the secretary of state.

CHAPTER 30

(Com. Sub. for House Bill No. 631—By Mr. Speaker,
Mr. White, and Mr. Cann)

[Passed February 28, 1967; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section 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
- 2 its charter in the following manner:
- 3 (a) The board of directors, or, in the event that the
- 4 restated charter includes an amendment not previously
- 5 certified to the secretary of state pursuant to section
- 6 twelve of this article, the stockholders, shall adopt a re-
- 7 statement resolution setting forth the text of the corpora-
- 8 tion's charter as amended or restated, or both, omitting
- 9 provisions which are not then in effect and, if desired,
- 10 including any new amendment or amendments then au-
- 11 thorized by law. The resolution shall be entitled a re-
- 12 statement resolution under this section and shall state
- 13 (i) that it is adopted under this section; (ii) the name
- 14 of the corporation; (iii) if its name has been changed at
- 15 any time, the name under which it was formed; (iv) the
- 16 date on which its charter was issued by the secretary of
- 17 state; (v) the county in which its certificate of incorpora-

18 tion is recorded pursuant to section ten of this article;
19 (vi) the then current amount of authorized capital stock;
20 and (vii) the restated charter. The resolution shall
21 identify each amendment to the charter included therein
22 which has not been previously certified to the secretary
23 of state pursuant to section twelve of this article or, if
24 there is no such amendment, shall so state.

25 (b) If the restated charter includes, or is to include,
26 an amendment to the charter of the corporation which
27 has not previously been certified to the secretary of state
28 pursuant to section twelve of this article, the restate-
29 ment resolution shall be adopted by the stockholders in
30 the same manner, upon the same notice and under all the
31 same terms and conditions as any amendment to the
32 charter adopted pursuant to section twelve of this article.

33 (c) The president or vice president of the corporation,
34 under his signature and the seal of the corporation, shall
35 certify to the secretary of state the resolution adopted
36 by the directors or by the stockholders, as the case may
37 be, and the fact and the manner of its adoption by the
38 directors, or by the directors and the stockholders, and,
39 if the resolution includes any amendment not previously
40 certified to the secretary of state pursuant to section
41 twelve of this article, the fact of the assenting of all stock-
42 holders, the consent of whom is required under this article
43 for the making of the amendment.

44 (d) Upon the filing of such a certificate in the office of
45 the secretary of state, and the payment of a fee equal to
46 the fee for the issuance of a certificate of incorporation,
47 he shall issue his certificate under the great seal of the
48 state, to the following effect: "I, A. B., Secretary of State
49 of West Virginia, hereby certify that restatement resolu-
50 tion, duly certified, has been this day filed in my office,
51 stating a restated charter, in words and figures follow-
52 ing: (here insert restated charter). Wherefore, I do de-
53 clare said restated charter as set forth above is authorized
54 by law and is in effect from the date hereof. Given under
55 my hand and the great seal of the said State, at Charles-
56 ton, this day of, 19....." The sec-
57 retary of state shall preserve the restatement resolution
58 certificate in his office and shall record his said certifi-

59 cate in the manner provided for the recordation of cer-
60 tificates of incorporation; and the secretary of state may
61 at any time make and certify a copy thereof. Such cer-
62 tificate or certified copy thereof shall be recorded and
63 received in evidence as provided for recordation and ad-
64 mission in evidence of an original certificate of incorpora-
65 tion or a certified copy of such original. Upon the issuance
66 of such certificate by the secretary of state, the restated
67 charter shall become effective, shall supersede the original
68 certificate of incorporation, all amendments thereto and
69 all prior restated charters, and shall be the charter of the
70 corporation.

CHAPTER 31

(Com. 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 Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to secondary mortgage loans; providing for the qualification, regulation and licensing of persons engaged 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.
15. Judicial review.
16. Actions to enjoin violations.
17. Loans made in violation of this article void; agreements to waive article void.
18. Violations and penalties.
19. Severability.

§31-17-1. Definitions and general provisions.

As used in this article:

- 2 (1) "Secondary mortgage loan" means a loan made
3 to an individual or partnership which is secured in whole
4 or in part by a mortgage or deed of trust upon any inter-
5 est in real property used as a dwelling with accommoda-
6 tions for not more than four families, which property is
7 subject to the lien of one or more prior recorded mort-
8 gages, deeds of trust or vendor's liens.
- 9 (2) "Person" means an individual, partnership, associa-
10 tion, trust, corporation, or any other legal entity, or any
11 combination thereof.
- 12 (3) "Lender" means any person who makes or offers
13 to make or accepts or offers to accept any secondary
14 mortgage loan in the regular course of business. A per-
15 son shall be deemed to be acting in the regular course of
16 business if he makes or accepts, or offers to make or

17 accept, more than five secondary mortgage loans in any
18 one calendar year.

19 (4) "Broker" means any person who, for a fee or com-
20 mission or other consideration, negotiates or arranges, or
21 who offers to negotiate or arrange, a secondary mortgage
22 loan between a lender and a borrower.

23 (5) "Brokerage fee" means the fee or commission or
24 other consideration charged by a broker for the services
25 described in subdivision (4) of this section.

26 (6) "Principal" or "principal sum" means the sum
27 delivered to the borrower by the lender, or expended by
28 the lender to third party creditors of the borrower for the
29 discharge of preexisting debts of such borrower.

30 (7) "Charge" or "charges" means every type of charge
31 incident to or arising out of the making or acceptance of
32 a secondary mortgage loan, except interest, including, by
33 whatever name called, but not by way of limitation,
34 title search fees, title report fees, title opinion fees, title
35 guarantee fees, credit report fees, investigation costs, in-
36 vestigation report costs, legal fees, fees for the prepara-
37 tion of instruments, placement fees, discount fees, broker-
38 age fees, recording fees, appraisal costs, closing costs, and
39 insurance costs, except as provided in subsection (c),
40 section eight of this article with respect to hazard insur-
41 ance.

42 (8) "Interest" means the compensation, other than a
43 charge or charges, to be paid for the loan of the principal
44 or principal sum.

45 (9) "Placement fee" or "discount fee" means a deduc-
46 tion from the principal or principal sum by the lender at
47 the time of the making or accepting of a secondary
48 mortgage loan, which deduction is ultimately charged to
49 or placed upon the borrower.

50 (10) "Commissioner" means the commissioner of bank-
51 ing of this state.

52 (11) "Applicant" means a person who has applied for
53 a lender's or broker's license.

54 (12) "Licensee" means any person duly licensed by the
55 commissioner under the provisions of this article as a
56 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
2 be in writing under oath, in the form prescribed by the
3 commissioner, and shall contain the full name and address
4 (both of the residence and place of business) of the ap-
5 plicant and, if the applicant is a partnership or association,
6 of every member thereof, and, if a corporation, of each
7 officer, director and owner of five per cent or more of the
8 capital stock thereof, and such further information as the
9 commissioner may reasonably require. Any application
10 shall also disclose the location in this state at which the
11 business of lender or broker is to be conducted.

(b) At the time of making application for a lender's
12 license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate
14 from the secretary of state certifying that such applicant
15 has qualified to hold property and transact business in this
16 state;
17

(2) Submit proof that he has available for the
18 operation of the business at the location specified in the
19 application net assets of at least two hundred fifty thou-
20 sand dollars;
21

(3) File with the commissioner a bond in favor of
22 the state in the amount of one hundred thousand dollars,
23 in such form and with such conditions as the commissioner
24 may prescribe, and executed by a surety company author-
25 ized to do business in this state; and
26

(4) Pay to the commissioner a license fee of one
27 thousand dollars and an investigation fee of two hundred
28 fifty dollars. If the commissioner shall determine that an
29 investigation outside this state is required to ascertain
30 facts or information relative to the applicant or infor-
31 mation set forth in the application, the applicant may be
32 required to advance sufficient funds to pay the estimated
33 cost of such investigation. An itemized statement of the
34 actual cost of the investigation outside this state shall be
35 furnished to the applicant by the commissioner, and the
36 applicant shall pay or shall have returned to him, as the
37 case may be, the difference between his payment in ad-
38

39 vance of the estimated cost and the actual cost of such in-
40 vestigation.

41 (c) At the time of making application for a broker's
42 license, the applicant therefor shall:

43 (1) If a foreign corporation, submit a certificate
44 from the secretary of state certifying that such applicant
45 has qualified to hold property and transact business in this
46 state;

47 (2) Submit proof that he has available for the
48 operation of the business at the location specified in the
49 application net assets of at least ten thousand dollars;

50 (3) File with the commissioner a bond in favor
51 of the state in the amount of ten thousand dollars, in such
52 form and with such conditions as the commissioner may
53 prescribe, and executed by a surety company authorized
54 to do business in this state; and

55 (4) Pay to the commissioner a license fee of one
56 hundred dollars and an investigation fee of fifty dollars.
57 Every individual applicant for a broker's license, and if
58 the applicant is a partnership or association, every mem-
59 ber thereof, shall be at the time of the filing of the ap-
60 plication for such license a bona fide resident of this
61 state and shall have been such a resident for a period
62 of at least one year prior to the date of such filing. In
63 the case of a corporate applicant for a broker's license,
64 the owner or owners of at least fifty-one per cent of the
65 capital stock of such corporation shall be at the time of
66 the filing of the application for such license bona fide
67 residents of this state and shall have been such residents
68 for a period of at least one year prior to the date of
69 such filing.

70 (d) The aggregate liability of the surety on any bond
71 given pursuant to the provisions of this section shall in
72 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 pro-
2 visions of section four of this article, the commissioner
3 shall investigate the relevant facts with regard to such
4 applicant and his application for a lender's or broker's

5 license, as the case may be. Upon the basis of the appli-
6 cation and all other information before him, the commis-
7 sioner shall make and enter an order denying the applica-
8 tion and refusing the license sought if the commissioner
9 finds that:

10 (1) The applicant does not have available the net
11 assets required by the provisions of section four of this
12 article;

13 (2) The applicant (individually, if an individual,
14 or the partners, if a partnership, or the officers and direc-
15 tors, if a corporation) is of such character and reputation
16 as reasonably to warrant the belief that the business will
17 not be operated lawfully and properly in accordance with
18 the provisions of this article;

19 (3) In the case of an application for a broker's
20 license, the applicant does not meet the residency quali-
21 fications specified in said section four;

22 (4) The applicant has habitually defaulted on
23 financial obligations; or

24 (5) The applicant has done any act or has failed or
25 refused to perform any duty or obligation for which the
26 license sought could be suspended or revoked were it then
27 issued and outstanding.

28 Otherwise, the commissioner shall issue to the applicant
29 a lender's or broker's license which shall entitle such ap-
30 plicant to engage in the business of lender or broker, as
31 the case may be, during the period, unless sooner sus-
32 pended or revoked, for which the license is issued.

33 (b) Every application for a lender's or broker's license
34 shall be passed upon and the license issued or refused
35 within forty-five days after the applicant therefor has
36 fully complied with the provisions of section four of this
37 article. Under no circumstances whatever shall the same
38 person hold both a lender's and a broker's license. When-
39 ever an application for a lender's or broker's license is
40 denied and the license sought is refused, which refusal
41 has become final, the commissioner shall retain the in-
42 vestigation fee or fees but shall return the license fee to
43 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

25 the commissioner at least forty-five days before the ex-
26 piration 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
2 a period not in excess of sixty months, and the maximum
3 rate of interest and maximum total charge or charges on
4 or in connection with any such secondary mortgage loan
5 shall be as follows:

(1) The maximum rate of interest on the principal
7 sum shall be six dollars upon each one hundred dollars
8 for a year, and proportionately for a greater or lesser
9 sum, or for a longer or shorter time: *Provided*, That the
10 borrower shall have the right to anticipate payment of
11 his debt in whole or in part at any time and shall receive
12 a rebate for any unearned interest, which rebate shall
13 be computed in accordance with the "Standard Rule
14 of 78";

(2) The total charge or charges may equal, but
16 shall not be in excess of, ten per cent of the principal
17 sum: *Provided, however*, That where the principal sum
18 at the inception of the secondary mortgage loan is one
19 thousand five hundred dollars or less, the total charge
20 or charges may exceed said ten per cent, but shall not
21 be in excess of one hundred fifty dollars: *Provided fur-*
22 *ther*, That such charges may not be imposed more often
23 than once each thirty-six months by renewal of a sec-
24 ondary mortgage loan or an additional secondary mort-
25 gage loan on the same residential property.

(b) Notwithstanding the provisions of subsection (a)
27 of this section, a delinquent or "late charge" not exceed-
28 ing five per cent of the monthly payment, may be charged
29 on any installment made fifteen or more days after the
30 regularly scheduled due date, said charge to be made
31 only once on any one installment during the term of the
32 secondary mortgage loan.

(c) Hazard insurance may be required by the lender
34 of the borrower and the premium shall not be considered

35 as a charge. Decreasing term life insurance, in an amount
36 not exceeding the amount of the secondary mortgage
37 loan and for a period not exceeding the term of such
38 loan, and accident and health insurance in an amount
39 sufficient to make the monthly payments due on said loan
40 in the event of the disability of the borrower and for
41 a period not exceeding the life of said loan, may also be
42 required by the lender of the borrower and the premium
43 therefor, if included in the loan, may bear interest, and
44 may be included in computing the charge or charges,
45 but shall not exceed the standard rate approved by the
46 insurance commissioner for such insurance. Proof of all
47 insurance in connection with secondary mortgage loans
48 subject to this article shall be furnished to the borrower
49 within ten days from and after the date of application
50 therefor by said borrower.

51 (d) No application fee may be allowed whether or
52 not the secondary mortgage loan is consummated; how-
53 ever, the borrower may be required to reimburse the
54 lender for actual expenses incurred by the lender after
55 acceptance and approval of a secondary mortgage loan
56 proposal made in accordance with the provisions of this
57 article which is not consummated because of:

58 (1) The borrower's wilful failure to close said loan;
59 or

60 (2) The borrower's false or fraudulent representa-
61 tion of a material fact which prevents closing of said loan
62 as proposed.

63 (e) No licensee shall make, offer to make, accept or
64 offer to accept, any secondary mortgage loan except
65 on the terms and conditions authorized in this article.

66 (f) No licensee shall induce or permit any husband
67 and wife, jointly and severally, to become obligated to
68 such licensee under this article, directly or contingently,
69 or both, under more than one secondary mortgage loan
70 at the same time for the purpose or with the result of
71 obtaining greater charges than would otherwise be per-
72 mitted under the provisions of this article.

73 (g) No instrument evidencing or securing a secondary
74 mortgage loan shall contain:

75 (1) Any acceleration clause under which any part
76 or all of the unpaid balance of the obligation not yet
77 matured may be declared due and payable because the
78 holder deems himself to be insecure;

79 (2) Any power of attorney to confess judgment
80 or any other power of attorney;

81 (3) Any provision whereby the borrower waives
82 any rights accruing to him under the provisions of this
83 article;

84 (4) Any requirement that more than one install-
85 ment be payable in any one installment period, or that
86 the amount of any installment be greater or less than
87 that of any other installment, except for the final in-
88 stallment which may be in a lesser amount; or

89 (5) Any assignment of or order for the payment
90 of any salary, wages, commissions, or other compensation
91 for services, or any part thereof, earned or to be earned.

**§31-17-9. Disclosure; closing statements; other records re-
quired.**

(a) Any licensee or person making on his own behalf,
2 or as agent, broker, or in other representative capacity on
3 behalf of any other person, a secondary mortgage loan,
4 whether lawfully or unlawfully, shall at the time of the
5 closing furnish to the borrower a complete and itemized
6 closing statement which shall show in detail:

7 (1) The amount and date of the note or secondary
8 mortgage loan contract and the date of maturity;

9 (2) The nature of the security;

10 (3) The interest and charges;

11 (4) The principal of the loan before adding the in-
12 terest and charges;

13 (5) Disposition of the principal;

14 (6) A description of the payment schedule;

15 (7) The terms on which additional advances, if
16 any, will be made;

17 (8) The charge to be imposed for past due install-
18 ments;

19 (9) A description of insurance required by the

20 lender or purchased by the borrower in connection with
21 the secondary mortgage loan;

22 (10) The name and address of the borrower and of
23 the lender; and

24 (11) That the borrower may prepay the secondary
25 mortgage loan in whole or in part on any installment date,
26 and that the borrower will receive a rebate in full for
27 any interest prepayment.

28 Such detailed closing statement shall be signed by the
29 lender or his representative, and a completed and signed
30 copy thereof shall be retained by the lender and made
31 available at all reasonable times to the borrower, the
32 borrower's successor in interest to the residential prop-
33 erty, or the authorized agent of the borrower or the bor-
34 rower's successor, until such time as the indebtedness
35 shall be satisfied in full.

36 The commissioner may, from time to time, by rules and
37 regulations prescribe additional information to be in-
38 cluded in a closing statement.

39 (b) Upon written request from the borrower, the
40 holder of a secondary mortgage loan instrument shall
41 deliver to the borrower, within ten days from and after
42 receipt of such written request, a statement of the bor-
43 rower's account showing the date and amount of all pay-
44 ments made or credited to the account and the total
45 unpaid balance. Not more than two such statements shall
46 be requested in any twelve-month period.

47 (c) Upon satisfaction of a secondary mortgage loan
48 obligation in full, the holder of the instrument evidencing
49 or securing such obligation shall deliver to the borrower
50 a recordable release and all writings signed by the bor-
51 rower which were incident to applying for and obtaining
52 such secondary mortgage loan.

§31-17-10. Advertising requirements.

It shall be unlawful for any person to cause to be placed
2 before the public in this state, directly or indirectly, any
3 false, misleading or deceptive advertising matter pertain-
4 ing to secondary mortgage loans or the availability there-
5 of: *Provided*, That this section shall not apply to the

6 owner, publisher, operator or employees of any publica-
7 tion or radio or television station which disseminates such
8 advertising matter without actual knowledge of the false
9 or misleading character thereof.

**§31-17-11. Records and reports; examination of records;
analysis.**

(a) Every licensee shall maintain at his place of busi-
2 ness in this state, if any, or if he has no place of business
3 in this state at his principal place of business outside this
4 state, such books, accounts and records relating to all
5 transactions within this article as are necessary to enable
6 the commissioner to enforce the provisions of this article.
7 All such books, accounts and records shall be preserved,
8 exhibited to the commissioner and kept available as pro-
9 vided herein for such reasonable period of time as the
10 commissioner may by rules and regulations require. The
11 commissioner is hereby authorized to prescribe by rules
12 and regulations the minimum information to be shown in
13 such books, accounts and records.

(b) Each licensee shall file with the commissioner on
15 or before the fifteenth of April of each year a report under
16 oath or affirmation concerning his business and operations
17 in this state for the preceding license year in the form
18 prescribed by the commissioner, which shall show the
19 annual volume and outstanding amounts of secondary
20 mortgage loans, the classification of such secondary mort-
21 gage loans by size and by security, and the gross income
22 from, and expenses properly chargeable to, such second-
23 ary mortgage loans.

(c) At least once each year the commissioner shall
25 make or cause to be made an examination of the books,
26 accounts and records of every licensee pertaining to sec-
27 ondary mortgage loans made in this state under the pro-
28 visions of this article, for the purpose of determining
29 whether each licensee is complying with the provisions
30 hereof and for the purpose of verifying each licensee's
31 annual report. If the examination is made outside this
32 state, the licensee shall pay the cost thereof in like manner
33 as applicants are required to pay the cost of investigations
34 outside this state.

35 (d) The commissioner shall publish annually an anal-
36 ysis of the information furnished in accordance with the
37 provisions of subsection (b) of this section, but the in-
38 dividual reports shall not be public records and shall not
39 be open to public inspection.

**§31-17-12. Grounds for suspension or revocation of license; sus-
pension and revocation generally; reinstatement or new
license.**

(a) The commissioner may suspend or revoke any
2 license issued hereunder if he finds that the licensee
3 and/or any owner, director, officer, member, partner,
4 stockholder, employee or agent of such licensee:

5 (1) Has knowingly violated any provision of this
6 article or any order, decision or rule and regulation of the
7 commissioner lawfully made pursuant to the authority of
8 this article; or

9 (2) Has knowingly made any material misstate-
10 ment in the application for such license; or

11 (3) Does not have available the net assets required
12 by the provisions of section four of this article; or

13 (4) Has failed or refused to keep the bond required
14 by section four of this article in full force and effect; or

15 (5) In the case of a broker's license, does not con-
16 tinue to meet the residency qualifications set forth in sec-
17 tion four of this article; or

18 (6) In the case of a foreign corporation, does not
19 remain qualified to do business in this state; or

20 (7) Has committed any fraud or engaged in any
21 dishonest activities with respect to such secondary mort-
22 gage loan business in this state, or failed to disclose any
23 of the material particulars of any secondary mortgage
24 loan transaction in this state to anyone entitled to such
25 information; or

26 (8) Has otherwise demonstrated bad faith, dis-
27 honesty or any other quality indicating that the business
28 of the licensee in this state has not been or will not be
29 conducted honestly or fairly within the purposes of this
30 article.

31 The commissioner may also suspend or revoke the li-

32 cense of a licensee if he finds the existence of any ground
33 upon which the license could have been refused, or any
34 ground which would be cause for refusing a license to such
35 licensee were he then applying for the same.

36 (b) The suspension or revocation of the license of any
37 licensee shall not impair or affect the obligation of any
38 preexisting lawful secondary mortgage loan between
39 such licensee and any obligor.

40 (c) The commissioner may reinstate a suspended li-
41 cense, or issue a new license to a licensee whose license
42 has been revoked, if the grounds upon which any such
43 license was suspended or revoked have been eliminated or
44 corrected and the commissioner is satisfied that such
45 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
2 a license, or shall suspend or revoke a license, he shall
3 make and enter an order to that effect and shall cause a
4 copy of such order to be served in person or by certified
5 mail, return receipt requested, or in any other manner in
6 which process in a civil action in this state may be served,
7 on the applicant or licensee, as the case may be.

8 (b) Whenever a license is suspended or revoked, the
9 commissioner shall in the order of suspension or revoca-
10 tion direct the licensee to return to the commissioner his
11 license. It shall be the duty of the licensee to comply
12 with any such order following expiration of the period
13 provided in section fourteen of this article in which such
14 licensee may demand a hearing before the commissioner
15 without such demand having been timely made, and im-
16 mediately if the license were suspended for failure to keep
17 the bond required by the provisions of section four of
18 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,
2 adversely affected by an order made and entered by the
3 commissioner in accordance with the provisions of sec-

4 tion thirteen of this article may in writing demand a hear-
5 ing before the commissioner. The written demand for a
6 hearing must be filed with the commissioner within
7 thirty days after the date upon which the applicant or
8 licensee was served with a copy of such order. The timely
9 filing of a written demand for hearing shall stay or
10 suspend execution of the order in question, pending a
11 final determination, except for an order suspending a
12 license for failure of the licensee to keep the bond re-
13 quired by the provisions of section four of this article in
14 full force and effect. If a written demand is timely filed
15 as aforesaid, the aggrieved party shall be entitled to a
16 hearing as a matter of right.

17 (b) All of the pertinent provisions of article five, chap-
18 ter twenty-nine-a of this code shall apply to and govern
19 the hearing and the administrative procedures in connec-
20 tion with and following such hearing, with like effect as
21 if the provisions of said article five were set forth in
22 extenso in this subsection.

23 (c) For the purpose of conducting any such hearing
24 hereunder, the commissioner shall have the power and
25 authority to issue subpoenas and subpoenas duces tecum,
26 in accordance with the provisions of section one, article
27 five, chapter twenty-nine-a of this code. All subpoenas
28 and subpoenas duces tecum shall be issued and served in
29 the manner, within the time and for the fees and shall
30 be enforced, as specified in section one, article five of said
31 chapter twenty-nine-a, and all of the said section one
32 provisions dealing with subpoenas and subpoenas duces
33 tecum shall apply to subpoenas and subpoenas duces
34 tecum issued for the purpose of a hearing hereunder.

35 (d) Any such hearing shall be held within twenty days
36 after the date upon which the commissioner received the
37 timely written demand therefor, unless there is a post-
38 ponement or continuance. The commissioner may post-
39 pone or continue any hearing on his own motion, or for
40 good cause shown upon the application of the aggrieved
41 party. At any such hearing, the aggrieved party may
42 represent himself or be represented by any attorney at
43 law admitted to practice before any circuit court of this
44 state.

45 (e) After such hearing and consideration of all of the
46 testimony, evidence and record in the case, the commis-
47 sioner shall make and enter an order affirming, modifying
48 or vacating his earlier order, or shall make and enter such
49 order as is deemed appropriate, meet and proper. Such
50 order shall be accompanied by findings of fact and con-
51 clusions of law as specified in section three, article five,
52 chapter twenty-nine-a of this code, and a copy of such
53 order and accompanying findings and conclusions shall
54 be served upon the aggrieved party and his attorney of
55 record, if any, in person or by certified mail, return receipt
56 requested, or in any other manner in which process in a
57 civil action in this state may be served. The order of the
58 commissioner shall be final unless vacated or modified on
59 judicial review thereof in accordance with the provisions
60 of section fifteen of this article.

§31-17-15. Judicial review.

(a) Any person adversely affected by a final order
2 made and entered by the commissioner after hearing held
3 in accordance with the provisions of section fourteen of
4 this article is entitled to judicial review thereof. All of
5 the pertinent provisions of section four, article five, chap-
6 ter twenty-nine-a of this code shall apply to and govern
7 such review with like effect as if the provisions of said sec-
8 tion four were set forth in extenso in this section.

9 (b) The judgment of the circuit court shall be final
10 unless reversed, vacated or modified on appeal to the
11 supreme court of appeals in accordance with the pro-
12 visions of section one, article six, chapter twenty-nine-a of
13 this code.

14 (c) Legal counsel and services for the commissioner in
15 all appeal proceedings in any circuit court and the
16 supreme court of appeals shall be provided by the at-
17 torney general or his assistants, and in appeal proceedings
18 in any circuit court by the prosecuting attorney of the
19 county as well, all without additional compensation.

§31-17-16. Actions to enjoin violations.

(a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any rules and regulations of the

4 commissioner or any final order of the commissioner,
5 the commissioner may apply in the name of the state, to
6 the circuit court of the county in which the violation or
7 violations or any part thereof has occurred, is occurring
8 or is about to occur, or the judge thereof in vacation, for
9 an injunction against such person and any other persons
10 who have been, are or are about to be, involved in, or in
11 any way participating in, any practices, acts or omissions,
12 so in violation, enjoining such person or persons from
13 any such violation or violations. Such application may
14 be made and prosecuted to conclusion whether or not
15 any such violation or violations have resulted or shall
16 result in prosecution or conviction under the provisions
17 of section eighteen of this article.

18 (b) Upon application by the commissioner as aforesaid,
19 the circuit courts of this state may by mandatory or pro-
20 hibitory injunction compel compliance with the provi-
21 sions of this article, any rules and regulations of the com-
22 missioner and all final orders of the commissioner. The
23 court may issue a temporary injunction in any case pend-
24 ing a decision on the merits of any application filed.

25 (c) The judgment of the circuit court upon any appli-
26 cation permitted by the provisions of this section shall
27 be final unless reversed, vacated or modified on appeal
28 to the supreme court of appeals. Any such appeal shall
29 be sought in the manner and within the time provided
30 by law for appeals from circuit courts in other civil
31 cases.

32 (d) The commissioner shall be represented in all such
33 proceedings by the attorney general or his assistants and
34 in such proceedings in the circuit courts by the prose-
35 cuting attorneys of the several counties as well, all with-
36 out additional compensation.

**§31-17-17. Loans made in violation of this article void; agree-
ments to waive article void.**

(a) If any secondary mortgage loan is made in viola-
2 tion of the provisions of this article, except as a result
3 of a bona fide error, such loan shall be void and neither
4 the lender nor any holder of the obligation secured by
5 such secondary mortgage shall have the right to collect

6 or receive any principal, interest or charges whatsoever,
7 and the lender shall refund all payments on or with
8 respect to such loan which have been made by the
9 borrower.

10 (b) Any agreement whereby the borrower waives the
11 benefits of this article shall be deemed to be against pub-
12 lic policy and void.

§31-17-18. Violations and penalties.

Any person, or any member, officer, director, agent, or
2 employee of such person, who violates or participates in
3 the violation of this article shall be guilty of a misde-
4 meanor, and, upon conviction thereof, shall be punished
5 by a fine of not more than five hundred dollars, or by
6 imprisonment of not more than six months, or by both
7 such fine and imprisonment, in the discretion of the
8 court.

§31-17-19. Severability.

If any provision of this article or its application to any
2 person or circumstance is held unconstitutional or invalid,
3 such unconstitutionality or invalidity shall not affect
4 other provisions or applications of the article, and to this
5 end the provisions of this article are hereby declared to
6 be severable.

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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, chap-
ter six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the employ-
ment and the appointment of deputies and local conserva-
tors 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

1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; removal of conservators.

§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; removal of conservators.

1 (a) (1) The clerk of the supreme court of appeals, or
2 of any circuit, criminal, common pleas, intermediate or
3 county court, or of any tribunal established by law in lieu
4 thereof, may, with the consent of the court, or such tri-
5 bunal, duly entered of record, appoint any person or per-
6 sons his deputy or deputies.

7 (2) A sheriff, surveyor of lands, or assessor may, with
8 the consent of the county court duly entered of record,
9 appoint any person or persons his deputy or deputies.

10 (3) A sheriff, when in the opinion of the judge of the
11 circuit court the public interest requires it, may, with the
12 assent of said court, duly entered of record, appoint any
13 person or persons his deputy or deputies to perform any
14 temporary service or duty.

15 (4) Each deputy so appointed shall take the same oath
16 of office required of his principal, and may, during his
17 continuance in office, perform and discharge any of the
18 official duties of his principal, and any default or mis-
19 feasant in office of the deputy shall constitute a breach
20 of the conditions of the official bond of his principal.

21 (5) A sheriff in any county in which there are more
22 than four deputies shall devote his full time to the per-
23 formance of the services or duties required by law of
24 such sheriff, and he shall not receive any compensation
25 or reimbursement, directly or indirectly, from any per-
26 son, firm or corporation for the performance of any
27 private or public services or duties: *Provided*, That any
28 such sheriff may retain or make any investment and

29 receive income therefrom, unless such investment is
30 otherwise prohibited by law or will impair his independ-
31 ence of judgment in the exercise of, or might reason-
32 ably tend to conflict with the proper discharge of, the
33 services or duties of his office. A sheriff in any county
34 in which there are four or fewer deputies, or a deputy
35 sheriff in any county irrespective of the number of
36 deputies, need not devote his full time to the services
37 or duties of his office as sheriff or his employment as
38 deputy sheriff, as the case may be, but any such sheriff
39 or deputy sheriff shall not engage in any business or
40 transaction, accept other employment or make any invest-
41 ment which is otherwise prohibited by law or which
42 will impair his independence of judgment in the exer-
43 cise of, or might reasonably tend to conflict with the
44 proper discharge of, the services or duties of his office
45 as sheriff or his employment as deputy sheriff, as the
46 case may be. A sheriff and his deputies in any county,
47 irrespective of the number of deputies, shall receive for
48 the performance of their public services and duties no
49 compensation or remuneration except such as may be
50 regularly provided and paid out of public funds to the
51 amount and in the manner provided by law. No sheriff
52 or deputy sheriff in any county, irrespective of the num-
53 ber of deputies, may receive, directly or indirectly, any
54 gift or donation from any person, firm or corporation.

55 (6) Except as hereinafter expressly provided by sub-
56 section (b) of this section no sheriff shall appoint or
57 continue the appointment of any deputy contrary to
58 the provisions hereof. Any sheriff or deputy sheriff
59 who shall violate any of the provisions of this section
60 shall be guilty of a misdemeanor, and, upon conviction
61 thereof, shall be fined not less than five hundred dollars
62 nor more than five thousand dollars, or confined in jail
63 not to exceed one year, or both, in the discretion of the
64 court.

65 (7) Circuit courts shall have jurisdiction in equity and
66 mandamus, and the supreme court of appeals shall have
67 jurisdiction in mandamus, upon the filing of a petition
68 by the prosecuting attorney, the attorney general, or any
69 three or more citizens of the county, to require any

70 sheriff and the county court to vacate the appointment
71 of any deputy, the appointment of which is made or
72 continued in violation of the provisions hereof. Any such
73 proceeding may be instituted and prosecuted by the
74 attorney general either in the circuit court of Kanawha
75 county or in the county for which such appointment was
76 made.

77 (b) (1) Any resident or group of residents of any
78 unincorporated community, as hereinafter defined, may
79 petition the sheriff for the appointment of a local con-
80 servator of the peace and such sheriff, when in his opinion
81 the public interests require it, may with the assent of
82 said county court and the judge of the circuit court
83 duly entered of record, either in term or vacation of any
84 such court, appoint any person or persons a local con-
85 servator or conservators of the peace to perform the
86 duties of a conservator of the peace outside of any in-
87 corporated city, town or village. No person shall be ap-
88 pointed such local conservator of the peace who has not
89 been a bona fide resident and taxpayer of the county
90 for at least one year prior to his appointment. Such local
91 conservator of the peace during his continuance in
92 office, may perform and discharge any of the official
93 duties of the sheriff, subject nevertheless to the provi-
94 sions of this section. No local conservator so appointed
95 shall be subject to the direction or control of any per-
96 son other than his principal, and he shall not perform
97 any services or duties, either private or public, except
98 the duties required by law of conservators of the peace
99 pursuant to the provisions hereof, for any person, firm,
100 or corporation. No such local conservator shall be en-
101 titled to collect or receive any fees provided by law to
102 be paid to the sheriff or to a deputy sheriff, but all fees
103 provided by law for the sheriff when such duties and
104 services are rendered by such local conservator, shall
105 be paid to the sheriff as regular collections of the sheriff's
106 officē. The local conservator shall be paid for the public
107 services performed by him a salary of not less than
108 seventy-five dollars per month out of the county treasury
109 from a fund to be paid into such treasury by a resident
110 or the residents of the community for which he is ap-

111 pointed, for the sole purpose of compensating such local
112 conservator or conservators, and no such local conserv-
113 ator shall receive any other compensation, directly or
114 indirectly, from any person, firm, or corporation, for any
115 private or public service, except the salary payable to
116 him for his public services and duties and from such
117 fund, except that he shall be entitled to witness and
118 mileage fees when a witness in a court of record. Each
119 local conservator so appointed shall take the same oath
120 of office required of his principal and any default or
121 misfeasance in the office of such local conservator shall
122 constitute a breach of the conditions of the official bond
123 of his principal.

124 (2) When the sheriff shall have been petitioned for
125 the appointment of a local conservator and has deter-
126 mined that the appointment is proper, he shall select
127 the person whom he proposes to have appointed such
128 conservator and shall notify the county court of the com-
129 munity for which such conservator is to be appointed
130 and the name of the person proposed for such appoint-
131 ment. The county court shall thereupon cause notice
132 that the sheriff has recommended the appointment of
133 the person named as conservator for the community
134 named to be published one time each week for two
135 successive weeks in a newspaper of general circulation
136 published in the county, and if there be no newspaper
137 published in the county, then in any other newspaper
138 published in the state having a general circulation in
139 the county, and designating a day not less than five days
140 after the last publication when the county court will
141 act upon the petition and recommendation. Neither the
142 county court nor the judge of the circuit court shall
143 assent and approve the appointment of such local con-
144 servator until such publication has been made. The costs
145 of the publication shall be paid by the person or persons
146 petitioning for the appointment of the conservator.

147 No local conservator shall be appointed except it be
148 made to appear to the satisfaction of the county court
149 and the judge of the circuit court that because of the
150 lack of sufficient funds, geographical location of the
151 unincorporated community for which such conservator

152 is to be appointed, or other good reason, the sheriff and
153 his regular deputies and the constables of the county
154 are not sufficient to afford proper local policing of such
155 community and that the person or persons moving for
156 the appointment of such local conservator have made
157 satisfactory arrangements to compensate him for his
158 services as such local conservator of the peace.

159 (3) Such local conservator of the peace shall have all
160 the powers and duties of a regularly appointed deputy
161 sheriff except that he shall not execute any civil proc-
162 ess except such process as may be necessary to bring
163 parties before the court in any action at law or suit in
164 equity and subpoenas for witnesses within the unincor-
165 porated community for which he is appointed and within
166 a distance of one mile outside the boundaries thereof,
167 except as hereinafter expressly provided, but he shall
168 not participate in any strike, unemployment boycott, or
169 other industrial or labor dispute, nor serve any court
170 process of any character relating thereto. He shall act
171 as such local conservator only in the unincorporated
172 community for which he is appointed, and within a dis-
173 tance of one mile from the boundaries thereof as fixed
174 by the county court: *Provided, however,* That the au-
175 thority of one local conservator shall not extend into
176 any other unincorporated community for which another
177 local conservator is appointed and acting, except as
178 otherwise expressly provided by subdivision (6) of this
179 subsection, except that in fresh pursuit he may effect
180 arrests anywhere in the county. He may also exercise
181 the powers of a regularly appointed deputy anywhere
182 in the county when required to guard or assist in guard-
183 ing a payroll, or any other property of value in transit
184 to or from the unincorporated community for which he
185 is appointed. Any person arrested by such local con-
186 servator shall, with all convenient speed, be turned over
187 to the sheriff, or one of his regular deputies, or to a
188 regular constable of the county to be dealt with accord-
189 ing to law, and his authority for that purpose shall be
190 coextensive with the county.

191 (4) Any local conservator appointed to perform the
192 duties of conservator of the peace shall be a public

193 officer and the payment, or contribution to the payment
194 of compensation of such local conservator shall not
195 constitute the person, firm or corporation making such
196 payment or contribution the employer of such local
197 conservator and no person, firm or corporation paying, or
198 contributing to the payment of compensation to such
199 local conservator shall be answerable in law or in equity
200 for any damages to person or property resulting from
201 any official act of such local conservator.

202 (5) No person appointed such local conservator shall
203 thereby be entitled to carry weapons, but such local con-
204 servator may carry weapons when he shall be duly li-
205 censed and shall have given bond as provided by section
206 two, article seven, chapter sixty-one of the code of West
207 Virginia, one thousand nine hundred thirty-one.

208 (6) Not more than one local conservator of the peace
209 shall be appointed, to perform the duties of conservator
210 of the peace, for each two thousand five hundred in-
211 habitants of the county as ascertained by the last regular
212 decennial census after deducting the number of inhabit-
213 ants of the county residing in the incorporated cities,
214 towns and villages in such county. Not more than one
215 local conservator shall be appointed for any unincor-
216 porated community unless the population thereof exceed
217 fifteen hundred people and in such case not more than
218 two conservators shall be appointed for such community.

219 (7) The phrase "unincorporated community" within
220 the meaning of this section shall mean any center of
221 population wherein three hundred or more persons reside
222 within an area of not more than one square mile.

223 (8) The county court and the judge of the circuit court
224 in approving the appointment of a local conservator shall
225 enter of record an order making such appointment and
226 shall show therein the necessity for the appointment, the
227 person or persons on whose motion the appointment is
228 made, the arrangement for the payment of compensa-
229 tion to such local conservator, the unincorporated com-
230 munity, or communities, for which the appointment is
231 made, including the general boundary of each unincor-
232 porated community for which he is appointed.

233 (9) No local conservator shall act as an election offi-

234 cial or remain in, about or near any voting place or place
235 of political convention, further than is necessary for him
236 to promptly cast his vote and retire from the voting place.

237 (10) Any local conservator violating any of the
238 provisions of subdivisions (3) and (9) of this subsec-
239 tion shall be guilty of a misdemeanor, and, upon con-
240 viction thereof, shall be fined not less than fifty dollars
241 nor more than three hundred dollars, or be confined in
242 the county jail not more than six months, or both, in
243 the discretion of the court; and it shall be the duty of
244 the sheriff and the county court to forthwith revoke his
245 appointment irrespective of any criminal prosecution. A
246 proceeding in mandamus or injunction shall lie in the
247 circuit court and a proceeding in mandamus shall lie in
248 the supreme court of appeals at the instance of the prose-
249 cuting attorney, the attorney general, or of any three
250 or more citizens of the community for which such con-
251 servator is appointed, to require the performance of such
252 duty by the sheriff and the county court.

253 (11) Such local conservator shall serve during the joint
254 will and pleasure of the sheriff and the county court and
255 his appointment may be revoked by order entered of
256 record by the county court either with or without the
257 assignment of cause therefor.

258 A local conservator may be removed by the judge of
259 the circuit court, either in term or vacation, for drunk-
260 eness, gross immorality, incompetence, neglect of duty,
261 or other good cause, upon the petition of three or more
262 residents of the community for which he has been ap-
263 pointed. The petition shall set forth the cause or causes
264 for which such removal is asked and shall show that
265 demand for removal has been made of the sheriff and the
266 county court and that the sheriff and the county court
267 have failed to remove the local conservator. At least
268 three copies of the petition shall be filed, and upon the
269 filing of the petition the judge shall fix a time and place
270 for a hearing thereon, which time shall not be less than
271 ten days after the filing of the petition, and shall cause
272 a copy thereof to be served upon the sheriff and such
273 local conservator at least ten days before the hearing
274 thereon.

CHAPTER 33

(House Bill No. 873—By Mr. Galperin)

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

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-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 con-
2 ferred by law upon county courts or tribunals in lieu
3 thereof, hereinafter referred to as county courts
4 or courts, such courts are hereby empowered to
5 employ, fix compensation for and discharge such clerical,
6 stenographic, technical, professional and other personnel,
7 including specialists and consultants, as may from
8 time to time be necessary to aid such courts in ex-
9 ercising their powers or discharging their duties as
10 provided by law: *Provided*, That such courts shall not
11 have the power to employ any such personnel to perform
12 powers and duties that are performed by such courts
13 through their clerks pursuant to law.

14 The county courts shall, not later than March twenty-
15 eight of each year, take up and consider the probable
16 amount necessary to be expended for such personnel in
17 the following fiscal year; shall determine and fix an aggre-

18 gate sum to be expended during the following fiscal year
19 for the compensation of such personnel, which shall be
20 reasonable and proper, taking into account the amount
21 of labor and services necessary to be performed by those
22 who are to receive the compensation; and shall make and
23 enter an order stating any action taken in this regard.

24 The county courts shall file with their clerks a state-
25 ment in writing showing such action and setting forth
26 the name of each person employed pursuant to the pro-
27 visions of this section, the time for which employed and
28 the monthly compensation. Such courts shall have au-
29 thority to discharge at their will and pleasure, any such
30 personnel by filing with their clerks a statement in writ-
31 ing showing such action, to be entered in, and made a part
32 of, their order book or other daily record book. All state-
33 ments required to be filed by this section shall be verified
34 by the affidavit of a majority of the members of the county
35 court making them, and among other things contained in
36 the affidavit shall be the statement that the amounts
37 shown therein were the amounts actually paid or
38 intended to be paid to each person employed without
39 rebates, or any agreement, understanding and expectation
40 that any part thereof shall be repaid to any of such mem-
41 bers making said affidavit, and that nothing has hereto-
42 fore been paid or promised any of such members making
43 said affidavit on that account, and that if any of such mem-
44 bers making said affidavit shall thereafter receive any
45 money, or thing of value, on account thereof, the same
46 will be accounted for and paid to the county. Until the
47 statements required by this section shall have been filed,
48 no allowance or payments shall be made by the county
49 courts for personnel.

—c—

CHAPTER 34

(House Bill No. 1109—By Miss Tsapis)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact section five, sections five-(one) through five-(fifty-four), article one; section one, sec-

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
2 each county to visit each quarter and inspect institu-

3 tions within their county for housing and caring for
4 the poor, to inspect the jails, and to arrange for the
5 feeding and care of the prisoners therein, and to in-
6 vestigate the conditions of the poor within their county,
7 not housed within such institutions; to visit detention
8 homes for children within their counties, if any, and to
9 visit and inspect bridges and bridge approaches under
10 their control; to provide for and have general super-
11 vision over the repair and maintenance of the county
12 courthouse, jails, houses for the poor and other county
13 property, so as to prevent the undue deterioration there-
14 of; to supervise and control the maintenance and opera-
15 tion of airport or airports owned and/or operated by
16 the county court; and to supervise and control the pur-
17 chase, erection and maintenance of airport facilities;
18 to supervise and control the purchase of furniture, fix-
19 tures and equipment, and janitors' and other supplies,
20 for their county; to attend the annual meeting of county
21 assessors, and such district meetings as may be called
22 by the state tax commissioner, on matters pertaining to
23 the work of the county assessors and the county courts
24 as boards of review and equalization; to review and
25 equalize the assessments made by the assessors; to in-
26 spect and review the lists of property, both real and
27 personal, made up by the assessor and his deputies for
28 taxable purposes, and to point out to the assessor any
29 property, real and personal, which the said assessors
30 of their respective counties may have overlooked or
31 omitted to place on said tax lists; to call to the atten-
32 tion of the assessor all real estate or personal property
33 belonging to churches, lodges, schools or other chari-
34 table institutions which may have been overlooked or
35 omitted by the assessor or his deputies in making up his
36 lists of property for entry on the land and personal prop-
37 erty books; to cooperate with the county public assistance
38 council and supervise the general management of the
39 fiscal affairs and business of each county; and as a fur-
40 ther part of their duties they shall be empowered to
41 purchase, lease, rent, control, supervise, inspect, main-
42 tain and erect public parks, playgrounds and recrea-
43 tional facilities, to purchase, lease or rent equipment

44 therefor, and to employ qualified recreational directors
45 and personnel; to construct new Four-H camps on county
46 property; to operate stone quarries and sand deposits
47 on county-owned or leased property; to construct build-
48 ings for or aid in constructing and/or equipping civil-
49 ian defense buildings on sites approved by state office
50 of civilian defense; and to operate dog pounds for county-
51 municipalities; and to purchase, lease, rent, control,
52 supervise, inspect, maintain, and erect public markets
53 and to purchase, rent or lease equipment therefor, and
54 to employ qualified personnel to operate such public
55 markets; and as a further part of their duties they shall
56 be empowered to purchase, lease, rent, control, super-
57 vise, inspect, maintain and erect county mental health
58 clinics and engage in any program designed for the bet-
59 terment of the mental and physical well-being of the resi-
60 dents of their county, and to cooperate with any public
61 or private agency for these purposes; to establish and/or
62 participate in regional councils.

63 Compensation shall be allowed and paid out of the
64 county treasury, in the same manner as salaries are
65 paid, to each county commissioner of each county (except
66 as otherwise provided by law for the county of Ohio),
67 for services performed for such county concerning the
68 visiting of the poor, inspection of jails, bridges and bridge
69 approaches, and for visiting detention homes for chil-
70 dren; and for providing for and supervising the repair
71 and maintenance of the county courthouse, jails, houses
72 for the poor and other county property; for supervis-
73 ing and controlling the maintenance and operation of
74 airport or airports owned and/or operated by the county
75 court, and supervising and controlling the purchase,
76 erection and maintenance of airport facilities; and for
77 supervising and controlling the purchase of furniture,
78 fixtures and equipment and janitors' and other supplies
79 of their county; and for attending the annual meeting of
80 assessors and such district meetings as may be called
81 by the state tax commissioner, on matters pertaining
82 to the work of assessors and county courts as boards
83 of review and equalization; for reviewing and equaliz-

84 ing the assessments made by the assessors; for inspect-
85 ing and reviewing the lists of property, both real and
86 personal, made up by the assessor and his deputies for
87 taxable purposes, and for pointing out to the assessor
88 any property, real and personal, which the said asses-
89 sors of their respective counties may have overlooked
90 or omitted to place on said tax lists; for calling to the
91 attention of the assessor all real estate or personal
92 property belonging to churches, lodges, schools or other
93 charitable institutions which may have been over-
94 looked or omitted by the assessor or his deputies in
95 making up his lists of property for entry on the land
96 and personal property books; and for duties of the county
97 commissioners in cooperating with the county public
98 assistance council; for purchasing, leasing, renting, con-
99 trolling, supervising, inspecting, maintaining and erect-
100 ing public parks, playgrounds and recreational facilities,
101 and the purchasing, leasing or renting the equipment
102 therefor, and employing qualified recreational directors
103 and personnel therefor; for constructing new Four-H
104 camps on county property; operating stone quarries and
105 sand deposits on county-owned or leased property; con-
106 structing buildings for or aiding in construction and/or
107 equipping civilian defense buildings on sites approved
108 by state office of civilian defense; operating dog pounds
109 for county-municipalities; and to purchase, lease, rent,
110 control, supervise, inspect, maintain and erect public mar-
111 kets, and to purchase, rent or lease equipment therefor,
112 and to employ qualified personnel to operate such public
113 markets; for constructing fallout shelters and aiding
114 individuals to construct fallout shelters through furnish-
115 ing available information; for purchasing, leasing, rent-
116 ing, controlling, supervising, inspecting, maintaining
117 and/or erecting county mental health clinics and/or
118 engaging in programs for the betterment of the men-
119 tal and/or physical well-being of the residents of their
120 county; for conducting a survey of all abandoned and
121 dilapidated buildings or structures within the county
122 and to prepare an inventory thereof which inventory
123 shall be made available to any agency of state or fed-
124 eral government or to local governmental agencies upon

125 request; to establish and/or participate in regional coun-
126 cils, and for supervising the general management of
127 the fiscal affairs and business of each county, within
128 their counties, and other business by such commissioners,
129 in addition to compensation for services in court, the
130 sums of money hereinafter provided in the following
131 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
2 dollars per month.

§7-1-5(2). Same—Berkeley county.

1 For the county of Berkeley, the president of the court
2 three hundred seventy-five dollars and other members
3 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
2 month.

§7-1-5(4). Same—Braxton county.

1 For the county of Braxton, the president of the court
2 eighty-five dollars and the other members of the court
3 seventy-five dollars per month.

§7-1-5(5). Same—Brooke county.

1 For the county of Brooke, one hundred fifty dollars
2 per month.

§7-1-5(6). Same—Cabell county.

1 For the county of Cabell, five hundred dollars per
2 month.

§7-1-5(7). Same—Calhoun county.

1 For the county of Calhoun, one hundred twenty-five
2 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
2 month.

§7-1-5(10). Same—Fayette county.

1 For the county of Fayette, 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(11). Same—Gilmer county.

1 For the county of Gilmer, one hundred dollars per
2 month.

§7-1-5(12). Same—Grant county.

1 For the county of Grant, one hundred twenty-five dol-
2 lars per month.

§7-1-5(13). Same—Greenbrier county.

1 For the county of Greenbrier, one hundred fifty dol-
2 lars per month.

§7-1-5(14). Same—Hampshire county.

1 For the county of Hampshire, the president of the
2 court one hundred twenty-five dollars and the other
3 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
2 three hundred dollars and the other members of the court
3 two hundred fifty dollars per month.

§7-1-5(16). Same—Hardy county.

1 For the county of Hardy, one hundred twenty-five dol-
2 lars per month.

§7-1-5(17). Same—Harrison county.

1 For the county of Harrison, five hundred twenty-five
2 dollars per month.

§7-1-5(18). Same—Jackson county.

1 For the county of Jackson, two hundred fifty dollars
2 per month.

§7-1-5(19). Same—Jefferson county.

- 1 For the county of Jefferson, the president of the court
- 2 two hundred dollars and the other members of the
- 3 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
- 2 month.

§7-1-5(21). Same—Lewis county.

- 1 For the county of Lewis, one hundred ninety dollars
- 2 per month.

§7-1-5(22). Same—Lincoln county.

- 1 For the county of Lincoln, the president of the court one
- 2 hundred seventy-five dollars and the other members of
- 3 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
- 2 three hundred fifty dollars and the other members of
- 3 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
- 2 per month.

§7-1-5(25). Same—Marshall county.

- 1 For the county of Marshall, three hundred dollars per
- 2 month.

§7-1-5(26). Same—Mason county.

- 1 For the county of Mason, two hundred fifty dollars
- 2 per month.

§7-1-5(27). Same—McDowell county.

- 1 For the county of McDowell, three hundred twenty-
- 2 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
- 2 per month.

§7-1-5(49). Same—Wayne county.

- 1 For the county of Wayne, three hundred dollars per
- 2 month.

§7-1-5(50). Same—Webster county.

- 1 For the county of Webster, one hundred fifty dollars
- 2 per month.

§7-1-5(51). Same—Wetzel county.

- 1 For the county of Wetzel, two hundred twenty-five dol-
- 2 lars 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
- 2 dollars per month.

§7-1-5(54). Same—Wyoming county.

- 1 For the county of Wyoming, the president of the court
- 2 two hundred fifty dollars and the other members of the
- 3 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. Salaries of circuit clerks.
 - 3-(1)—3-(52). Salaries of circuit clerks of the various counties of the state.
4. Salaries of joint clerks of county and circuit courts.
5. Salaries of prosecuting attorneys.
 - 5-(1)—5-(55). Salaries of prosecuting attorneys of the various counties of the state.

6-(1)—6-(55). Salaries of assistants, stenographers and clerks for 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
2 shall, on and after January first, one thousand nine hun-
3 dred sixty-nine, be in the amount set forth in sections
4 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
2 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 dol-
2 lars.

§7-7-1(4). Same—Braxton county.

1 For the county of Braxton, not less than five thousand
2 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
2 dollars.

§7-7-1(7). Same—Calhoun county.

1 For the county of Calhoun, four thousand three hundred
2 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 hun-
2 dred 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
2 dollars.

§7-7-1(12). Same—Grant county.

1 For the county of Grant, four thousand five hundred
2 dollars.

§7-7-1(13). Same—Greenbrier county.

1 For the county of Greenbrier, seven thousand two hun-
2 dred dollars.

§7-7-1(14). Same—Hampshire county.

1 For the county of Hampshire, four thousand five hun-
2 dred dollars.

§7-7-1(15). Same—Hancock county.

1 For the county of Hancock, four thousand eight hun-
2 dred dollars.

§7-7-1(16). Same—Hardy county.

1 For the county of Hardy, four thousand five hundred
2 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
2 dollars.

§7-7-1(22). Same—Logan county.

1 For the county of Logan, eight thousand four hundred
2 dollars.

§7-7-1(23). Same—Lincoln county.

1 For the county of Lincoln, not less than six thousand
2 four hundred dollars nor more than seven thousand six
3 hundred dollars.

§7-7-1(24). Same—Marion county.

1 For the county of Marion, eight thousand eight hun-
2 dred dollars.

§7-7-1(25). Same—Marshall county.

1 For the county of Marshall, seven thousand two hun-
2 dred 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
2 dollars.

§7-7-1(30). Same—Monongalia county.

1 For the county of Monongalia, seven thousand two
2 hundred dollars.

§7-7-1(31). Same—Monroe county.

1 For the county of Monroe, four thousand five hundred
2 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 hun-
2 dred dollars.

§7-7-1(34). Same—Nicholas county.

1 For the county of Nicholas, six thousand two hundred
2 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 hun-
2 dred dollars.

§7-7-1(37). Same—Pleasants county.

1 For the county of Pleasants, four thousand eight hun-
2 dred 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
2 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 hun-
2 dred dollars.

§7-7-1(43). Same—Ritchie county.

1 For the county of Ritchie, four thousand eight hundred
2 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
- 2 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
- 2 dollars.

§7-7-1(49). Same—Upshur county.

- 1 For the county of Upshur, four thousand eight hundred
- 2 dollars.

§7-7-1(50). Same—Wayne county.

- 1 For the county of Wayne, six thousand three hundred
- 2 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
- 2 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
- 2 court of each county shall, on and after January one,
- 3 one thousand nine hundred sixty-nine, be in the amount.

4 set forth in sections two-(one) to two-(fifty-two), in-
5 clusive, of this article.

§7-7-2(1). Same—Barbour county.

1 For the county of Barbour, four thousand five hundred
2 dollars.

§7-7-2(2). Same—Berkeley county.

1 For the county of Berkeley, eight thousand five hun-
2 dred dollars.

§7-7-2(3). Same—Boone county.

1 For the county of Boone, six thousand five hundred
2 dollars.

§7-7-2(4). Same—Braxton county.

1 For the county of Braxton, not less than four thousand
2 eight hundred nor more than five thousand four hundred
3 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 hun-
2 dred dollars.

§7-7-2(10). Same—Fayette county.

1 For the county of Fayette, seven thousand five hundred
2 dollars.

§7-7-2(11). Same—Gilmer county.

1 For the county of Gilmer, four thousand eight hundred
2 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
2 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
2 dollars.

§7-7-2(29). Same—Monongalia county.

1 For the county of Monongalia, eight thousand five
2 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-
2 dred dollars.

§7-7-2(32). Same—Nicholas county.

1 For the county of Nicholas, five thousand eight hun-
2 dred dollars.

§7-7-2(33). Same—Ohio county.

1 For the county of Ohio, eight thousand four hundred
2 dollars.

§7-7-2(34). Same—Pleasants county.

1 For the county of Pleasants, four thousand eight hun-
2 dred dollars.

§7-7-2(35). Same—Pocahontas county.

1 For the county of Pocahontas, four thousand two hun-
2 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 hun-
2 dred dollars.

§7-7-2(49). Same—Wetzel county.

1 For the county of Wetzel, six thousand six hundred
2 dollars.

§7-7-2(50). Same—Wirt county.

1 For the county of Wirt, two thousand four hundred
2 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 hun-
2 dred dollars.

§7-7-3. Salaries of circuit clerks.

1 The annual compensation of the clerk of the circuit
2 court (or clerk of the circuit and criminal or intermediate
3 or other court of limited jurisdiction) in each county
4 shall, on and after January one, one thousand nine
5 hundred sixty-nine, be in the amount set forth in sec-
6 tions three-(one) to three-(fifty-two), inclusive, of this
7 article.

§7-7-3(1). Same—Barbour county.

1 For the county of Barbour, three thousand eight hun-
2 dred 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
2 dollars.

§7-7-3(4). Same—Braxton county.

1 For the county of Braxton, four thousand eight hun-
2 dred 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 hun-
2 dred dollars.

§7-7-3(8). Same—Clay county.

1 For the county of Clay, three thousand five hundred
2 dollars.

§7-7-3(9). Same—Doddridge county.

1 For the county of Doddridge, three thousand eight hun-
2 dred dollars.

§7-7-3(10). Same—Fayette county.

1 For the county of Fayette, seven thousand five hundred
2 dollars.

§7-7-3(11). Same—Gilmer county.

1 For the county of Gilmer, four thousand two hundred
2 dollars.

§7-7-3(12). Same—Greenbrier county.

1 For the county of Greenbrier, five thousand nine hun-
2 dred dollars.

§7-7-3(13). Same—Hampshire county.

1 For the county of Hampshire, three thousand three
2 hundred dollars.

§7-7-3(14). Same—Hancock county.

1 For the county of Hancock, six thousand five hundred
2 four 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 hun-
2 dred 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
2 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
2 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
2 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
2 fifty dollars.

§7-7-3(28). Same—Mingo county.

1 For the county of Mingo, seven thousand two hundred
2 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
2 dollars.

§7-7-3(32). Same—Nicholas county.

1 For the county of Nicholas, five thousand eight hun-
2 dred 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 hun-
2 dred dollars.

§7-7-3(35). Same—Pocahontas county.

1 For the county of Pocahontas, three thousand eight hun-
2 dred 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 hun-
2 dred dollars.

§7-7-3(40). Same—Ritchie county.

1 For the county of Ritchie, four thousand two hundred
2 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 hun-
2 dred dollars.

§7-7-4. Salaries of joint clerks of county and circuit courts.

1 The annual compensation of the clerks of the courts in
2 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, six
5 thousand dollars; Grant county, six thousand dollars;
6 Pendleton county, six thousand five hundred dollars.

§7-7-5. Salaries of prosecuting attorneys.

1 The annual compensation of the prosecuting attorney in
2 each county, including the compensation provided by
3 law for his services as attorney for boards of education
4 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 amount set forth
7 in sections five-(one) to five-(fifty-five), inclusive, of this
8 article.

§7-7-5(1). Same—Barbour county.

1 For the county of Barbour, three thousand eight hun-
2 dred 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
2 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 dol-
2 lars: *Provided*, That the prosecuting attorney shall de-
3 vote full time to his public duties as prosecuting attorney
4 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
2 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
2 dollars.

§7-7-5(24). Same—Marion county.

1 For the county of Marion, eight thousand eight hundred
2 dollars.

§7-7-5(25). Same—Marshall county.

1 For the county of Marshall, seven thousand five hun-
2 dred 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 hun-
2 dred 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
2 dollars.

§7-7-5(31). Same—Monongalia county.

1 For the county of Monongalia, seven thousand five hun-
2 dred dollars.

§7-7-5(32). Same—Monroe county.

1 For the county of Monroe, two thousand four hundred
2 dollars.

§7-7-5(33). Same—Morgan county.

1 For the county of Morgan, three thousand six hundred
2 dollars.

§7-7-5(34). Same—Nicholas county.

1 For the county of Nicholas, five thousand eight hun-
2 dred dollars.

§7-7-5(35). Same—Ohio county.

1 For the county of Ohio, nine thousand five hundred
2 dollars.

§7-7-5(36). Same—Pendleton county.

1 For the county of Pendleton, two thousand four hun-
2 dred dollars.

§7-7-5(37). Same—Pleasants county.

1 For the county of Pleasants, three thousand six hun-
2 dred 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
2 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 hun-
- 2 dred 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 hun-
- 2 dred 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 hun-
- 2 dred dollars.

§7-7-5(49). Same—Upshur county.

- 1 For the county of Upshur, four thousand two hun-
- 2 dred dollars.

§7-7-5(50). Same—Wayne county.

- 1 For the county of Wayne, seven thousand two hun-
- 2 dred dollars.

§7-7-5(51). Same—Webster county.

1 For the county of Webster, four thousand eight hun-
2 dred dollars.

§7-7-5(52). Same—Wetzel county.

1 For the county of Wetzel, six thousand three hundred
2 dollars.

§7-7-5(53). Same—Wirt county.

1 For the county of Wirt, one thousand eight hundred
2 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 hun-
2 dred 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
2 thousand dollars; one stenographer, two thousand four
3 hundred dollars.

§7-7-6(2). Same—Berkeley county.

1 For the county of Berkeley, one assistant attorney, not
2 less than three thousand four hundred dollars nor more
3 than four thousand dollars; one stenographer, not less
4 than three thousand four hundred dollars nor more than
5 four thousand dollars.

§7-7-6(3). Same—Boone county.

1 For the county of Boone, one assistant attorney, four
2 thousand five hundred dollars; one stenographer at three
3 thousand one hundred dollars.

§7-7-6(4). Same—Braxton county.

1 For the county of Braxton, one assistant attorney; one
2 stenographer, not more than two thousand four hundred
3 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,
2 not less than six thousand nor more than thirteen thou-
3 sand dollars; three assistant attorneys, not less than six
4 thousand nor more than thirteen thousand dollars each;
5 and stenographers and clerks at a salary to be fixed by
6 the county court payable out of the county treasury of
7 said county of Kanawha.

§7-7-6(21). Same—Lewis county.

1 For the county of Lewis, one assistant attorney, not
2 more than one thousand eight hundred dollars; one sten-
3 ographer, not less than six hundred nor more than one
4 thousand eight hundred dollars.

§7-7-6(22). Same—Lincoln county.

1 For the county of Lincoln, one assistant attorney, four
2 thousand dollars; one stenographer or clerk, not more
3 than four thousand two hundred dollars.

§7-7-6(23). Same—Logan county.

1 For the county of Logan, one assistant attorney, at six
2 thousand five hundred dollars; one stenographer, not
3 more than three thousand nine hundred dollars; second
4 stenographer, not more than three thousand three hundred
5 dollars.

§7-7-6(24). Same—Marion county.

1 For the county of Marion, first assistant attorney, six
2 thousand dollars; second assistant attorney, five thousand
3 four hundred dollars; one stenographer whose salary
4 shall be set by the county court.

§7-7-6(25). Same—Marshall county.

1 For the county of Marshall, one assistant attorney, at
2 two thousand four hundred dollars; one stenographer
3 or clerk, not less than two thousand eight hundred nor
4 more than three thousand six hundred dollars.

§7-7-6(26). Same—Mason county.

- 1 For the county of Mason, one assistant attorney, not
- 2 less than one thousand five hundred nor more than two
- 3 thousand dollars; one stenographer, two thousand dollars.

§7-7-6(27). Same—McDowell county.

- 1 For the county of McDowell, first assistant attorney,
- 2 not less than three thousand nor more than six thousand
- 3 six hundred dollars; second assistant attorney, not less
- 4 than three thousand nor more than five thousand dollars;
- 5 one stenographer, at a salary to be fixed by the county
- 6 court.

§7-7-6(28). Same—Mercer county.

- 1 For the county of Mercer, one assistant attorney, at six
- 2 thousand five hundred dollars; one stenographer or clerk,
- 3 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
- 2 more than one thousand six hundred dollars; one sten-
- 3 ographer, not more than three thousand six hundred
- 4 dollars.

§7-7-6(30). Same—Mingo county.

- 1 For the county of Mingo, one assistant attorney, not
- 2 more than six thousand dollars; one stenographer, not
- 3 more than four thousand two hundred dollars.

§7-7-6(31). Same—Monongalia county.

- 1 For the county of Monongalia, one assistant attorney,
- 2 six thousand dollars; one stenographer, not less than two
- 3 thousand four hundred nor more than three thousand
- 4 six hundred dollars.

§7-7-6(32). Same—Monroe county.

- 1 For the county of Monroe, one assistant attorney; one
- 2 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
2 more than one thousand two hundred dollars; one
3 stenographer or clerk, at a salary to be fixed by the
4 county court.

§7-7-6(35). Same—Ohio county.

1 For the county of Ohio, first assistant attorney, at seven
2 thousand five hundred dollars; second assistant attorney,
3 at six thousand five hundred dollars; third assistant
4 attorney, at six thousand five hundred dollars; one
5 stenographer, not more than three thousand three hun-
6 dred dollars; second stenographer, not more than one
7 thousand two hundred dollars.

§7-7-6(36). Same—Pendleton county.

1 For the county of Pendleton, one assistant attorney,
2 two thousand dollars; one stenographer or clerk, not
3 more than one thousand five hundred dollars.

§7-7-6(37). Same—Pleasants county.

1 For the county of Pleasants, one stenographer, not more
2 than two thousand four hundred dollars.

§7-7-6(38). Same—Pocahontas county.

1 For the county of Pocahontas, one assistant attorney;
2 one stenographer, not more than two thousand one hun-
3 dred dollars.

§7-7-6(39). Same—Preston county.

1 For the county of Preston, one assistant attorney at a
2 salary not exceeding three thousand six hundred dollars;
3 one stenographer, not more than four thousand two
4 hundred dollars.

§7-7-6(40). Same—Putnam county.

1 For the county of Putnam, one assistant attorney, not
2 more than three thousand dollars; one stenographer, not
3 more than three thousand six hundred dollars.

§7-7-6(41). Same—Raleigh county.

- 1 For the county of Raleigh, one assistant attorney, six
- 2 thousand six hundred dollars; two stenographers, not less
- 3 than one thousand eight hundred dollars nor more than
- 4 four thousand eight hundred dollars each.

§7-7-6(42). Same—Randolph county.

- 1 For the county of Randolph, one assistant attorney, not
- 2 more than five thousand one hundred dollars; one
- 3 stenographer, not less than two thousand seven hundred
- 4 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
- 2 stenographer, not less than one thousand six hundred
- 3 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
- 2 stenographer, not less than two thousand four hundred
- 3 nor more than three thousand dollars.

§7-7-6(45). Same—Summers county.

- 1 For the county of Summers, one assistant attorney, not
- 2 less than one thousand nor more than two thousand
- 3 dollars; one stenographer, not less than one thousand five
- 4 hundred nor more than three thousand dollars.

§7-7-6(46). Same—Taylor county.

- 1 For the county of Taylor, one assistant attorney; one
- 2 stenographer, not less than one thousand two hundred
- 3 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
- 2 stenographer, not more than one thousand eight hundred
- 3 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 two hundred dollars.

§7-7-6(50). Same—Wayne county.

1 For the county of Wayne, one assistant attorney, five
2 thousand dollars; one stenographer, three thousand six
3 hundred dollars.

§7-7-6(51). Same—Webster county.

1 For the county of Webster, one stenographer, three
2 thousand five hundred dollars.

§7-7-6(52). Same—Wetzel county.

1 For the county of Wetzel, one assistant attorney, not
2 less than nine hundred dollars nor more than one thousand
3 two hundred dollars; one stenographer, not more than
4 four thousand five hundred dollars.

§7-7-6(53). Same—Wirt county.

1 For the county of Wirt, one stenographer or clerk at
2 not more than nine hundred dollars.

§7-7-6(54). Same—Wood county.

1 For the county of Wood, one assistant attorney, who
2 shall maintain offices in the courthouse, at not more than
3 six thousand six hundred dollars; and in addition thereto,
4 the prosecuting attorney may, with the consent of the
5 county court, appoint one additional assistant attorney
6 at a salary to be fixed by the county court; and stenog-
7 raphers 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
2 seven thousand dollars; one stenographer at salary fixed
3 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,
2 on and after January one, one thousand nine hundred
3 sixty-nine, be in the amounts set forth in sections five-
4 (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
2 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
2 dollars.

§11-2-5(4). Same—Braxton county.

1 For the county of Braxton, four thousand eight hundred
2 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
2 dollars.

§11-2-5(7). Same—Calhoun county.

1 For the county of Calhoun, three thousand six hundred
2 dollars.

§11-2-5(8). Same—Clay county.

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 hun-
2 dred dollars.

§11-2-5(10). Same—Fayette county.

- 1 For the county of Fayette, seven thousand five hundred
- 2 dollars.

§11-2-5(11). Same—Gilmer county.

- 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.

§11-2-5(14). Same—Hampshire county.

- 1 For the county of Hampshire, three thousand six hun-
- 2 dred 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.

§11-2-5(18). Same—Jackson county.

- 1 For the county of Jackson, six thousand dollars.

§11-2-5(19). Same—Jefferson county.

- 1 For the county of Jefferson, five thousand six hundred
- 2 dollars.

§11-2-5(20). Same—Kanawha county.

- 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
- 2 dollars nor more than seven thousand two hundred
- 3 dollars.

§11-2-5(23). Same—Logan county.

- 1 For the county of Logan, eight thousand one hundred
- 2 dollars.

§11-2-5(24). Same—Marion county.

- 1 For the county of Marion, eight thousand dollars.

§11-2-5(25). Same—Marshall county.

- 1 For the county of Marshall, six thousand six hundred
- 2 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.

§11-2-5(28). Same—Mercer county.

- 1 For the county of Mercer, seven thousand two hundred
- 2 fifty dollars.

§11-2-5(29). Same—Mineral county.

- 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
- 2 dollars.

§11-2-5(31). Same—Monongalia county.

- 1 For the county of Monongalia, five thousand five hundred dollars.

§11-2-5(32). Same—Monroe county.

- 1 For the county of Monroe, three thousand six hundred
- 2 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.

§11-2-5(36). Same—Pendleton county.

- 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.

§11-2-5(39). Same—Preston county.

- 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.

§11-2-5(41). Same—Raleigh county.

- 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.

§11-2-5(46). Same—Taylor county.

1 For the county of Taylor, four thousand two hundred
2 dollars.

§11-2-5(47). Same—Tucker county.

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.

§11-2-5(50). Same—Wayne county.

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.

§11-2-5(55). Same—Wyoming county.

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 nine hundred thirty-one, as amended, relating to allowance 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

12. Allowance for expenses of sheriff.

§7-7-12. Allowance for expenses of sheriff.

The county court, or tribunal in lieu thereof, of every
 2 county having thirty thousand or less population which,
 3 as provided in section two-a, article eight of this chapter,
 4 has directed the sheriff as jailer to feed prisoners shall,
 5 in addition to the salary herein provided, allow to the
 6 sheriff for keeping and feeding each prisoner, other than
 7 federal prisoners or prisoners held under civil process as
 8 provided by law, an amount to be computed in accord-

9 ance with the following schedule, based on the population
10 figures appearing in the latest official census, in counties
11 having a population of thirty thousand or less, one dollar
12 and twenty-five cents per day.

13 The limitation per day shall not include cost of personal
14 service, bed or bedding, soaps and disinfectants and items
15 of like kind, the cost of all of which shall be paid out of
16 the allowance fixed by the county court under the pro-
17 visions of present law.

18 All supplies of whatever kind for keeping and feeding
19 prisoners shall be purchased upon the requisition of the
20 sheriff under such rules and regulations as may be pre-
21 scribed by the county court. At the end of each month
22 the sheriff shall file with the county court a detailed state-
23 ment showing the name of each prisoner, date of com-
24 mitment and date of discharge, and number of days in
25 jail, and shall also file an itemized statement showing each
26 purchase and the cost thereof for keeping and feeding
27 prisoners.

28 The county court of every county shall allow the actual
29 and necessary expenses incurred or expended by the
30 sheriff in arresting, pursuing, or transporting persons ac-
31 cused or convicted of crimes and offenses, including the
32 cost of law enforcement and safety equipment, and in
33 conveying or transferring any person to or from any state
34 institution to where he may be committed from his
35 county, where by law the sheriff is authorized to convey
36 or transfer such person, and shall allow the actual and
37 necessary expenses incurred or expended in serving sum-
38 monses, notices, or other official papers in connection with
39 the sheriff's office, including an allowance of ten cents
40 per mile for each mile a sheriff or deputy sheriff is re-
41 quired to drive his personally owned car in the perform-
42 ance of his duties hereunder. Every sheriff shall file
43 monthly, under oath, a full and accurate account of all
44 his actual and necessary expenses mentioned in this sec-
45 tion, supported by verified accounts for his deputies for
46 amounts expended or incurred by each, before payment
47 thereof shall be allowed by the county court.

CHAPTER 37

(Senate Bill No. 339—By Mr. Brotherton)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

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.

Section

14. Fees to be charged by sheriffs.

§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 eject-	
3	ment, or an order, notice, summons or other proc-	
4	ess, where the body is not taken, except a subpoena	
5	served on a witness, and making return thereof.....	\$1.50
6	For summoning a witness	1.50
7	For serving on any person an attachment or other	
8	process under which the body is taken.....	1.50
9	For levying an attachment on real estate and making	
10	the return	3.00
11	For making any other levy	1.50
12	For conveying a prisoner to or from jail, for each	
13	mile of necessary travel either in going or return-	
14	ing05
15	For taking any bond60
16	When a jury is sworn in court, for summoning and	
17	impaneling such jury	1.00
18	For serving a writ of possession	1.50

19 For issuing receipt to purchaser at delinquent tax
20 sale25

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.

CHAPTER 39

(Senate Bill No. 146—By Mr. Miller)

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

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 1. 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
2 the approval of the court for which he or she is clerk,
3 cause any or all records, papers, plats, or other documents
4 kept by him or her to be reproduced on photographic
5 microfilm or microcards and may, with the approval of
6 the court for which he or she is clerk, record, keep and
7 preserve any and all records, papers, plats, or other docu-
8 ments required by the laws of this state to be recorded
9 or kept by said clerk or court exclusively upon photo-
10 graphic microfilm or microcards instead of in well-bound
11 books or instead of by any other method heretofore pre-
12 scribed by law.

13 Such photographic microfilm and microcards shall be
14 of durable material and possess good, archival qualities.
15 The device used to reproduce such records on such film

16 and cards shall be one which accurately reproduces the
17 original thereof in all details.

18 Such photographic microfilm and microcards shall be
19 deemed to be an original record for all purposes, includ-
20 ing introduction into evidence in all courts or adminis-
21 trative agencies. A transcript, exemplification, or photo-
22 graphic reproduction thereof shall, when properly au-
23 thenticated by the clerk of such court, be deemed for all
24 purposes to be a transcript, exemplification, or certified
25 copy of the original.

26 Such photographic microfilm and microcards shall be put
27 in convenient, accessible fireproof files and adequate pro-
28 vision shall be made for preserving, examining and using
29 the same.

30 Any such records, papers, plats, or other documents not
31 held for others by said clerk or court or required by law
32 to be delivered to some other person, court, corporation
33 or agency, may with the approval of the court keeping
34 such records, papers, plats, or other documents be de-
35 stroyed; but before any such records, papers, plats or
36 other documents are authorized to be destroyed the
37 court keeping them or the clerk thereof shall obtain the
38 advice and counsel of the state historian or archivist, or
39 his designated representatives, as to the desirability of
40 placing the said records, papers, plats, or other docu-
41 ments in the department of archives and history and
42 upon the request of the state historian or archivist said
43 court or the clerk thereof shall cause such records, papers,
44 plats, or other documents to be so placed at the expense
45 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 INTER-MEDIATE JUDGES.

Section

1. Judicial circuits; election and terms of judges; terms of court.
- 1x. Twenty-fourth circuit.
- 1dd. Thirtieth circuit.
- 1ee. Thirty-first circuit.

§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

16 Fayette shall constitute the twelfth circuit; the county
17 of Kanawha shall constitute the thirteenth circuit; the
18 counties of Braxton, Clay, Gilmer and Webster shall con-
19 stitute the fourteenth circuit; the county of Harrison
20 shall constitute the fifteenth circuit; the county of Marion
21 shall constitute the sixteenth circuit; the county of Mo-
22 nongalia shall constitute the seventeenth circuit; the
23 county of Preston shall constitute the eighteenth circuit;
24 the counties of Barbour and Taylor shall constitute the
25 nineteenth circuit; the county of Randolph shall con-
26 stitute the twentieth circuit; the counties of Grant, Min-
27 eral and Tucker shall constitute the twenty-first circuit;
28 the counties of Hampshire, Hardy and Pendleton shall
29 constitute the twenty-second circuit; the counties of
30 Berkeley, Jefferson and Morgan shall constitute the
31 twenty-third circuit; the county of Wayne shall constitute
32 the twenty-fourth circuit; the counties of Lincoln and
33 Boone shall constitute the twenty-fifth circuit; the coun-
34 ties of Lewis and Upshur shall constitute the twenty-
35 sixth circuit; the county of Wyoming shall constitute the
36 twenty-seventh circuit; the county of Nicholas shall
37 constitute the twenty-eighth circuit; the counties of Ma-
38 son and Putnam shall constitute the twenty-ninth circuit;
39 the county of Mingo shall constitute the thirtieth circuit;
40 and the counties of Berkeley, Jefferson and Morgan
41 shall constitute the thirty-first circuit.

42 There shall be elected on the Tuesday next after the
43 first Monday in November, one thousand nine hundred
44 sixty-eight, and every eighth year thereafter, one judge in
45 each of the circuits herein constituted, except for the
46 first circuit there shall be two judges elected.

47 The terms of the several circuit judges of the counties
48 aforesaid shall commence and be held each year as here-
49 inafter provided.

§51-2-1x. Twenty-fourth circuit.

For the county of Wayne, on the first Monday in March,
2 July and November.

§51-2-1dd. Thirtieth circuit.

For the county of Mingo, on the first Monday in Janu-
2 ary, May and September.

§51-2-1ee. Thirty-first circuit.

2 For the county of Morgan, on the first Tuesday in Feb-
ruary, May and October.

3 For the county of Jefferson, on the third Tuesday in
4 February, May and October.

5 For the county of Berkeley, on the first Tuesday in
6 January, April and September.

7 *This act, insofar as it relates to the rearrangement
8 of judicial circuits and terms of court therein, shall be-
9 come effective on January one, one thousand nine hun-
10 dred sixty-nine, but the provisions of this act relating
11 to the election of judges of the judicial circuits, as re-
12 arranged herein, shall become effective as of the date of
13 passage of this act.

14 If any provision of this act is held unconstitutional
15 or invalid, such unconstitutionality or invalidity shall
16 not affect other provisions of the act, and to this end each
17 and every provision of this act is declared to be severable.
18 The Legislature hereby declares that it would have en-
19 acted the remaining provisions of this act even if it had
20 known that any provisions thereof would be declared
21 to be unconstitutional or invalid.

*These provisions apply to provisions of the act enumerated therein, and are not a part of §51-2-1ee.

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 INTER-MEDIATE JUDGES.

Section

- 1c. Third circuit.
- 1h. Eighth circuit.

§51-2-1c. Third circuit.

For the county of Doddridge, on the fourth Monday in
2 January, May and September.

3 For the county of Pleasants, on the second Monday in
4 January, May and September.

5 For the county of Ritchie, on the third Monday in Jan-
6 uary, May and September.

§51-2-1h. Eighth circuit.

For the county of McDowell, on the third Monday in
2 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
2 book and in the discretion of the court may be caused
3 to be read, and after being corrected, where it is neces-
4 sary, shall be signed by the judge or presiding officer on
5 the following day, except those of the last day of the term
6 and of the day on which the court may adjourn to a future
7 day as prescribed in article two of this chapter, which
8 shall be drawn up and corrected, where it is necessary,
9 and signed by the judge or officer on the same day: *Pro-*
10 *vided*, That where microfilm, photocopies or some other
11 similar reproduction process is used to copy the original
12 orders of such proceedings for entry in the book, and
13 such original orders have been signed by the judge or
14 presiding officer, it shall not be necessary for the judge
15 or presiding officer to personally sign such copies entered
16 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
2 distribution of the reports of the cases decided by the su-

3 preme court of appeals, after the same are printed and
4 bound, and are approved by the reporter and the court.
5 After any new volumes of such reports have been de-
6 livered to the librarian, not including reprints of former
7 volumes, he shall distribute the volumes as follows: Five
8 volumes to the governor; one volume to the president of
9 the senate; one volume to the speaker of the house of dele-
10 gates; twenty-five volumes to the attorney general; two
11 volumes to each judge of the supreme court of appeals;
12 one volume to each clerk to the judges of the supreme
13 court of appeals; one volume to the clerk of the supreme
14 court of appeals; one volume to the judge of each judi-
15 cial circuit for each county in such judicial circuit;
16 one volume to each of the judges of courts of limited
17 jurisdiction; one volume to each judge of the United
18 States district courts in West Virginia; one volume to
19 each prosecuting attorney in this state; three volumes
20 to the public service commission; five volumes to the
21 state road commissioner; three volumes to the state tax
22 commissioner; five volumes to the library of Congress,
23 Washington, District of Columbia; one volume to the
24 director of legislative services; twenty volumes to the
25 college of law of West Virginia University; one volume
26 to the law library at Charles Town; one volume to the
27 Ohio county law library at Wheeling; two volumes to
28 the department of archives and history; one volume each
29 to the auditor, commissioner of agriculture, state treas-
30 urer, secretary of state and state superintendent of free
31 schools; and one volume to the head of subordinate ex-
32 ecutive departments, boards, commissions and agencies at
33 the state capitol.

34 The state law librarian shall arrange, as far as pos-
35 sible, to exchange one volume of the West Virginia re-
36 ports for a volume of the current reports of the court
37 of last resort of each state, the District of Columbia and
38 the territorial possessions of the United States. He may
39 further arrange for the exchange of such volumes with
40 law schools for law reviews, law bulletins, reports
41 and other legal publications. All such law reviews,
42 law bulletins, reports and other legal publications so
43 received shall become the property of the state of West

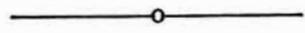
44 Virginia unless otherwise so designated, and shall be
45 placed by the librarian and safely kept in the law library
46 at the state capitol.

47 The supreme court of appeals, or a judge thereof in
48 vacation of the court, may order the librarian to dis-
49 tribute volumes of the West Virginia reports to any uni-
50 versity or college on written request therefor; and may
51 order him to distribute additional volumes to any officer,
52 judge, court, tribunal, prosecuting attorney, institution,
53 library, board, commission or agency now entitled to one
54 volume of such report, or any such agency hereafter
55 created, upon written request therefor made to the court.
56 Such volumes shall remain the property of the state of
57 West Virginia and volumes so received by them shall
58 be turned over to their successors in office.

59 The supreme court of appeals, or a judge thereof in
60 vacation of the court, on written request therefor and as
61 such court or judge deems best, may order the librarian
62 to distribute reprints of old volumes of the reports as
63 replacements when requested.

64 The librarian is charged with and it shall be his duty
65 to retain and keep safely five volumes of the reports
66 in the state law library, at Charleston.

67 All volumes of the reports distributed as herein pro-
68 vided shall be sent by the librarian by mail, express,
69 freight or otherwise as he may deem best: *Provided*,
70 That such reports so distributed shall contain a receipt
71 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, chap-
ter 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
2 two of this article, an annuity to the widow of a judge,
3 who, at death, is eligible for the retirement benefits pro-
4 vided by sections six, six-a or eight of this article, or who,
5 at death, has served at least sixteen full years as a judge
6 of any court of record of this state, and who dies, either
7 while in office or after resignation or retirement from
8 office pursuant to the provisions of this article: *Provided,*
9 *however,* That any annuity accruing under this section
10 shall be paid from, and only from, the fund, and the in-
11 terest thereon, accumulated through the contributions of
12 judges from whose salary deductions have been made, as
13 herein provided, and no annuity accruing hereunder
14 shall be paid from any public moneys contributed to the
15 judges' retirement fund by the state of West Virginia.

16 Said annuity shall amount to forty per cent of the
17 annual salary of the office which said judge held at his
18 death or from which he resigned or retired. In the event
19 said salary is increased or decreased while an annuitant
20 is receiving the benefits hereunder, her annuity shall
21 amount to forty per cent of the new salary. The annuity

22 granted hereunder shall accrue monthly and shall be due
23 and payable in monthly installments on the first business
24 day of the month following the month for which the
25 annuity shall have accrued. Such annuity shall commence
26 on the first day of the month in which said judge dies
27 and shall terminate upon the death or remarriage of the
28 annuitant.



CHAPTER 45

(Com. Sub. for House Bill No. 930—By Mr. Payne and Mr. Seibert)

[Passed March 2, 1967; in effect ninety days from passage. Approved
by the Governor.]

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.
4. Shoplifting to constitute breach of peace; detention.

§61-3A-1. Definitions.

- 1 When used in this article, the following terms shall
- 2 have the following meanings:
- 3 (1) "Shoplifting" shall consist of any one or more of
- 4 the following acts:

5 (a) For any person wilfully to take possession of any
6 merchandise offered for sale by any store with the in-
7 tention of converting the same to the use of such person
8 without paying to the owner the value thereof.

9 (b) For any person wilfully to conceal upon his person
10 or otherwise any merchandise offered for sale by any
11 store with the intention of converting the same to the use
12 of such person without paying to the owner the value
13 thereof.

14 (c) For any person wilfully to alter any label, price
15 tag or marking upon any merchandise offered for sale
16 by any store with the intention of depriving the owner of
17 all or some part of the value thereof.

18 (d) For any person wilfully to transfer any mer-
19 chandise offered for sale by any store from the container
20 in or on which the same shall be displayed to any other
21 container with intent to deprive the owner of all or some
22 part of the value thereof.

23 (2) "Store" shall mean any store or mercantile estab-
24 lishment in which merchandise is displayed for sale in
25 such manner as to be readily accessible to persons shop-
26 ping therein.

27 (3) "Merchandise" shall include goods and wares.

28 (4) "Owner of merchandise" shall include the owner
29 and any other person, firm or corporation having the
30 right to offer the same for sale as agent, consignee or in
31 other capacity under any agreement with the owner of
32 such merchandise.

33 (5) "Value of merchandise" shall mean the sale price of
34 any merchandise which a person shall convert to his own
35 use in committing an act of shoplifting defined in para-
36 graphs (a) and (b) of subdivision (1), or in the event a
37 person shall commit an act of shoplifting defined in
38 either paragraph (c) or (d) of subdivision (1), then the
39 "value of merchandise" shall mean the sale price of that
40 part of the merchandise of which the owner has been
41 deprived in consequence of the commission of such act
42 of shoplifting.

§61-3A-2. Penalties; process; compensation of officers and witnesses.

1 If any person shall commit an act of shoplifting as de-
2 fined in this article, for the first offense, he shall be guilty
3 of a misdemeanor if the value of merchandise is less than
4 fifty dollars, and, upon conviction thereof, shall be
5 punished by imprisonment in the county jail for not more
6 than ninety days or by fine of not more than three hun-
7 dred dollars, or by both such fine and imprisonment.

8 If any person shall commit an act of shoplifting as
9 defined in this article, for the second offense, he shall be
10 guilty of a misdemeanor if the value of merchandise is
11 less than fifty dollars, and, upon conviction thereof, shall
12 be punished by imprisonment in the county jail for a
13 period of not less than thirty days nor more than one
14 hundred and eighty days, or by fine of not more than five
15 hundred dollars, or by both such fine and imprisonment.

16 If any person shall commit an act of shoplifting as
17 defined in this article, for the third or subsequent offense,
18 he shall be guilty of a felony regardless of the value of
19 merchandise involved in the first two convictions under
20 the provisions of this article, and, upon conviction thereof,
21 shall be punished by imprisonment in the penitentiary
22 for not less than one nor more than ten years.

23 If any person shall commit an act of shoplifting as
24 defined in this article, he shall be guilty of a felony if
25 the value of merchandise is fifty dollars, or more, and,
26 upon conviction thereof, shall be punished by imprison-
27 ment in the penitentiary for not less than one nor more
28 than ten years.

29 In all prosecutions under this article, process shall be
30 issued and served in the county or out of the county where
31 prosecution is pending and shall have the same binding
32 force and effect as though the offense being prosecuted
33 were a felony; and all officers issued and serving such
34 process in or out of the county wherein the prosecution
35 is pending, and all witnesses from within or without the
36 county wherein the prosecution is pending shall be com-
37 pensated in like manner as though the offense were a
38 felony in grade.

§61-3A-4. Shoplifting to constitute breach of peace; detention.

1 An act of shoplifting as defined herein, is hereby de-
2 clared to constitute a breach of peace and any owner of
3 merchandise, his agent or employee, or any law-enforce-
4 ment officer, except a constable, who has reasonable
5 ground to believe that a person has committed shoplifting,
6 may detain such person in a reasonable manner and for
7 a reasonable length of time not to exceed thirty minutes,
8 for the purpose of investigating whether or not such
9 person has committed or attempted to commit shop-
10 lifting. Such reasonable detention shall not constitute
11 an arrest nor shall it render the owner of merchandise,
12 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.

1 If any person shall make use of any telephone facility
2 or equipment for, (1) placing any anonymous call or calls
3 in a manner which could reasonably be expected to annoy,
4 abuse, torment, harass or embarrass any person, (2) pro-
5 fanely cursing, swearing at or abusing another, or using
6 profane, obscene, indecent or vulgar language, or (3)
7 threatening to commit a crime against any person, he
8 shall be guilty of a misdemeanor.

9 Any offense committed under this section may be
10 deemed to have taken place at the place at which
11 the telephone call was made or placed, or the place at
12 which the telephone call was received.

13 Any person convicted of an offense hereunder, shall be
14 punished by a fine of not more than five hundred dollars
15 or by imprisonment in the county jail for not more than
16 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.

1 Any person who exhibits or displays a false or er-
 2 roneous birth certificate, draft card, registration card or
 3 certificate, license, or identification card or certificate of
 4 any kind or character, or who exhibits or displays any
 5 certificate, card or license of any kind or character not
 6 his own, for the purpose of purchasing or drinking beer
 7 or liquor or gaining admittance to any establishment, from
 8 which he or she would otherwise be barred by reason
 9 of age, shall be guilty of a misdemeanor, and, on con-
 10 viction thereof, shall be punished by a fine of not less
 11 than twenty-five nor more than one hundred dollars,
 12 and, in the discretion of the court, may be imprisoned in
 13 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
2 vendor unless the vendor has filed with the director an
3 affidavit of the vendor or the affidavit of a member of the
4 vendor's firm, or, if the vendor be a corporation, the
5 affidavit of an officer, director, or managing agent, of
6 such corporation, disclosing the following information:
7 (1) If the vendor be an individual, his name and residence
8 address, and, if he has associates or partners sharing in
9 his business, their names and residence addresses; (2)
10 if the vendor be a firm, the name and residence address
11 of each member, partner or associate of the firm; (3) if
12 the vendor be a corporation created under the laws of
13 this state, the name and business address of the corpora-
14 tion; the names and residence addresses of the president,
15 vice president, secretary, treasurer, and general manager,
16 if any, of the corporation; and the names and residence
17 addresses of each stockholder of the corporation owning
18 or holding more than ten per cent of the capital stock
19 thereof; (4) if the vendor be a foreign corporation, the
20 name and business address of the corporation; the names
21 and residence addresses of the president, vice president,
22 secretary, treasurer, and general manager, if any, of the
23 corporation; and the names and residence addresses of
24 each stockholder of the corporation owning or holding
25 more than ten per cent of the capital stock thereof. When-
26 ever a change occurs in the information heretofore sub-
27 mitted as required, such change shall be reported im-

28 mediately in the same manner as required in the original
29 disclosure affidavit.

30 The affidavit and information so received by the director
31 shall be kept in a register of vendors which shall be a
32 public record and open to public inspection during regular
33 business hours in the director's office and made readily
34 available to the public at such time.

35 The director may waive the above requirements in the
36 case of corporations listed on any nationally-recognized
37 stock exchange.

38 Any person who makes such affidavit falsely or who
39 shall knowingly file or cause to be filed with the director,
40 an affidavit containing a false statement of a material
41 fact or omitting any material fact, shall be guilty of a
42 misdemeanor, and, upon conviction thereof, shall be fined
43 not more than one thousand dollars, and in the discretion
44 of the court, confined in jail not more than one year. In
45 any such case, the person convicted shall be adjudged
46 forever incapable of holding any office of honor, trust
47 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
2 system of the registration of divorce and annulment of
3 marriage in this state, each divorce and annulment of
4 marriage which shall occur in this state shall be regis-
5 tered with the state division of vital statistics in accord-
6 ance with the following procedures:

7 (a) The state board of health shall have the authority
8 and duty to:

9 (1) Install a centralized system of registering, index-
10 ing and preserving records of divorce and annulment
11 of marriage; (2) promulgate such rules and regulations,
12 in accordance with chapter twenty-nine-a of this code
13 as are necessary to implement the provisions of this sec-
14 tion, and prescribe and furnish forms for collecting, tran-
15 scribing, compiling and preserving records and statistics
16 of divorce and annulment of marriage as required in
17 subdivision (b) below; (3) make and publish a statisti-
18 cal report of divorce and annulment of marriage; and
19 (4) enforce the regulations made pursuant thereto.

20 (b) The clerk of every court of record having juris-
21 diction of divorce or annulment of marriage shall monthly
22 make and deliver to the state registrar of vital statistics
23 a report on a form prescribed by the state registrar of
24 vital statistics, listing all of the divorces or annulments
25 of marriages granted by such court during the preceding
26 calendar month, showing insofar as such information ap-
27 pears in the complaint or final decree: (1) The names
28 and ages of the parties to the action, (2) the date and
29 place of the marriage thereby terminated, (3) the names
30 of said parties' children under the age of eighteen years,
31 (4) the date of the final decree: *Provided*, That in coun-
32 ties where the court is not in continuous session these

33 reports shall be forwarded within ten days following
34 the close of the term of the court.

35 (c) The state registrar shall search his files of reports
36 of divorce and annulment of marriage upon receipt of
37 written request and a fee of one dollar. If the record is
38 found, he shall verify the facts of the divorce or annul-
39 ment of marriage in writing to the applicant and shall
40 notify the applicant of the place where the original
41 record is found.

42 (d) Failure of the clerk of the court to comply with
43 the provisions of subdivision (b) hereof shall in no way
44 affect the validity of any final judgment order of divorce
45 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
2 shall sue, answer and plead by a next friend, and an
3 incompetent or insane party shall sue, answer and plead
4 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.

Section

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.

§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

9 anyone, except upon court order for good cause shown.
10 No person in charge of adoption records shall disclose the
11 names of the adopting parent or parents or adopted child
12 except by court order. The clerk of the court keeping
13 and maintaining the records in adoption cases shall keep
14 and maintain an index of such cases separate and distinct
15 from all other indices kept or maintained by him, and the
16 index of adoption cases shall be kept in a locked or sealed
17 cabinet, vault or other container and shall not be open
18 to inspection or copy by anyone, except upon court order
19 for good cause shown. Immediately upon the entry of
20 such a decree of adoption, the court shall direct the clerk
21 thereof forthwith to make and deliver to the state regis-
22 trar of vital statistics a certificate under the seal of said
23 court, showing:

24 (1) The date and place of birth of the adoptee, if
25 known;

26 (2) The names of the natural parents of the adoptee,
27 if known;

28 (3) The name by which said child has previously been
29 known;

30 (4) The names and addresses of the adopting parents;

31 (5) The name by which the child is to be thereafter
32 known; and

33 (6) Such other information from the record of said
34 adoption proceedings as may be required by the law of
35 this state relating to vital statistics and as may enable
36 the state registrar of vital statistics to carry out the duty
37 imposed upon him by this section.

38 Upon receipt of said certificate, the said registrar of
39 vital statistics shall forthwith issue and deliver by mail
40 to the adopting parents at their last-known address and
41 to the clerk of the county court of the county wherein
42 such decree of adoption was entered a birth certificate
43 in the form required by law, except that the name of
44 the adoptee shown in said certificate shall be the name
45 given him by the decree of adoption. Such county court
46 clerk shall record such birth in the manner provided by
47 chapter sixteen, article five, section nineteen of this code.

CHAPTER 52

(House Bill No. 662—By Mr. Sayre)

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

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.

1 Upon the entry of such decree of adoption, the natural
2 parent or parents, any parent or parents by any previous
3 legal adoption, and the lineal or collateral kindred of any
4 such parent or parents, except any such parent who is
5 the husband or wife of the petitioner for adoption, shall
6 be divested of all legal rights, including the right of
7 inheritance from or through the adopted child under the
8 statutes of descent and distribution of this state, and
9 shall be divested of all obligations in respect to the said
10 adopted child, and the said adopted child shall be free
11 from all legal obligations, including obedience and main-
12 tenance, in respect to any such parent or parents. From

13 and after the entry of such decree of adoption, the
14 adopted child shall be, to all intents and for all pur-
15 poses, the legitimate issue of the person or persons
16 so adopting him or her and shall be entitled to
17 all the rights and privileges and subject to all the
18 obligations of a natural child of such adopting parent or
19 parents.

20 For the purpose of descent and distribution, from and
21 after the entry of such decree of adoption, a legally
22 adopted child shall inherit from and through the parent
23 or parents of such child by adoption and from or through
24 the lineal or collateral kindred of such adopting parent
25 or parents in the same manner and to the same extent
26 as though said adopted child were a natural child of
27 such adopting parent or parents, but such child shall not
28 inherit from his or her natural parent or parents nor
29 their lineal or collateral kindred, except that a child
30 legally adopted by a husband or wife of the natural
31 parent shall inherit from the natural parent of such child
32 as well as from the adopting parent. If a legally adopted
33 child shall die intestate, all property, including real and
34 personal, of such adopted child shall pass, according to
35 the statutes of descent and distribution of this state, to
36 those persons who would have taken had the decedent
37 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.

Section

13. Order of support.

§48-9-13. Order of support.

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.
3. Powers of authority.
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.

16 The chairman and vice chairman of the authority as
17 of the effective date of this article shall continue in their
18 respective offices until their successors are elected.
19 Thereafter, at its first regular meeting in each year the
20 authority shall elect one of its members as chairman and
21 one as vice chairman. The authority is authorized to
22 select an executive secretary and such other personnel
23 as may be necessary to perform its duties and to fix the
24 compensation of such personnel to be paid out of moneys
25 appropriated for this purpose. The executive secretary
26 shall keep a record of the proceedings of the authority
27 and shall perform such other duties as it may prescribe.
28 The authority is authorized to establish such office or
29 offices as may be necessary for the proper performance
30 of its duties.

31 The authority shall hold one meeting in July of each
32 year and at least two additional meetings at such times
33 and places as it may prescribe. It may meet at such other
34 times as may be necessary, such meetings to be held upon
35 its own resolution or at the call of the chairman of the
36 authority. The members shall serve without compensa-
37 tion, but every member may be reimbursed for actual
38 expenses incident to the performance of his duties upon
39 presentation to the chairman of an itemized sworn state-
40 ment thereof.

§10-5-3. Powers of authority.

The authority shall have the power:

- 2 (1) To act as advisor and consultant to television
3 and radio stations concerning noncommercial educational
4 programs supported by federal, state, county, city and/or
5 private funds.
- 6 (2) To cooperate with and assist all local and state
7 educational institutions in planning and development of
8 the use of educational radio, television and related media.
- 9 (3) To promote and coordinate the use of these media
10 for noncommercial educational purposes.
- 11 (4) To construct, maintain and operate educational
12 broadcasting, closed circuit or related facilities located
13 at a suitable site or sites within this state including, with-
14 out limitation thereby, production centers, broadcasting

15 stations and a broadcasting network connecting such
16 communities or stations as may be designated by the
17 authority.

18 (5) To acquire in the name of the state for the use and
19 benefit of the authority by purchase, lease or agreement,
20 any property, both real and personal, and any interest in
21 such property necessary to carry out the provisions of this
22 article.

23 (6) To apply for and receive any license from the ap-
24 propriate federal agency necessary to operate any educa-
25 tional broadcasting, closed circuit or related facility.

26 (7) To supervise and approve the origination and trans-
27 mission of all noncommercial educational radio, television
28 and related media programs in this state which would
29 be carried through the facilities of a state network.

30 (8) To employ such personnel as may be necessary to
31 operate and maintain any facility created under the pro-
32 visions of this article.

33 (9) To lease from communications common carriers
34 and use such transmission channels as may be necessary
35 or, if it determines it could more economically construct
36 and maintain such transmission channels, it may design,
37 construct, maintain and operate the same, including a
38 television microwave network.

39 (10) To sue and be sued, plead and be impleaded.

40 (11) To contract and be contracted with, including the
41 power to enter into contracts with any person, firm or
42 corporation, including any like authority of neighboring
43 states.

44 (12) To have and use a corporate seal.

45 (13) To promulgate reasonable rules and regulations to
46 carry out the provisions of this article in accordance with
47 the provisions of article three, chapter twenty-nine-a of
48 the code.

49 (14) To perform such other services in behalf of non-
50 commercial educational radio, television and related
51 media as it may consider to be in the best interest of the
52 state.

§10-5-4. Funds; right of state agencies, etc., to contribute to authority.

The authority is further authorized and empowered to
2 apply for and receive appropriations, gifts, bequests or
3 grants from any agency of the United States government,
4 any agency of the state of West Virginia, any municipality
5 or county within this state, any school board or college
6 or university supported in whole or in part by this state
7 or any other person, firm, partnership, association or
8 corporation, within or without this state, and any agency
9 of the state of West Virginia, any municipality or county
10 within this state, or any school board or college or univer-
11 sity supported in whole or in part by this state is hereby
12 authorized and empowered to make appropriations or
13 grants to the authority, to assist in achieving the public
14 purpose of the authority. All such funds shall be deposited
15 with the state treasurer of West Virginia and dispersed
16 by the authority to be used exclusively for carrying out
17 the provisions of this article: *Provided*, That any ap-
18 propriations, gifts, bequests or grants received by the
19 authority with any restriction or restrictions on the use
20 thereof shall be expended by the authority in accordance
21 with such restriction or restrictions.

§10-5-5. Advisory councils.

The authority may also create one or more advisory
2 councils. Each council so created shall consist of not
3 more than nine members to be appointed by and serve at
4 the will and pleasure of the authority. Each council
5 shall annually elect a chairman, vice chairman and secre-
6 tary. Members so appointed shall serve without com-
7 pensation, but may be reimbursed for actual expenses
8 incident to the performance of their duties as provided
9 in this article for members of the authority.

10 Any such council shall serve in an advisory manner to
11 one or more facilities established under the provisions
12 of this article as directed by the authority and shall meet
13 at least twice a year.

CHAPTER 55

(Senate Bill No. 104—By Mr. McKown and Mr. Carrigan)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

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.
5. District Board of Education.
7. Teachers.
- 9A. Allocation of State Aid for Schools.
- 9B. State Board of School Finance.

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 teacher or 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;

12 (e) "State superintendent" shall mean the state su-
13 perintendent of free schools;

14 (f) "Superintendent" shall mean the county superin-
15 tendent of schools;

16 (g) "Teacher" shall mean teacher, supervisor, prin-
17 cipal, superintendent, public school librarian or any other
18 person regularly employed for instructional purposes in
19 a public school in this state;

20 (h) "Service personnel" shall mean all nonteaching
21 school employees not included in the above definition of
22 "teacher";

23 (i) "Regular full-time employee" shall mean any per-
24 son employed by a county board of education who has a
25 regular position or job throughout his employment term,
26 without regard to hours or method of pay.

ARTICLE 5. DISTRICT BOARD OF EDUCATION.

Section

15. School term; employment term; extension of terms; levies; ages of youths to which schools open.

§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
2 which shall be comprised of (a) an employment term for
3 teachers, and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less than
5 ten months, a month to be defined as twenty employment
6 days exclusive of Saturdays and Sundays: *Provided*, That
7 the board may contract with all or part of the personnel
8 for a longer term. The employment term shall be fixed
9 within such beginning and closing dates as established
10 by the state board: *Provided*, That the time between the
11 beginning and closing dates does not exceed forty-three
12 weeks.

13 Within the employment term there shall be an in-
14 structional term for pupils of not less than one hundred
15 eighty nor more than one hundred eighty-five instruc-
16 tional days. Instructional and noninstructional activities
17 may be scheduled during the same employment day. The
18 instructional term shall start not later than the fifth day
19 of the employment term.

20 Noninstructional days in the employment term may be
 21 used for curriculum development, preparation for opening
 22 and closing of the instructional term, in-service and pro-
 23 fessional training of teachers, teacher-pupil-parent confer-
 24 ences, professional meetings and other related activities.

25 Where the employment term overlaps a teacher's partic-
 26 ipation in a summer institute or institution of higher learn-
 27 ing for the purpose of professional growth, the teacher
 28 may substitute, with the approval of the county superin-
 29 tendent, such participation for not more than four of the
 30 noninstructional days of the employment term.

31 The board may extend the instructional term beyond
 32 one hundred eighty-five instructional days provided the
 33 employment term is extended an equal number of days.
 34 If the state revenues and regular levies, as provided by
 35 law, are insufficient to enable the board of education to
 36 provide for the school term, the board may at any gen-
 37 eral or special election, if petitioned by at least five per
 38 cent of the qualified voters in the district, submit the
 39 question of additional levies to the voters. If at the elec-
 40 tion sixty per cent of the qualified voters cast their ballots
 41 in favor of the additional levy, the board shall fix the
 42 term and lay a levy necessary to pay the cost of the addi-
 43 tional term. The additional levy fixed by the election
 44 shall not continue longer than five years without sub-
 45 mission to the voters. The additional rate shall not exceed
 46 by more than one hundred per cent the maximum school
 47 rate prescribed by article eight, chapter eleven of the
 48 code, as amended.

49 The schools shall be open to youths between the ages
 50 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
 2 any Saturday nor on the following days which are desig-

3 nated as legal school holidays, namely: Independence
4 Day, Labor Day, Veterans Day, Thanksgiving Day,
5 Christmas Day, New Year's Day, Memorial Day, and any
6 day on which a primary election, general election, or
7 special election is held throughout the state or school dis-
8 trict and any day appointed and set apart by the president
9 or the governor as a holiday of special observance by the
10 people of the state. When any such holiday falls within
11 the employment term of the teacher it shall be considered
12 as a day of the employment term and the teacher shall re-
13 ceive his pay for same. When any of the above desig-
14 nated holidays, except a special election, falls on Saturday,
15 the schools shall be closed on the preceding Friday; when
16 any such falls on Sunday, the schools shall be closed on
17 the following Monday.

18 Special classes may be conducted on Saturdays, provided
19 they are conducted on a voluntary basis, for pupils, teach-
20 ers and service personnel, and that such teachers and
21 service personnel shall be remunerated in ratio to the reg-
22 ularly contracted pay.

23 Any school or schools may be closed by proper authori-
24 ties on account of the prevalence of contagious disease,
25 conditions of weather or any other calamitous cause over
26 which the board has no control. Under any or all of the
27 above provisions, the time lost by the closing of schools
28 shall be counted as taught and as meeting a part of the
29 requirements of the minimum term of one hundred and
30 eighty days of instruction. The teacher shall receive pay
31 the same as if school were in session. Insofar as funds
32 are available or can be made available during the school
33 year, the board may extend the employment term for
34 the purpose of making up time that might affect the
35 instructional term.

36 In addition to any other provisions of this chapter, the
37 board is further authorized to provide in its annual budget
38 for teachers' meetings, workshops, vacation time and/or
39 other holidays through extended employment of teachers
40 at the same rate of pay.

ARTICLE 9A. ALLOCATION OF STATE AID FOR SCHOOLS.

Section

2. Definitions.

§18-9A-2. Definitions.

For the purpose of this article:

2 "State board" or "board" means the state board of
3 school finance.

4 "County board" means a county board of education.

5 "Teacher" means any person, except the county super-
6 intendent and assistant superintendents, who is required
7 to hold an authorized teaching certificate for employment
8 in any county of the state, and who devotes the majority
9 of his school time to the instruction of school-age children.

10 "Employment term" means ten months of employment
11 as defined in section fifteen, article five of this chapter.

12 "Instructional term" shall be that as defined in section
13 fifteen, article five of this chapter.

14 "Average annual foundation salary for teachers," based
15 on the standard term, means the sum of the basic founda-
16 tion salary, which for this purpose shall be determined on
17 the same certification classification as provided in item
18 (A), section two, article seven of this chapter, and in ac-
19 cordance with the numerical subdivisions of said section
20 at the following rate of each class under said numerical
21 subdivisions: (1) \$165, (2) \$175, (3) \$200, (4) \$210, (5)
22 \$260, (6) \$285, (7) \$290; plus the advanced-salary experi-
23 ence increment of six dollars per month times the years
24 of allowable experience under each classification in sec-
25 tion two of said article seven, for all full-time teachers
26 employed in a county at the end of the third month of the
27 current year divided by the total number of such teachers.

28 "Net enrollment" means the number of pupils enrolled
29 in grades one to twelve, inclusive, of the public schools of
30 the county at the close of the third month of the current
31 school year, but no pupil shall be counted more than once
32 by reason of transfer within the county or from another
33 county within the state, and no pupil shall be counted
34 who attends school in this state from another state.

35 "High school" means a school consisting only of grades
36 above the sixth, organized for instruction by departments,
37 or the seventh and eighth grades of a school in which
38 these grades are organized for instruction by departments
39 and which has at least four teachers in these grades.

40 "Levies for general current expense purposes" means
 41 on each hundred dollars of valuation, nineteen and six-
 42 tenths cents on class one property, thirty-nine and two-
 43 tenths cents on class two property, and seventy-eight and
 44 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:

- 2 "Board of finance" means the state board of school
 3 finance.
- 4 "Budget" means the annual budget of school revenues
 5 and expenditures prepared and adopted by a county
 6 board of education in accordance with this article.
- 7 "Levy estimate" means the summary statement of the
 8 total budgeted school requirements prepared and adopted
 9 by a county board of education in accordance with law,
 10 in justification of the amount levied upon taxable
 11 property within the county for the support of the local
 12 schools.
- 13 "Appropriation" means an item, or the amount of an
 14 item, budgeted by a county board of education for ex-
 15 penditure during the fiscal year.
- 16 "Expenditure schedule" means a schedule for the ex-
 17 penditure of amounts budgeted throughout the fiscal
 18 year and adopted in conjunction with the annual budget.
- 19 "County board" means a county board of education.
- 20 "Employment term" means ten months of employment
 21 as defined in section fifteen, article five of this chapter.
- 22 "Instructional term" shall be that as defined in section
 23 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
 2 to a proposed budget, shall require that:

3 (1) Estimates of revenue and receipts are reasonable
4 and accurate;

5 (2) Amounts are budgeted so as to cover actual re-
6 quirements of school operation;

7 (3) Amounts are budgeted so as to maintain the
8 schools of the county for the employment term; or, if the
9 employment term cannot be maintained, amounts are
10 budgeted so as to assure the maximum length of such term
11 possible, but not for less than the instructional term as
12 defined in section fifteen, article five of this chapter.

13 The board of finance may authorize budgeting for less
14 than the employment term only if it finds, upon petition
15 of the county board setting forth the circumstances in
16 full, that the best interests of the county schools will be
17 promoted by the use of available funds for purposes other
18 than the maintenance of the maximum employment term
19 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
2 for a county will not maintain the schools for the em-
3 ployment term, it may require that the budget be revised
4 so as to provide as much of the employment term as
5 possible; but in no case shall permit the reduction of the
6 instructional term. Any required revision in the budget
7 for this purpose may be made in the following order:

8 (1) Postpone expenditures for permanent improve-
9 ments and capital outlays except from the permanent im-
10 provement fund;

11 (2) Reduce the amount budgeted for maintenance ex-
12 clusive of service personnel so as to guarantee the pay-
13 ment of salaries for the employment term;

14 (3) Reduce the number of noninstructional days;

15 (4) Reduce the amount of salary paid in excess of that
16 fixed by section two, article seven of this chapter;

17 (5) Adjust amounts budgeted in any other way so as
18 to assure the required instructional term of one hundred
19 eighty days under the applicable provisions of law.

CHAPTER 56

(Senate Bill No. 80—By Mr. McCourt)

[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 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.

Section

15a. Establishment and operation of branch colleges.

§18-2-15a. Establishment and operation of branch colleges.

The state board of education is hereby authorized and
2 empowered to continue the operation and maintenance
3 of any branch colleges it has established under the
4 authority of section six-a, article one-a, chapter twenty-
5 five of this code, and to establish, maintain and operate
6 such other branches of state-supported institutions of
7 higher education under its control as it may deem ad-
8 visable: *Provided*, That programs of education offered
9 in such branch colleges, whether established or continued
10 hereunder, shall not exceed two-year liberal arts pro-
11 grams and/or terminal occupational education and adult
12 education programs.

13 No funds shall be expended by the state board for the
14 operation or maintenance of, or capital improvements
15 for, any such branch college, whether established or
16 continued hereunder, except funds provided by student
17 fees, federal grants, county boards of education, other

18 local governmental bodies, corporations, or persons, or
19 funds appropriated by the Legislature expressly for such
20 purpose or purposes. Except for the use of funds provided
21 by student fees, federal grants or those appropriated by
22 the Legislature expressly for such purposes the burden
23 of providing satisfactory and acceptable capital improve-
24 ments for such colleges shall be upon such governmental
25 bodies, corporations, or persons, and the state board may
26 enter into memoranda of agreements with such govern-
27 mental bodies, corporations, or persons for the use of local
28 plant facilities and/or grants or contributions toward the
29 cost of the acquisition or construction of such facilities.
30 Such local governmental bodies may convey capital im-
31 provements, or lease the same without monetary consider-
32 ation, to the state board for use as a branch college, and
33 the state board may accept such facilities, or the use or
34 lease thereof, or such grants or contributions, for such pur-
35 pose from such governmental bodies, the federal govern-
36 ment or any corporation or person.

37 The state board may fix enrollment, tuition and other
38 fees to be charged students enrolling in such branch col-
39 leges, retaining the same in a revolving fund for the
40 partial or full support of the branch at which they were
41 collected, including the making of capital improvements.

42 The state board may also charge any one or more of the
43 following fees at such branches: (1) Health service fees;
44 (2) infirmary fees; and (3) student activities, recreational,
45 athletic and extracurricular fees. All fees collected under
46 (1), (2) and (3) shall be paid into special funds and shall
47 be used only for the purposes for which they were
48 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.

Section

- 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.
- 19b. Same—posting of licenses; assignment or transfer; certificates to persons completing course; maximum tuition fee.

**§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
2 of instruction for commercial driver education and train-
3 ing schools in West Virginia which shall consist of not
4 less than thirty hours of classroom instruction and six
5 hours of behind-the-wheel training. The state superin-
6 tendent of schools shall issue licenses to commercial
7 driver education and training schools which offer courses
8 of instruction in driver education and training which
9 comply with the course of study approved by the state
10 board of education.

11 A fee of fifty dollars shall be charged by the state
12 superintendent of schools for the issuance of such licenses
13 which shall be renewed annually for a fee of fifty dol-
14 lars. Sums so received shall be deposited into the state
15 treasury and credited to an account of the department of
16 education for the administration of the provisions of
17 this article.

18 An application for a license to operate a licensed com-
19 mercial driver education and training school shall be

20 made upon an official form prescribed by the superin-
21 tendent of schools, and licenses shall be granted only
22 when the state superintendent is satisfied that the school
23 offers a course of driver education and training which
24 complies with the requirements approved by the state
25 board of education.

26 The state superintendent of schools shall periodically
27 cause an inspection to be made of such licensed schools
28 and shall revoke and require the surrender of the license
29 issued to a school when he finds that such school is not
30 conducting a driver education and training course that
31 is in conformity with the requirements approved by the
32 state board of education.

33 The state superintendent of schools shall maintain and
34 post at his office and at such other places as he may select
35 lists of all public and nonpublic schools offering approved
36 courses of driver education and training and all commer-
37 cial schools holding licenses and those whose licenses have
38 been revoked. The state superintendent of schools shall
39 furnish a copy of such list to the commissioner of motor
40 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 train-
2 ing school shall be assigned or transferred or used at
3 any location other than that therein designated, and
4 every license shall be posted in a conspicuous place at
5 the school location designated.

6 Persons operating any such licensed school shall issue
7 a certificate upon an official form prescribed by the state
8 superintendent of schools to persons completing a driver
9 education and training course. A record shall be kept
10 of every certificate so issued.

11 A tuition fee of not more than one hundred dollars
12 may be charged for enrollment in a licensed commercial
13 driver education and training school and for the issuance
14 of such certificate.

CHAPTER 58

(House Bill No. 788—By Mr. Lohr and Mr. Cain)

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

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section 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
2 appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased at any col-
4 lege or university under its jurisdiction, subject to the
5 conditions and restrictions hereinafter imposed. Before
6 entering upon the performance of his duties as such
7 security officer in any county, each person so appointed
8 shall qualify therefor in the same manner as is required
9 of constables by the taking and filing of an oath of office as
10 required by article one, chapter six of this code and
11 by the posting of an official bond as required by article
12 two, chapter six of this code. No such person shall have

13 authority to carry a gun or any other dangerous weapon
14 until he shall have obtained a license therefor in the
15 manner prescribed by section two, article seven, chapter
16 sixty-one of this code: *Provided, however,* That no en-
17 rolled student at any such college or university shall be
18 appointed as a security officer.

19 It shall be the duty of any person so appointed and
20 qualified to preserve law and order on any premises
21 under the jurisdiction of the board to which he may be
22 assigned by the president of the university or college.
23 For this purpose he shall as to offenses committed on such
24 premises have and may exercise all the powers and
25 authority and shall be subject to all the responsibilities
26 of regularly elected constables of the county. The assign-
27 ment of security officers to any premises under the juris-
28 diction of the board shall not be deemed to supersede in
29 any way the authority or duty of other peace officers
30 to preserve law and order on such premises.

31 The salary of all such security officers shall be paid
32 by the board. The board shall also furnish such security
33 officers with an official uniform and other equipment
34 and shall furnish and require each such officer while
35 on duty to wear a metallic shield with an appropriate in-
36 scription and to carry credentials certifying to his identity
37 and to his authority as a security officer. If an automo-
38 bile is not provided for his use by the board, such security
39 officer shall be reimbursed at the rate of ten cents per
40 mile for the use of a private automobile used in pursuance
41 of his necessary duties hereunder.

42 The state board of education may at its pleasure re-
43 voke the authority of any such officer by filing a notice
44 to that effect in the office of the clerk of each county in
45 which his oath of office was filed, and in the case of
46 officers licensed to carry a gun or other dangerous wea-
47 pon by notifying the clerk of the circuit court of the
48 county in which the license therefor was granted.

CHAPTER 59

(Com. Sub. for House Bill No. 951—By Mr. Wilson and
Mr. Seibert)

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

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section 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
2 and shall exercise the control, supervision and regula-
3 tion of all interscholastic athletic events, and other ex-
4 tracurricular activities of the students in public sec-
5 ondary schools, and of said schools of their respective
6 counties. The county board of education may delegate
7 such control, supervision and regulation of interscho-
8 lastic athletic events and band activities to the "West Vir-
9 ginia Secondary School Activities Commission," which
10 is hereby established.

11 The West Virginia secondary school activities com-
12 mission shall be composed of the principals, or their rep-
13 resentatives, of those secondary schools whose county
14 boards of education have certified in writing to the state
15 superintendent of schools that they have elected to dele-
16 gate the control, supervision and regulation of their
17 interscholastic athletic events and band activities of the
18 students in the public secondary schools in their respec-
19 tive counties to said commission. The West Virginia
20 secondary school activities commission is hereby em-
21 powered to exercise the control, supervision and regu-
22 lation of interscholastic athletic events and band activ-
23 ities of secondary schools, delegated to it pursuant to
24 this section. The rules and regulations of the West Vir-
25 ginia secondary school activities commission shall con-
26 tain a provision for a proper review procedure and re-
27 view board and be promulgated in accordance with the
28 provisions of chapter twenty-nine-a of this code, but
29 shall, in all instances be subject to the prior approval
30 of the state board. The West Virginia secondary school
31 activities commission, may, with the consent of the
32 state board of education, incorporate under the name
33 of "West Virginia Secondary School Activities Com-
34 mission, Inc.," as a nonprofit, nonstock corporation un-

35 der the provisions of chapter thirty-one of this code.
36 County boards of education are hereby authorized to
37 expend moneys for and pay dues to the West Virginia
38 secondary school activities commission, and all moneys
39 paid to such commission, as well as moneys derived
40 from any contest or other event sponsored by said com-
41 mission, shall be quasi-public funds as the same are
42 defined in article five, chapter eighteen, and such funds
43 of the commission shall be subject to an annual audit
44 by the state tax commissioner.

45 The West Virginia secondary school activities com-
46 mission shall promulgate reasonable rules and regula-
47 tions providing for the control, supervision and regu-
48 lation of the interscholastic athletic events and other
49 extracurricular activities of such private and parochial
50 secondary schools as elect to delegate to such commis-
51 sion such control, supervision and regulation, upon the
52 same terms and conditions, subject to the same regu-
53 lations and requirements and upon the payment of the
54 same fees and charges as those provided for public sec-
55 ondary schools. Any such private or parochial sec-
56 ondary school shall receive any monetary or other bene-
57 fits in the same manner and in the same proportion as
58 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

- 3. State Superintendent of Schools.
- 4. County Superintendent of Schools.
- 5. District Board of Education.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

Section

- 9. State department of education.
- 11. Classification of schools.

§18-3-9. State department of education.

For carrying into effect the provisions of this chapter,
 2 the state superintendent of schools shall maintain a de-
 3 partment of education at his office at the state capitol,
 4 and he shall have authority to employ assistants and such
 5 other employees as may be necessary.

§18-3-11. Classification of schools.

The state superintendent shall classify all elementary
 2 and secondary schools on the basis of standards, rules
 3 and regulations established by the state board after pub-
 4 lishing such standards, rules and regulations, and for-
 5 warding them to the district boards of education, county
 6 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
 2 a certificate valid in West Virginia and an approved bache-
 3 lor's degree including at least twelve semester hours in

4 school administration and supervision, and at least five
5 years' experience in public school teaching and/or su-
6 pervision: *Provided*, A superintendent who held office
7 during the school year of one thousand nine hundred
8 forty—one thousand nine hundred forty-one may be
9 elected to succeed himself in office.

10 Before entering upon the discharge of his duties the
11 superintendent shall file with the president of the board
12 a health certificate from a reputable physician, on a form
13 prescribed by the state department of schools, certifying
14 that he is physically fit for the duties of his office and
15 that he has no infectious or contagious disease; and if
16 the superintendent, due to accident or illness, should
17 become incapacitated to an extent that could lead to a
18 prolonged absence, the board, upon unanimous vote,
19 shall have authority to enter an order declaring such
20 incapacity and it shall appoint an acting superintendent
21 until such time as a majority of the members of the board
22 shall determine that the incapacity no longer exists. How-
23 ever, an acting superintendent shall not serve as such for
24 more than one year, or later than the expiration date of
25 the superintendent's term, whichever is less, without
26 being reappointed by the board of education.

§18-4-10. Duties.

The county superintendent shall:

- 2 (1) Act as the chief executive officer of the board,
3 and execute under the direction of the state board all
4 its educational policies;
- 5 (2) Nominate all personnel to be employed; in case
6 the board of education refuses to employ any or all of
7 the persons nominated, the superintendent shall nomi-
8 nate others and submit the same to the board of educa-
9 tion at such time as the board may direct, but no such
10 person or persons shall be employed except on the nomi-
11 nation of the county superintendent;
- 12 (3) Assign, transfer, suspend or promote teachers and
13 all other school employees of the district, subject only
14 to the approval of the board, and to recommend to the
15 board their dismissal pursuant to the provisions of this
16 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
20 detrimental to the health, safety or welfare of the pupils;

21 (6) Certify all expenditures and monthly payrolls of
22 teachers and employees;

23 (7) Be the secretary of the board and attend all meet-
24 ings of the board or its committees, except when his ten-
25 ure, salary or administration is under consideration;

26 (8) Administer oaths and examine under oath wit-
27 nesses in any proceedings pertaining to the schools of
28 the district, and have the testimony reduced to writing;

29 (9) Exercise all other authority granted by this chap-
30 ter or required by the board or state board;

31 (10) Act in case of emergency as the best interests of
32 the school demand.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

Section

1a. Eligibility of members.

4. Meetings; quorum; employment and assignment of teachers; com-
pensation 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
2 county board of education who is not a citizen, resident
3 in such county, or who accepts a position as teacher or
4 service personnel in any school district, or who is an
5 elected or an appointed member of any political party
6 executive committee, or who becomes a candidate for any
7 other office than to succeed himself.

8 No member or member-elect of any board of education
9 shall be eligible for nomination, election or appointment
10 to any public office, other than to succeed himself, or
11 for election or appointment as a member of any political
12 party executive committee, unless and until after his
13 membership on the board, or his status as member-elect
14 to the board, has been terminated at or before the time

15 of his filing for such nomination for, or appointment to,
16 such public office or committee.

§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,
2 and upon the dates provided by law for the laying of
3 levies, and at such other times as the board may fix upon
4 its records. At any meeting as authorized above and in
5 compliance with the provisions of article four of this
6 chapter, the board may employ such qualified teachers, or
7 those who will qualify by the time of entering upon their
8 duties, necessary to fill existing or anticipated vacancies
9 for the current or next ensuing school year. At a meeting
10 of the board, on or before the first Monday in May, the
11 superintendent shall furnish in writing to the board a
12 list of those teachers to be considered for transfer and
13 subsequent assignment for the next ensuing school year;
14 all other teachers not so listed shall be considered as re-
15 assigned to the positions held at the time of this meeting.
16 Such list of those recommended for transfer shall be in-
17 cluded in the minute record and the teachers so listed
18 shall be notified in writing, which notice shall be delivered
19 in writing, by certified mail, return receipt requested, to
20 such teachers' last known addresses within ten days fol-
21 lowing said board meeting, of their having been so recom-
22 mended for transfer and subsequent assignment.

23 Special meetings may be called by the president or
24 any three members, but no business shall be transacted
25 other than that designated in the call.

26 A majority of the members shall constitute the quorum
27 necessary for the transaction of official business.

28 Board members shall receive compensation at the rate
29 of twenty dollars per meeting attended. But they shall
30 not receive pay for more than twenty-four meetings in
31 any one fiscal year.

32 Members shall also be paid, upon the presentation of an
33 itemized sworn statement, for all necessary traveling ex-

34 penses, including all authorized meetings, incurred on
35 official business, at the order of the board.

36 When, by a majority vote of its members, a county
37 board of education deems it a matter of public interest,
38 such board may join the West Virginia school board as-
39 sociation and the national school board association, and
40 may pay such dues as may be prescribed by said associa-
41 tions and approved by action of the respective county
42 boards. Membership dues and actual traveling expenses
43 of board members for attending meetings of the West
44 Virginia school board association may be paid by their
45 respective county boards of education out of funds avail-
46 able to meet actual expenses of the members, but no al-
47 lowance shall be made except upon sworn itemized state-
48 ments.

§18-5-13. Authority of boards generally.

The boards, subject to the provisions of this chapter
2 and the rules and regulations of the state board, shall
3 have authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school prop-
6 erty, whether owned or leased by the county, including the
7 authority to require that records be kept of all receipts and
8 disbursements of all funds collected or received by any
9 principal, teacher, student or other person in connection
10 therewith, any programs, activities or other endeavors of
11 any nature operated or carried on by or in the name of the
12 school, or any organization or body directly connected
13 with the school, to audit such records and to conserve
14 such funds, which shall be deemed quasi-public moneys,
15 including securing surety bonds by expenditure of board
16 moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and/or programs for post high school instruction,
20 subject to approval of the state board of education;

21 (3) To close any school which is unnecessary and to
22 assign the pupils thereof to other schools: *Provided*, That
23 such closing shall be officially acted upon and teachers
24 and service personnel involved notified on or before the

25 first Monday in May, in the same manner as provided in
26 section four of this article, except in an emergency, sub-
27 ject to the approval of the state superintendent, or under
28 subdivision (5);

29 (4) To consolidate schools;

30 (5) To close any elementary school whose average
31 daily attendance falls below twenty pupils for two months
32 in succession, and send the pupils to other schools in the
33 district or to schools in adjoining districts. If the teachers
34 in the schools so closed are not transferred or reassigned
35 to other schools, they shall receive one month's salary;

36 (6) To provide at public expense adequate means of
37 transportation for all children of school age who live
38 more than two miles distant from school by the nearest
39 available road and to provide at public expense and
40 according to such regulations as the board may estab-
41 lish, adequate means of transportation for school children
42 participating in board-approved curricular and extra-
43 curricular activities; and provide in addition thereto, by
44 rules and regulations and within the available revenues,
45 transportation for those within two miles distance: *Pro-*
46 *vided*, That in all cases the buses or other transportation
47 facilities owned by the board of education shall be driven
48 or operated only by drivers regularly employed by the
49 board of education: *Provided, however*, That buses shall
50 be used for extracurricular activities as herein provided
51 only when the insurance provided for by this section shall
52 have been effected;

53 (7) To provide at public expense for insurance against
54 the negligence of the drivers of school buses, trucks, or
55 other vehicles operated by the board; and if the transpor-
56 tation of pupils be let out to contract, then the contract
57 therefor shall provide that the contractor shall carry in-
58 surance against negligence in such an amount as the board
59 shall specify;

60 (8) To employ and to provide in-service training for
61 teacher aides, the training to be in accordance with rules
62 and regulations of the state board;

63 (9) To establish and conduct a self-supporting dormi-
64 tory for the accommodation of the pupils attending a high

65 school or participating in a post high school program and
66 of persons employed to teach therein;

67 (10) The board shall be authorized to provide at public
68 expense, adequate public liability insurance;

69 (11) No policy or contract of public liability insurance
70 providing coverage for public liability shall be purchased
71 as provided herein, unless it shall contain a provision or
72 endorsement whereby the company issuing such policy
73 waives, or agrees not to assert as a defense to any claim
74 covered by the terms of such policy, the defense of gov-
75 ernmental immunity. In any action against the board,
76 its officers, agents or employees, in which there is in
77 effect liability insurance coverage in an amount equal to
78 or greater than the amount sued for, the attorney for
79 such board, the attorney for such insurance carrier, or
80 any other attorney who may appear on behalf of the
81 board, its agents, officers or employees shall not set up
82 the defense of governmental immunity in any such action.

83 "Quasi-public funds" as used herein are defined as any
84 money received by any principal, teacher, student or other
85 person for the benefit of the school system as a result of
86 curricular or noncurricular activities.

87 The board of any district shall expend under such regu-
88 lations as it establishes for each child an amount not to
89 exceed the proportion of all school funds of the district
90 that each child would be entitled to receive if all the funds
91 were distributed equally among all the children of school
92 age in the district upon a per capita basis. No changes in
93 textbooks except those provided by general law shall be
94 made as a result of the passage of this section: *Provided,*
95 That at least one year of instruction in the history of the
96 state of West Virginia shall be given prior to the eighth
97 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
2 district shall have authority to establish and maintain
3 evening classes or night schools, continuation or part-
4 time day schools, and vocational schools, wherever prac-
5 ticable to do so, and shall admit thereto adult persons and

6 all other persons, including persons of foreign birth, but
7 excepting children and youths who are required by law
8 to attend day schools. Boards of education shall have
9 authority to use school funds for the financial support
10 of such schools and to use the schoolhouses and their
11 equipment for such purposes. Any such classes of schools
12 shall be conducted in accordance with the rules and regu-
13 lations of the state board of education.

14 The board of education of any district or independent
15 district shall have authority also to provide for the free,
16 comfortable and convenient use of any school property
17 to promote and facilitate frequent meetings and asso-
18 ciations of the people for discussion, study, recreation and
19 other community activities, and may secure, assemble
20 and house material for use in the study of farm, home
21 and community problems, and may provide facilities
22 for the dissemination of information useful on the farm,
23 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-
2 tendent, may employ such service personnel as is deemed
3 necessary for meeting the needs of the county school
4 system. After four consecutive years of acceptable serv-
5 ice within the district, any employee shall be notified
6 in writing on or before June thirtieth if he is not to be
7 reemployed for the ensuing year and shall have the
8 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 crediting and expending of tuitions accruing therefrom within the general current expense fund of county boards of education.

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
2 most part lie dormant and unused during the summer
3 months, and inasmuch as there are many students who are
4 in need of remedial instruction and others who desire
5 accelerated instruction, it is the purpose of this section
6 to provide for the establishment of a summer school pro-
7 gram, which program is to be separate and apart from
8 the full school term as established by each county.

9 The board of education of any county shall have au-
10 thority to establish a summer school program utilizing the
11 public school facilities and to charge tuition for students
12 who attend such summer school, such tuitions not to ex-
13 ceed in any case the actual cost of operation of such sum-
14 mer school program: *Provided*, That any deserving pupil
15 whose parents, in the judgment of the board, are unable
16 to pay such tuition, may attend without charge. The
17 county board of education shall have the authority to
18 determine the term and curriculum of such summer
19 schools based upon the particular needs of the individual
20 county. The curriculum may include, but is not limited to,
21 remedial instruction, accelerated instruction, and the
22 teaching of manual arts. The term of such summer school
23 program may not be established in such a manner as to
24 interfere with the regular school term.

25 The county boards of education may employ as teachers
26 for this summer school program any certified teacher.
27 Certified teachers employed by the county board of edu-

28 cation to teach in the summer school program shall be
29 paid an amount to be determined by the board and shall
30 enter into a contract of employment in such form as is
31 prescribed by the county board of education.

32 Any funds accruing from such tuitions shall be credited
33 to and expended within the existing framework of the
34 general current expense fund of the county board of
35 education.

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 re-enacted 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
2 guardian in exercising authority over the school, and shall

3 have control of all pupils enrolled in the school from the
4 time they reach the school until they have returned to
5 their respective homes, except that where transportation
6 of pupils is provided, the driver in charge of the school
7 bus or other mode of transportation shall exercise such
8 authority and control over the children while they are in
9 transit to and from the school. Subject to the rules of the
10 state board of education, the teacher shall exclude from
11 the school any pupil or pupils known to have or suspected
12 of having any infectious disease, or any pupil or pupils
13 who have been exposed to such disease, and shall immedi-
14 ately notify the proper health officer, or medical inspector,
15 of such exclusion. Any pupil so excluded shall not be
16 readmitted to the school until such pupil has complied
17 with all the requirements of the rules governing such
18 cases, or has presented a certificate of health signed by
19 the medical inspector or other proper health officer. The
20 teacher shall have authority to suspend any pupil guilty
21 of disorderly, refractory, indecent or immoral conduct,
22 and the district board of education may expel or exclude
23 any such pupil if, on investigation, the conduct of such
24 pupil is found to be detrimental to the progress and the
25 general conduct of the school.

26 For the purpose of this section: (1) "Pupil" shall in-
27 clude any child, youth, or adult who is enrolled in any
28 instructional program or activity conducted under board
29 authorization and within the facilities of or in connection
30 with any program under public school direction:
31 *Provided*, That in the case of adults the pupil-teacher re-
32 lationship shall terminate when the pupil leaves the school
33 or other place of instruction or activity; (2) "teacher"
34 shall include principals, regular teachers, substitute
35 teachers, teacher aides and other school employees or per-
36 sons assigned responsibility for directing or supervising
37 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
2 this state shall receive for such services any part of any

3 free school funds who does not hold a valid teaching
4 certificate licensing him to teach in the public schools for
5 the period of his employment and showing the grade
6 levels and subject areas in which he is qualified to teach:
7 *Provided*, That if a teacher is employed in good faith on
8 the anticipation that he is eligible for a certificate and it
9 is later determined that he was not eligible, the state
10 superintendent of schools may authorize payment by the
11 county board of education to the teacher for a time not
12 exceeding three school months. All certificates shall ex-
13 pire on June thirtieth of the last year of their validity
14 irrespective of the date of issuance. A certificate to teach
15 shall not be granted to any person who is not a citizen of
16 the United States, is not of good moral character and
17 physically, mentally and emotionally qualified to perform
18 the duties of a teacher and who has not attained the age
19 of eighteen years on or before the first day of October of
20 the year in which his certificate is issued; except, that an
21 exchange teacher from a foreign country, or an alien per-
22 son who meets the requirements to teach and who has
23 applied for a permanent residence certificate to become a
24 naturalized citizen, may be granted a provisional permit
25 to teach within the public schools of the state.

26 The term "teacher" as used in this section is intended to
27 include the classroom teacher, school librarian, school
28 principal, school superintendent, assistant superintendent,
29 supervisor of instruction and other persons employed in
30 similar positions.

**§18-7-23. Authority of state superintendent to issue certificates;
kinds of certificates.**

The state superintendent of free schools shall have
2 authority to issue certificates valid in the public schools of
3 the state in accordance with standards and requirements
4 approved by the state board of education. Certificates
5 authorized to be issued include:

6 A professional certificate for teaching in the public
7 schools may be issued for a five-year period to a person
8 who has completed the requirements for a bachelor's de-
9 gree from an approved institution of higher education, in
10 which case, the certificate shall be endorsed for teaching

11 in the elementary or secondary schools or both in ac-
12 cordance with an approved program completed by the
13 applicant. A professional certificate for teaching in the
14 public schools may be issued provisionally, in which case,
15 it shall be valid for a three-year period.

16 Professional certificates, as provided by this section,
17 shall be valid for teaching in grades one through nine, or
18 seven through twelve, or one through twelve, or in any
19 other combination of grades approved by the state board
20 of education in accordance with the program of collegiate
21 training completed.

22 A professional administrative certificate may be issued
23 for a five-year period to an applicant who has completed
24 the requirements for a master's degree in an institution of
25 higher education approved to give graduate training, in
26 which case, the certificate shall be endorsed in accordance
27 with an approved program completed by the applicant.

28 Other teaching certificates and permits may be issued,
29 subject to the approval of the state board, to persons who
30 do not qualify for the professional certificate. Such cer-
31 tificates or permits shall not be given permanent status
32 and persons holding such shall meet renewal require-
33 ments 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 amend-
ed, relating to the amount of contribution to be made by
members of the state teachers' retirement system, and in-
creasing the amount of highest annual salary used in cal-
culating 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.
- 26. Computation of annuities.

§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-

31 division (e) of Plan A of section twenty-six of this article.
32 The amount so fixed shall not exceed twenty dollars, nor
33 shall it in any case exceed one sixth of the annual contri-
34 bution of the member. All supplementary fees shall be
35 deposited in the benefit fund.

36 The aggregate of employer contributions, due and pay-
37 able under this article, shall equal annually the total
38 deductions from the earnable compensation of members
39 required by this section. All employer contributions shall
40 be credited to the employers' accumulation fund, from
41 which fund an amount equalling annually the supple-
42 mentary fees of members shall be transferred to the
43 benefit fund.

44 Payment by an employer to a member of the sum speci-
45 fied in the employment contract minus the amount of the
46 employee's deductions shall be deemed to be a full dis-
47 charge of the employer's contractual obligation as to
48 earnable compensation.

49 Each contributor shall file with the retirement board
50 or with the employer to be forwarded to the retirement
51 board an enrollment form showing his date of birth and
52 other data needed by the retirement board. Upon notice
53 from the retirement board to the employer that a con-
54 tributor has failed to file such forms as prescribed, the
55 employer shall withhold the salary of the contributor
56 until the needed form is filed with the retirement board.

§18-7A-26. Computation of annuities.

Annuitants whose annuities were approved by the re-
2 tirement board prior to the effective date of this act shall
3 be paid the annuities which were approved by the retire-
4 ment board. Annuities approved by the board after the
5 effective date of this act shall be computed as provided
6 herein.

7 Upon establishment of eligibility for a retirement al-
8 lowance, a member shall be granted an annuity which
9 shall be the sum of either Plan A or Plan B, whichever
10 provides the larger annuity.

11 Plan A shall be computed as follows:

12 (a) The actuarial equivalent of the contributions and

13 deposits of the member in his individual account up to the
14 time of his retirement, with regular interest.

15 (b) The actuarial equivalent of the contributions of
16 the employer up to the time of the member's retirement,
17 which shall equal the sum in subdivision (a) of Plan A of
18 this section minus deposits with regular interest on such
19 deposits.

20 (c) Where prior service credit has been granted, an
21 allowance of one and one-half per cent of the member's
22 average final salary multiplied by the number of years of
23 prior service credited to him.

24 (d) The actuarial equivalent of the amounts that
25 would have accumulated under subdivisions (a) and (b)
26 of Plan A, if the member had contributed to his individual
27 account until he was fifty years old, at the annual rate of
28 his past actual contributions, but this subdivision shall
29 apply only as additional income to members who qualify
30 for disability retirement before they are fifty years old.

31 (e) Twelve dollars multiplied by his total service
32 credit as a teacher.

33 (f) The member shall receive in addition to the allow-
34 ances under subdivisions (c) and (d) an amount equal to
35 six dollars multiplied by his total service credit: *Provided*,
36 That the maximum allowance under this subdivision shall
37 be one hundred and ninety-two dollars: *Provided, how-*
38 *ever*, That this subdivision shall be effective on and after
39 July first, one thousand nine hundred fifty-seven.

40 (g) Twelve dollars multiplied by the member's total
41 service credit as a teacher.

42 For the purpose of subdivision (c) in Plan A:

43 (1) An allowance for prior service shall in no case
44 exceed three fifths of the member's average final salary.

45 (2) Average final salary for this purpose shall in no
46 case exceed two thousand five hundred dollars, nor shall
47 it be less than twelve hundred dollars.

48 Plan B shall be computed as follows:

49 (a) One per cent of the member's average salary multi-
50 plied by his total service credit as a teacher. In this para-
51 graph "average salary" shall mean the average of the

52 highest annual salaries received by the member during
53 any five years contained within his last fifteen years
54 of total service credit: *Provided further*, That the high-
55 est annual salary used in this calculation shall be
56 twelve thousand dollars: *And provided further*, That
57 the highest annual salary used in this calculation for
58 members employed by the board of governors of West
59 Virginia University, or by the West Virginia board of
60 education at institutions of higher education under its
61 control, shall be four thousand eight hundred dollars.

62 (b) The actuarial equivalent of the deposits of the
63 member in his individual account up to the time of his
64 retirement, with regular interest.

65 The disability annuities of all teachers retired for dis-
66 ability shall be based upon a disability table prepared by
67 a competent actuary approved by the retirement board.

68 Upon the death of an annuitant who qualified for an
69 annuity as a surviving spouse or because of permanent
70 disability, the estate of the deceased or beneficiary desig-
71 nated for such purpose, shall be paid the difference, if any,
72 between the member's contributions with regular interest
73 thereon, and the sum of the annuity payments.

74 All annuities shall be paid in twelve monthly payments.
75 In computing such monthly payments, fractions of a cent
76 shall be deemed a cent. Such monthly payments shall
77 cease with the payment for the month within which the
78 beneficiary dies, and shall begin with the payment for
79 the month succeeding the month within which the an-
80 nuitant became eligible under this article for the annuity
81 granted; in no case, however, shall an annuitant receive
82 more than four monthly payments which are retroactive
83 after the board receives his application for annuity.

84 In case the retirement board receives data affecting the
85 approved annuity of a retired teacher, the annuity shall
86 be changed in accordance with such data, the change
87 being effective with the payment for the month within
88 which the board received the new data.

89 An annuity application shall be cancelled immediately
90 if the applicant dies before the retirement board approves
91 such application.

92 Any person who has attained the age of sixty-five and
93 who has served at least twenty-five years as a teacher
94 prior to July one, one thousand nine hundred forty-one,
95 shall be eligible for prior service credit and for prior
96 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.

1 The board of education of any county is hereby au-
2 thorized and empowered to create a special building
3 fund and to transfer to such special fund any part or all
4 of the unexpended balance accumulated in the "perma-
5 nent improvement fund," heretofore established by sec-
6 tion fourteen, article nine-b, chapter eighteen of the code
7 of West Virginia, one thousand nine hundred thirty-one,
8 as amended. Such boards of education are further au-
9 thorized and empowered to use and expend the special

10 funds, created under the authority of this section, to con-
 11 struct, erect, furnish and equip a building for educational
 12 purposes suitable for instruction in transfer, terminal,
 13 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
 2 and entered into by the state of West Virginia with any
 3 and all states legally joining therein in accordance with
 4 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:

2 1. Establish and maintain close cooperation and under-
3 standing among executive, legislative, professional edu-
4 cational and lay leadership on a nationwide basis at the
5 state and local levels.

6 2. Provide a forum for the discussion, development,
7 crystalization and recommendation of public policy alter-
8 natives in the field of education.

9 3. Provide a clearinghouse of information on matters
10 relating to educational problems and how they are being
11 met in different places throughout the nation, so that the
12 executive and legislative branches of state government
13 and of local communities may have ready access to the
14 experience and record of the entire country, and so that
15 both lay and professional groups in the field of education
16 may have additional avenues for the sharing of experi-
17 ence and the interchange of ideas in the formation of
18 public policy in education.

19 4. Facilitate the improvement of state and local edu-
20 cational systems so that all of them will be able to meet
21 adequate and desirable goals in a society which requires
22 continuous qualitative and quantitative advance in edu-
23 cational opportunities, methods and facilities.

24 B. It is the policy of this compact to encourage and
25 promote local and state initiative in the development,
26 maintenance, improvement and administration of educa-
27 tional systems and institutions in a manner which will
28 accord with the needs and advantages of diversity among
29 localities and states.

30 C. The party states recognize that each of them has
31 an interest in the quality and quantity of education fur-
32 nished in each of the other states, as well as in the ex-
33 cellence of its own educational systems and institutions,
34 because of the highly mobile character of individuals
35 within the nation, and because the products and services
36 contributing to the health, welfare and economic advance-
37 ment of each state are supplied in significant part by per-
38 sons educated in other states.

Article II. State Defined.

1 As used in this compact, "State" means a state, terri-

2 tory or possession of the United States, the District of
3 Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

1 A. The Education Commission of the states, hereinafter
2 called "the commission," is hereby established. The com-
3 mission shall consist of seven members representing each
4 party state. One of such members shall be the governor;
5 two shall be members of the state legislature selected by
6 its respective houses and serving in such manner as the
7 legislature may determine; and four shall be appointed by
8 and serve at the pleasure of the governor, unless the laws
9 of the state otherwise provide. If the laws of a state
10 prevent legislators from serving on the commission, six
11 members shall be appointed and serve at the pleasure of
12 the governor, unless the laws of the state otherwise pro-
13 vide. In addition to any other principles or requirements
14 which a state may establish for the appointment and
15 service of its members of the commission, the guiding
16 principle for the composition of the membership on the
17 commission from each party state shall be that the mem-
18 bers representing such state shall, by virtue of their
19 training, experience, knowledge or affiliations be in a
20 position collectively to reflect broadly the interests of
21 the state government, higher education, the state edu-
22 cation system, local education, lay and professional, pub-
23 lic and nonpublic educational leadership. Of those ap-
24 pointees, one shall be the head of a state agency or in-
25 stitution, designated by the governor, having responsi-
26 bility for one or more programs of public education. In
27 addition to the members of the commission representing
28 the party states, there may be not to exceed ten non-
29 voting commissioners selected by the steering committee
30 for terms of one year. Such commissioners shall represent
31 leading national organizations of professional educators
32 or persons concerned with educational administration.

33 B. The members of the commission shall be entitled to
34 one vote each on the commission. No action of the com-
35 mission shall be binding unless taken at a meeting at
36 which a majority of the total number of votes on the
37 commission are cast in favor thereof. Action of the com-

38 mission shall be only at a meeting at which a majority
39 of the commissioners are present. The commission shall
40 meet at least once a year. In its bylaws, and subject to
41 such directions and limitations as may be contained
42 therein, the commission may delegate the exercise of any
43 of its powers to the steering committee or the executive
44 director, except for the power to approve budgets or re-
45 quests for appropriations, the power to make policy
46 recommendations pursuant to Article IV and adoption of
47 the annual report pursuant to Article III J.

48 C. The commission shall have a seal.

49 D. The commission shall elect annually, from among
50 its members, a chairman, who shall be a governor, a vice
51 chairman and a treasurer. The commission shall provide
52 for the appointment of an executive director. Such execu-
53 tive director shall serve at the pleasure of the commis-
54 sion, and together with the treasurer and such other per-
55 sonnel as the commission may deem appropriate shall
56 be bonded in such amount as the commission shall deter-
57 mine. The executive director shall be secretary.

58 E. Irrespective of the civil service, personnel or other
59 merit system laws of any of the party states, the execu-
60 tive director subject to the approval of the steering com-
61 mittee shall appoint, remove or discharge such personnel
62 as may be necessary for the performance of the func-
63 tions of the commission, and shall fix the duties and com-
64 pensation of such personnel. The commission in its by-
65 laws shall provide for the personnel policies and pro-
66 grams of the commission.

67 F. The commission may borrow, accept or contract for
68 the services of personnel from any party jurisdiction, the
69 United States, or any subdivision or agency of the afore-
70 mentioned governments, or from any agency of two or
71 more of the party jurisdictions or their subdivisions.

72 G. The commission may accept for any of its purposes
73 and functions under this compact any and all donations,
74 and grants of money, equipment, supplies, materials and
75 services, conditional or otherwise, from any state, the
76 United States, or any other governmental agency, or from
77 any person, firm, association, foundation, or corporation,

78 and may receive, utilize and dispose of the same. Any
79 donation or grant accepted by the commission pursuant
80 to this paragraph or services borrowed pursuant to para-
81 graph F of this article shall be reported in the annual
82 report of the commission. Such report shall include the
83 nature, amount and conditions, if any, of the donation,
84 grant, or services borrowed, and the identity of the donor
85 or lender.

86 H. The commission may establish and maintain such
87 facilities as may be necessary for the transacting of its
88 business. The commission may acquire, hold, and convey
89 real and personal property and any interest therein.

90 I. The commission shall adopt bylaws for the conduct
91 of its business and shall have the power to amend and
92 rescind these bylaws. The commission shall publish its
93 bylaws in convenient form and shall file a copy thereof
94 and a copy of any amendment thereto, with the appro-
95 priate agency or officers in each of the party states.

96 J. The commission annually shall make to the gover-
97 nor and legislature of each party state a report covering
98 the activities of the commission for the preceding year.
99 The commission may make such additional reports as it
100 may deem desirable.

Article IV. Powers.

1 In addition to authority conferred on the commission
2 by other provisions of the compact, the commission shall
3 have authority to:

4 1. Collect, correlate, analyze and interpret informa-
5 tion and data concerning educational needs and resources.

6 2. Encourage and foster research in all aspects of
7 education, but with special reference to the desirable
8 scope of instruction, organization, administration, and
9 instructional methods and standards employed or suit-
10 able for employment in public educational systems.

11 3. Develop proposals for adequate financing of educa-
12 tion as a whole and at each of its many levels.

13 4. Conduct or participate in research of the types re-
14 ferred to in this article in any instance where the com-
15 mission finds that such research is necessary for the

16 advancement of the purposes and policies of this com-
17 pact, utilizing fully the resources of national associations,
18 regional compact organizations for higher education, and
19 other agencies and institutions, both public and private.

20 5. Formulate suggested policies and plans for the im-
21 provement of public education as a whole, or for any
22 segment thereof, and make recommendations with respect
23 thereto available to the appropriate governmental units,
24 agencies and public officials.

25 6. Do such other things as may be necessary or in-
26 cidental to the administration of any of its authority or
27 functions pursuant to this compact.

Article V. Cooperation with Federal Government.

1 A. If the laws of the United States specifically so pro-
2 vide, or if administrative provision is made therefor
3 within the federal government, the United States may be
4 represented on the commission but not to exceed ten
5 representatives. Any such representative or representa-
6 tives of the United States shall be appointed and serve in
7 such manner as may be provided by or pursuant to
8 federal law, and may be drawn from any one or more
9 branches of the federal government, but no such repre-
10 sentative shall have a vote on the commission.

11 B. The commission may provide information and make
12 recommendations to any executive or legislative agency
13 or officer of the federal government concerning the com-
14 mon educational policies of the states, and may advise
15 with any such agencies or officers concerning any matter
16 of mutual interest.

Article VI. Committees.

1 A. To assist in the expeditious conduct of its business
2 when the full commission is not meeting, the commis-
3 sion shall elect a steering committee of thirty-two mem-
4 bers which, subject to the provisions of this compact and
5 consistent with the policies of the commission, shall be
6 constituted and function as provided in the bylaws of the
7 commission. One fourth of the voting membership of the
8 steering committee shall consist of governors, one fourth
9 shall consist of legislators, and the remainder shall con-

10 sist of other members of the commission. A federal repre-
11 sentative on the commission may serve with the steering
12 committee, but without vote. The voting members of
13 the steering committee shall serve for terms of two years,
14 except that members elected to the first steering com-
15 mittee of the commission shall be elected as follows:
16 sixteen for one year and sixteen for two years. The chair-
17 man, vice chairman, and treasurer of the commission
18 shall be members of the steering committee and, any-
19 thing in this paragraph to the contrary notwithstanding,
20 shall serve during their continuance in these offices.
21 Vacancies in the steering committee shall not affect its
22 authority to act, but the commission at its next regularly
23 ensuing meeting following the occurrence of any vacancy
24 shall fill it for the unexpired term. No person shall serve
25 more than two terms as a member of the steering com-
26 mittee: *Provided*, That service for a partial term of one
27 year or less shall not be counted toward the two term
28 limitation.

29 B. The commission may establish advisory and tech-
30 nical committees composed of state, local, and federal
31 officials, and private persons to advise it with respect
32 to any one or more of its functions. Any advisory or
33 technical committee may, on request of the states con-
34 cerned be established to consider any matter of special
35 concern to two or more of the party states.

36 C. The commission may establish such additional com-
37 mittees as its bylaws may provide.

Article VII. Finance.

1 A. The commission shall advise the governor or desig-
2 nated officer or officers of each party State of its budget
3 and estimated expenditures for such period as may be
4 required by the laws of that party state. Each of the
5 commission's budgets of estimated expenditures shall
6 contain specific recommendations of the amount or
7 amounts to be appropriated by each of the party states.

8 B. The total amount of appropriation requests under
9 any budget shall be apportioned among the party states.
10 In making such apportionment, the commission shall
11 devise and employ a formula which takes equitable ac-

12 count of the populations and per capita income levels of
13 the party states.

14 C. The commission shall not pledge the credit of any
15 party states. The commission may meet any of its obli-
16 gations in whole or in part with funds available to it
17 pursuant to Article III G of this compact: *Provided*, That
18 the commission take specific action setting aside such
19 funds prior to incurring an obligation to be met in whole
20 or in part in such manner. Except where the commission
21 makes use of funds available to it pursuant to Article
22 III G thereof, the commission shall not incur any obli-
23 gation prior to the allotment of funds by the party states
24 adequate to meet the same.

25 D. The commission shall keep accurate accounts of
26 receipts and disbursements. The receipts and disburse-
27 ments of the commission shall be subject to the audit and
28 accounting procedures established by its bylaws. How-
29 ever, all receipts and disbursements of funds handled by
30 the commission shall be audited yearly by a qualified
31 public accountant, and the report of the audit shall be
32 included in and become part of the annual report of
33 the commission.

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

38 F. Nothing contained herein shall be construed to
39 prevent commission compliance with laws relating to
40 audit or inspection of accounts by or on behalf of any
41 government contributing to the support of the com-
42 mission.

Article VIII. Eligible Parties; Entry Into and Withdrawal.

1 A. This compact shall have as eligible parties all
2 states, territories, and possessions of the United States,
3 the District of Columbia, and the Commonwealth of
4 Puerto Rico. In respect of any such jurisdiction not hav-
5 ing a governor, the term "Governor," as used in this com-
6 pact, shall mean the closest equivalent official of such
7 jurisdiction.

8 B. Any state or other eligible jurisdiction may enter
9 into this compact and it shall become binding thereon
10 when it has adopted the same, provided that in order to
11 enter into initial effect, adoption by at least ten eligible
12 party jurisdictions shall be required.

13 C. Adoption of the compact may be either by enact-
14 ment thereof or by adherence thereto by the governor:
15 *Provided*, That in the absence of enactment, adherence
16 by the governor shall be sufficient to make his state a
17 party only until December 31, 1967. During any period
18 when a state is participating in this compact through
19 gubernatorial action, the governor shall appoint those
20 persons who, in addition to himself, shall serve as the
21 members of the commission from his state, and shall
22 provide to the commission an equitable share of the finan-
23 cial support of the commission from any source available
24 to him.

25 D. Except for a withdrawal effective on December 31,
26 1967, in accordance with paragraph C of this article, any
27 party state may withdraw from this compact by enacting
28 a statute repealing the same, but no such withdrawal
29 shall take effect until one year after the governor of the
30 withdrawing state has given notice in writing of the
31 withdrawal to the governors of all other party states.
32 No withdrawal shall affect any liability already incurred
33 by or chargeable to a party state prior to the time of
34 such withdrawal.

Article IX. Construction and Severability.

1 This compact shall be liberally construed so as to
2 effectuate the purposes thereof. The provisions of this
3 compact shall be severable and if any phrase, clause,
4 sentence or provision of this compact is declared to be
5 contrary to the constitution of any state or of the United
6 States, or the application thereof to any government,
7 agency, person or circumstance is held invalid, the
8 validity of the remainder of this compact and the applica-
9 bility thereof to any government, agency, person or cir-
10 cumstance shall not be affected thereby. If this compact
11 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.

* * *

§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
 2 necessary to carry out the provisions of this chapter,
 3 article, and sections.

§18-10D-7. Severability clause.

1 If for any reason any section or provision of this article
 2 shall be held to be unconstitutional or invalid, such uncon-
 3 stitutionality or invalidity shall not affect the remainder
 4 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, chap-
 ter 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
 2 United States Army reserve officers training corps and
 3 United States Air Force reserve officers training corps
 4 programs for male students of suitable age in the univer-
 5 sity. Students enrolling in either of these programs shall
 6 serve for the time and according to such regulations as the
 7 board shall prescribe, and shall be entitled to such special
 8 privileges and immunities as the board may determine.
 9 The board of governors shall have authority to accept ap-

10 appropriations, materials, and other benefits from the fed-
11 eral government on account of any federal law providing
12 for aid to the West Virginia University for giving instruc-
13 tion in military science, and to cooperate as far as prac-
14 ticable with the federal government for such purposes.

CHAPTER 67

(Senate Bill No. 78—By Mr. McCourt)

[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.

Section

9b. Establishment and operation of branch colleges.

§18-11-9b. Establishment and operation of branch colleges.

The board of governors is hereby authorized and em-
2 powered to continue to operate and maintain any branch
3 colleges it has established under the authority of section
4 six-a, article one-a, chapter twenty-five of this code, and
5 to establish, maintain and operate such other branch col-
6 leges as it may deem advisable: *Provided*, That programs
7 of education offered in such branch colleges, whether

8 established or continued hereunder, shall not exceed two-
9 year liberal arts programs and/or terminal occupational
10 education and adult education programs.

11 No funds shall be expended by the board for the opera-
12 tion or maintenance of, or capital improvements for, any
13 such branch college, whether established or continued
14 hereunder, except funds provided by student fees, fed-
15 eral grants, county boards of education, other local gov-
16 ernmental bodies, corporations or persons, or funds ap-
17 propriated by the Legislature expressly for such purpose
18 or purposes. Except for the use of funds provided by
19 student fees, federal grants or those appropriated by the
20 Legislature expressly for such purposes, the burden of
21 providing satisfactory and acceptable capital improve-
22 ments for such colleges shall be upon such governmental
23 bodies, corporations or persons, and the board may enter
24 into memoranda of agreements with such governmental
25 bodies, corporations, or persons for the use of local plant
26 facilities and/or grants or contributions toward the cost
27 of the acquisition or construction of such facilities. Such
28 local governmental bodies may convey capital improve-
29 ments, or lease the same without monetary consideration,
30 to the board for use as a branch college, and the board
31 may accept such facilities, or the use or lease thereof, or
32 such grants or contributions, for such purpose from such
33 governmental bodies, the federal government or any cor-
34 poration or person.

35 The board may fix enrollment, tuition and other fees to
36 be charged students enrolling in such branch colleges,
37 retaining the same in a revolving fund for the partial or
38 full support of the branch at which they were collected,
39 including the making of capital improvements.

40 The board may also charge any one or more of the fol-
41 lowing fees at such branches: (1) Health service fees;
42 (2) infirmary fees; and (3) student activities, recreational,
43 athletic and extracurricular fees. All fees collected under
44 (1), (2) and (3) shall be paid into special funds and shall
45 be used only for the purposes for which they were col-
46 lected.

CHAPTER 68

(Senate Bill No. 71—By Mr. Moreland and Mr. McCourt)

[Passed March 10, 1967; in effect July 1, 1967. Approved by the Governor.]

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

17 eleven-b of this chapter shall be paid into such special
 18 fund for so long as any such bonds remain outstanding
 19 and unpaid.

CHAPTER 69

(Senate Bill No. 79—By Mr. Carson, Mr. President, and
 Mr. Brotherton)

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

AN ACT to amend and reenact section ten-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the board of governors of West Virginia University to establish, operate and maintain graduate centers.

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

16 Legislature expressly for such purpose or purposes. Ex-
17 cept for the use of funds provided by student fees, fed-
18 eral grants or those appropriated by the Legislature
19 expressly for such purposes, the burden of providing
20 satisfactory and acceptable capital improvements for
21 such centers shall be upon such state agencies, local gov-
22 ernmental bodies, corporations or persons, and the board
23 may enter into memoranda of agreements with such state
24 agencies, local governmental bodies, corporations or per-
25 sons for the use of plant facilities and/or grants or con-
26 tributions toward the cost of the acquisition or construc-
27 tion of such facilities. Such state agencies and local gov-
28 ernmental bodies may convey capital improvements, or
29 lease the same without monetary consideration, to the
30 board for use as a graduate center, and the board may
31 accept such facilities, the use or lease thereof, or such
32 grants or contributions, for such purpose from such gov-
33 ernmental bodies, the federal government or any corpora-
34 tion or person.

35 The board may fix enrollment, tuition and other fees
36 to be charged students enrolling in such graduate centers,
37 and retain the same in a special fund for the partial or
38 full support of the center at which they were collected,
39 including the making of capital improvements. The board
40 may also charge any one or more of the following fees
41 at such centers: (1) Health service fees; (2) infirmary
42 fees; and (3) student activities, recreational, athletic and
43 extracurricular fees. All fees collected under (1), (2)
44 and (3) shall be paid into special funds and shall be used
45 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

23 or parking lot for storage until called for by the owner or
24 his agent. In such case, the owner shall be liable for the
25 reasonable cost of such removal and storage, and until
26 payment of such cost the garage or parking lot operator
27 may retain possession of the vehicle subject to a lien for
28 the amount due. The garage or parking lot operator may
29 enforce his lien for towing and storage in the manner
30 provided in section fourteen, article eleven, chapter
31 thirty-eight of this code for the enforcement of other
32 liens.

33 The board shall have authority to charge fees for the
34 use of parking facilities under its control. All moneys col-
35 lected for such use shall be paid into a special fund which
36 is hereby created in the state treasury. The moneys in
37 such fund shall be used first to pay the cost of maintaining
38 and operating such facilities, but any excess not needed
39 for this purpose may be used to finance the construction
40 of additional parking facilities or the acquisition by lease
41 or purchase of additional parking areas. The board may
42 use the moneys in such special fund to finance the costs
43 of the above purposes on a cash basis, or may from time
44 to time issue revenue bonds of the state as provided in
45 this section to finance such costs and pledge all or any part
46 of the moneys in such special funds for the payment of
47 the principal of and interest on such revenue bonds, and
48 for reserves therefor. Whenever parking facilities are
49 provided in any university building financed in whole or
50 in part by the issue of revenue bonds otherwise authorized
51 by law, the net revenue derived from the parking facilities
52 included in such building may be used or pledged to meet
53 the sinking fund requirements of the bonds issued for con-
54 struction of the building. The pledge of moneys in such
55 special fund for any revenue bonds shall be a prior and
56 superior charge on such special fund over the use of any
57 of the moneys in such fund to pay for the cost of any of
58 such purposes on a cash basis.

59 Such revenue bonds may be authorized and issued from
60 time to time by the board of governors to finance in whole
61 or in part the purposes provided in this section in an
62 aggregate principal amount not exceeding the amount
63 which the board shall determine can be paid as to both

64 principal and interest and reasonable margins for a re-
65 serve therefor from the moneys in such special fund.

66 The issuance of such bonds shall be authorized by a
67 resolution adopted by the board, and such revenue bonds
68 shall bear such date or dates, mature at such times not
69 exceeding forty years from their respective dates; bear
70 interest at such rate or rates not exceeding six per centum
71 per annum; be in such form either coupon or registered,
72 with such exchangeability and interchangeability privi-
73 leges; be payable in such medium of payment and at such
74 place or places, within or without the state; be subject to
75 such terms of prior redemption at such prices not exceed-
76 ing one hundred six per centum of the principal amount
77 thereof; and shall have such other terms and provisions
78 as the board shall determine. Such revenue bonds shall
79 be signed by the governor and by the president of the
80 board of governors, under the great seal of the state,
81 attested by the secretary of state, and the coupons at-
82 tached thereto shall bear the facsimile signature of the
83 president of the board. Such revenue bonds shall be sold
84 in such manner as the board may determine to be for the
85 best interests of the state, such sale to be made at a price
86 not lower than a price which will show a net return of
87 not more than six per centum per annum to the purchaser
88 upon the amount paid therefor computed to the stated
89 maturity dates of such revenue bonds without regard to
90 any right of prior redemption.

91 The board may enter into trust agreements with banks
92 or trust companies, within or without the state, and in
93 such trust agreements or the resolutions authorizing the
94 issuance of such bonds may enter into valid and legally
95 binding covenants with the holders of such revenue bonds
96 as to the custody, safeguarding and disposition of the pro-
97 ceeds of such revenue bonds, the moneys in such special
98 fund, sinking funds, reserve funds, or any other moneys
99 or funds; as to the rank and priority, if any, of different
100 issues of revenue bonds under the provisions of this sec-
101 tion; and as to any other matters or provisions which are
102 deemed necessary and advisable by the board in the best
103 interests of the state and to enhance the marketability of
104 such revenue bonds.

105 Such revenue bonds shall be and constitute negotiable
106 instruments under the law merchant and the negotiable
107 instruments law of the state; shall, together with the in-
108 terest thereon, be exempt from all taxation by the state
109 of West Virginia, or by any county, school district, mu-
110 nicipality or political subdivision thereof; and such reve-
111 nue bonds shall not be deemed to be obligations or debts
112 of the state, and the credit or taxing power of the state
113 shall not be pledged therefor, but such revenue bonds
114 shall be payable only from the revenue pledged therefor
115 as provided in this section.



CHAPTER 71

(House Bill No. 794—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 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
2 the state are hereby required to register the names of
3 all deaf persons and blind persons under twenty-one
4 years of age in their respective counties, with the degree
5 and cause of deafness and blindness in each case, as far

6 as can be ascertained from the heads of the families or
7 from other persons whom the county assessors may con-
8 veniently consult, their ages, the names of their parents
9 or guardians, their postoffice addresses, and such other
10 facts as may be useful in making the institution
11 efficient in the education of the deaf and of the blind.
12 They shall complete the registration on or before June
13 one of each year and forward their report to the state
14 superintendent of schools and to the superintendent of
15 the West Virginia schools for the deaf and the blind
16 on or before July one of each year. The superintendent
17 shall immediately communicate with the parents or
18 guardians of all the deaf persons and the blind persons
19 mentioned in the assessor's report, with a view of their
20 admission as pupils into said schools.

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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.

1 A county board of education, the teachers' retirement
2 board, the West Virginia board of education and the board
3 of governors of West Virginia University and their
4 agencies may provide by written agreement between any
5 such board or agency and any teacher or other employee,
6 to reduce the cash salary payable to such teacher or other
7 employee, and, in consideration thereof, to pay an amount
8 equal to the amount of such reduction to an insurance
9 company licensed to do business in this state as premi-
10 ums on an annuity contract owned by such teacher
11 or other employee, which annuity contract shall be in
12 such form and upon such terms as will qualify the pay-
13 ments thereon for tax deferment under the United States
14 Internal Revenue Code, or to pay an amount equal to the
15 amount of such reduction as voluntary deposits to the
16 teachers' retirement board as provided by section eight-
17 een, article seven-a, chapter eighteen of this code. The
18 amount of such reduction shall not exceed the amount
19 excludible from income under Section 403(b) of the
20 United States Internal Revenue Code, and amendments
21 and successor provisions thereto, and shall be considered
22 a part of the teacher's or employee's salary for all pur-
23 poses other than federal and state income tax.

24 The purchase of such tax sheltered annuity for a teacher
25 or other employee by a board of education, the teachers'
26 retirement board, the West Virginia board of education
27 and the board of governors of West Virginia University
28 and their agencies shall impose no liability nor respon-
29 sibility whatsoever on said boards or members thereof
30 except to show that the payments have been remitted for
31 the purposes for which deducted.

CHAPTER 73

(Senate Bill No. 196—By Mr. McKown and Mr. Smith)

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

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.

§25-1A-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-

17 plies and equipment, storage, and other operating ex-
18 penses, to the end that the prices charged shall be com-
19 mensurate with the total cost to the state of operating the
20 book store.

21 All moneys derived from the operation of the store shall
22 be paid into a special revenue fund as provided in sec-
23 tion two, article two, chapter twelve of this code. The
24 governing board shall, subject to the approval of the
25 governor, fix and from time to time change the amount
26 of the revolving fund necessary for the proper and effi-
27 cient operation of each book store. Whenever at the end
28 of any fiscal year the unencumbered balance in the book
29 store special revenue fund shall exceed the amount of
30 the revolving fund so established, the excess shall be
31 transferred by the state auditor to the general revenue
32 fund and become a part of the general revenue of the
33 state.

34 Moneys derived from the operation of the book store
35 shall be used first to replenish the stock of goods and to
36 pay the costs of operating and maintaining the store.
37 From any balance in the Marshall University book store
38 fund not needed for operation and maintenance and re-
39 plenishing the stock of goods, the West Virginia board of
40 education shall have authority to expend a sum not to
41 exceed two hundred thousand dollars for the construction
42 of quarters to house the book store in the university center
43 at Marshall University. Until such quarters for housing
44 the book store are completed, the West Virginia board of
45 education and the governor shall take this authorization
46 into account in fixing the amount of the revolving fund
47 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 thousand 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 election 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
2 or special session at the courthouse of the county on the
3 first Tuesday of the month next preceding the date on
4 which any election is to be held and appoint three com-
5 missioners and two clerks to hold the election in each
6 precinct in the county. In primary and general elections
7 and in any special election in which political party can-
8 didates are to be nominated or elected, the election com-
9 missioners and clerks shall be selected from the two po-
10 litical parties which at the last preceding general election
11 cast the highest and the second highest number of votes
12 in this state. For every precinct in which there are three
13 hundred, but not more than four hundred, registered
14 voters, there may be two boards of election officers, and
15 for all precincts in which there are more than four hun-
16 dred registered voters, there shall be two boards of elec-
17 tion officers, and where two boards are used, each board
18 shall consist of three election commissioners and two poll
19 clerks, one of which boards shall be designated the "re-
20 ceiving board" and the other the "counting board" and
21 not more than two commissioners and one poll clerk of

22 each board shall be appointed from the same political
23 party: *Provided*, That for any special election for the pur-
24 pose of taking the sense of the voters on the question of
25 calling a constitutional convention, and for any special
26 election to elect members of a constitutional convention,
27 and for any special election to ratify or reject the pro-
28 posals, acts and ordinances of a constitutional convention,
29 and for any special election where there are only public
30 questions to be voted upon, there shall be but one board of
31 election officials in each precinct, consisting of three com-
32 missioners and two poll clerks. If, at any time before or
33 during the session of the county court, the county ex-
34 ecutive committee of either or both of the political parties,
35 from which commissioners and clerks of election are to
36 be selected, shall file with or present to the county court
37 a writing signed by them, or by the chairman or secre-
38 tary of such committee on their behalf, requesting the
39 appointment of a member and of one clerk of each board
40 of the political party for which such committee, chairman
41 or secretary is acting, and designating persons who are
42 qualified under this article for such appointment for each
43 election precinct in the county, the county court shall
44 appoint the persons so designated.

45 The county court shall by mail notify all commissioners
46 and poll clerks of their appointment, and include with
47 such notice an appropriate form for each person so ap-
48 pointed to return indicating whether or not he will serve
49 as such commissioner or poll clerk. It shall be the duty of
50 all persons so appointed to immediately return said form
51 to the county court. In the event any of the persons so
52 appointed refuse to serve as such commissioners or poll
53 clerks, the county court shall immediately notify the
54 chairman of the county executive committee of the po-
55 litical party from which such commissioners and poll
56 clerks are to be selected. The chairman of the political
57 committee so notified shall recommend the person or per-
58 sons to be appointed to replace those declining to serve
59 and it shall be the duty of the county court to appoint the
60 person or persons so recommended.

61 If any person appointed receiving commissioner or
62 clerk of election shall fail to appear at the voting place

63 at the hour for opening the polls, the remaining commis-
64 sioner or commissioners of election of the political party
65 to which the absentee belongs shall select another com-
66 missioner or clerk, as the case may be, of such political
67 party. But if the qualified voters of his party present at
68 the polls shall nominate a voter of his party qualified to
69 act under the provisions of this section, such nominee
70 shall be appointed. If none of the receiving commissioners
71 of the election or poll clerks shall appear at the voting
72 place at the hour appointed for opening the polls, the
73 qualified voters present, being at least ten in number, of
74 the political party which cast the highest number of votes
75 in the county at the last preceding election, shall select
76 two commissioners and one clerk and those of the po-
77 litical party which cast the next highest number of votes
78 in the county at such election shall select one commis-
79 sioner and one clerk of the receiving board of such pre-
80 cinct, and the persons so selected shall constitute the re-
81 ceiving board for the precinct. A vacancy or vacancies
82 on the counting board shall be filled in the manner herein
83 provided for filling a vacancy or vacancies on the re-
84 ceiving board, except that such vacancy or vacancies shall
85 be determined and filled as of the hour appointed in this
86 chapter for the counting board to attend at the polls. Any
87 commissioner of election acting at any election precinct
88 is hereby empowered and authorized to administer oaths
89 and to take and certify affidavits in relation to any mat-
90 ter or thing required or permitted to be done by any of
91 the provisions of this article in conducting and holding
92 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 amended, 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.

CHAPTER 76

(Senate Bill No. 359—By Mr. Martin)

[Passed March 11, 1967; in effect April 15, 1967. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chap-

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 transfers 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 Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve, to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

Section

12. Distribution of assets in satisfaction of pecuniary bequests; authority 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
 2 directs the fiduciary to satisfy wholly or partly in kind

3 a pecuniary bequest or transfer in trust of a pecuniary
4 amount, unless the instrument shall otherwise expressly
5 provide, the assets selected by the fiduciary for that pur-
6 pose shall be valued at their respective values on the
7 date or dates of their distribution.

8 (b) Whenever a fiduciary under the provisions of a
9 will or other governing instrument is required to satisfy
10 a pecuniary bequest or transfer in trust in favor of the
11 testator's or donor's spouse and is authorized to satisfy
12 such bequest or transfer by selection and distribution of
13 assets in kind, and the will or other governing instrument
14 further provides that the assets to be so distributed shall
15 or may be valued by some standard other than their fair
16 market value on the date of distribution, the fiduciary,
17 unless the will or other governing instrument otherwise
18 specifically directs, shall distribute assets, including cash,
19 fairly representative of appreciation or depreciation in
20 the value of all property available for distribution in
21 satisfaction of such pecuniary bequest or transfer. This
22 section shall not apply to prevent a fiduciary from carry-
23 ing into effect the provisions of the will or other govern-
24 ing instrument that the fiduciary, in order to implement
25 such a bequest or transfer, must distribute assets, in-
26 cluding cash, having an aggregate fair market value at
27 the date or dates of distribution amounting to no less
28 than the amount of the pecuniary bequest or transfer as
29 finally determined for federal estate tax purposes.

30 (c) Any fiduciary having discretionary powers under
31 a will or other governing instrument with respect to the
32 selection of assets to be distributed in satisfaction of a
33 pecuniary bequest or transfer in trust in favor of the
34 testator's or donor's spouse shall be authorized to enter
35 into agreements with the commissioner of internal rev-
36 enue of the United States of America and other taxing
37 authorities requiring the fiduciary to exercise the fidu-
38 ciary's discretion so that cash and other properties dis-
39 tributed in satisfaction of such bequest or transfer in
40 trust will be fairly representative of the appreciation or
41 depreciation in value of all property then available for
42 distribution in satisfaction of such bequest or transfer
43 in trust and any such agreement heretofore entered into

44 after April one, one thousand nine hundred sixty-four, is
45 hereby validated. Any such fiduciary shall be authorized
46 to enter into any other agreement not in conflict with the
47 express terms of the will or other governing instrument
48 that may be necessary or advisable in order to secure for
49 federal estate tax purposes the appropriate marital de-
50 duction available under the internal revenue laws of the
51 United States of America, and to do and perform all acts
52 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

3 loan or invest money entrusted to him as such, may,
4 without any order of any court, invest the same or any
5 part thereof in any of the following securities, and with-
6 out liability for any loss resulting from investments there-
7 in: *Provided*, That such fiduciary shall exercise the judg-
8 ment and care under the circumstances then prevailing
9 which men of prudence, discretion and intelligence exer-
10 cise in the management of their own affairs, not in regard
11 to speculation, but in regard to the permanent disposition
12 of their funds, considering the probable income as well as
13 the probable safety of their capital:

14 (a) In bonds or interest-bearing notes or obligations of
15 the United States, or those for which the faith of the
16 United States is distinctly pledged to provide for the pay-
17 ment of the principal and interest thereof, including, but
18 not by way of limitation, bonds or debentures issued
19 under the "Federal Farm Loan Act," debentures issued
20 by "Banks for Cooperatives" under the "Farm Credit Act
21 of One Thousand Nine Hundred Thirty-three," as amend-
22 ed, and debentures issued by the Federal National
23 Mortgage Association; and in bonds, interest-bearing notes
24 and obligations issued, guaranteed or assumed by the In-
25 ternational Bank for Reconstruction and Development or
26 by the Inter-American Development Bank;

27 (b) In bonds or interest-bearing notes or obligations
28 of this state;

29 (c) In bonds of any state of the United States which
30 has not within ten years previous to the making of such
31 investment defaulted in the payment of any part of either
32 principal or interest on any of its bonds issued by author-
33 ity of the legislature of such state;

34 (d) In the bonds or interest-bearing notes or obliga-
35 tions of any county, district, school district or independent
36 school district, municipality, or any other political division
37 of this state that have been issued pursuant to the au-
38 thority of any law of this state, since the ninth day of
39 May of the year one thousand nine hundred seventeen;

40 (e) In bonds and negotiable notes secured by first
41 mortgage or first trust deed upon improved real estate in
42 this state where the amount secured by such mortgage or

43 trust deed shall not at the time of making the same exceed
44 eighty per cent of the assessed value, or sixty-six and two-
45 thirds per cent of the appraised value as determined by
46 wholly disinterested and independent appraisers, which-
47 ever value shall be the higher, of the real estate covered
48 by such mortgage or trust deed, and when such mortgage
49 or trust deed is accompanied by a satisfactory abstract of
50 title, certificate of title, or title insurance policy, showing
51 good title in the mortgagor when making such mortgage
52 or trust deed, and by a fire insurance policy in an old line
53 company with loss, if any, payable to the mortgagee or
54 trustee as his interest may appear: *Provided,*
55 That the rate of interest upon the above enumerated
56 securities in this subdivision (e), in which such invest-
57 ments may be made, shall not be less than two per cent,
58 nor more than seven per cent, per annum;

59 (f) In savings accounts and time deposits of bank or
60 trust companies to the extent that such deposits are in-
61 sured by the federal deposit insurance corporation, or by
62 any other similar federal instrumentality that may be
63 hereafter created, provided there shall be such an instru-
64 mentality in existence and available for the purpose, or,
65 by bonds of solvent surety companies: *Provided,*
66 That the rate of interest upon such savings accounts or
67 time deposits shall not be less than the rate paid other
68 depositors in such bank or trust company;

69 (g) In shares of state building and loan associations,
70 or federal savings and loan associations, to the extent
71 that such shares are insured by the federal savings and
72 loan insurance corporation, or by any other similar federal
73 instrumentality that may be hereafter created, provided
74 that there shall be such an instrumentality in existence
75 and available for the purpose, or by bonds of solvent
76 surety companies: *Provided,* That the dividend rate
77 upon such shares shall not be less than the rate paid to
78 other shareholders in such associations;

79 (h) In other securities of corporations organized and
80 existing under the laws of the United States or of the
81 District of Columbia or any state of the United States
82 including, but not by way of limitation, bonds, debentures,

83 notes, equipment trust obligations or other evidences of
84 indebtedness, and shares of common and preferred stocks
85 of such corporations and securities of any open end or
86 closed end management type investment company or in-
87 vestment trust registered under the "Federal Investment
88 Company Act" of one thousand nine hundred forty, as
89 from time to time amended, which men of prudence, dis-
90 cretion and intelligence acquire or retain for their own
91 account, provided, and upon conditions, however, that:

92 (1) No investment shall be made pursuant to the pro-
93 visions of this subdivision (h) which, at the time such in-
94 vestment shall be made, will cause the aggregate market
95 value thereof to exceed fifty per cent of the aggregate
96 market value at that time of all of the property of the fund
97 held by such fiduciary. Notwithstanding the aforesaid
98 percentage limitation the cash proceeds of the sale of
99 securities received or purchased by a fiduciary and made
100 eligible by this subdivision (h) may be reinvested in any
101 securities of the type described in this subdivision (h).

102 (2) No bonds, debentures, notes, equipment trust obli-
103 gations or other evidence of indebtedness of such corpora-
104 tions shall be purchased under authority of this subdivision
105 (h) unless such obligations, if other than issues of a com-
106 mon carrier subject to the provisions of section twenty-a
107 of the "Interstate Commerce Act," as amended, shall be
108 obligations issued, guaranteed or assumed by corporations
109 which have any securities currently registered with the
110 securities and exchange commission.

111 (3) No common or preferred stocks, other than bank
112 and insurance company stocks, shall be purchased under
113 authority of this subdivision (h) unless currently fully
114 listed and registered upon an exchange registered with
115 the securities and exchange commission as a national se-
116 curities exchange. No sale or other liquidation of any
117 investment shall be required solely because of any change
118 in the relative market value of those investments made
119 eligible by this subdivision (h) and those made eligible
120 by the preceding subdivisions of this section. In deter-
121 mining the aggregate market value of the property of a
122 fund and the percentage of a fund to be invested under

123 the provisions of this subdivision, a fiduciary may rely
124 upon published market quotations as to those investments
125 for which such quotations are available, and upon such
126 valuations of other investments as in the fiduciary's best
127 judgment seem fair and reasonable according to available
128 information.

129 Trust funds received by executors, administrators,
130 guardians, curators, committees, trustees and other fiduci-
131 aries may be kept invested in the securities originally
132 received by them, unless otherwise ordered by a court
133 having jurisdiction of the matter, as hereinafter provided,
134 or unless the instrument under which the trust was
135 created shall direct that a change of investment be made,
136 and any such fiduciary shall not be liable for any loss
137 that may occur by depreciation of such securities.

138 This section shall not apply where the instrument creat-
139 ing the trust, or the last will and testament of any testa-
140 tor, or any court having jurisdiction of the matter,
141 specially directs in what securities the trust funds shall
142 be invested, and every such court is hereby given power
143 specially to direct by order or orders, from time to time,
144 additional securities in which trust funds may be invested,
145 and any investment thereof made in accordance with any
146 such special direction shall be legal, and no executor,
147 administrator, guardian, curator, committee, trustee or
148 other fiduciary shall be held for any loss resulting in any
149 such case.

§44-6-6. Establishment of common trust funds; investments.

Any bank or trust company qualified to act as fiduciary
2 in this state may establish common trust funds for the
3 purpose of furnishing, or making available, investments to
4 itself as fiduciary, or to itself and others, as cofiduciaries,
5 and may, as such fiduciary or cofiduciary, invest funds
6 which it lawfully holds for investment in interests in such
7 common trust funds, if such investment is not prohibited
8 by the instrument, judgment, decree or order creating its
9 fiduciary status or relationship, and if, in the case of
10 cofiduciaries, the bank or trust company procures the
11 consent of its cofiduciaries to such investment: *Provided,*
12 That unless each fiduciary acquiring or holding any inter-

13 est in any common trust fund is specifically permitted by
14 the instrument, judgment, decree or order creating the
15 fiduciary status or relationship to invest in securities other
16 than those described in section two of this article, or any
17 amendments or reenactments thereof, such common trust
18 funds shall be invested only in those securities described
19 in said section two and subject to the limitations and con-
20 ditions of said section, and any amendments or reenact-
21 ments thereof, except that a common trust fund or funds
22 may be established for the purchase of securities of the
23 type described in said section two without regard to the
24 percentage limitation specified in subparagraph (1) of
25 subdivision (h) of said section two, in which event the
26 funds invested by a fiduciary in interests in such last-
27 mentioned common trust fund or funds shall not exceed
28 the percentage limitation specified in said subparagraph
29 (1) of subdivision (h) unless a larger investment is per-
30 mitted by the instrument, judgment, decree or order
31 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-

erty, 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.

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.

Section

1. By circuit court or judge, for trustee in deed, will or other writing; appointment of ancillary trustee under certain circumstances.

§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,
2 one or more of the trustees, in any will, deed or other
3 writing, die or remove beyond the limits of this state, or
4 decline to accept the trust, or having accepted, resign the
5 same, or refuse to act as trustee, the circuit court of the
6 county in which such will was admitted to probate, or
7 such deed or other writing is or may be recorded, or the
8 judge of such court in vacation, may, on motion of any
9 party interested, and upon satisfactory evidence of such
10 death, removal, declination, resignation, or refusal, ap-
11 point a trustee or trustees in the place of the trustee or
12 trustees named in such instrument and so dying, re-
13 moving, declining, resigning or refusing.

14 If any such trust, other than a security trust, include
15 real property situate in this state, and the trustee, or,
16 if there be more than one trustee, one or more of the
17 trustees, appointed by or under the will, deed or other
18 writing creating such trust and required under the pro-
19 visions thereof to act in respect of such real property,
20 be a corporation or association chartered under the laws
21 of any other state or jurisdiction which is not qualified
22 under the laws of this state to hold property or transact
23 business in this state, and refuses or is unable to so
24 qualify, such court, or the judge thereof in vacation,

25 may in like manner appoint an ancillary trustee of such
 26 trust to act with respect to such real property situate in
 27 this state pursuant to, and with all the powers and
 28 authorities granted to the trustee or trustees of such trust
 29 by, the provision of the will, deed or other writing
 30 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
 2 fire marshal shall have authority, at any time, in the per-
 3 formance of the duties imposed by this article, to enter
 4 and examine any building or premises where any fire has

5 occurred, or other buildings or premises adjoining or near
6 the same, or any vehicle or vehicles where any fire has
7 occurred.



CHAPTER 81

(Senate Bill No. 127—By Mr. Brotherton)



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



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
2 any means or methods of communication aid or abet in the
3 making or turning in of, any alarm of fire which he knows
4 to be false at the time of making such alarm.

5 Any person who violates the provisions of this section
6 shall be guilty of a misdemeanor, and, upon conviction
7 thereof, shall be punished for a first offense by a fine of
8 not more than one hundred dollars or imprisonment for
9 not more than thirty days or by both such fine and im-
10 prisonment, and for a second and each subsequent offense
11 by a fine of not less than one hundred dollars nor more
12 than five hundred dollars or by imprisonment for not less

- 13 than ninety days nor more than one year, or by both such
 14 fine and imprisonment.

CHAPTER 82

(House Bill No. 668—By Mr. Myles and Mr. Seibert)

[Passed February 18, 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, to be designated article one-f, 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 authorizing 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-f, 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-

3 tiated by representatives of the commonwealth of Penn-
4 sylvania and the state of West Virginia, is hereby ap-
5 proved, ratified, adopted, enacted into law, and entered
6 into by the state of West Virginia as a party thereto and
7 signatory state, namely:

WHEELING CREEK WATERSHED PROTECTION AND FLOOD
PREVENTION DISTRICT COMPACT

Article I. Recitation of Reasons for Compact.

1 Whereas, Wheeling Creek, a tributary of the Ohio
2 River, arises in Pennsylvania, flows through Washington
3 and Greene Counties of that commonwealth, enters the
4 State of West Virginia, flows through Marshall and Ohio
5 Counties, West Virginia, and empties into the Ohio River
6 at Wheeling, West Virginia; and

7 Whereas, The inhabitants of Marshall and Ohio Coun-
8 ties, West Virginia, and, also, but to a much lesser de-
9 gree, the inhabitants of Washington and Greene Coun-
10 ties, Pennsylvania, living along Wheeling Creek have over
11 the years experienced loss of life and property from
12 flooding of that stream; and

13 Whereas, Surveys made by the Soil Conservation Serv-
14 ice of the United States Department of Agriculture indi-
15 cate that the inhabitants of the four counties named can
16 best be protected from the flooding of Wheeling Creek by
17 flood prevention dams constructed thereon with some of
18 the dams being located on the upper reaches of the stream
19 and its tributaries in the Commonwealth of Pennsylvania;
20 and

21 Whereas, The federal Watershed Protection and Flood
22 Prevention Act of 1954, as amended, authorizes, under
23 certain circumstances, federal assistance to local organi-
24 zations in preparing and carrying out undertakings for
25 flood prevention and the conservation, development,
26 utilization and disposal of water in watershed or sub-
27 watershed areas; and

28 Whereas, No local organization within the meaning
29 of the federal act aforesaid established by or organized
30 under the laws of West Virginia is competent under state
31 laws to acquire land for, construct, and operate with or
32 without federal assistance flood prevention facilities in

33 the Commonwealth of Pennsylvania, and it appears that
34 no such local organization established by or organized
35 under the laws of the Commonwealth of Pennsylvania
36 can justify the expenditure of locally raised funds to
37 construct and operate flood prevention facilities which
38 will benefit primarily the inhabitants of the neighboring
39 State of West Virginia; and

40 Whereas, Facilities erected on the upper reaches of
41 Wheeling Creek and its tributaries for flood control and
42 prevention can nevertheless have a recreational value
43 for the citizens of both West Virginia and Pennsylvania
44 and particularly the citizens of Ohio and Marshall Coun-
45 ties, West Virginia, and Washington and Greene Counties,
46 Pennsylvania; accordingly, for purposes of promoting
47 that potential, as well as providing a vehicle or means
48 whereby federal assistance may be enlisted for the pro-
49 tection of citizens of her neighboring State of West Vir-
50 ginia from the flooding of Wheeling Creek, the Common-
51 wealth of Pennsylvania joins with the State of West
52 Virginia in negotiating and ratifying this compact; now
53 therefore,

**Article II. Wheeling Creek Watershed Protection and Flood
Prevention District Created.**

1 The Commonwealth of Pennsylvania and the State of
2 West Virginia hereby create as an agency and instru-
3 mentality of the governments thereof a district to be
4 known as the "Wheeling Creek Watershed Protection and
5 Flood Prevention District," hereinafter called the dis-
6 trict, which shall embrace all territory in the Common-
7 wealth of Pennsylvania and the State of West Virginia,
8 the water in which flows ultimately into Wheeling Creek
9 or its tributaries.

**Article III. Wheeling Creek Watershed Protection and Flood
Prevention Commission Created.**

1 The Commonwealth of Pennsylvania and the State of
2 West Virginia hereby create as the governing body of the
3 district the "Wheeling Creek Watershed Protection and
4 Flood Prevention Commission," hereinafter called the
5 commission, which shall be a body corporate, with the
6 powers and duties set forth herein, and such additional

7 powers as may be conferred upon it by subsequent con-
8 current action of the General Assembly of Pennsylvania
9 and the Legislature of West Virginia or by act or acts
10 of the Congress of the United States.

Article IV. Composition of Commission.

1 The commission shall consist of five commissioners
2 from Pennsylvania and five commissioners from West
3 Virginia, each of whom shall be a citizen of the common-
4 wealth or state from which he is appointed. The com-
5 missioners from the commonwealth and from the state
6 shall be chosen in the manner and for the terms pro-
7 vided by the laws of the commonwealth or state from
8 which they shall be appointed, and any commissioner
9 may be removed or suspended from office as provided
10 by the law of the commonwealth or state from which he
11 shall be appointed. Vacancies on the commission shall
12 be filled in the manner provided by the laws of the
13 commonwealth or state among whose representation on
14 the commission the vacancy occurs.

15 The commissioners shall serve without compensation
16 from the commission, but they shall be paid by the com-
17 mission their actual expenses incurred and incident to
18 the performance of their duties.

Article V. Organization of Commission.

1 The commission shall meet and organize within sixty
2 days after the effective date of this compact, shall elect
3 from its number a chairman and vice chairman, and shall
4 appoint, and at its pleasure remove or discharge, such
5 officers and legal, clerical, expert and other assistants as
6 may be required to carry the provisions of this com-
7 pact into effect, and shall determine their qualifications
8 and fix their duties and compensation. It shall adopt
9 a seal and suitable bylaws, and shall adopt and promul-
10 gate rules and regulations for its management and con-
11 trol. It may establish and maintain one or more offices
12 within the district for the transaction of its business, and
13 may meet at any time or place. The presence of three
14 commissioners from the Commonwealth of Pennsylvania
15 and three commissioners from the State of West Virginia
16 shall constitute a quorum, and a majority vote of the

17 quorum shall be necessary to pass upon matters before
18 the commission.

Article VI. Powers and Duties.

1 The commission is hereby authorized and empowered:

2 (a) To be and serve in the capacity of a local organi-
3 zation within the meaning of the Watershed Protection
4 and Flood Prevention Act of the eighty-third Congress of
5 the United States, second session, (Public Law 566), ap-
6 proved August 4, 1954, as from time to time amended,
7 and in that capacity the commission shall have the fol-
8 lowing authority and powers:

9 (1) To apply for and receive federal financial and
10 other assistance in preparing and carrying out plans for
11 works of improvement as that term is defined in said
12 federal act, as from time to time amended, hereinafter
13 referred to as works of improvement, and to apply for
14 and receive federal financial and other assistance under
15 the aforementioned or other federal acts in preparing
16 and carrying out plans for public fish and wildlife or
17 recreational development in connection with works of
18 improvement, including the construction and operation
19 of all facilities which may be necessary or incident to
20 such works of improvement and public fish and wildlife
21 or recreational development in connection therewith.

22 (2) To acquire, or with respect to interests in land
23 to be acquired by condemnation, provide assurances
24 satisfactory to the secretary of agriculture of the United
25 States or other agent or agency of the United States that
26 the commission will acquire such land, easements, or
27 right of ways as will be needed in connection with works
28 of improvement, and public fish and wildlife or recrea-
29 tional development and facilities in connection with
30 works of improvement, installed with federal assistance.

31 (3) To agree to operate and maintain any reservoir
32 or other area included in a plan for works of improve-
33 ment or public fish and wildlife or recreational develop-
34 ment and facilities.

35 (4) To assume all or such proportionate share, as is
36 determined by the secretary of agriculture of the United
37 States or other agent or agency of the United States,

38 of the costs of installing any works of improvement, in-
39 volving federal assistance, which is applicable to the
40 agricultural phases of the conservation, development,
41 utilization, and disposal of water or for fish and wild-
42 life or recreational development and facilities or to pur-
43 poses other than flood prevention and features relating
44 thereto.

45 (5) To make arrangements satisfactory to the secre-
46 tary of agriculture of the United States or other agent or
47 agency of the United States for defraying costs of operat-
48 ing and maintaining works of improvement and public
49 fish and wildlife or recreational development and facili-
50 ties in connection with works of improvement: *Provided*,
51 That such arrangements shall be based solely upon con-
52 tributions, allotments or commitments of funds to the
53 district or commission.

54 (6) To acquire, or provide assurance that landowners
55 or water users have acquired, such water rights, pur-
56 suant to the law of the commonwealth or state applicable
57 thereto, as may be needed in the installation and opera-
58 tion of the works of improvement and public fish and
59 wildlife or recreational development and facilities in
60 connection with works of improvement.

61 (7) To cooperate with soil conservation districts in ob-
62 taining agreements to carry out recommended soil con-
63 servation measures and proper farm plans from owners of
64 land situated in the drainage area above each retention res-
65 ervoir to be installed with or without federal assistance.

66 (8) To apply for and receive federal loans or ad-
67 vancements to finance the local share of costs of carry-
68 ing out works of improvement and public fish and wild-
69 life or recreational development and facilities in con-
70 nection with works of improvement, and to submit a
71 plan of repayment satisfactory to the secretary of agri-
72 culture or other agent or agency of the United States
73 for any loan or advancement: *Provided*, That such plan
74 of repayment shall be based solely upon contributions,
75 allotments or commitments of funds to the district or
76 commission.

77 (9) To cooperate, and enter into agreements with,

78 the secretary of agriculture of the United States or other
79 agent or agency of the United States, and to do all other
80 things required, not inconsistent with the provisions of
81 this compact and the laws of the Commonwealth of
82 Pennsylvania and the State of West Virginia, to obtain
83 maximum federal financial assistance for works of im-
84 provement and public fish and wildlife or recreational
85 development and facilities in connection with such works
86 of improvement.

87 (b) To acquire within the district, land, easements,
88 right of ways and other property rights as may be
89 needed in connection with works of improvement and
90 public fish and wildlife or recreational development and
91 facilities in connection with such works of improvement
92 and to make studies respecting, and to plan, construct,
93 maintain and operate, works of improvement within the
94 district and public fish and wildlife or recreational de-
95 velopment and facilities in connection with such works
96 of improvement.

97 (c) To obtain options upon and to acquire, by pur-
98 chase, exchange, lease, gift, grant, bequest, devise, emi-
99 nent domain, or otherwise, any property, real or per-
100 sonal, or rights therein, for any of the purposes speci-
101 fied in this article of the compact: *Provided*, That eminent
102 domain proceedings shall be instituted and prosecuted
103 in the manner and forums provided by the laws of the
104 commonwealth or state in which the property or property
105 rights proceeded against are situate: *Provided, however*,
106 That no property now or hereafter vested in or held
107 by the Commonwealth of Pennsylvania or the State of
108 West Virginia, or by any county, city, town, village,
109 district, township, municipality or other political sub-
110 division thereof shall be taken by the district without
111 the consent of the commonwealth, state or political sub-
112 division which owns the same.

113 (d) To maintain, administer and improve any proper-
114 ties acquired, to charge fees for use of, and receive in-
115 come from, such properties and to expend such income
116 in carrying out the purposes and provisions of this com-
117 pact, and to lease any of its property or interests therein
118 in accordance with the following provisions and require-

119 ments: The board of commissioners of the County of Ohio,
120 West Virginia, the county court of Marshall County, West
121 Virginia, the board of commissioners of Greene County,
122 Pennsylvania, and the board of commissioners of Wash-
123 ington County, Pennsylvania, shall each have the option
124 of leasing from the commission for such period as the
125 lessee may specify all or any part of the works of im-
126 provement and the public fish and wildlife and recrea-
127 tional development and facilities in connection with
128 works of improvement located within their respective
129 counties upon the following terms and conditions: (a)
130 That in each such lease the lessee in consideration thereof
131 pay to the lessor the sum of one dollar and agree to fully
132 maintain at its (the lessee's) expense all works of im-
133 provement and all such development and facilities in
134 connection therewith located within the county of the
135 lessee in accordance with the requirements of the Water-
136 shed Protection and Flood Prevention Act of the eighty-
137 third Congress of the United States, second session, (Pub-
138 lic Law 566), approved August 4, 1954, as from time to
139 time amended, and all agreements and work plans made
140 or formulated thereunder with respect to such works
141 of improvement and such development and facilities in
142 connection therewith located within the county of the
143 lessee, and that for failure of the lessee to comply with
144 such agreement, the lessor shall be given the right in the
145 lease agreement to cancel the lease upon thirty days'
146 written notice to the lessee; (b) that any such lease
147 not be inconsistent with the provisions, or impair the
148 purposes, of this compact; and (c) that any such lease
149 be approved by the secretary of agriculture of the United
150 States or other federal agent or agencies having au-
151 thority to extend approval under the provisions of said
152 act and agreements and work plans made or formulated
153 thereunder. In the event the board of commissioners or
154 county court of any one of the four counties named does
155 not, within six months from the completion of the works
156 of improvement and all such development and facilities
157 in connection therewith located in such county, elect
158 in writing transmitted to the commission to exercise
159 the option given to it by the foregoing provisions, or in

160 the event such option is exercised and the lease to such
161 board of commissioners or county court is subsequently
162 cancelled because of violation of the provision of the
163 lease by the lessee, or in the event such option is exer-
164 cised and the board of commissioners or county court
165 subsequently chooses not to renew its lease, the com-
166 missioners may lease all or any part of the works of
167 improvement and all such development and facilities in
168 connection therewith located within such county to any
169 other lessee which the commission may choose, and upon
170 such terms as may be agreed upon, provided (a) that
171 any such lease be approved by the board of commis-
172 sioners or county court of the county in which any
173 part or all of the works of improvement and all such
174 development and facilities in connection therewith are
175 located; (b) that any such lease not be inconsistent with
176 the provisions, or impair the purposes, of this compact;
177 (c) that any such lease be approved by the secre-
178 tary of agriculture of the United States or other federal
179 agent or agencies having authority to extend approval
180 under the provisions of said act and agreements and work
181 plans made or formulated thereunder; and the option of
182 leasing in the board of commissioners of the County of
183 Ohio, West Virginia, the county court of Marshall County,
184 West Virginia, the board of commissioners of Greene
185 County, Pennsylvania, and the board of commissioners of
186 Washington County, Pennsylvania, shall include the right
187 to sublease on the same terms and conditions set out in
188 this paragraph designated (d) to any individual, corpo-
189 ration, municipal subdivision or municipal authority
190 without the approval of the Wheeling Creek Watershed
191 Protection and Flood Prevention Commission.

192 (e) To enter into contracts and other arrangements
193 with agencies of the United States, with persons, firms
194 or corporations, including both public and private cor-
195 porations, with the government of the state and the
196 government of the commonwealth, or any department or
197 agency of the United States, the state or the common-
198 wealth, with governmental divisions, with soil conser-
199 vation, drainage, flood control, soil erosion or other im-
200 provement districts in the state or the commonwealth,

201 for cooperation or assistance in constructing, improving,
202 operating or maintaining works of improvement within
203 the district, and public fish and wildlife or recreational
204 development and facilities in connection with works of
205 improvement, or in preventing floods, damage from sedi-
206 ment deposited by floodwaters, or in clearance of stream
207 beds, or in conserving, developing, utilizing and dis-
208 posing of water in the district, or for making surveys,
209 investigations or reports thereof.

210 (f) To apply for, receive and use grants-in-aid, dona-
211 tions and contributions from any source or sources, and
212 to accept and use, consistent with the purposes of this
213 compact, bequests, devises, gifts and donations from any
214 person, firm, corporation, state, commonwealth or agency
215 or political subdivision thereof.

216 (g) To do any and all things necessary or convenient
217 for the purpose of promoting, developing and advancing
218 the purposes of said district herein set forth, and in pro-
219 moting, developing and advancing the recreational de-
220 velopment and facilities incidental to the works of im-
221 provement that shall be constructed to achieve said pur-
222 poses.

223 (h) To delegate any authority given to it by law to
224 any of its agents or employees, and to expend its funds
225 in the execution of the powers and authority herein given.

Article VII. Fiscal Affairs.

1 The commission shall submit at the appropriate or desig-
2 nated time to the board of commissioners of the County
3 of Ohio, West Virginia, the county court of Marshall
4 County, West Virginia, the board of commissioners of
5 Greene County, Pennsylvania, and the board of commis-
6 sioners of Washington County, Pennsylvania, an annual
7 budget of its estimated expenditures, which budget shall
8 contain specific recommendations of the amount or
9 amounts to be appropriated by each of the named gov-
10 erning bodies.

11 The commission shall not incur any obligation prior
12 to the commitment or allotment of funds by the named
13 governing bodies or by other sources adequate to meet
14 the same.

15 The commission shall keep accurate accounts of all
16 receipts and disbursements, which accounts shall be open
17 for inspection at any reasonable time and shall be sub-
18 ject to audit by representatives of contributing political
19 subdivisions and of the Commonwealth of Pennsylvania
20 and State of West Virginia. The receipts and disburse-
21 ments of the commission shall be subject to the audit
22 and accounting procedures established under its bylaws:
23 *Provided*, That all receipts and disbursements of the
24 commission shall be audited yearly by a qualified public
25 accountant, and the report of the audit shall be trans-
26 mitted to each contributor of funds to the district or
27 commission.

Article VIII. Exemption from Taxes and Fees.

1 The district and the property belonging to the district
2 shall be exempt from the payment of all taxes or fees
3 imposed by the Commonwealth of Pennsylvania or the
4 State of West Virginia and by any agency and political
5 subdivision thereof.

Article IX. Effective Date of Compact.

1 This compact shall become effective upon ratification
2 by the General Assembly of the Commonwealth of Penn-
3 sylvania and the Legislature of the State of West Vir-
4 ginia and upon approval by the Congress of the United
5 States.

§29-1F-2. Appointment of members of commission; vacancies.

1 In pursuance of article IV of the above compact, there
2 shall be five members of the Wheeling Creek watershed
3 protection and flood prevention commission from the
4 state of West Virginia, one of whom shall be a member
5 of the board of commissioners of the county of Ohio, West
6 Virginia, appointed by that body to serve at its will and
7 pleasure, one of whom shall be a citizen of the city of
8 Wheeling, Ohio county, West Virginia, appointed by the
9 board of commissioners of the county of Ohio, West Vir-
10 ginia, to serve at its will and pleasure, one of whom shall
11 be a member of the county court of Marshall county, West
12 Virginia, appointed by that body to serve at its will and
13 pleasure, one of whom shall be a citizen of Marshall
14 county, West Virginia, appointed by the county court

15 thereof to serve at its will and pleasure, and one of whom
16 shall be a member of the board of supervisors of the
17 northern panhandle soil conservation district, appointed
18 by said board of supervisors to serve at its will and
19 pleasure: *Provided*, That (1) the citizen appointed by the
20 board of commissioners of the county of Ohio, West Vir-
21 ginia, shall not be a member of that body; (2) the citizen
22 appointed by the county court of Marshall county, West
23 Virginia, shall not be a member of that body; and (3)
24 the member appointed by the board of supervisors of
25 the northern panhandle soil conservation district shall
26 not be a resident of either Ohio or Marshall county, West
27 Virginia.

28 Vacancies shall be filled by the appointing authority
29 responsible for making the appointment to the position
30 vacated.

§29-1F-3. Contributions by political subdivisions.

1 The county court of Marshall county, West Virginia, and
2 the board of commissioners of the county of Ohio, West
3 Virginia, and any municipality therein, which may rea-
4 sonably be expected to receive a benefit from the con-
5 struction, improvement, operation or maintenance of any
6 works of improvement, are hereby authorized and em-
7 powered to contribute moneys to the district by appro-
8 priation from their respective general funds not other-
9 wise appropriated, and may set up in their respective
10 budgets funds to be spent for such purposes, and such
11 counties or municipalities may levy and collect taxes
12 for such purposes, in the manner provided by law: *Pro-*
13 *vided*, That in case sufficient funds cannot be raised by
14 ordinary levies, additional funds may be raised by the
15 counties of Marshall and Ohio, and any such munici-
16 pality, as provided by section sixteen, article eight, chap-
17 ter eleven of the code of West Virginia, one thousand
18 nine hundred thirty-one, as amended.

19 Such county court, board of commissioners, and mu-
20 nicipal corporations are hereby authorized and empow-
21 ered to transfer and convey to the district property of
22 any kind heretofore acquired by said county court, board
23 of commissioners, and municipalities, if acceptable to

24 the district as adaptable to use for the purposes of the
25 district, such transfers or conveyances to be without con-
26 sideration or for such price and upon such terms and
27 conditions as such county court, board of commissioners
28 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.

1 The board of commissioners of the county of Ohio is
2 hereby authorized and empowered to transfer to the
3 Wheeling creek watershed protection and flood prevention
4 commission established by this article all tax revenue and
5 interest thereon received pursuant to and as the result
6 of the special levy election held in Ohio county on May
7 12, 1964, to raise funds for the Wheeling creek watershed
8 project, which election was authorized and called by the
9 board of commissioners of the county of Ohio by order en-
10 tered on March 31, 1964: *Provided*, That before making any
11 such transfer the board of commissioners of the county of
12 Ohio shall obtain from the Wheeling creek watershed pro-
13 tection and flood prevention commission written assur-
14 ances that all such revenue and interest thereon to be so
15 transferred shall be expended solely for the purposes for
16 which such special levies were authorized: *Provided*
17 *further*, That upon the receipt of such written assurances
18 the board of commissioners of the county of Ohio shall not
19 be liable for any misapplication by the Wheeling creek
20 watershed protection and flood prevention commission of
21 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.

Section

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.

§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.**

2 The director shall have charge and supervision of the
3 printing and binding of all reports transmitted to the gov-
4 ernor as required by section twenty, article one, chapter
5 five of this code. Said reports shall be printed annually as
6 soon as possible after the close of the fiscal year. The
7 director shall combine in each volume of printed reports
8 such reports of various departments as he shall deem
9 proper for the size volume he may prescribe. The director
10 shall adopt a uniform size and binding for all reports, and
11 insofar as possible keep the various volumes as near the
12 same number of pages as possible. A uniform weight
13 and grade of paper stock shall be selected by the director
14 to be used in printing all reports, and glazed paper shall
15 not be used unless necessary for the reproduction of half-
16 tone illustrations.

17 No pictures or half-tone cuts of state officials shall be
18 included in said reports, and no funds shall be expended
19 for engravings or half-tone cuts, other than for illustra-
20 tions, graphs or maps.

21 The director shall furnish each department sufficient
22 copies of the volume containing its report for its office use.

23 The director may sell such copies of the reports as re-
24 main, after the distribution herein provided for has been
25 made, at a price to be fixed by him with the approval of
26 the governor. The proceeds of such sale shall immediately
27 be paid into the treasury. At the beginning of each ses-
28 sion, the director shall report to the Legislature as to the
29 sale of such reports and also as to the sale of acts of the
30 Legislature.

31 The director shall ask for competitive bids for the print-
32 ing of any such reports.

33 Subject to the approval of the commissioner and the
34 governor, the director shall have authority to limit the
35 number of any other report, bulletin, and other publica-
36 tion ordered to be printed by each department.

CHAPTER 84

(Com. Sub. for Senate Bill No. 398—By Mr. Carson, Mr. President)

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

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.

Section

1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

§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

16 seventy. The members of the committee shall serve with-
17 out compensation but shall be reimbursed for reasonable
18 and necessary expenses actually incurred in the perform-
19 ance of their duties. The wife of any governor during his
20 term of office or the designated representative of such
21 governor shall serve as chairman of the committee. The
22 commissioner of finance and administration shall serve
23 as secretary. The committee shall meet upon the call of
24 the chairman annually and may meet at such other
25 times as may be necessary for the performance of its
26 functions.

27 The committee shall be charged with the following
28 responsibilities:

29 (1) To make recommendations for the maintaining,
30 preserving and replenishing of all articles of furniture,
31 fixtures, decorative objects, linens, silver, china, crystal
32 and objects of art used or displayed in the state rooms of
33 the governor's mansion, which state rooms shall consist
34 of the front hall, the reception room, the ballroom and
35 its sitting room, the state dining room, the front upstairs
36 hall and the music room;

37 (2) To make recommendations as to the decor and ar-
38 rangements best suited to enhance the historic and artistic
39 values of the mansion in keeping with the architecture
40 thereof and of such articles of furniture, fixtures, decora-
41 tive objects, linens, silver, china, crystal and objects of
42 art; and

43 (3) To invite interested persons to attend its meetings
44 or otherwise to assist in carrying out its functions.

45 All departments, boards, agencies, commissions, officials
46 and employees of the state are hereby authorized to co-
47 operate with and assist the committee in the performance
48 of its functions and duties whenever possible. As soon
49 after the close of each fiscal year as possible, the com-
50 mittee shall make an annual report to the governor and
51 the Legislature with respect to its activities and responsi-
52 bilities.

CHAPTER 85

(Senate Bill No. 38—By Mr. Carson, Mr. President, and
Mr. Moreland)

[Passed January 25, 1967; in effect from passage. Approved by the Governor.]

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.
9. Judicial review; disposition of petitioner pending appeal.
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
2 under sentence of imprisonment therefor who contends
3 that there was such a denial or infringement of his
4 rights as to render the conviction or sentence void under
5 the constitution of the United States or the constitu-
6 tion of this state, or both, or that the court was without
7 jurisdiction to impose the sentence, or that the sentence
8 exceeds the maximum authorized by law, or that the
9 conviction or sentence is otherwise subject to collateral
10 attack upon any ground of alleged error heretofore avail-
11 able under the common law or any statutory provision
12 of this state, may, without paying a filing fee, file a peti-
13 tion for a writ of habeas corpus ad subjiciendum, and
14 prosecute the same, seeking release from such illegal im-
15 prisonment, correction of the sentence, the setting aside
16 of the plea, conviction and sentence, or other relief, if
17 and only if such contention or contentions and the grounds
18 in fact or law relied upon in support thereof have not
19 been previously and finally adjudicated or waived in
20 the proceedings which resulted in the conviction and
21 sentence, or in a proceeding or proceedings on a prior
22 petition or petitions filed under the provisions of this
23 article, or in any other proceeding or proceedings which
24 the petitioner has instituted to secure relief from such
25 conviction or sentence. Any such petition shall be filed
26 with the clerk of the supreme court of appeals, or the
27 clerk of any circuit court, said supreme court of appeals
28 and all circuit courts of this state having been granted
29 original jurisdiction in habeas corpus cases by the con-
30 stitution of this state, or with the clerk of any court of

31 record of limited jurisdiction having criminal jurisdiction
32 in this state. Jurisdiction is hereby conferred upon each
33 and every such court of record of limited jurisdiction
34 having criminal jurisdiction (hereinafter for convenience
35 of reference referred to simply as a "statutory court")
36 to refuse or grant writs of habeas corpus ad subjiciendum
37 in accordance with the provisions of this article and to
38 hear and determine any contention or contentions and
39 to pass upon all grounds in fact or law relied upon in
40 support thereof in any proceeding on any such writ made
41 returnable thereto in accordance with the provisions of
42 this article. All proceedings in accordance with this
43 article shall be civil in character and shall under no
44 circumstances be regarded as criminal proceedings or
45 a criminal case.

46 (b) For the purposes of this article, a contention or
47 contentions and the grounds in fact or law relied upon
48 in support thereof shall be deemed to have been pre-
49 viously and finally adjudicated only when at some point
50 in the proceedings which resulted in the conviction and
51 sentence, or in a proceeding or proceedings on a prior
52 petition or petitions filed under the provisions of this
53 article, or in any other proceeding or proceedings insti-
54 tuted by the petitioner to secure relief from his convic-
55 tion or sentence, there was a decision on the merits
56 thereof after a full and fair hearing thereon and the time
57 for the taking of an appeal with respect to such decision
58 has not expired or has expired, as the case may be, or
59 the right of appeal with respect to such decision has been
60 exhausted, unless said decision upon the merits is clearly
61 wrong.

62 (c) For the purposes of this article, a contention or
63 contentions and the grounds in fact or law relied upon
64 in support thereof shall be deemed to have been waived
65 when the petitioner could have advanced, but intelli-
66 gently and knowingly failed to advance, such contention
67 or contentions and grounds before trial, at trial, or on
68 direct appeal (whether or not said petitioner actually
69 took an appeal), or in a proceeding or proceedings on a
70 prior petition or petitions filed under the provisions of
71 this article, or in any other proceeding or proceedings

72 instituted by the petitioner to secure relief from his con-
73 viction or sentence, unless such contention or contentions
74 and grounds are such that, under the constitution of
75 the United States or the constitution of this state, they
76 cannot be waived under the circumstances giving rise to
77 the alleged waiver. When any such contention or conten-
78 tions and grounds could have been advanced by the peti-
79 tioner before trial, at trial, or on direct appeal (whether
80 or not said petitioner actually took an appeal), or in a
81 proceeding or proceedings on a prior petition or petitions
82 filed under the provisions of this article, or in any other
83 proceeding or proceedings instituted by the petitioner
84 to secure relief from his conviction or sentence, but were
85 not in fact so advanced, there shall be a rebuttable pre-
86 sumption that the petitioner intelligently and knowingly
87 failed to advance such contention or contentions and
88 grounds.

89 (d) For the purposes of this article, and notwithstand-
90 ing any other provisions of this article, no such conten-
91 tion or contentions and grounds shall be deemed to have
92 been previously and finally adjudicated or to have been
93 waived where, subsequent to any decision upon the merits
94 thereof or subsequent to any proceeding or proceedings
95 in which said question otherwise may have been waived,
96 any court whose decisions are binding upon the supreme
97 court of appeals of this state or any court whose decisions
98 are binding upon the lower courts of this state holds that
99 the constitution of the United States or the constitution
100 of West Virginia, or both, impose upon state criminal
101 proceedings a procedural or substantive standard not
102 theretofore recognized, if and only if such standard is
103 intended to be applied retroactively and would thereby
104 affect the validity of the petitioner's conviction or
105 sentence.

106 (e) The writ of habeas corpus ad subjiciendum pro-
107 vided for in this article is not a substitute for nor does
108 it affect any remedies which are incident to the criminal
109 proceedings in the trial court or any remedy of direct
110 review of the conviction or sentence, but such writ com-
111 prehends and takes the place of all other common law
112 and statutory remedies, including, but not limited to, the

113 writ of habeas corpus ad subjiciendum provided for in
114 article four of this chapter, which have heretofore been
115 available for challenging the validity of a conviction or
116 sentence and shall be used exclusively in lieu thereof:
117 *Provided*, That nothing contained in this article shall
118 operate to bar any proceeding or proceedings in which
119 a writ of habeas corpus ad subjiciendum is sought for
120 any purpose other than to challenge the legality of a
121 criminal conviction or sentence of imprisonment therefor.
122 A petition for a writ of habeas corpus ad subjiciendum
123 in accordance with the provisions of this article may be
124 filed at any time after the conviction and sentence in
125 the criminal proceedings have been rendered and imposed
126 and the time for the taking of an appeal with respect
127 thereto has expired or the right of appeal with respect
128 thereto has been exhausted.

**§53-4A-2. Petition; contents thereof; supreme court may pre-
scribe form of petition, verification and writ; duties of
clerk.**

A petition seeking a writ of habeas corpus ad subji-
2 ciendum in accordance with the provisions of this article
3 shall identify the proceedings in which the petitioner was
4 convicted and sentenced, give the date of the entry of
5 the judgment and sentence complained of, specifically set
6 forth the contention or contentions and grounds in fact
7 or law in support thereof upon which the petition is
8 based, and clearly state the relief desired. Affidavits,
9 exhibits, records or other documentary evidence support-
10 ing the allegations of the petition shall be attached to
11 the petition unless there is a recital therein as to why
12 they are not attached. All facts within the personal knowl-
13 edge of the petitioner shall be set forth separately from
14 other allegations, and such facts and the authenticity of
15 all affidavits, exhibits, records or other documentary evi-
16 dence attached to the petition must be sworn to affirma-
17 tively as true and correct. The petition must also identify
18 any previous proceeding or proceedings on a petition
19 or petitions filed under the provisions of this article, or
20 any other previous proceeding or proceedings which the
21 petitioner instituted to secure relief from his conviction

22 or sentence and must set forth the type or types of such
23 previous proceeding or proceedings, the contention or
24 contentions there advanced, the grounds in fact or law
25 assigned therein for the relief there sought, the date
26 thereof, the forum in which instituted and the result
27 thereof. Argument, citations and discussion of authori-
28 ties shall be omitted from the petition, but may be filed
29 as a separate document or documents. The supreme court
30 of appeals may by rule prescribe the form of the petition,
31 verification and the writ itself. The clerk of the court in
32 which the petition is filed shall docket the petition upon
33 its receipt, and shall bring the petition and any affidavits,
34 exhibits, records and other documentary evidence at-
35 tached 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 gen-
eral and prosecuting attorney.**

(a) If the petition, affidavits, exhibits, records and
2 other documentary evidence attached thereto, or the
3 record in the proceedings which resulted in the conviction
4 and sentence, or the record or records in a proceeding or
5 proceedings on a prior petition or petitions filed under
6 the provisions of this article, or the record or records in
7 any other proceeding or proceedings instituted by the
8 petitioner to secure relief from his conviction or sentence
9 (if any such record or records are part of the official court
10 files of the court with whose clerk the petition is filed
11 and are thus available for examination and review by
12 such court) show to the satisfaction of the court that the
13 petitioner is entitled to no relief, or that the contention
14 or contentions and grounds (in fact or law) advanced
15 have been previously and finally adjudicated or waived,
16 the court shall by order entered of record refuse to grant
17 a writ, and such refusal shall constitute a final judgment.
18 If it appears to such court from said petition, affidavits,
19 exhibits, records and other documentary evidence, or
20 any such available record or records referred to above,
21 that there is probable cause to believe that the petitioner
22 may be entitled to some relief, and that the contention or
23 contentions and grounds (in fact or law) advanced have

24 not been previously and finally adjudicated or waived,
25 the court shall forthwith grant a writ, directed to and
26 returnable as provided in subsection (b) hereof. If any
27 such record or records referred to above are not a part
28 of the official court files of the court with whose clerk the
29 petition is filed and are thus not available for examina-
30 tion and review by such court, the determination as to
31 whether to refuse or grant the writ shall be made on the
32 basis of the petition, affidavits, exhibits, records and other
33 documentary evidence attached thereto.

34 (b) Any writ granted in accordance with the provi-
35 sions of this article shall be directed to the person under
36 whose supervision the petitioner is incarcerated. Whether
37 the writ is granted by the supreme court of appeals, a
38 circuit court, or any statutory court in this state, it shall,
39 in the discretion of the court, be returnable before (i)
40 the court granting it, (ii) the circuit court, or a statutory
41 court, of the county wherein the petitioner is incarcerated,
42 or (iii) the circuit court, or the statutory court, in which,
43 as the case may be, the petitioner was convicted and
44 sentenced.

45 (c) The clerk of the court to which a writ granted in
46 accordance with the provisions of this article is made
47 returnable shall promptly bring the petition and any affi-
48 davits, exhibits, records and other documentary evi-
49 dence attached thereto and the writ to the attention of
50 the court if the writ was granted by some other court,
51 and in every case deliver a copy of such petition and any
52 affidavits, exhibits, records and other documentary evi-
53 dence attached thereto and the writ to the prosecuting
54 attorney of the county, or the attorney general if the writ
55 is returnable before the supreme court of appeals. The
56 prosecuting attorney or the attorney general, as the case
57 may be, shall represent the state in all cases arising under
58 the provisions of this article.

**§53-4A-4. Inability to pay costs, etc.; appointment of counsel;
obtaining copies of record or records in criminal pro-
ceedings 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
2 may allege facts to show that the petitioner is unable to
3 pay the costs of the proceeding or to employ counsel, may
4 request permission to proceed in forma pauperis and may
5 request the appointment of counsel. If the court to which
6 the writ is returnable (hereinafter for convenience of
7 reference referred to simply as "the court," unless the
8 context in which used clearly indicates that some other
9 court is intended) is satisfied that the facts alleged in
10 this regard are true, and that the petition was filed in
11 good faith, and has merit or is not frivolous, the court
12 shall order that the petitioner proceed in forma pauperis,
13 and the court shall appoint counsel for the petitioner. If
14 it shall appear to the court that the record in the proceed-
15 ings which resulted in the conviction and sentence, in-
16 cluding, but not limited to, a transcript of the testimony
17 therein, or the record or records in a proceeding or pro-
18 ceedings on a prior petition or petitions filed under the
19 provisions of this article, or the record or records in any
20 other proceeding or proceedings instituted by the peti-
21 tioner to secure relief from his conviction or sentence, or
22 all of such records, or any part or parts thereof, are neces-
23 sary for a proper determination of the contention or con-
24 tentions and grounds (in fact or law) advanced in the
25 petition, the court shall, by order entered of record, direct
26 the state to make arrangements for copies of any such
27 record or records, or all of such records, or such part or
28 parts thereof as may be sufficient, to be obtained for ex-
29 amination and review by the court, the state and the
30 petitioner. The state may on its own initiative obtain
31 copies of any record or records, or all of the records, or
32 such part or parts thereof as may be sufficient, as afore-
33 said, for its use and for examination and review by the
34 court and the petitioner. If, after judgment is entered
35 under the provisions of this article, an appeal or writ of
36 error is sought by the petitioner in accordance with the
37 provisions of section nine of this article, and the court
38 which rendered the judgment is of opinion that the review
39 is being sought in good faith and the grounds assigned
40 therefor have merit or are not frivolous, and such court
41 finds that the petitioner is unable to pay the costs incident

42 thereto or to employ counsel, the court shall, upon the
43 petitioner's request, order that the petitioner proceed in
44 forma pauperis and shall appoint counsel for the peti-
45 tioner. If an appeal or writ of error is allowed, whether
46 upon application of the petitioner or the state, the re-
47 viewing court shall, upon the requisite showing and re-
48 quest as aforesaid, order that the petitioner proceed in
49 forma pauperis and shall appoint counsel for the peti-
50 tioner. If it is determined that the petitioner has the
51 financial means with which to pay the costs incident to
52 any proceedings hereunder and to employ counsel, or that
53 the petition was filed in bad faith or is without merit or
54 is frivolous, or that review is being sought or prosecuted
55 in bad faith or the grounds assigned therefor are without
56 merit or are frivolous, the request to proceed in forma
57 pauperis and for the appointment of counsel shall be
58 denied and the court making such determination shall
59 enter an order setting forth the findings pertaining thereto
60 and such order shall be final.

61 (b) Whenever it is determined that a petitioner shall
62 proceed in forma pauperis, all necessary costs and ex-
63 penses incident to proceedings hereunder, originally, or
64 on appeal pursuant to section nine of this article, or both,
65 including, but not limited to, all court costs, the reason-
66 able expenses actually and necessarily incurred in the
67 representation of a petitioner by any attorney appointed
68 hereunder to represent him and the cost of furnishing
69 transcripts, shall, upon certification by the court to the
70 state auditor, be paid out of the treasury of the state from
71 the appropriation for criminal charges. Any attorney ap-
72 pointed in accordance with the provisions of this section
73 shall be paid the same fee as an attorney appointed in a
74 felony case receives, and any such fee shall be paid by
75 the state auditor as expenses in felony cases are paid, all
76 as prescribed in section one, article three, chapter sixty-
77 two of this code, as amended. All costs and expenses in-
78 curred incident to obtaining copies of any record or
79 records, or all of the records, or such part or parts thereof
80 as may be sufficient, as aforesaid, for examination and
81 review by the court, the state and the petitioner, shall,
82 where the petitioner is proceeding in forma pauperis, and

83 the court orders the state to make arrangements for the
84 obtaining of same or the state obtains the same on its own
85 initiative, be paid out of the treasury of the state, upon
86 certification by the court to the state auditor, from the
87 appropriation for criminal charges. All such costs, ex-
88 penses and fees shall be paid as provided in this subsec-
89 tion (b) notwithstanding the fact that all proceedings
90 under the provisions of this article are civil and not
91 criminal in character. In the event a petitioner who is
92 proceeding in forma pauperis does not substantially pre-
93 vail, all such costs, expenses and fees shall be and consti-
94 tute a judgment of the court against the petitioner to be
95 recovered as any other judgment for costs.

96 (c) In the event a petitioner who is not proceeding in
97 forma pauperis does not substantially prevail, all costs
98 and expenses incurred incident to obtaining copies of
99 any record or records, or all of the records, or such part
100 or parts thereof as may be sufficient, as aforesaid, for
101 examination and review by the court, the state and the
102 petitioner, shall, where the court orders the state to make
103 arrangements for the obtaining of same or the state
104 obtains the same on its own initiative, be and constitute a
105 judgment of the court against the petitioner to be re-
106 covered as any other judgment for costs. In any case
107 where the petitioner does not proceed in forma pauperis,
108 the court shall adjudge all costs and expenses to be paid
109 as shall seem to the court to be right, consistent with the
110 immediately preceding sentence of this subsection (c)
111 and with the provisions of chapter fifty-nine of this code,
112 as amended.

§53-4A-5. Service of writ.

Any writ granted in accordance with the provisions of
2 this article shall be served upon the person to whom it
3 is directed, or, in his absence from the place where the
4 petitioner is incarcerated, upon the person having the
5 immediate custody of the petitioner.

§53-4A-6. Return; pleadings; amendments.

Within such time as may be specified in the writ or as
2 the court may fix, the state shall make its return. No
3 other or further pleadings shall be filed except as the

4 court may order. At any time prior to entry of judgment
5 on the writ in accordance with the provisions of this
6 article, the court may permit the petitioner to withdraw
7 his petition. The court may make such orders as to amend-
8 ment of the petition or return or other pleading, as to
9 pleading over, or filing other or further pleadings, or ex-
10 tending the time for the making of the return or the
11 filing of other pleadings, as shall seem to the court to be
12 appropriate, meet and reasonable. In considering the
13 petition, the return or other pleading, or any amendment
14 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
2 other documentary evidence attached thereto, or the re-
3 turn or other pleadings, or the record in the proceedings
4 which resulted in the conviction and sentence, or the rec-
5 ord or records in a proceeding or proceedings on a prior
6 petition or petitions filed under the provisions of this
7 article, or the record or records in any other proceeding
8 or proceedings instituted by the petitioner to secure relief
9 from his conviction or sentence, show to the satisfaction
10 of the court that the petitioner is entitled to no relief, or
11 that the contention or contentions and grounds (in fact
12 or law) advanced have been previously and finally ad-
13 judicated or waived, the court shall enter an order deny-
14 ing the relief sought. If it appears to the court from said
15 petition, affidavits, exhibits, records and other docu-
16 mentary evidence attached thereto, or the return or other
17 pleadings, or any such record or records referred to above,
18 that there is probable cause to believe that the petitioner
19 may be entitled to some relief and that the contention or
20 contentions and grounds (in fact or law) advanced have
21 not been previously and finally adjudicated or waived, the
22 court shall promptly hold a hearing and/or take evidence
23 on the contention or contentions and grounds (in fact or
24 law) advanced, and the court shall pass upon all issues of
25 fact without a jury. The court may also provide for one
26 or more hearings to be held and/or evidence to be taken in
27 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, arraignment, 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

6 be made returnable, consistent with the provisions of
7 subsection (b) of section three of this article, to the
8 supreme court of appeals in term, or to a judge of a cir-
9 cuit court or any statutory court in vacation as well as
10 to such court in term. Although a writ granted in accord-
11 ance with the provisions of this article is returnable to a
12 circuit court in term or a statutory court in term, the
13 contention or contentions and grounds (in fact or law)
14 advanced, and any incidental matters related thereto,
15 may be heard and/or determined or passed upon by a
16 judge of the court in vacation. Any judge of the supreme
17 court of appeals (where at least three judges of such court
18 concur therein), or of a circuit court or a statutory court,
19 in vacation shall have the same power to enforce obedi-
20 ence to the writ, to compel the attendance of witnesses,
21 or to punish contempt of their or his authority, as a court
22 has; and the judgment of a judge of a circuit court or a
23 statutory court in vacation when entered of record shall
24 be considered and be enforced as if it were a judgment
25 of the court among whose records it is entered.

§53-4A-9. Judicial review; disposition of petitioner pending appeal.

(a) A final judgment entered under the provisions of
2 this article by a statutory court may be appealed by the
3 petitioner or the state to the circuit court of the county
4 upon application for an appeal or writ of error in the
5 manner and within the time provided in article four,
6 chapter fifty-eight of this code, as amended. A final judg-
7 ment entered under the provisions of this article by a
8 circuit court or a final judgment entered by the circuit
9 court after an appeal or writ of error was granted by
10 such circuit court with respect to the judgment of a
11 statutory court entered under the provisions of this ar-
12 ticle, as well as an order by a circuit court rejecting an
13 appeal from or writ of error to the judgment of a statutory
14 court entered under the provisions of this article, may
15 be appealed by the petitioner or the state to the supreme
16 court of appeals upon application for an appeal or writ
17 of error in the manner and within the time provided by
18 law for civil appeals generally. When an application for

19 an appeal or writ of error is rejected by the circuit court
20 (and the order of rejection is not appealed to the supreme
21 court of appeals), or the supreme court of appeals, as
22 the case may be, or both, the order sought to be reviewed
23 shall thereby become final to the same extent and with
24 like effect as if said order had been affirmed on appeal.

25 (b) When the petitioner is remanded, execution of the
26 judgment entered under the provisions of this article shall
27 not be suspended by the granting of an appeal or writ
28 of error, or suspended while the petitioner is applying
29 for an appeal or writ of error. When the petitioner is
30 ordered to be discharged, and execution of the judgment
31 entered under the provisions of this article is ordered
32 suspended to permit the state to apply for an appeal or
33 writ of error, the court making such suspending order
34 may, in its discretion, admit the petitioner to bail until
35 expiration of the time allowed for making application
36 for an appeal or writ of error, or, in case the appeal or
37 writ of error is allowed, until the decision of the appellate
38 court thereon is duly certified.

§53-4A-10. Construction; repeal.

All other pertinent provisions of this code shall be con-
2 strued so as to conform to and be consistent with the pro-
3 visions of this article. In the event that there are perti-
4 nent provisions in this code so inconsistent with the pro-
5 visions of this article as to preclude such construction,
6 such other provisions shall be considered as having been
7 repealed to the extent of such inconsistency by the enact-
8 ment of this article. The provisions of this article shall be
9 liberally construed so as to effectuate its purposes.

§53-4A-11. Severability.

If any provision of this article or the application thereof
2 to any person or circumstances is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article which can be given effect without the in-
5 valid provision or application, and to this end the pro-
6 visions of this article are hereby declared to be severable.
7 The Legislature does hereby further declare that it would
8 have enacted this article even if it had known at the time

9 of enactment that such provision or application thereof
10 would be held to be invalid.

CHAPTER 86

(House Bill No. 895—By Mr. Holliday and Mr. Potter)

[Passed March 1, 1967; in effect from passage. Approved by the Governor.]

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
2 state shall have been successfully immunized against
3 smallpox, diphtheria; polio, measles, tetanus and whoop-
4 ing cough. Any person who cannot give satisfactory proof
5 of having been immunized previously or a certificate
6 from a reputable physician showing that a successful
7 immunization for any or all smallpox, diphtheria, polio,
8 measles, tetanus and whooping cough is impossible or im-
9 proper or sufficient reason why any or all immuniza-
10 tions should not be done, shall be immunized for small-
11 pox, diphtheria, polio, measles, tetanus and whooping
12 cough prior to being admitted in any of the public
13 schools of the state. No child or person shall be admitted
14 or received in any of the public schools of the state
15 until he or she has been successfully immunized as

16 hereinafter provided, or produces a certificate from a
17 reputable physician showing that a successful immun-
18 ization for smallpox, diphtheria, polio, measles, tetanus
19 and whooping cough has been done or is impossible
20 or improper or other sufficient reason why such im-
21 munizations have not been done. Any teacher, having
22 information concerning any person who attempts to en-
23 ter school for the first time without having been immun-
24 ized against smallpox, diphtheria, polio, measles, tet-
25 anus and whooping cough, shall report the names of all
26 such persons to the county health officer. It shall be
27 the duty of the health officer in counties having a full-
28 time health officer to see that such persons are immunized
29 before entering school.

30 In counties where there is no full-time health officer
31 or district health officer, the county court or municipal
32 council shall appoint competent physicians to do the
33 immunizations and fix their compensation. The expense
34 incurred in carrying into effect the provision of this sec-
35 tion shall be deemed a part of the expense of the county,
36 city, town or village as the case may be, and shall be
37 charged and paid in the same manner as other expenses.
38 County health departments shall furnish the biologicals
39 for this immunization free of charge.

40 Health officers and physicians who shall do this im-
41 munization work shall give to all persons and children
42 a certificate free of charge showing that they have been
43 successfully immunized against smallpox, diphtheria,
44 polio, measles, tetanus and whooping cough, or he may
45 give the certificate to any person or child whom he knows
46 to have been successfully immunized against smallpox,
47 diphtheria, polio, measles, tetanus and whooping cough.
48 If any physician shall give any person a false certificate
49 of immunization against smallpox, diphtheria, polio,
50 measles, tetanus or whooping cough, he shall be guilty
51 of a misdemeanor, and, upon conviction, he shall be fined
52 not less than twenty-five nor more than one hundred
53 dollars.

54 Any parent or guardian who refuses to permit his or
55 her child to be immunized against smallpox, diphtheria,
56 polio, measles, tetanus or whooping cough, who cannot

57 give satisfactory proof that the child or person has been
58 immunized against smallpox, diphtheria, polio, measles,
59 tetanus and whooping cough previously or a certificate
60 from a reputable physician showing that a successful
61 immunization for any or all is impossible or improper
62 or sufficient reason why any or all immunizations should
63 not be done, shall be guilty of a misdemeanor, and, ex-
64 cept as herein otherwise provided, shall, upon convic-
65 tion, be punished by a fine of not less than ten nor more
66 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 sixteen 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 Virginia nursing home licensing board; providing for the appointment 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 inspections of nursing homes; providing for promulgation of

rules and regulations; providing for suspension or revocation 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 five-b, chapter sixteen of the code of West Virginia, one thousand 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 revocation.
11. Violations; penalties.
12. Injunction; severability of article.

§16-5B-1. Hospitals and certain facilities operated in connection therewith to obtain license; exemptions; meaning 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-
- 5 tain in the state of West Virginia any hospital, sana-
- 6 torium or extended care facility operated in connection
- 7 with a hospital without first obtaining a license therefor
- 8 in the manner hereinafter provided: *Provided*, That only
- 9 one license shall be required for any person, partnership,
- 10 association, corporation, or any local governmental unit
- 11 or any division, department, board or agency thereof who
- 12 operates any combination of a hospital, sanatorium or
- 13 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
16 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,
21 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-
26 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-
40 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-
43 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 nection 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

24 effect on the thirtieth day of June of any year, for which
25 timely application for renewal, together with payment
26 of the proper fee, has been made to the state department
27 of health in conformance with the provisions of this
28 article and the rules and regulations issued thereunder,
29 and prior to the expiration date of such license, shall con-
30 tinue in effect until (a) the thirtieth day of June next
31 following the expiration date of such license, or (b)
32 the date of the revocation or suspension of such license
33 pursuant to the provisions of this article, or (c) the date
34 of issuance of a new license, whichever date first occurs.
35 All fees received by the state department of health under
36 the provisions of this article shall be paid into the state
37 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
2 to issue licenses for the operation of hospitals, sana-
3 toriums or extended care facilities operated in connec-
4 tion with hospitals, which are found to comply with
5 the provisions of this article and with all regulations
6 lawfully promulgated by the department.

7 The state department of health is hereby authorized
8 to suspend or revoke a license issued hereunder, on any
9 of the following grounds:

10 (1) Violation of any of the provisions of this article
11 or the rules and regulations issued pursuant thereto;

12 (2) Knowingly permitting, aiding or abetting the com-
13 mission of any illegal act in such institution;

14 (3) Conduct or practices detrimental to the health
15 or safety of the patients and employees of such institu-
16 tion.

17 Before any such license is suspended or revoked, how-
18 ever, written notice shall be given the licensee, stating
19 the grounds of the complaint, and of the date, time, and
20 place set for the hearing of the complaint, which date
21 shall not be less than thirty days from the time the
22 notice is given. Such notice shall be sent by registered
23 mail to the licensee at the address where the institution

24 concerned is located. The licensee shall be entitled to be
25 represented by legal counsel at the hearing.

26 If a license is revoked as herein provided, a new appli-
27 cation for a license shall be considered by the state de-
28 partment of health if, when, and after the conditions
29 upon which revocation was based have been corrected
30 and evidence of this fact has been furnished. A new
31 license shall then be granted after proper inspection has
32 been made and all provisions of this article and rules
33 and regulations promulgated hereunder have been sat-
34 isfied.

35 All of the pertinent provisions of article five, chapter
36 twenty-nine-a of this code shall apply to and govern any
37 hearing authorized and required by the provisions of this
38 article and the administrative procedure in connection
39 with and following any such hearing, with like effect as
40 if the provisions of said article five were set forth in
41 extenso in this section.

§16-5B-11. Violations; penalties.

1 Any person, partnership, association or corporation,
2 and any local governmental unit or any division, depart-
3 ment, board or agency thereof establishing, conducting,
4 managing, or operating a hospital, sanatorium, or ex-
5 tended care facility operated in connection with a hos-
6 pital, without first obtaining a license therefor as herein
7 provided, or violating any provision of this article or
8 any rule or regulation lawfully promulgated thereunder,
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be punished for the first offense by a fine
11 of not more than one hundred dollars, or by imprison-
12 ment in the county jail for a period of not more than
13 ninety days, or by both such fine and imprisonment, in
14 the discretion of the court. For each subsequent offense
15 the fine may be increased to not more than five hundred
16 dollars, with imprisonment in the county jail for a period
17 of not more than ninety days, or both such fine and
18 imprisonment in the discretion of the court. Each day
19 of a continuing violation after conviction shall be con-
20 sidered a separate offense.

§16-5B-12. Injunction; severability of article.

1 Notwithstanding the existence or pursuit of any other
 2 remedy, the department may, in the manner provided by
 3 law, maintain an action in the name of the state for an in-
 4 junction against any person, partnership, association,
 5 corporation, or any local governmental unit, or any divi-
 6 sion, department, board or agency thereof, to restrain
 7 or prevent the establishment, conduct, management or
 8 operation of any hospital, sanatorium, or extended care
 9 facility operated in connection with a hospital without
 10 first obtaining a license therefor in the manner herein-
 11 before provided.

12 If any part of this article shall be declared unconsti-
 13 tutional, such declaration shall not affect any other part
 14 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.
4. Powers, duties and rights of board.
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.
10. Rules and regulations.
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
 2 the development and utilization of resources to insure
 3 the effective care and treatment of persons who are
 4 convalescing or whose physical or mental condition re-
 5 quires them to receive a degree of nursing or related
 6 health care greater than that necessary for well indi-
 7 viduals, but not so acute as to require hospitalization.
 8 Such care and treatment requires a living environment
 9 for such persons which, to the extent practicable, will

10 approximate a normal home environment. To this end,
11 the guiding principle for administration of the laws of
12 this state is that such persons shall be encouraged and
13 assisted in securing necessary care and treatment in
14 noninstitutional surroundings. In recognition that for
15 many such persons effective care and treatment can only
16 be secured from proprietary, voluntary and governmental
17 nursing homes, it is the policy of this state to encourage,
18 promote and require the maintenance of institutions other
19 than hospitals offering nursing or related health care so
20 as to insure protection of those using the services of
21 such facilities.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) The term "nursing home" means and shall be
4 construed to include any building, structure, agency, insti-
5 tution, or other place, for the reception, accommodation,
6 board, care or treatment of not less than twenty-four
7 hours in any week of five or more unrelated individuals,
8 hereinafter designated patients, who are unable suffi-
9 ciently or properly to care for themselves, and for which
10 reception, accommodation, board, care or treatment a
11 charge is made: *Provided*, That the reception, accommo-
12 dation, board, care or treatment in a household or family,
13 for compensation, of a person or persons related by blood
14 or marriage to the head of such household or family, or
15 to his or her spouse or family, within the degree of con-
16 sanguinity of first cousins, shall not be deemed to be a
17 nursing home. The term "nursing home" shall include,
18 but not be limited to, homes for the aged, convalescent
19 homes, and extended care facilities not operated in con-
20 nection with a hospital. The term "nursing home" shall
21 not include institutions operated by the federal or state
22 governments or hospitals, institutions for the treatment
23 and care of psychiatric patients, boarding homes for
24 children, day nurseries, child-care institutions, children's
25 homes and child-placing agencies, as defined under
26 the laws of this state, nor hotels or offices of physi-
27 cians.

28 (b) The term "person" means any individual, firm,
29 partnership, corporation, company, association, or joint-
30 stock association and the legal successor thereof.

31 (c) The term "board" shall mean the West Virginia
32 nursing home licensing board as herein created.

33 (d) The term "aged" relates to any individual who
34 has attained the age of sixty-five years.

**§16-5C-3. West Virginia nursing home licensing board; crea-
tion; appointment, qualifications, term, etc., of mem-
bers; vacancies.**

1 There is hereby created a state board to be known and
2 designated as the "West Virginia Nursing Home Licensing
3 Board" which shall consist of nine members, six of whom
4 shall be appointed by the governor, by and with the
5 advice and consent of the senate, and the initial appoint-
6 ments shall be made within twenty days after the effec-
7 tive date of this article. One of said six members to be
8 appointed by the governor shall be a member of the
9 medical profession having an unlimited license to prac-
10 tice medicine and surgery in the state of West Virginia,
11 one such member shall be a licensed pharmacist, one
12 such member shall be a registered nurse, one such mem-
13 ber shall be a person with experience or education in the
14 field of aging, and two such members shall be persons
15 who have been engaged in the management of an oper-
16 ating nursing home for four years immediately prior to
17 the date of appointment, who shall hereinafter be re-
18 ferred to as nursing home administrators. The three
19 remaining members shall be ex officio members, one of
20 whom shall be the commissioner of welfare, or his offi-
21 cial designate, one of whom shall be the state fire marshal,
22 or his official designate, and the other of whom shall
23 be the state director of health, or his official designate.
24 The ex officio members shall always serve during their
25 regular tenure of office. No member of the board, other
26 than the two nursing home administrators, shall have
27 any direct or indirect financial or pecuniary interest in
28 any nursing home in this state. Of the original board
29 members appointed, the one who is a registered nurse
30 shall serve for one year, the one who has experience or
31 education in the field of aging shall serve for two years,

32 the one who is a member of the medical profession shall
33 serve for three years, the one who is a licensed pharma-
34 cist shall serve for four years, one of the two nursing
35 home administrators shall serve for five years, and the
36 other nursing home administrator shall serve for six
37 years. All subsequent appointments shall be for six
38 years, except that in case of a vacancy, the appointee
39 shall be appointed for the remainder of the unex-
40 pired term. Any vacancy shall be filled by the gover-
41 nor, with the advice and consent of the senate, from the
42 same group as was represented by the outgoing member.
43 All members of the board, unless sooner removed, shall
44 continue to serve until their respective terms expire and
45 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
2 have the following powers, duties and rights:

3 (a) To adopt, promulgate, amend, modify and en-
4 force regulations and standards for nursing homes.

5 (b) To exercise as sole authority all powers relat-
6 ing to the issuance, suspension and revocation of licenses
7 of nursing homes.

8 (c) To adopt, promulgate, amend and modify rules
9 and regulations governing the qualifications of applicants
10 for nursing home licenses including but not limited to
11 educational requirements, financial requirements, moral,
12 personal and ethical requirements.

13 (d) To adopt, promulgate, amend and modify such
14 other reasonable rules and regulations to carry out
15 the intent and purpose of this article.

16 In addition, the board may classify nursing homes
17 into care categories such as homes for the aged, con-
18 valescent homes, and extended care facilities not oper-
19 ated by hospitals, and other comparable categories under
20 the terms of this article, if, in the opinion of the board,
21 the best interest of the public is served by so doing.
22 Such classification shall be by rules and regulations duly
23 promulgated and adopted in accordance with the re-
24 quirements hereinafter set out.

§16-5C-5. Meetings of board; quorum.

1 The first meeting of the board shall be on a date not
2 later than sixty days after the board has been appointed.
3 Thereafter, the board shall meet at least twice each year
4 on dates to be set by the board. Special meetings of
5 the board shall be called by the chairman or on the
6 written request of any three members of the board.
7 Five members shall constitute a quorum for the transac-
8 tion of all business when such number includes at least one
9 nursing home administrator. The board shall establish
10 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
2 pro tempore and any other officers as the board shall
3 deem necessary in the conduct of its official duties. The
4 members of the board shall serve without salary, but
5 they shall be reimbursed for all reasonable and necessary
6 expenses actually incurred in the discharge of their offi-
7 cial duties out of the receipts of the board: *Provided,*
8 That the ex officio members of the board shall be reim-
9 bursed for such expenses out of the funds of their re-
10 spective 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
2 article, no person shall establish, conduct, operate or
3 maintain a nursing home unless and until he first obtains
4 a license therefor as hereinafter provided, which license re-
5 mains unsuspended, unrevoked and unexpired. The
6 procedure for obtaining such license shall be as follows:
7 (a) The applicant shall submit an application to the
8 board on a form to be prescribed by the board, containing
9 such information as may be necessary to show that the
10 applicant is reputable and responsible and able to com-
11 ply with the standards for nursing homes as established
12 by the rules and regulations lawfully promulgated under
13 this article. The application shall contain the following in-

14 formation: The name of the applicant; the type of insti-
15 tution to be operated; the location thereof; the name of the
16 person to be in charge thereof; and such other informa-
17 tion as the board may require.

18 (b) The board may, without further evidence, direct
19 and approve the issuance of a license or a renewal upon
20 application and payment of the required fee when the
21 requirements of the board established pursuant to section
22 four (c) of this article have been satisfied: *Provided,*
23 That, in its discretion, the board may, and, upon the de-
24 mand of the applicant, shall hold a hearing to determine
25 whether a license should be issued or renewed, as the case
26 may be. Such hearing shall be held in accordance with
27 and be governed by the provisions of article five, chapter
28 twenty-nine-a of this code with like effect as if the pro-
29 visions of said article five were set forth in extenso in
30 this section.

31 (c) If, after such hearing, the board determines that
32 the applicant complies, and will in the future comply,
33 with the provisions of this article, and the rules and
34 regulations promulgated hereunder, the board shall
35 direct the issuance or renewal of a license licensing
36 the applicant to operate said nursing home. An original
37 license shall be renewable, conditioned only upon the
38 licensee filing timely application for the extension of the
39 term of the license accompanied by the fee. A license
40 to operate a nursing home shall be issued only for the
41 premises named in the application and shall be posted in
42 a conspicuous place in such nursing home. No license
43 issued hereunder shall be transferable or assignable
44 without the written consent of the board, but such con-
45 sent shall not be arbitrarily or capriciously withheld.

46 (d) In determining whether to approve or reject a
47 license application for a presently existing and operating
48 nursing home, the board shall consider the economic
49 impact of the denial of a license, based upon standards
50 adopted after such nursing home commenced operations
51 and was first licensed, upon the owner or operator of the
52 nursing home and the effects upon the patients served
53 thereby as well as upon the community. If undue hard-
54 ship would result from denial of said license, the board

55 shall approve or reject such application on the basis of
56 the standards adopted and in effect at the time such
57 nursing home commenced functioning and was first
58 licensed.

59 (e) In the event the board finds that an applicant
60 seeking to renew a license substantially complies and
61 will soon fully comply with standards set pursuant to
62 the provisions of this article, it may issue a provisional
63 renewal of the license conditioned upon full and timely
64 compliance with requirements specifically stated by the
65 board. A provisional renewal may be automatically re-
66 voked if its terms are not met within the period specified:
67 *Provided*, That a provisional renewal may not be issued
68 for a period greater than one year.

69 In any case where a license or renewal is not issued, the
70 fee is to be returned to the applicant. If the board re-
71 fuses to issue or renew the license after a hearing de-
72 manded by the applicant as provided in this section, the
73 applicant is entitled to judicial review thereof. All of the
74 pertinent provisions of section four, article five, chapter
75 twenty-nine-a of this code shall apply to and govern such
76 review with like effect as if the provisions of said section
77 four were set forth in extenso in this section.

78 The judgment of the circuit court shall be final unless
79 reversed, vacated or modified on appeal to the supreme
80 court of appeals in accordance with the provisions of sec-
81 tion one, article six, chapter twenty-nine-a of this code.

82 Legal counsel and services for the board in all appeal
83 proceedings in any circuit court and the supreme court
84 of appeals shall be provided by the attorney general or
85 his assistants, and in appeal proceedings in any circuit
86 court by the prosecuting attorney of the county as well,
87 all without additional compensation.

§16-5C-8. License fees; amount, disposition.

1 An application fee in the amount of one hundred dol-
2 lars for an original nursing home license shall be paid at
3 the time application is made for such license. The license
4 fee for renewal of license shall be one dollar per bed
5 based on the approved bed capacity as determined by
6 the board. All such license fees shall be due and payable

7 to the board on or before June thirtieth of each year.
8 Such fee and application shall be submitted to the secre-
9 tary of the board who shall retain both the applica-
10 tion and fee pending final action on the application.
11 Thereafter, upon order of the auditor of the state, all
12 such fees shall be transmitted to the state treasurer
13 to be deposited to the credit of the general revenue fund:
14 *Provided*, That authorized expenses of the board are to
15 be paid out of such fees.

§16-5C-9. Inspection.

1 Inspection of nursing homes shall be made regularly as
2 required by the board and in accordance with the rules
3 and regulations adopted and promulgated hereunder. Re-
4 ports of such inspection shall be in writing which shall
5 be filed with the board. The department of health of
6 this state, by its employees or authorized agents, shall
7 make all health, sanitation and like inspections. The
8 state fire marshal, by his employees or authorized agents,
9 shall make all fire, safety, and like inspections. The board
10 may provide for such other inspections and the enforce-
11 ment of its rules and regulations as it may deem neces-
12 sary to carry out the intent and purpose of this article.

§16-5C-10. Rules and regulations.

1 All rules and regulations shall be approved by the
2 board and promulgated in the manner provided by the
3 provisions of article three, chapter twenty-nine-a of this
4 code.

**§16-5C-11. Suspension or revocation of license; notice; hearing;
judicial review; appeal; confidential information.**

1 The board may suspend or revoke a license issued
2 hereunder on any of the following grounds:

3 (1) Violation of any of the provisions of this article
4 or the standards or rules and regulations promulgated
5 pursuant hereto.

6 (2) Conduct or practices found by the board to be
7 detrimental to the welfare of the patients of the nursing
8 home.

9 Whenever a license is suspended or revoked, the board
10 shall file a complaint stating facts constituting a ground

11 or grounds for revocation or suspension. Upon the filing
12 of the complaint, the board shall notify the licensee in
13 writing of the filing of the complaint and of the time and
14 place of the hearing, and shall also enclose a copy of the
15 complaint with such notice. Such notice and copy of the
16 complaint shall be served on such licensee by certified
17 mail, return receipt requested. The hearing shall be held
18 by the board not less than fifteen days after such service
19 on the licensee. The licensee shall be entitled to be rep-
20 resented by counsel at said hearing.

21 All of the pertinent provisions of article five, chapter
22 twenty-nine-a of this code shall apply to and govern any
23 such hearing and the administrative procedures in con-
24 nection with and following such hearing, with like effect
25 as if the provisions of said article five were set forth in
26 extenso in this section.

27 Following such hearing the board shall make and enter
28 a written order either suspending or revoking such li-
29 cense, dismissing the complaint or taking such other ac-
30 tion as is authorized in this article. If the board sus-
31 pends such license, it may also specify the conditions
32 giving rise to such suspension, to be corrected by the li-
33 censee during the period of suspension, in order to en-
34 title the licensee to reinstatement of his license.

35 The written order of the board shall be accompanied
36 by findings of fact and conclusions of law as specified in
37 section three, article five, chapter twenty-nine-a of this
38 code, and a copy of such order and accompanying find-
39 ings and conclusions shall be served upon the licensee
40 and his attorney of record, if any, by certified mail, re-
41 turn receipt requested. The order of the board shall be
42 final unless vacated or modified upon judicial review
43 thereof in accordance with the provisions of this section.

44 In addition to all other powers granted it by this sec-
45 tion, the board may hold the case under advisement and
46 make a recommendation as to requirements to be met
47 by said licensee in order to avoid either suspension or
48 revocation. In such a case, the board shall enter an or-
49 der accordingly and so notify the licensee and his at-
50 torney of record, if any, by certified mail, return re-
51 ceipt requested. If the licensee meets the requirements

52 of such order, the board shall enter an order showing
53 satisfactory compliance and dismissing the complaint and
54 shall so notify the licensee and his attorney of record,
55 if any, by certified mail, return receipt requested.

56 Any licensee adversely affected by an order of the
57 board rendered after a hearing held in accordance with
58 the provisions of this section is entitled to judicial re-
59 view thereof. All of the pertinent provisions of section
60 four, article five, chapter twenty-nine-a of this code shall
61 apply to and govern such review with like effect as if
62 the provisions of said section four were set forth in ex-
63 tenso in this section.

64 The judgment of the circuit court shall be final un-
65 less reversed, vacated or modified on appeal to the su-
66 preme court of appeals in accordance with the provisions
67 of section one, article six, chapter twenty-nine-a of this
68 code.

69 Legal counsel and services for the board in all appeal
70 proceedings in any circuit court and the supreme court
71 of appeals shall be provided by the attorney general
72 or his assistants, and in appeal proceedings in any cir-
73 cuit court by the prosecuting attorney of the county as
74 well, all without additional compensation.

75 Information received by the board under the provisions
76 of this article shall be confidential and shall not be pub-
77 licly disclosed except in a proceeding involving the ques-
78 tion of the issuance or revocation of a license.

§16-5C-12. Unlawful acts; penalty.

1 It shall be unlawful for any person to conduct, main-
2 tain or operate, or permit to be conducted, maintained or
3 operated, or to participate in the conduct, maintenance
4 or operation of a nursing home in this state, unless and
5 until a license therefor is first issued in accordance with
6 this article, which license remains unexpired, unsus-
7 pended and unrevoked.

8 Any person violating the provisions of this section shall
9 be guilty of a misdemeanor, and, upon conviction thereof,
10 shall be fined not more than one hundred dollars for the
11 first offense, and not less than fifty nor more than one
12 hundred dollars for each subsequent offense. Each day

13 a violation continues after conviction shall be consid-
14 ered a separate offense.

§16-5C-13. Injunctions.

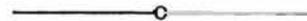
1 If any person conducts, manages or operates a nurs-
2 ing home without first having obtained a license there-
3 for, which license remains unexpired, unsuspended and
4 unrevoked, the circuit court, or the judge thereof in vaca-
5 tion, of the county in which such conduct, management or
6 operation occurred, shall upon proper application by the
7 board in the name of the state, and after ten days' written
8 notice thereof to such person, issue an injunction pro-
9 hibiting such person from managing or operating such
10 nursing home until he has fully complied with the provi-
11 sions of this article. The remedy provided in this sec-
12 tion shall be in addition to all other penalties and reme-
13 dies 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
2 the taking effect of this article shall continue in full
3 force and effect during the period for which issued un-
4 less 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
2 code, which are inconsistent with the provisions of this
3 article are hereby repealed to the extent of such incon-
4 sistency. The provisions of this article are severable
5 and if any shall be held unconstitutional or invalid, such
6 determination shall not affect or impair any of the re-
7 maining 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, chap-
ter 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.

§16-15-1. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following respective meanings,
3 unless in any case a different meaning clearly appears
4 from the context:

5 (a) "Authority" or "housing authority" shall mean a
6 corporate body organized in accordance with the pro-
7 visions of this article for the purposes, with the powers,
8 and subject to the restrictions hereinafter set forth.

9 (b) "Mayor" shall mean the chief executive of the
10 city, whether the official designation of his office be
11 mayor, city manager or otherwise.

12 (c) "Council" shall mean the chief legislative body
13 of the city.

14 (d) "Commissioner" shall mean one of the members
15 of an authority appointed in accordance with the pro-
16 visions of this article.

17 (e) "Government" shall include the state and federal
18 governments and any subdivisions, agency or instru-
19 mentality, corporate or otherwise, of either of them.

20 (f) The "state" shall mean the state of West Virginia.

21 (g) "City" shall mean any incorporated city, town
22 or village.

23 (h) "Slum clearance" shall include the removal of
24 housing conditions which shall be considered by the
25 housing authority of the city in which such conditions
26 exist to be unsanitary or substandard or a menace to
27 public health.

28 (i) "Low-cost housing" shall include any housing ac-
29 commodations which are or are to be rented at not in

30 excess of a maximum rate per room, or maximum aver-
31 age rate per room, which shall be specified or provided
32 by the housing authority of the city in which such hous-
33 ing accommodations are or are to be located, or the Legis-
34 lature, or a duly constituted agency of the state, or of
35 the United States of America.

36 (j) "Project" shall include all lands, buildings and
37 improvements, acquired, owned, leased, managed or
38 operated by a housing authority, and all buildings and
39 improvements constructed, reconstructed or repaired by
40 a housing authority, designed to provide housing ac-
41 commodated, or stores, offices and community facili-
42 ties appurtenant thereto, which are planned as a unit,
43 whether or not acquired or constructed at one time, and
44 which ordinarily are contiguous or adjacent to one an-
45 other. The term "project" may also be applied to the
46 planning of buildings and improvements, the acquisition
47 of property, the demolition of existing structures, the
48 clearing of land, the construction, reconstruction and
49 repair of improvements and all other work in connec-
50 tion therewith.

51 (k) "Community facilities" shall include lands, build-
52 ings and equipment of recreation or social assembly, for
53 educational, health or welfare activities and other neces-
54 sary utilities primarily for use and benefit of the occu-
55 pants of housing accommodations to be constructed and
56 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.
13. Exclusiveness of remedy.
14. Penalty.
15. Construction; severability.

§5-11-1. Short title.

- 1 This article shall be known and may be cited and re-
- 2 ferred 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
- 2 provide all of its citizens equal opportunity for employ-
- 3 ment and equal access to places of public accommodations.
- 4 Equal opportunity in the areas of employment and
- 5 public accommodations is hereby declared to be a human
- 6 right or civil right of all persons without regard to race,
- 7 religion, color, national origin, age, sex or ancestry.
- 8 The denial of these rights to properly qualified per-
- 9 sons by reason of race, religion, color, national origin
- 10 or ancestry is contrary to the principles of freedom and
- 11 equality of opportunity and is destructive to a free and
- 12 democratic society.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individ-
3 uals, partnerships, associations, organizations, corpora-
4 tions, labor organizations, cooperatives, legal represen-
5 tatives, trustees, trustees in bankruptcy, receivers, and
6 other organized groups of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive direc-
10 tor of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twenty-five or more persons within the state: *Provided*,
14 That such term shall not be taken, understood or con-
15 strued to include a private club;

16 (e) The term "employee" shall not include any in-
17 dividual employed by his parents, spouse, or child, or
18 in the domestic service of any person;

19 (f) The term "labor organization" includes any or-
20 ganization which exists for the purpose, in whole or in
21 part, for collective bargaining or for dealing with em-
22 ployers concerning grievances, terms or conditions of em-
23 ployment, or for other mutual aid or protection in rela-
24 tion to employment;

25 (g) The term "employment agency" includes any per-
26 son undertaking with or without compensation to pro-
27 cure, recruit, refer or place employees;

28 (h) The term "discriminate" or "discrimination"
29 means to exclude from, or fail or refuse to extend to, a
30 person equal opportunities because of race, religion, color,
31 national origin or ancestry, and includes to separate or
32 segregate;

33 (i) The term "unlawful discriminatory practices" in-
34 cludes only those practices specified in section nine of
35 this article;

36 (j) The term "place of public accommodations" means
37 any establishment or person, as defined herein, including
38 the state, or any political or civil subdivision thereof,
39 which offers its services, goods, facilities, or accommo-

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, powers and objects.

1 The West Virginia human rights commission, hereto-
2 fore created, is hereby continued. The commission shall
3 have the powers and authority and shall perform the
4 functions and services as in this article prescribed and as
5 otherwise provided by law. The commission shall en-
6 courage and endeavor to bring about mutual under-
7 standing and respect among all racial, religious and eth-
8 nic groups within the state and shall strive to eliminate
9 all discrimination in employment and places of public
10 accommodations by virtue of race, religion, color, na-
11 tional origin or ancestry.

§5-11-5. Composition; appointment, terms and oath of members; 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

24 official oath prescribed by section five, article four of
25 the constitution of West Virginia, which executed oath
26 shall be filed in the office of the secretary of state.

27 Each member of the commission shall receive a salary
28 of twenty-five dollars per day as compensation for his
29 services as such, and each member shall be reimbursed
30 for his reasonable and necessary travel expenses actu-
31 ally incurred in performance of his commission services.

**§5-11-6. Commission organization and personnel; executive
director; offices; meetings; quorum; expenses of per-
sonnel.**

1 As soon as practical after the first day of July of each
2 year, the governor shall call a meeting of the commis-
3 sion to be convened at the state capitol. The commis-
4 sion shall at such meeting organize by electing one of
5 its members as chairman of the commission and one
6 as vice chairman thereof for a term of one year or until
7 their successors are elected and qualified. At such meet-
8 ing the commission shall also elect from its member-
9 ship such other officers as may be found necessary and
10 proper for its effective organization.

11 The governor shall, by and with the advice and con-
12 sent of the senate, appoint an executive director to serve
13 at his will and pleasure. The executive director shall
14 serve as secretary of the commission. The executive
15 director shall have a college degree. He shall be selected
16 with particular reference to his training, experience and
17 qualifications for the position and shall be paid an an-
18 nual salary, payable in monthly installments, from any
19 appropriations made therefor. The commission, upon
20 recommendation of the executive director and in accord-
21 ance with the requirements of the civil service law, may
22 employ such personnel as may be necessary for the effec-
23 tive and orderly performance of the functions and serv-
24 ices of the commission.

25 The commission shall equip and maintain its offices at the
26 state capitol and shall hold its annual organizational meet-
27 ing there. The commission may hold other meetings dur-
28 ing the year at such times and places within the state as
29 may be found necessary. Any five members of the com-

30 mission shall constitute a quorum for the transaction of
31 business. Minutes of its meetings shall be kept by its
32 secretary.

33 The executive director and other commission person-
34 nel shall be reimbursed for necessary and reasonable
35 travel and subsistence expenses actually incurred in the
36 performance of commission services upon presentation
37 of properly verified expense accounts as prescribed by
38 law.

§5-11-7. Assistance to commission; legal services.

1 The commission may call upon other officers, depart-
2 ments and agencies of the state government to assist in
3 its hearings, programs and projects. The attorney gen-
4 eral of the state shall render legal services to the com-
5 mission upon request made by the commission or by
6 the chairman or the executive director thereof.

§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and
3 local government officers, units, activities and agencies
4 in the promotion and attainment of more harmonious
5 understanding and greater equality of rights between
6 and among all racial, religious and ethnic groups in this
7 state;

8 (b) To enlist the cooperation of racial, religious and
9 ethnic units, community and civic organizations, indus-
10 trial and labor organizations and other identifiable
11 groups of the state in programs and campaigns devoted
12 to the advancement of tolerance, understanding and the
13 equal protection of the laws of all groups and peoples;

14 (c) To receive, investigate and pass upon complaints
15 alleging discrimination in employment or places of pub-
16 lic accommodations, because of race, religion, color, na-
17 tional origin or ancestry, and to initiate its own con-
18 sideration of any situations, circumstances or problems,
19 including therein any racial, religious or ethnic group
20 tensions, prejudice, disorder or discrimination reported
21 or existing within the state relating to employment and
22 places of public accommodations;

23 (d) To hold and conduct public and private hearings on
24 complaints, matters and questions before the commis-
25 sion and, in connection therewith, relating to discrimi-
26 nation in employment or places of public accommoda-
27 tions and during the investigation of any formal com-
28 plaint before the commission relating to employment or
29 places of public accommodations to:

30 (1) Issue subpoenas and subpoenas duces tecum upon
31 the concurrence of at least five members of the commis-
32 sion, administer oaths, take the testimony of any person
33 under oath, and make reimbursement for travel and other
34 reasonable and necessary expenses in connection with
35 such attendance;

36 (2) Furnish copies of public hearing records to par-
37 ties involved therein upon their payment of the rea-
38 sonable costs thereof to the commission;

39 (3) Delegate to a panel of three commission members
40 appointed by the chairman, the power and authority to
41 hold and conduct the hearings, as herein provided, but all
42 decisions and action growing out of or upon any such hear-
43 ings shall be reserved for determination by the commission;

44 (4) To enter into conciliation agreements;

45 (5) To apply to the circuit court of the county where
46 the respondent resides or transacts business for enforce-
47 ment of any conciliation agreement by seeking specific
48 performance of such agreement;

49 (6) To issue cease and desist orders against any per-
50 son found, after a public hearing, to have violated the
51 provisions of this article or the rules and regulations
52 of the commission;

53 (7) To apply to the circuit court of the county where
54 the respondent resides or transacts business for an or-
55 der enforcing any lawful cease and desist order issued
56 by the commission;

57 (e) To recommend to the governor and Legislature
58 policies, procedures, practices and legislation in mat-
59 ters and questions affecting human rights;

60 (f) To delegate to its executive director such pow-
61 ers, duties and functions as may be necessary and ex-

62 pedient in carrying out the objectives and purposes of
63 this article;

64 (g) To prepare a written report on its work, func-
65 tions and services for each year ending on the thirtieth
66 day of June and to deliver copies thereof to the governor
67 on or before the first day of December next thereafter;

68 (h) To do all other acts and deeds necessary and
69 proper to carry out and accomplish effectively the ob-
70 jects, functions and services contemplated by the pro-
71 visions of this article, including the promulgation of
72 rules and regulations in accordance with the provisions
73 of article three, chapter twenty-nine-a of this code, im-
74 plementing the powers and authority hereby vested in
75 the commission;

76 (i) To create such advisory agencies and concilia-
77 tion councils, local, regional, or statewide, as in its judg-
78 ment will aid in effectuating the purposes of this article, to
79 study the problem of discrimination in all or specific
80 fields or instances or discrimination because of race,
81 religion, color, national origin or ancestry; to foster,
82 through community effort or otherwise, good will, co-
83 operation and conciliation among the groups and ele-
84 ments of the population of this state, and to make rec-
85 ommendations to the commission for the development
86 of policies and procedures, and for programs of formal
87 and informal education, which the commission may rec-
88 ommend to the appropriate state agency. Such advisory
89 agencies and conciliation councils shall be composed of
90 representative citizens serving without pay. The com-
91 mission may itself make the studies and perform the
92 acts authorized by this subdivision. It may, by voluntary
93 conferences with parties in interest, endeavor by con-
94 ciliation and persuasion to eliminate discrimination in
95 all the stated fields and to foster good will and cooper-
96 ation among all elements of the population of the state;

97 (j) To accept contributions from any person to as-
98 sist in the effectuation of the purposes of this section and
99 to seek and enlist the cooperation of private, charitable,
100 religious, labor, civic and benevolent organizations for
101 the purposes of this section;

102 (k) To issue such publications and such results of
103 investigation and research as in its judgment will tend
104 to promote good will and minimize or eliminate discrim-
105 ination: *Provided*, That the identity of the parties in-
106 volved shall not be disclosed.

§5-11-9. Unlawful discriminatory practices.

1 It shall be an unlawful discriminatory practice, un-
2 less based upon a bona fide occupational qualification,
3 or except where based upon applicable security regu-
4 lations established by the United States or the state of
5 West Virginia or its agencies or political subdivisions:

6 (a) For any employer to discriminate against an
7 individual with respect to compensation, hire, tenure,
8 terms, conditions or privileges of employment if the
9 individual is able and competent to perform the serv-
10 ices required;

11 (b) For any employer, employment agency or labor
12 organization, prior to the employment or admission to
13 membership, to (1) elicit any information or make or
14 keep a record of or use any form of application or ap-
15 plication blank containing questions or entries concern-
16 ing the race, religion, color, national origin or ancestry
17 of any applicant for employment or membership; (2)
18 print or publish or cause to be printed or published any
19 notice or advertisement relating to employment or mem-
20 bership indicating any preference, limitation, specifica-
21 tion or discrimination based upon race, religion, color,
22 national origin or ancestry; or (3) deny or limit, through
23 a quota system, employment or membership because of
24 race, religion, color, national origin or ancestry;

25 (c) For any labor organization because of the race,
26 religion, color, national origin or ancestry of any indi-
27 vidual to deny full and equal membership rights to any
28 individual or otherwise to discriminate against such in-
29 dividuals with respect to hire, tenure, terms, conditions
30 or privileges of employment or any other matter, di-
31 rectly or indirectly, related to employment;

32 (d) For an employer, labor organization, employment
33 agency or any joint labor-management committee con-
34 trolling 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, proprie-
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 thereof of any individual,

75 belonging to or purporting to be of any particular race,
76 religion, color, national origin or ancestry is unwelcome,
77 objectionable, not acceptable, undesired or not solicited;

78 (g) For any person, employer, employment agency
79 or labor organization to:

80 (1) Engage in any form of threats or reprisal, or to
81 engage in, or hire, or conspire with others to commit
82 acts or activities of any nature, the purpose of which
83 is to harass, degrade, embarrass, or cause physical harm
84 or economic loss or to aid, abet, incite, compel, or coerce
85 any person to engage in any of the unlawful discrim-
86 inatory practices defined in this section;

87 (2) Willfully obstruct or prevent any person from
88 complying with the provisions of this article, or to re-
89 sist, prevent, impede or interfere with the commission
90 or any of its members or representatives in the perfor-
91 mance of duty under this article;

92 (3) Engage in any form of reprisal or otherwise dis-
93 criminate against any person because he has opposed
94 any practices or acts forbidden under this article or be-
95 cause he has filed a complaint, testified, or assisted in
96 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
2 unlawful discriminatory practice shall make, sign and
3 file with the commission a verified complaint, which
4 shall state the name and address of the person, employer,
5 labor organization or employment agency alleged to
6 have committed the unlawful discriminatory practice
7 complained of, and which shall set forth the particu-
8 lars thereof and contain such other information as may
9 be required by the commission's rules and regulations.
10 The commission upon its own initiative, or the attorney
11 general, shall, in like manner, make, sign and file such
12 complaint. Any employer, whose employees, or some
13 of them, hinder or threaten to hinder compliance with
14 the provisions of this article, shall file with the commis-
15 sion a verified complaint, asking for assistance by con-
16 ciliation or other remedial action and, during such period

17 of conciliation or other remedial action, no hearings,
18 orders or other actions shall be held, made or taken by
19 the commission against such employer. Any complaint
20 filed pursuant to this article must be filed within sixty
21 days after the alleged act of discrimination.

22 After the filing of any complaint, or whenever there
23 is reason to believe that an unlawful discriminatory
24 practice has been committed, the commission shall make
25 a prompt investigation in connection therewith.

26 If it shall be determined after such investigation that
27 no probable cause exists for substantiating the allega-
28 tions of the complaint, the commission shall, within ten
29 days from such determination, cause to be issued and
30 served upon the complainant written notice of such de-
31 termination, and the said complainant or his attorney
32 may, within ten days after such service, file with the
33 commission a written request for a meeting with the
34 commission to show probable cause for substantiating
35 the allegations of the complaint. If it shall be determined
36 after such investigation or meeting that probable cause
37 exists for substantiating the allegations of the complaint,
38 the commission shall immediately endeavor to eliminate
39 the unlawful discriminatory practices complained of by
40 conference, conciliation and persuasion. The members
41 of the commission and its staff shall not disclose
42 what has transpired in the course of such endeavors:
43 *Provided*, That the commission may publish the facts
44 in the case of any complaint which has been dismissed,
45 and the terms of conciliation when the complaint has
46 been adjusted, without disclosing the identity of the par-
47 ties involved.

48 In case of failure so to eliminate such practice or in
49 advance thereof, if in the judgment of the commission
50 circumstances so warrant, the commission shall cause
51 to be issued and served a written notice, together with
52 a copy of such complaint as the same may have been
53 amended, in the manner provided by law for the service of
54 summons in civil actions, requiring the person, employer,
55 labor organization or employment agency named in such
56 complaint, hereinafter referred to as respondent, to an-
57 swer the charges of such complaint at a hearing before the

58 commission in the county of residence of the respondent,
59 at a time and place to be specified in such notice: *Pro-*
60 *vided, however,* That said written notice be served at least
61 thirty days prior to the time set for the hearing.

62 The case in support of the complaint shall be presented
63 before the commission by one of its attorneys or agents.
64 The respondent may file a written, verified answer to the
65 complaint and appear at such hearing in person or other-
66 wise, with or without counsel, and submit testimony and
67 evidence. Except as provided in the immediately preced-
68 ing proviso, all of the pertinent provisions of article five,
69 chapter twenty-nine-a of this code shall apply to and gov-
70 ern the hearing and the administrative procedures in con-
71 nection with and following such hearing, with like effect
72 as if the provisions of said article five were set forth in
73 extenso in this section.

74 If, after such hearing and consideration of all of the
75 testimony, evidence and record in the case, the com-
76 mission shall find that a respondent has engaged in or
77 is engaging in any unlawful discriminatory practice as
78 defined in this article, the commission shall issue and
79 cause to be served on such respondent an order to cease
80 and desist from such unlawful discriminatory practice
81 and to take such affirmative action, including, but not
82 limited to, hiring, reinstatement or upgrading of em-
83 ployees, with or without back pay, admission or restora-
84 tion to membership in any respondent labor organization,
85 or the admission to full and equal enjoyment of the serv-
86 ices, goods, facilities, or accommodations offered by any
87 respondent place of public accommodations, denied in
88 violation of this article, as in the judgment of the commis-
89 sion, will effectuate the purposes of this article, and in-
90 cluding a requirement for report of the manner of com-
91 pliance. Such order shall be accompanied by findings of
92 fact and conclusions of law as specified in section three,
93 article five, chapter twenty-nine-a of this code.

94 If, after such hearing and consideration of all of the
95 testimony, evidence and record in the case, the commis-
96 sion shall find that a respondent has not engaged in such
97 unlawful discriminatory practice, the commission shall
98 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

4 relations commission. The number and qualifications
5 of the members of any local commission and their terms
6 and method of appointment or removal shall be such
7 as may be determined and agreed upon by the legisla-
8 tive body, except that no such member shall hold office
9 in any political party.

10 (b) The legislative body of any political subdivision
11 shall have the authority to appropriate funds, in such
12 amounts as may be deemed necessary, for the purpose
13 of contributing to the operation of a local commission.

14 (c) The local commission shall have the power to
15 appoint such employees and staff, as it may deem neces-
16 sary, to fulfill its purpose.

§5-11-13. Exclusiveness of remedy.

1 Nothing contained in this article shall be deemed to
2 repeal or supersede any of the provisions of any exist-
3 ing or hereafter adopted municipal ordinance, municipi-
4 pal charter or of any law of this state relating to dis-
5 crimination because of race, religion, color, national or-
6 igin or ancestry, but as to acts declared unlawful by
7 section nine of this article the procedure herein pro-
8 vided shall, when invoked, be exclusive and the final
9 determination therein shall exclude any other action,
10 civil or criminal, based on the same grievance of the
11 complainant concerned. If such complainant institutes
12 any action based on such grievance without resorting
13 to the procedure provided in this article, he may not
14 subsequently resort to the procedure herein. In the
15 event of a conflict between the interpretation of a pro-
16 vision of this article and the interpretation of a similar
17 provision contained in any municipal ordinance author-
18 ized by charter, the interpretation of the provision in
19 this article shall apply to such municipal ordinance.

§5-11-14. Penalty.

1 Any person who shall wilfully resist, prevent, impede
2 or interfere with the commission, its members, agents
3 or agencies in the performance of duties pursuant to
4 this article, or shall wilfully violate a final order of the
5 commission, shall be guilty of a misdemeanor, and, upon
6 conviction thereof, shall be punished by a fine of not

7 less than one hundred dollars nor more than five hun-
8 dred dollars, or by imprisonment not exceeding thirty
9 days, or by both such fine and imprisonment, in the dis-
10 cretion of the court, but seeking judicial review of an
11 order shall not be deemed to be such willful conduct.

§5-11-15. Construction; severability.

1 The provisions of this article shall be liberally con-
2 strued to accomplish its objectives and purposes. If any
3 provision of this article be held invalid or unconstitu-
4 tional by any court of competent jurisdiction, such in-
5 validity or unconstitutionality shall not affect or invali-
6 date the other provisions hereof, all of which are de-
7 clared 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, chap-
ter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the pay-
ment 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 solic-
itors; access to books, records, etc.**

1 (a) The commissioner or his accredited examiners
2 shall, at least once each three years, visit each domestic
3 insurer and thoroughly examine its financial condition
4 and methods of doing business and ascertain whether

5 it has complied with all the laws and regulations of this
6 state. The commissioner at such times as he deems
7 necessary may cause an examination to be conducted
8 of any foreign or alien insurer licensed to trans-
9 act insurance in this state; all expenses of such
10 examination shall be charged to and collected from such
11 insurer in the manner prescribed by the commissioner.
12 The commissioner shall make a full written report of
13 each such examination of an insurer, certified to by the
14 commissioner or the examiner in charge of such exami-
15 nation. The commissioner shall furnish a copy of the
16 report to the insurer examined not less than ten days
17 prior to filing the same in his office. If such insurer so
18 requests in writing, within such ten-day period, the com-
19 missioner shall consider the objections of such insurer
20 to the report as proposed, and shall not so file the report
21 until after such modifications, if any, have been made
22 therein as the commissioner deems proper. The report,
23 when filed, shall be admissible in evidence in any action
24 or proceeding brought by the commissioner against the
25 insurer examined, or its officers or agents, and shall be
26 prima facie evidence of the facts stated therein. The
27 commissioner or his examiners may at any time testify
28 and offer other proper evidence as to information secured
29 during the course of an examination, whether or not a
30 written report of the examination has at that time been
31 either made, served, or filed in the commissioner's office.
32 The examination of an alien insurer shall be limited to
33 its United States business. In lieu of making his own
34 examination, the commissioner may accept a full report of
35 the last recent examination of a foreign or alien insurer,
36 certified to by the insurance supervisory official of the
37 state of domicile of a foreign insurer or the state of
38 entry into the United States of an alien insurer.

39 (b) The commissioner may also cause to be examined
40 at such times as he deems necessary the books, records,
41 papers, documents, correspondence and methods of doing
42 business of any agent, broker or solicitor licensed by
43 this state.

44 (c) For such purposes the commissioner, his deputies
45 and employees shall have free access to all books, records,

46 papers, documents and correspondence of all such in-
47 surers (whether domestic, foreign or alien), agents,
48 brokers and solicitors wherever such books, records,
49 papers, documents and records are situate.

50 (d) The commissioner may revoke the license of any
51 such insurer, agent, broker or solicitor who refuses to
52 submit to such examination.

53 (e) The commissioner may withhold from public in-
54 spection any examination or investigation report for such
55 time as he may deem prudent, but no such report shall
56 be withheld from public inspection for longer than
57 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.

§33-2-12. Notice.

Whenever under the provisions of this chapter the com-
2 missioner is required to give notice to any person the
3 service of such notice shall be deemed proper and effective
4 with regard to any licensee of the commissioner (includ-
5 ing insurers, agents, brokers and solicitors) or any em-

6 ployee of such licensee when such notice directed to
7 such person to be notified shall have been deposited in
8 the United States mails, postage prepaid, addressed to
9 the principal place of business or residence of such li-
10 censee as last of record in the commissioner's office. The
11 verified return of the person depositing such notice in
12 the mails as to the fact of such mailing shall be proof
13 of service. With the exception of notice for public hear-
14 ing as is stated in subsection (g), section five, article
15 twenty of this chapter, notice to a person other than a
16 licensee or employee of a licensee shall be served in the
17 manner provided by law for service off process in civil
18 actions, and such manner of service may also be used and
19 shall constitute effective notice to a licensee or employee
20 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 requirements 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
2 otherwise provided in this chapter, an insurer applying

3 for said license, after the effective date of this section, shall
 4 possess paid-in capital stock (if a stock insurer) or sur-
 5 plus (if a mutual insurer) in the amount set forth below
 6 opposite the kinds of insurance for which license is re-
 7 quested:

8	(a) Life	\$ 750,000.00
9	(b) Accident and Sickness	\$ 750,000.00
10	(c) Life and Accident and Sickness	\$ 1,000,000.00
11	(d) Fire and Marine	\$ 250,000.00
12	(e) Casualty	\$ 250,000.00
13	(f) Surety	\$ 600,000.00
14	(g) Accident and Sickness together with	
15	any one or more of the following:	
16	Fire and Marine, Casualty.....	\$ 500,000.00
17	(h) Fire and Marine and Casualty	\$ 500,000.00
18	(i) Surety together with any one or more	
19	of the following: Accident and	
20	Sickness, Fire and Marine, Cas-	
21	ualty	\$ 600,000.00

22 In addition, every insurer applying for said license,
 23 after the enactment of this section, shall maintain addi-
 24 tional surplus funds in an amount equal to one half such
 25 minimum capital or surplus listed above for the kinds of
 26 insurance for which license is requested: *Provided*, That
 27 insurers duly licensed to transact insurance in West Vir-
 28 ginia prior to the enactment of this section shall not be
 29 subject to the capital and surplus requirements of this
 30 section but shall be required to maintain capital and sur-
 31 plus as is prescribed in section five of this article, or two
 32 hundred thousand dollars capital and one hundred thou-
 33 sand dollars surplus funds whichever be the greater. All
 34 insurers duly licensed prior to the enactment of this sec-
 35 tion whose capital and surplus requirements are increased
 36 by virtue of the above proviso shall have until June
 37 thirtieth, one thousand nine hundred seventy-one, to meet
 38 such increased requirements.

CHAPTER 93

(House Bill No. 994—By Mr. Hill)

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

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.

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under
4 certain insurance contracts and to subject said insurers
5 to the jurisdiction of the courts of this state in suits
6 by or on behalf of the insurance commissioner of West
7 Virginia. The Legislature declares that it is a subject
8 of concern that certain insurers, while not licensed to
9 transact insurance in this state, are soliciting the sale
10 of insurance and selling insurance to residents of this
11 state, thus presenting the insurance commissioner with
12 the problem of resorting to courts of foreign jurisdic-
13 tions for the purpose of enforcing the insurance laws
14 of this state for the protection of our citizens. The
15 Legislature declares that it is also a subject of concern
16 that many residents of this state hold policies of insur-
17 ance issued or delivered in this state by insurers while
18 not licensed to transact insurance in this state, thus
19 presenting to such residents the often insuperable obstacle

20 of resorting to distant forums for the purpose of
21 asserting legal rights under such policies. In further-
22 ance of such state interest, the Legislature herein
23 provides a method of substituted service of process upon
24 such insurers and declares that in so doing it exercises
25 its powers to protect its residents and to define, for the
26 purpose of this section, what constitutes transacting
27 insurance in this state, and also exercises powers and
28 privileges available to the state by virtue of public law
29 number fifteen, seventy-ninth Congress of the United
30 States, chapter twenty, first session, senate number
31 three hundred forty, as amended, which declares that
32 the business of insurance and every person engaged
33 therein shall be subject to the laws of the sev-
34 eral states.

35 (b) (1) Any of the following acts in this state,
36 effected by mail or otherwise, by an unlicensed foreign
37 or alien insurer: (1) The issuance or delivery of con-
38 tracts of insurance to residents of this state or to cor-
39 porations authorized to do business therein, (2) the
40 solicitation of applications for such contracts, (3) the
41 collection of premiums, membership fees, assessments
42 or other considerations for such contracts, or (4) any
43 other transaction of business, is equivalent to and shall
44 constitute an appointment by such insurer of the auditor
45 of the state and his successor in office, to be its true and
46 lawful attorney, upon whom may be served all lawful
47 process in any action, suit, or proceeding instituted
48 by or on behalf of an insured or beneficiary arising out
49 of any such contract of insurance, and in any action,
50 suit, or proceeding which may be instituted by the in-
51 surance commissioner in the name of any such insured
52 or beneficiary or in the name of the state of West Vir-
53 ginia, and any such act shall be signification of its
54 agreement that such service of process is of the same
55 legal force and validity as personal service of process in
56 this state upon such insurer.

57 (2) Such service of process upon any such insurer
58 in any such action or proceeding in any court of com-
59 petent jurisdiction of this state, may be made by serving
60 the auditor of the state or his chief clerk with two

61 copies thereof and the payment to him of a fee of two
62 dollars. The auditor shall forward a copy of such proc-
63 ess by registered mail to the defendant at its last-known
64 principal place of business, and shall keep a record
65 of all process so served upon him. Such service of
66 process is sufficient, provided notice of such service and
67 a copy of the process are sent within ten days there-
68 after by or on behalf of the plaintiff to the defendant
69 at its last-known principal place of business by regis-
70 tered mail with return receipt requested. The plaintiff
71 shall file with the clerk of the court in which the action
72 is pending, or with the judge or justice of such court,
73 in case there be no clerk, an affidavit of compliance
74 herewith, a copy of the process, and either a return
75 receipt purporting to be signed by the defendant or
76 a person qualified to receive its registered mail in ac-
77 cordance with the rules and customs of the postoffice
78 department; or, if acceptance was refused by the de-
79 fendant or its agent, the original envelope bearing a
80 notation by the postal authorities that receipt was re-
81 fused. Service of process so made shall be deemed
82 to have been made within the territorial jurisdiction of
83 any court in this state.

84 (3) Service of process in any such action, suit or
85 proceeding shall in addition to the manner provided
86 in subparagraph (2) of this paragraph (b) be valid
87 if served upon any person within this state who, in
88 this state on behalf of such insurer, is

89 A. Soliciting insurance, or

90 B. Making, issuing or delivering any contract of in-
91 surance, or

92 C. Collecting or receiving any premium, member-
93 ship fee, assessment or other consideration for insur-
94 ance; provided notice of such service and a copy of such
95 process are sent within ten days thereafter, by or on
96 behalf of the plaintiff to the defendant at the last-known
97 principal place of business of the defendant, by regis-
98 tered mail with return receipt requested. The plaintiff
99 shall file with the clerk of the court in which the action
100 is pending, or with the judge or justice of such court in

101 case there be no clerk, an affidavit of compliance here-
102 with, a copy of the process, and either a return receipt
103 purporting to be signed by the defendant or a per-
104 son qualified to receive its registered mail in accordance
105 with the rules and customs of the postoffice depart-
106 ment; or, if acceptance was refused by the defendant
107 or its agent the original envelope bearing a no-
108 tation by the postal authorities that receipt was
109 refused.

110 (4) The papers referred to in subparagraphs (2)
111 and (3) of this paragraph (b) shall be filed within
112 thirty days after the return receipt or other official proof
113 of delivery or the original envelope bearing a notation
114 of refusal, as the case may be, is received by the plain-
115 tiff. Service of process shall be complete ten days after
116 such process and the accompanying papers are filed in
117 accordance with this section.

118 (5) Nothing in this section contained shall limit or
119 abridge the right to serve any process, notice or demand
120 upon any insurer in any other manner now or here-
121 after permitted by law.

122 (c) (1) Before any unlicensed foreign or alien in-
123 surer shall file or cause to be filed any pleading in
124 any action, suit or proceeding instituted against it, such
125 unlicensed insurer shall either (1) deposit with the
126 clerk of the court in which such action, suit or proceed-
127 ing is pending, cash or securities or file with such clerk
128 a bond with good and sufficient sureties, to be approved
129 by the court, in an amount to be fixed by the court
130 sufficient to secure the payment of any final judgment
131 which may be rendered in such action: *Provided, how-*
132 *ever,* That the court may in its discretion make an order
133 dispensing with such deposit or bond where the
134 auditor of the state shall have certified to such court
135 that such insurer maintains within this state funds or
136 securities in trust or otherwise sufficient and available
137 to satisfy any final judgment which may be entered
138 in such action, suit or proceeding; or (2) procure a license
139 to transact insurance in this state.

140 (2) The court in any action, suit or proceeding, in

141 which service is made in the manner provided in sub-
142 paragraph (2) or (3) of paragraph (b) of this section
143 may, in its discretion, order such postponement as may
144 be necessary to afford the defendant reasonable oppor-
145 tunity to comply with the provisions of subparagraph
146 (1) of this paragraph (c) and to defend such
147 action.

148 (3) Nothing in subparagraph (1) of this paragraph
149 (c) is to be construed to prevent an unlicensed foreign
150 or alien insurer from filing a motion to set aside service
151 thereof made in the manner provided in subparagraph
152 (2) or (3) of paragraph (b) of this section on the
153 grounds either (1) that such unlicensed insurer has not
154 done any of the acts enumerated in subparagraph (1)
155 of paragraph (b) of this section, or (2) that the person
156 on whom service was made pursuant to subparagraph
157 (3) of paragraph (b) of this section was not doing any
158 of the acts therein enumerated.

159 (d) In any action against an unlicensed foreign or
160 alien insurer upon a contract of insurance issued or
161 delivered in this state to a resident thereof or to a cor-
162 poration authorized to do business therein, if the in-
163 surer has failed for thirty days after demand prior to
164 the commencement of the action to make payment in
165 accordance with the terms of the contract, and it appears
166 to the court that such refusal was vexatious and with-
167 out reasonable cause, the court may allow to the
168 plaintiff a reasonable attorney's fee and include such
169 fee in any judgment that may be rendered in such action.
170 Such fee shall not exceed twelve and one half per cent
171 of the amount which the court finds the plaintiff is
172 entitled to recover against the insurer, but in no event
173 shall such fee be less than twenty-five dollars. Failure
174 of an insurer to defend any such action shall be deemed
175 prima facie evidence that its failure to make payment
176 was vexatious and without reasonable cause.

177 (e) The provisions of this section shall not apply
178 to any suit, action or proceeding against any unlicensed
179 foreign or alien insurer arising out of any contract of
180 excess line insurance effected in accordance with article

181 twelve of this chapter where any such contract con-
182 tains a provision designating the auditor or his successor
183 in office its true and lawful attorney upon whom may
184 be served all lawful process in any action, suit or pro-
185 ceeding instituted by or on behalf of an insured or bene-
186 ficiary arising out of such contract of insurance.

CHAPTER 94

(House Bill No. 588—By Mr. Hill)

[Passed February 21, 1967; in effect ninety days from passage. Approved
by the Governor.]

AN ACT to amend and reenact section twenty-two, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, 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
2 becomes impaired, or the assets of a domestic mutual
3 insurer are less than its liabilities and the minimum
4 amount of surplus required of it by this chapter for au-
5 thority to transact the kinds of insurance being trans-
6 acted, the commissioner shall at once determine the
7 amount of the deficiency and serve notice upon the in-
8 surer to make good the deficiency within ninety days
9 after service of such notice.

10 (b) The deficiency may be made good in cash or in
11 assets eligible under this chapter for the investment of
12 the insurer's funds; or if a stock insurer by reduction of

13 the insurer's capital to an amount not below the mini-
14 mum required for the kinds of insurance thereafter to be
15 transacted; or if a mutual insurer, by amendment of its
16 license to cover only such kind or kinds of insurance for
17 which the insurer has on deposit sufficient surplus.

18 (c) If the deficiency is not made good and proof
19 thereof filed with the commissioner within such ninety-
20 day period, the insurer shall be deemed insolvent and the
21 commissioner shall institute delinquency proceedings
22 against it as authorized by this chapter. If such deficiency
23 exists because of increased loss reserves required by the
24 commissioner, or because of disallowance by the com-
25 missioner of certain assets or reduction of the value at
26 which carried in the insurer's accounts, the commis-
27 sioner may in his discretion and upon application and
28 good cause shown, extend for not more than an addi-
29 tional one hundred eighty days the period within which
30 such deficiency may be so made good and such proof
31 thereof so filed.

32 (d) The ninety-day notice required in subsection (a)
33 of this section shall only affect the grounds for rehabili-
34 tation of domestic insurers and grounds for liquidation
35 as set forth in subdivision (c), section five, article ten
36 of this chapter, and shall not affect the rights and duties
37 of the commissioner to take action under any other
38 grounds for rehabilitation of domestic insurers or grounds
39 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.

Section

30. Construction of policies.

§33-6-30. Construction of policies.

1 Every insurance contract shall be construed accord-
 2 ing to the entirety of its terms and conditions as set
 3 forth in the policy and as amplified, extended, or modi-
 4 fied by any rider, endorsement, or application attached
 5 to and made a part of the policy: *Provided*, That the
 6 word "physician" when used in any accident and sick-
 7 ness policy or other contract providing for the payment
 8 of surgical procedures shall be construed to include a
 9 physician, dentist, or chiropodist-podiatrist performing
 10 such surgical procedure within the scope of his profes-
 11 sional license: *Provided further*, That any policy of in-
 12 surance or medical or health service contract providing
 13 for payment or reimbursement for any professional serv-
 14 ices pertaining to eye examination, refractions or the
 15 fitting of corrective lenses shall be construed to include
 16 payment or reimbursement for such professional service
 17 rendered by either a duly licensed physician or a duly
 18 licensed optometrist, within the scope of their respective
 19 professional licenses, and that the insured or subscriber
 20 shall have freedom of choice to select either a physician
 21 or an optometrist to render or perform such professional
 22 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.]

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 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-

22 bile is conditioned upon the consent of the owner of such
23 motor vehicle, the word "owner" shall be construed to in-
24 clude the custodian of such nonowned motor vehicles.

25 (b) Nor shall any such policy or contract be so issued
26 or delivered unless it shall contain an endorsement or
27 provisions undertaking to pay the insured all sums which
28 he shall be legally entitled to recover as damages from
29 the owner or operator of an uninsured motor vehicle,
30 within limits which shall be no less than the requirements
31 of section two, article four, chapter seventeen-d of the
32 code of West Virginia, as amended from time to time:
33 *Provided*, That such endorsement or provisions may ex-
34 clude the first three hundred dollars of property damage
35 resulting from the negligence of an uninsured motorist.

36 (c) As used in this section, the term "bodily injury"
37 shall include death resulting therefrom, and the term
38 "named insured" shall mean the person named as such in
39 the declarations of the policy or contract and shall also in-
40 clude such person's spouse if a resident of the same house-
41 hold, and the term "insured" shall mean the named insured
42 and, while resident of the same household, the spouse of
43 any such named insured, and relatives of either, while in a
44 motor vehicle or otherwise, and any person, except a bailee
45 for hire, who uses, with the consent, expressed or implied,
46 of the named insured, the motor vehicle to which the pol-
47 icy applies or the personal representative of any of the
48 above; and the term "uninsured motor vehicle" shall mean
49 a motor vehicle as to which there is no (i) bodily injury lia-
50 bility insurance and property damage liability insurance
51 both in the amounts specified by section two, article four,
52 chapter seventeen-d, as amended from time to time, or (ii)
53 there is such insurance, but the insurance company writing
54 the same denies coverage thereunder, or (iii) there is no
55 certificate of self insurance issued in accordance with the
56 provision of section two, article six, chapter seventeen-d of
57 the code of West Virginia. A motor vehicle shall be deemed
58 to be uninsured if the owner or operator thereof be unknown:
59 *Provided*, That recovery under the endorsement or provi-
60 sions shall be subject to the conditions hereinafter set forth.

61 (d) Any insured intending to rely on the coverage re-
62 quired by subsection (b) of this section shall, if any ac-

63 tion be instituted against the owner or operator of an
64 uninsured motor vehicle, cause a copy of the summons
65 and a copy of the complaint to be served upon the insur-
66 ance company issuing the policy, in the manner prescribed
67 by law, as though such insurance company were a named
68 party defendant; such company shall thereafter have the
69 right to file pleadings and to take other action allowable
70 by law in the name of the owner, or operator, or both, of
71 the uninsured motor vehicle or in its own name. Nothing
72 in this subsection shall prevent such owner or operator
73 from employing counsel of its own choice and taking any
74 action in his own interest in connection with such pro-
75 ceeding.

76 (e) If the owner or operator of any motor vehicle
77 which causes bodily injury or property damage to the
78 insured be unknown, the insured, or someone in his behalf,
79 in order for the insured to recover under the uninsured
80 motorist endorsement or provision, shall:

81 (i) Within twenty-four hours report the accident to a
82 police, peace, or judicial officer, or to the commissioner of
83 motor vehicles, unless the accident shall already have
84 been investigated by a police officer; and

85 (ii) File with the insurance company, within thirty
86 days after such accident, a statement under oath that the
87 insured or his legal representative has a cause or causes
88 of action arising out of such accident for damages against
89 a person or persons whose identity is unknown and setting
90 forth the facts in support thereof; and, upon written re-
91 quest of the insurance company communicated to the in-
92 sured not later than five days after receipt of such state-
93 ment under oath, shall make available for inspection the
94 motor vehicle which the insured was occupying at the
95 time of the accident; and

96 (iii) Upon trial establish that the motor vehicle which
97 caused the bodily injury or property damage, whose op-
98 erator is unknown, was a "hit and run" motor vehicle,
99 meaning a motor vehicle which causes damage to the
100 property of the insured arising out of physical contact of
101 such motor vehicle therewith, or which causes bodily
102 injury to the insured arising out of physical contact of

103 such motor vehicle with the insured or with a motor
104 vehicle which the insured was occupying at the time of
105 the accident. If the owner or operator of any motor
106 vehicle causing bodily injury or property damage be un-
107 known, an action may be instituted against the unknown
108 defendant as "John Doe," in the county in which the
109 accident took place or in any other county in which such
110 action would be proper under the provisions of article
111 one, chapter fifty-six of this code; service of process may
112 be made by delivery of a copy of the complaint and
113 summons or other pleadings to the clerk of the court in
114 which the action is brought, and service upon the insur-
115 ance company issuing the policy shall be made as pre-
116 scribed by law as though such insurance company were
117 a party defendant. The insurance company shall have the
118 right to file pleadings and take other action allowable by
119 law in the name of John Doe.

120 (f) An insurer paying a claim under the endorsement
121 or provisions required by subsection (b) of this section
122 shall be subrogated to the rights of the insured to whom
123 such claim was paid against the person causing such in-
124 jury, death or damage to the extent that payment was
125 made. The bringing of an action against the unknown
126 owner or operator as John Doe or the conclusion of such
127 an action shall not constitute a bar to the insured, if the
128 identity of the owner or operator who caused the injury
129 or damages complained of becomes known, from bringing
130 an action against the owner or operator theretofore pro-
131 ceeded against as John Doe. Any recovery against such
132 owner or operator shall be paid to the insurance company
133 to the extent that such insurance company shall have
134 paid the insured in the action brought against such owner
135 or operator as John Doe, except that such insurance com-
136 pany shall pay its proportionate part of any reasonable
137 costs and expenses incurred in connection therewith, in-
138 cluding reasonable attorney's fees. Nothing in an endorse-
139 ment or provision made under this subsection, nor any
140 other provision of law, shall operate to prevent the join-
141 ing, in an action against John Doe, of the owner or opera-
142 tor of the motor vehicle causing injury as a party defend-
143 ant, and such joinder is hereby specifically authorized.

144 (g) No such endorsement or provisions shall contain
145 any provision requiring arbitration of any claim arising
146 under any such endorsement or provisions, nor may any-
147 thing be required of the insured except the establishment
148 of legal liability, nor shall the insured be restricted or
149 prevented in any manner from employing legal counsel or
150 instituting legal proceedings.

151 (h) The provisions of subsections (a) and (b) of this
152 section shall not apply to any policy of insurance to the
153 extent that it covers the liability of an employer to his
154 employees under any workmen's compensation law.

155 (i) The commissioner of insurance shall formulate and
156 require the use of standard policy provisions for the insur-
157 ance required by this section, but use of such standard
158 policy provisions may be waived by the commissioner in
159 the circumstances set forth in section ten of this article.

160 (j) A motor vehicle shall be deemed to be uninsured
161 within the meaning of this section, if there has been a
162 valid bodily injury or property damage liability policy
163 issued upon such vehicle, but which policy is uncollectible
164 in whole or in part, by reason of the insurance company
165 issuing such policy upon such vehicle being insolvent or
166 having been placed in receivership. The right of subroga-
167 tion granted insurers under the provisions of subsection
168 (f) of this section shall not apply as against any person or
169 persons who is or becomes an uninsured motorist for the
170 reasons set forth in this subsection.

3

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-

26 ates an automobile insured under such policy is convicted
27 of or forfeits bail during the policy period for any of the
28 following:

29 (1) Any felony or assault involving the use of a
30 motor vehicle;

31 (2) Negligent homicide arising out of the opera-
32 tion of a motor vehicle;

33 (3) Operating a motor vehicle while under the
34 influence of intoxicating liquor or of any narcotic drug;

35 (4) Leaving the scene of a motor vehicle accident
36 in which the insured is involved without reporting as re-
37 quired by law;

38 (5) Theft of a motor vehicle or the unlawful taking
39 of a motor vehicle;

40 (6) Making false statements in an application for a
41 motor vehicle operator's license;

42 (7) A third violation, committed within a period
43 of twelve months, of any moving traffic violation which
44 constitutes a misdemeanor, whether or not the violations
45 were repetitions of the same offense or were different
46 offenses.

§33-6A-2. Cancellation for other reasons void.

Any purported cancellation by an insurer of a policy
2 of automobile liability insurance which has been in effect
3 for sixty days and which has been renewed shall be void
4 if such purported cancellation is contrary to section one
5 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-
2 mobile liability insurance which has been in effect sixty
3 days or which has been renewed is cancelled by the in-
4 surer, such insurer or its duly authorized agent shall, in
5 the notice of cancellation or at the written request of the
6 named insured, specify the reason or reasons relied upon
7 by such insurer for such cancellation. Such reasons shall
8 be stated in a written notice and shall, if not provided in
9 the notice of cancellation, be made within thirty days
10 after such request: *Provided, however,* That there shall

11 be no liability on the part of, and no cause of action shall
12 arise against, any insurer or its agents or its authorized
13 investigative sources for any statements made with prob-
14 able cause by such insurer, agent or investigative source
15 in such written notice required to be given pursuant to
16 this section.

§33-6A-4. Advanced notice of nonrenewal required; assigned risk policies.

No insurer shall fail to renew an outstanding automo-
2 bile liability insurance policy unless such nonrenewal
3 is preceded by at least forty-five days of advance notice
4 to the named insured of such insurer's election not to
5 renew such policy: *Provided*, That subject to this sec-
6 tion, nothing contained in this article shall be construed
7 so as to prevent an insurer from refusing to issue an auto-
8 mobile liability policy upon application to such insurer,
9 nor shall any provision of this article be construed to
10 prevent an insurer from refusing to renew such a policy
11 upon expiration, except as to the notice requirements
12 of this section, and except further as to those applicants
13 lawfully submitted pursuant to the West Virginia assigned
14 risk plan.

§33-6A-5. Hearing and review by commissioner; action by commissioner; judicial review.

For the implementation of this article and for advising
2 all persons of their rights and privileges under this ar-
3 ticle, the commissioner, by regulation and in accordance
4 with section thirteen, article two of this chapter, shall
5 establish a procedure whereby any person whose automo-
6 bile liability insurance policy has been cancelled or whose
7 policy has not been renewed without proper notice being
8 given to such insured, may within forty-five days after the
9 mailing of notice of cancellation or nonrenewal appeal
10 such cancellation or nonrenewal to the commissioner for
11 hearing and review. The appeal and hearing shall relate
12 to the ground or grounds upon which the insurer's action
13 is based. The commissioner after such hearing may affirm
14 the insurer's cancellation or nonrenewal, or may reinstate
15 the policy and if reinstated such policy shall become effec-
16 tive from the date of cancellation or nonrenewal. Either

17 party may appeal the commissioner's ruling to the circuit
18 court of the county in which the applicant or the insured
19 resides in accordance with section fourteen, article two of
20 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.

Section

2. Qualifications.

§33-12-2. Qualifications.

For the protection of the people of West Virginia, the
2 commissioner shall not issue, renew or permit to exist
3 any agent's, broker's or solicitor's license except to an
4 individual who:

5 (a) Is twenty-one years of age or more, except that
6 present licensees who otherwise qualify may secure re-
7 newal even though they be less than twenty-one.

8 (b) Is a resident of West Virginia, except that a brok-
9 er's license shall be issued only to nonresidents, and ex-
10 cept for nonresident life and accident and sickness agents
11 as provided in section eight of this article.

12 (c) Is, in the case of an agent applicant, appointed
13 as agent by a licensed insurer for the kind or kinds of

14 insurance for which application is made, subject to is-
15 suance of license, or, in the case of a solicitor applicant,
16 appointed as solicitor by a licensed resident agent, subject
17 to issuance of license.

18 (d) Does not intend to use the license principally for
19 the purpose, in the case of life or accident and sickness
20 insurance, of procuring insurance on himself, members
21 of his family or his relatives; or, as to insurance other
22 than life and accident and sickness, upon his property
23 or insurable interests or those of his family or his rela-
24 tives or those of his employer, employees or firm, or
25 corporation in which he owns a substantial interest, or
26 of the employees of such firm or corporation, or on prop-
27 erty or insurable interests for which the applicant or any
28 such relative, employer, firm or corporation is the trustee,
29 bailee or receiver. For the purposes of this provision, a
30 vendor's or lender's interest in property sold or being
31 sold under contract or which is the security for any loan,
32 shall not be deemed to constitute property or an insur-
33 able interest of such vendor or lender.

34 (e) Satisfies the commissioner that he is trustworthy
35 and competent. The commissioner may, at his discretion,
36 test the competency of an applicant for a license under
37 this section by examination. If such examination is
38 required by the commissioner, each examinee shall pay
39 a five dollar examination fee for each examination. The
40 commissioner shall pay said examination fee into the
41 state treasury for the benefit of the state fund general
42 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 pro-
2 visions of this chapter may be licensed as life agents, but
3 all policies issued as a result of solicitation on the part
4 of such nonresidents, in the state, shall be reported,
5 placed, countersigned, and consummated by and through
6 a duly licensed resident agent of the issuing insurer.

7 (b) An individual otherwise complying with the pro-
8 visions of this chapter, who is a resident of another state
9 and who is a licensed accident and sickness agent of such
10 state, may be licensed as a nonresident accident and sick-
11 ness agent in this state, if the state of residence of such
12 nonresident has established, by law or regulation like
13 requirements for the licensing of a resident of this state
14 as a nonresident accident and sickness agent. All policies
15 issued as a result of solicitation by such nonresident ac-
16 cident and sickness agents shall be reported, placed,
17 countersigned and consummated by and through a duly
18 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

29 hearing to every insurer and rating organization which
30 made such filing, issue an order specifying in what re-
31 spects he finds that such filing fails to meet the require-
32 ments of this article, and stating when, within a reason-
33 able period thereafter, such filing shall be deemed no
34 longer effective. Copies of said order shall be sent to
35 every such insurer and rating organization. Said order
36 shall not affect any contract or policy made or issued prior
37 to the expiration of the period set forth in said order.

38 (d) Any person or organization aggrieved with respect
39 to any filing which is in effect may demand a hearing
40 thereon. If, after such hearing, the commissioner finds
41 that the filing does not meet the requirements of this
42 article, he shall issue an order specifying in what respects
43 he finds that such filing fails to meet the requirements of
44 this article, and stating when, within a reasonable period
45 thereafter, such filing shall be deemed no longer effective.
46 Said order shall not affect any contract or policy made or
47 issued prior to the expiration of the period set forth in
48 said order.

49 (e) Any insurer or rating organization, in respect to
50 any filing made by it which is not approved by the com-
51 missioner, may demand a hearing thereon.

52 (f) No manual of classifications, rules, rating plans, or
53 any modification of any of the foregoing which establishes
54 standards for measuring variations in hazards or expense
55 provisions, or both, in the case of casualty insurance to
56 which this article applies and no manual, minimum, class
57 rate, rating schedule, rating plan, rating rule, or any
58 modification of any of the foregoing, in the case of fire
59 insurance to which this article applies, and which has
60 been filed pursuant to the requirements of section four
61 of this article, shall be disapproved if the rates thereby
62 produced meet the requirements of this article.

63 (g) If, in the opinion of the commissioner, the rate or
64 form filing made by an insurer is of such import that it
65 will affect the public he may, at his discretion, issue notice
66 to such insurer of a public hearing. The notice of public
67 hearing to the insurer making such form or rate filing
68 shall be made by United States mail at least fifteen days

69 prior to hearing date. Notice to the public shall be given
70 by appropriate publication in a newspaper in the form
71 and manner prescribed by chapter twenty-nine-a of this
72 code. The holding of a public hearing as outlined in this
73 subsection shall have the effect of eliminating the right of
74 the party making such filing to demand a hearing as
75 stated in subsections (d) and (e) of this section.

CHAPTER 102

(House Bill No. 670—By Mr. Speaker, Mr. White)

[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 corporations.

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 MEDICAL SERVICE CORPORATIONS.

Section

2. Definitions.

§33-24-2. Definitions.

1 For the purpose of this article:

2 (a) "Corporation" shall mean either a hospital service
3 corporation, a medical service corporation or a dental
4 service corporation.

5 (b) "Hospital service corporation" shall mean a non-
6 profit, nonstock corporation, organized in accordance
7 with the provisions of article one, chapter thirty-one of
8 this code, for the sole purpose of contracting with the
9 public and with hospitals and other health agencies for

10 hospital or other health services to be furnished to sub-
11 scribers under terms of their contract with the corpora-
12 tion.

13 (c) "Hospital service" shall mean only such hospital or
14 other health care, to be provided by hospitals or other
15 health agencies, or such payment therefor, as may be
16 specified in the contract made by the subscriber with the
17 corporation.

18 (d) "Medical service corporation" shall mean a non-
19 profit, nonstock corporation, organized in accordance
20 with the provisions of article one, chapter thirty-one of
21 this code, for the sole purpose of contracting with the
22 public and with duly licensed physicians, duly licensed
23 dentists and duly licensed chiropodists-podiatrists for
24 medical or surgical services and with other health agen-
25 cies for other health services to be furnished to subscrib-
26 ers under terms of their contracts with the corporation,
27 and controlled by a board of directors, the majority of
28 whom are duly licensed physicians.

29 (e) "Medical service" shall mean only such medical,
30 surgical, or other health care, to be provided by duly
31 licensed physicians, duly licensed dentists, duly licensed
32 chiropodists-podiatrists or other health agencies, or such
33 payment therefor, as may be specified in the contract
34 made by the subscriber with the corporation.

35 (f) "Dental service corporation" shall mean a non-
36 profit, nonstock corporation, organized in accordance
37 with the provisions of article one, chapter thirty-one of
38 this code, for the sole purpose of contracting with the
39 public and with duly licensed dentists for dental services
40 to be furnished to subscribers under terms of their con-
41 tracts with the corporations, and controlled by a board
42 of directors, the majority of whom are duly licensed
43 dentists.

44 (g) "Dental service" shall mean only such dental care,
45 to be provided by duly licensed dentists, duly licensed
46 physicians, or such payment therefor, as may be specified
47 in the contract made by the subscriber with the corpora-
48 tion.

49 (h) "Service" shall mean such hospital, medical, den-
50 tal or other health service as shall be provided under

- 51 the terms of the contracts issued by the corporation to
52 subscribers.
- 53 (i) "Commissioner" shall mean the insurance com-
54 missioner 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
2 senate of this state, to be officially known as the "Senate
3 Committee on Interstate Cooperation," and to consist of
4 seven senators. The members and the chairman of this
5 committee shall be designated in the same manner as is
6 customary in the case of the members and chairmen of
7 other standing committees of the senate. In addition to
8 the regular members, the president of the senate shall be

9 ex officio an honorary nonvoting member of this com-
10 mittee.

§29-1B-2. House committee on interstate cooperation.

There is hereby established a similar standing com-
2 mittee of the house of delegates of this state, to be offi-
3 cially known as the "House Committee on Interstate Co-
4 operation," to consist of seven members of the house of
5 delegates. The members and the chairman of this com-
6 mittee shall be designated in the same manner as is cus-
7 tomary in the case of the members and chairmen of other
8 standing committees of the house of delegates. In addi-
9 tion to the regular members, the speaker of the house of
10 delegates shall be ex officio an honorary nonvoting mem-
11 ber of this committee.

§29-1B-3. West Virginia commission on interstate cooperation.

There is hereby established the West Virginia commis-
2 sion on interstate cooperation. This commission shall be
3 composed of fourteen regular members, namely:

4 The seven members of the senate committee on inter-
5 state cooperation; and

6 The seven members of the house committee on inter-
7 state cooperation.

8 The president of the senate and the speaker of the
9 house of delegates shall be ex officio honorary nonvoting
10 members of this commission and as such shall serve as
11 cochairmen thereof.

§29-1B-4. Terms of senate and house committees.

The said standing committee of the senate and the said
2 standing committee of the house of delegates shall func-
3 tion during the regular sessions of the Legislature and
4 also during the interim periods between such sessions;
5 their members shall serve until their successors are desig-
6 nated; and they shall respectively constitute for this state
7 the senate council and house council of the American
8 legislators' association.

§29-1B-5. Function of commission.

It shall be the function of this commission:

2 (1) To carry forward the participation of this state as
3 a member of the council of state governments.

- 4 (2) To encourage and assist the legislative, executive,
5 administrative and judicial officials and employees of this
6 state to develop and maintain friendly contact by cor-
7 respondence, by conference, and otherwise, with officials
8 and employees of the other states of the federal govern-
9 ment, and of local units of government.
- 10 (3) To endeavor to advance cooperation between this
11 state and other units of government whenever it seems
12 advisable to do so by formulating proposals for, and by
13 facilitating:
- 14 (a) The adoption of compacts,
15 (b) The enactment of uniform or reciprocal stat-
16 utes,
17 (c) The adoption of uniform or reciprocal admin-
18 istrative rules and regulations,
19 (d) The informal cooperation of governmental
20 offices with one another,
21 (e) The personal cooperation of governmental
22 officials and employees with one another, individually,
23 (f) The institution and consummation of a federal
24 long-range program of flood control, meeting the require-
25 ments of the federal flood control act of one thousand
26 nine hundred thirty-six or other acts of Congress relative
27 thereto,
28 (g) The interchange and clearance of research and
29 information, and
30 (h) Any other suitable process.
- 31 (4) To perform such duties as from time to time may
32 be assigned to it by the joint committee on government
33 and finance and to cooperate with the joint committee on
34 government and finance in joint interim studies.
- 35 (5) In short, to do all such acts as will, in the opinion
36 of this commission, enable this state to do its part, or more
37 than its part, in forming a more perfect union among the
38 various governments in the United States and in develop-
39 ing the council of state governments for that purpose.

§29-1B-6. Commission may establish delegations and committees.

The commission shall establish such delegations and

2 committees as it deems advisable, in order that they may
3 confer and formulate proposals concerning effective
4 means to secure intergovernmental harmony, and may
5 perform other functions for the commission in obedience
6 to its decisions. Subject to the approval of the commis-
7 sion, the member or members of each such delegation or
8 committee shall be appointed by the chairman of the
9 commission. State officials or employees who are not
10 members of the commission on interstate cooperation
11 may be appointed as members of any such delegation or
12 committee, but private citizens holding no governmental
13 position in this state shall not be eligible. The commission
14 may provide such other rules as it considers appropriate
15 concerning the membership and the functioning of any
16 such delegation or committee. The commission may pro-
17 vide for advisory boards for itself and for its various
18 delegations and committees, and may authorize private
19 citizens to serve on such boards.

§29-1B-7. Names of committees and commission.

The committees and the commission established by this
2 article shall be informally known, respectively, as the
3 "Senate Cooperation Committee," the "House Cooperation
4 Committee," and the "West Virginia Cooperation Com-
5 mission."

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.
3. Summoning jury commissioners; selection and summoning of jurors.

§52-2-2. Preparation of jury list; qualifications of jurors; ballots; custody of list and ballots.

The jury commissioners appointed under the provisions
2 of section three of article one of this chapter shall select
3 and draw persons for grand juries. Such commissioners
4 shall, at the levy term of the county court each year, and
5 at any other time when required by the court which ap-
6 pointed them, or the judge thereof in vacation, prepare a
7 list of not less than one hundred nor more than two hun-
8 dred qualified persons of their county for grand jury serv-
9 ice, chosen from the respective magisterial districts
10 thereof, as nearly as may be in proportion to the popula-
11 tion of the districts. The lists so prepared shall be sub-
12 mitted to the clerk of the court authorized to impanel a
13 grand jury, or the judge thereof when required, and the
14 name of any person who is not qualified shall be stricken
15 from the list by the clerk or judge. The persons so listed
16 shall be of good moral character, who have never been
17 convicted of a felony or of any scandalous offense; and
18 shall have been bona fide citizens of the state and county
19 for at least one year immediately preceding the prepara-
20 tion of the list, and shall not be officeholders under the
21 laws of the United States or of this state: *Provided*, That
22 the term "officeholders" shall not be taken, read or under-
23 stood to include notaries public. At the time such jury
24 list is made up, the jury commissioners shall cause all the
25 names thereon to be written, each on a separate ballot, and
26 shall fold, roll or prepare the same so as to resemble each
27 other as nearly as may be, and so that the name written
28 thereon shall not be visible on the outside, and shall in-
29 close 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
2 least thirty days before the term of court, summon the
3 jury commissioners to attend at his office at a day speci-
4 fied, which shall not be less than twenty days before such
5 term, and select persons for the grand jury, but the court,
6 or judge thereof, may require such jury commissioners to
7 appear forthwith, or at any specified time, and select
8 grand jurors for either a regular, special or adjourned
9 term of court. On the day appointed, the jury commis-
10 sioners shall appear and draw the names of sixteen per-
11 sons from the grand jury box, and the persons so drawn
12 shall constitute the grand jury. If when drawing the bal-
13 lots it shall appear to the commissioners that any person
14 so drawn is dead, or for any reason disqualified or unable
15 to serve, they shall destroy the ballot and cancel the name
16 on the list and draw another in such person's stead. They
17 shall enter the names of all persons so drawn in a book
18 kept for that purpose and deliver a list thereof to the
19 clerk, who shall issue a summons for the persons drawn,
20 directed to the sheriff of the county requiring him to sum-
21 mon them to appear on the day required and serve as
22 grand jurors. The provisions of article one of this chapter
23 relating to the drawing and summoning of petit jurors and
24 drawing ballots and cancellation and marking thereof, so
25 far as applicable and not inconsistent with the provisions
26 of this article, shall be observed and govern the selection
27 of a grand jury, except in that the ballots shall be drawn
28 from the several envelopes in proportion as near as may
29 be to the numbers indorsed thereon, but so that at least
30 one ballot shall be drawn from each envelope.

CHAPTER 105

(Senate Bill No. 270—By Mr. Carson, Mr. President, and Mr. Moreland)

[Passed March 11, 1967; in effect May 1, 1967. Approved by the Governor.]

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 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 fifteen, 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-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 eight, 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 two, article four, 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-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; 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 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 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-

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-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 eight, 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 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.**
- 6. General Provisions Respecting Officers.**
- 7. County Courts and Officers.**
- 8. Municipal Corporations.**
- 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.**
- 16. Public Health.**
- 17. Roads and Highways.**
- 18. Education.**
- 19. Agriculture.**
- 20. Natural Resources.**
- 22. Mines and Minerals.**
- 24. Public Service Commission.**
- 24A. Motor Carriers of Passengers and Property for Hire.**
- 25. Commissioner of Public Institutions.**
- 28. State Correctional and Penal Institutions.**
- 29A. State Administrative Procedures.**
- 31. Corporations.**

34. Estrays, Drift and Derelict Property.
35. Property of Religious, Educational and Charitable Organizations.
36. Estates in Property.
37. Real Property.
38. Liens.
39. Records and Papers.
44. Administration of Estates and Trusts.
47. Regulation of Trade.
48. Domestic Relations.
49. Child Welfare.
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.
14. Notice and survey in case of changing county line.

§1-3-1. Notice of intention to create new county.

1 When it is intended to apply to the Legislature for
2 the passage of an act to create a new county, a notice
3 of such intention shall be published as a Class II legal
4 advertisement in compliance with the provisions of
5 article three, chapter fifty-nine of this code, and the
6 publication area for such publication shall be each county
7 from which any part of such new county is proposed to
8 be taken.

§1-3-2. Survey and census; area and population.

1 The county court of each of the counties out of which
2 the new county is proposed to be formed, at its first
3 session after the notice mentioned in the next preceding
4 section has been published, as required by said section,
5 shall order a survey of the whole county, and of that

6 portion thereof proposed to be included in the new
7 county, to be made by the surveyor of such county, if
8 there be one, and if not by some other competent sur-
9 veyor, in order to ascertain the number of square miles
10 in the county, as well as in that portion thereof pro-
11 posed to be included in such new county. Such court
12 shall also appoint some one or more competent person
13 or persons to take a census of the population of such
14 county, and of that part thereof proposed to be included
15 in such new county, in order to ascertain whether or not
16 there will remain in such county a population of six
17 thousand after the creation of such new county. It shall
18 be the duty of the surveyor so directed or appointed
19 to make such survey, and of the person or persons so
20 appointed to take the census, as soon as their fees are
21 paid or secured to be paid in a manner satisfactory to
22 them to proceed in the shortest time practicable to make
23 such survey and take such census and make report
24 thereof to the county court by which they were ap-
25 pointed; and the surveyor shall return and file with his
26 report two fair plats and certificates of the survey made
27 by him, showing the metes and bounds of the county
28 and the number of square miles of territory contained
29 therein, and the number of square miles contained within
30 that portion thereof proposed to be included in the new
31 county, and the metes and bounds thereof. The return
32 of such survey and census shall be noted in the records
33 of the court, and such reports shall be filed and pre-
34 served by the clerk of such court in his office, and a
35 notice in writing that such return of the survey and
36 census has been made shall be sent to the county court
37 of the other county out of which such new county is
38 proposed to be formed.

§1-3-14 Notice and survey in case of changing county line.

1 When it is proposed to change a county line, a notice
2 thereof shall be published prior to the application for a
3 survey of the proposed change as a Class II legal ad-
4 vertisement in compliance with the provisions of article
5 three, chapter fifty-nine of this code, and the publication
6 area for such publication shall be the county from which

7 any territory is proposed to be taken. At any time after
8 such notice has been published, the county court of the
9 county, a part of whose territory is proposed to be at-
10 tached to another county, shall, on application of any
11 person interested, and at his expense, cause a survey
12 of the proposed change of line to be made by the sur-
13 veyor of the county, or by some competent surveyor
14 appointed for the purpose. The surveyor so appointed,
15 or directed, to make such survey shall, as soon as his
16 fees therefor are paid or secured to be paid to his satis-
17 faction, proceed to make such survey and return a plat
18 and report thereof to said court, and the clerk thereof
19 shall file and preserve the same in his office; and shall,
20 as provided in section three of this article, make out
21 and deliver to any person who may demand the same,
22 a certified copy thereof. Every application to the Legis-
23 lature for the change of a county line shall be accom-
24 panied by a duly certified copy of such plat and report.
25 If the county court of such county refuse to order such
26 survey to be made, or if the surveyor appointed by such
27 court to make such survey fail or refuse to do so, then
28 and in that event the county court of the county to which
29 such territory is proposed to be added shall, on the appli-
30 cation of any person interested, and at his expense, order
31 the survey to be made and appoint a surveyor to make
32 the same; and the surveyor so appointed shall, as soon
33 as his fees therefor are paid or secured to be paid to
34 his satisfaction, make and report such survey to the
35 county court of his county as hereinbefore required.

CHAPTER 3. ELECTIONS.

Article

1. General Provisions and Definitions.
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

2 five of this article, the county court of any county may
3 change the boundaries of any precinct within such
4 county, or divide any precinct into two or more pre-
5 cincts, or consolidate two or more precincts into one,
6 or change any place of holding elections, whenever the
7 public convenience may require it. If by reason of the
8 destruction of the house or structure at which a voting
9 place is established, or if for any other reason the elec-
10 tion cannot be held thereat, and no provision has been
11 made by the county court for holding the election at
12 another place, the commissioners of election at such
13 place may hold the election at the place nearest thereto
14 which they can secure for the purpose; and in such case
15 they shall make known by proclamation, to the voters
16 assembled at such first named place of voting, the place
17 at which the election will be held. The county court
18 shall, in such case, establish another place of voting for
19 said precinct as soon thereafter as practicable. No order
20 effecting such change, division, or consolidation shall
21 be made by the county court within ninety days next
22 preceding an election nor without giving notice thereof
23 at least one month before such change, division or con-
24 solidation, by publication of such notice as a Class II-0
25 legal advertisement in compliance with the provisions
26 of article three, chapter fifty-nine of this code, and the
27 publication area for such publication shall be the county
28 in which such precinct or precincts are located.

29 Such court shall also, within fifteen days after the
30 date of such order, cause a copy thereof to be published
31 as aforesaid.

32 Such court shall also, before the next succeeding elec-
33 tion, cause the voters in the several precincts so af-
34 fected by such order to be duly registered in the proper
35 precinct or precincts.

36 The county court shall keep in a well-bound book,
37 marked "election precinct record," a complete record
38 of all their proceedings hereunder and of every order
39 made creating a precinct or precincts or establishing a
40 place of voting therein. Such "election precinct record"
41 shall be kept by the county court clerk in his office,
42 and shall, at all reasonable hours, when not actually

43 in use by the county court, be open to inspection by any
44 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-
2 mary and special elections in any county by either of the
3 following procedures, and not otherwise:

4 (1) By a majority of the members of the county court
5 voting to adopt the same at a meeting regularly called
6 in regular or special session: *Provided, however,* That
7 such meeting shall be held not less than six months prior
8 to a general election or six months prior to a primary
9 election. If at such meeting, such county court shall enter
10 an order of its intention to adopt the use of voting ma-
11 chines, it shall thereafter forthwith cause to be published
12 a certified copy of such order as a Class II-0 legal adver-
13 tisement in compliance with the provisions of article
14 three, chapter fifty-nine of this code, and the publication
15 area for such publication shall be the county involved.
16 The first publication of such order shall not be less than
17 twenty days after the entry of such order. Such county
18 court shall not adopt the use of voting machines until
19 ninety days after the entry of such order of its intention to
20 adopt the same. Promptly after the expiration of ninety
21 days after the entry of such order of intention to adopt the
22 use of voting machines, if no petition has theretofore been
23 filed with such county court requesting a referendum on
24 the question of adoption of voting machines as hereinafter
25 provided, such county court shall enter a final order adopt-
26 ing voting machines, and voting machines shall thereby
27 be adopted.

28 If five per cent or more of the registered voters of such
29 county shall sign a petition requesting that voting ma-
30 chines be not adopted for use in such county and such
31 petition be filed with the county court of such county
32 within ninety days after the entry of such order of inten-
33 tion to adopt the use of voting machines, such county
34 court shall submit to the voters of such county at the next

35 general or primary election, whichever shall first occur,
 36 the question: "Shall voting machines be adopted in.....
 37 County?" If this question be answered
 38 in the affirmative by a majority of the voters in such
 39 election upon the question, voting machines shall thereby
 40 be adopted. If such question shall not be answered in the
 41 affirmative by such majority, the use of voting machines
 42 shall not be adopted.

43 (2) By the affirmative vote of a majority of the voters
 44 of such county voting upon the question of the adoption
 45 of voting machines in such county. If five per cent or more
 46 of the registered voters of such county shall sign a peti-
 47 tion requesting the adoption of voting machines for use in
 48 such county, and such petition be filed with the county
 49 court of such county, such county court shall submit to
 50 the voters of such county at the next general or primary
 51 election, following by not less than ninety days the date
 52 of the filing of such petition, the question: "Shall voting
 53 machines be adopted in..... County?" If
 54 this question be answered in the affirmative by a majority
 55 of the voters of such county voting upon the question,
 56 voting machines shall thereby be adopted. If such ques-
 57 tion shall not be answered in the affirmative by such
 58 majority, the use of voting machines shall not be adopted.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PRO- CEDURES.

Section

10. Publication and printing of ballots; number.
21. Party conventions to nominate presidential electors; candidates; organization; duties.

§3-5-10. Publication and printing of ballots; number.

1 Between the sixtieth and the thirtieth days next prior
 2 to the date of the primary election, the ballot commis-
 3 sioners of each county shall prepare from the lists and
 4 certificates of announcements, as provided in this article,
 5 a sample official primary ballot for each party, placing
 6 thereon the names of all the candidates of the political
 7 party, and, as the case may be, the nonpartisan candidates
 8 to be voted for at such primary election. During the two
 9 weeks next preceding the primary election they shall pub-
 10 lish such sample official primary election ballot as a Class
 11 II-0 legal advertisement in compliance with the provisions

12 of article three, chapter fifty-nine of this code, and the
13 publication area for such publication shall be the county.
14 The second publication shall be on the last day upon
15 which each newspaper is published before the election.

16 The ballot commissioners shall determine the total num-
17 ber of official ballots required for conducting the primary
18 election in all of the election precincts of the county and
19 shall cause same to be printed at least thirty days next
20 preceding the date of the election and made ready for
21 delivery to the several precincts along with other election
22 supplies. The number of official ballots of a political party
23 prepared for delivery to a precinct shall not exceed one
24 and one-twentieth times the number of registered voters
25 of such party in that precinct.

**§3-5-21. Party conventions to nominate presidential electors;
candidates; organization; duties.**

1 Candidates for presidential electors shall be nominated
2 by the delegated representatives of the political party
3 assembled in a state convention to be held between the
4 first and fifteenth days of August next preceding any
5 general election at which presidential electors are to be
6 elected. The state executive committee of the political
7 party, by resolution, shall designate the place and fix the
8 date of such convention, shall prescribe the number of
9 delegates thereto, and shall apportion the delegates among
10 the several counties of the state in proportion to the vote
11 cast in the state for the party's candidate for governor at
12 the last preceding general election at which a governor
13 was elected. The state executive committee shall also
14 ascertain and designate all offices for which candidates
15 are to be nominated at such convention.

16 At least sixty days prior to the date fixed for holding
17 any state convention, the chairman of the party's state
18 executive committee shall cause to be delivered to the
19 party's county executive committee in each county of the
20 state a copy of the resolutions fixing the time and place of
21 holding the state convention and prescribing the number
22 of delegates from each county to the convention. Within
23 ten days after receipt of the copy of such resolutions, the
24 party executive committee of each county shall meet and,

25 by resolution, shall apportion the delegates to the state
26 convention among the several magisterial districts of the
27 county, on a basis of the vote received in the county by
28 the candidate of the party for governor at the last pre-
29 ceding general election at which a governor was elected,
30 but in such apportionment of county delegates each magis-
31 terial district shall be entitled to at least one delegate to
32 such state convention. The party's county executive com-
33 mittee shall call a meeting of the members of the political
34 party in mass convention in the several magisterial dis-
35 tricts of the county, which district meeting shall be held
36 at least thirty days prior to the date fixed for the state
37 convention and at which meeting the members of the
38 political party in each magisterial district shall elect the
39 number of delegates to which such district is entitled in
40 the state convention.

41 The meeting place in the magisterial district shall be
42 as central and convenient as can reasonably be selected,
43 and all recognized members of the political party shall be
44 entitled to participate in any such mass convention and in
45 the selection of delegates. Notice of the time and place
46 of holding the several magisterial district mass conven-
47 tions and of the person who shall act as temporary chair-
48 man thereof shall be given by publication as a Class II-0
49 legal advertisement in compliance with the provisions of
50 article three, chapter fifty-nine of this code, and the pub-
51 lication area for such publication shall be the county.
52 The first publication shall be made not more than fifteen
53 days and the second publication shall be made not less
54 than five days prior to the date fixed for holding the
55 convention. The notice published shall specify the num-
56 ber of delegates which each magisterial district in the
57 county is entitled to elect to the state convention.

58 Upon assembling, the mass convention of each magis-
59 terial district shall choose a chairman and a secretary,
60 who, within five days after the holding of such conven-
61 tion, shall certify to the chairman of the state executive
62 committee of the political party and the chairman of the
63 county committee of the political party, the names and
64 addresses of the parties selected as delegates to the state
65 convention.

66 All contests over the selection of delegates to conven-
67 tions shall be heard and determined by the party execu-
68 tive committee of the county from which the delegates
69 are chosen, and such county executive committee shall,
70 upon written petition of any contestant, meet for such
71 hearings and determinations within ten days after the
72 holding of such magisterial district mass convention. The
73 circuit court of the county and the supreme court of ap-
74 peals of the state shall have concurrent original jurisdic-
75 tion to review, by mandamus or other proper proceeding,
76 the decision of a county executive committee in any
77 contest.

78 The delegates chosen and certified by and from the
79 several magisterial districts in the state, and, in the event
80 of any contest, those prevailing in the contest, shall make
81 up the state convention. The number present of those
82 entitled to participate in any convention shall cast the
83 entire vote to which the county is entitled in such con-
84 vention, and it shall require a majority vote to nominate
85 any candidate for office.

86 All nominations made at state conventions shall be
87 certified within fifteen days thereafter, by the chairman
88 and the secretary of the convention, to the secretary of
89 state, who shall certify them to the clerk of the circuit
90 court of each county concerned, and the names of the
91 persons so nominated shall be printed upon the regular
92 ballot to be voted at the ensuing general election, except
93 that the names of the presidential elector candidates shall
94 not be printed thereon.

95 The delegates to any state convention may formulate
96 and promulgate such party platform or declaration of
97 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
2 office at which the voters of any county are entitled to
3 vote, the clerk of the circuit court of such county shall
4 cause to be published the nominations for office certified

5 to him and filed in his office, excepting nominations for
 6 office to be filled by the voters of any subdivision less
 7 than a county, such nominations to be published as a
 8 Class II-0 legal advertisement in compliance with the
 9 provisions of article three, chapter fifty-nine of this code,
 10 and the publication area for such publication shall be
 11 the county. The second publication shall be on the last
 12 day upon which each newspaper is published before the
 13 election. Whenever it shall appear by affidavit that an
 14 error or omission has occurred in the publication of the
 15 names or description of candidates nominated for public
 16 office, or in the printing of the ballots, the board of ballot
 17 commissioners shall correct such error. The list of
 18 nominations published by clerks of the circuit courts of
 19 the several counties shall be arranged in the order and
 20 form in which they will be printed upon the ballot.

ARTICLE 10. FILLING VACANCIES.

Section

2. Vacancy in office of governor.
3. Vacancies in offices of state officials, United States senator and judges.
4. Vacancies in representation in Congress.
5. Vacancies in state Legislature.
6. Vacancy in office of circuit court clerk.

§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
 3 governor, the president of the senate shall act as gov-
 4 ernor until the vacancy is filled or the disability re-
 5 moved; and if the president of the senate, for any of the
 6 above-named causes, shall be or become incapable of
 7 performing the duties of governor, the same shall de-
 8 velop upon the speaker of the house of delegates; and
 9 in all other cases where there is no one to act as gov-
 10 ernor, one shall be chosen by the joint vote of the Legis-
 11 lature. Whenever a vacancy shall occur in the office
 12 of governor before the first three years of the term shall
 13 have expired, a new election for governor shall take
 14 place to fill the vacancy. If the vacancy shall occur
 15 more than thirty days next preceding a general elec-
 16 tion, the vacancy shall be filled at such election and the

17 acting governor for the time being shall issue a procla-
18 mation accordingly, which shall be published prior to
19 such election as a Class II-0 legal advertisement in com-
20 pliance with the provisions of article three, chapter
21 fifty-nine of this code, and the publication area for such
22 publication shall be each county of the state. But if
23 it shall occur less than thirty days next preceding such
24 general election, and more than one year before the
25 expiration of the term, such acting governor shall issue
26 a proclamation, fixing a time for a special election to
27 fill such vacancy, which shall be published as herein-
28 before provided.

29 If the vacancy is to be filled at a general election and
30 shall occur before the primary election to nominate
31 candidates to be voted for at such general election, can-
32 didates to fill the vacancy shall be nominated at such
33 primary election in accordance with the time require-
34 ments and the provisions and procedures prescribed in
35 article five of this chapter. When nominations to fill
36 such vacancy cannot be so accomplished at such primary
37 election, and in all cases wherein the vacancy is to be
38 filled at a special election, candidates to be voted for
39 at such general or special elections shall be nominated
40 by a state convention to be called, convened and held
41 under the resolutions, rules and regulations of the po-
42 litical party executive committees of the state. The laws
43 prescribing the manner of calling, constituting and hold-
44 ing conventions to nominate candidates for presiden-
45 tial electors shall, insofar as applicable, govern conven-
46 tions to nominate candidates to fill any vacancy in any
47 office to be filled by the voters of the state as a whole,
48 except that, in lieu of the magisterial district conven-
49 tions in the several counties, the county executive com-
50 mittee shall call and convene a county convention at the
51 county seat with delegates thereto apportioned to and
52 representative of the several magisterial districts of the
53 county as provided in section twenty-one of article five
54 of this chapter. The county convention shall proceed
55 to select the county's prescribed number of state con-
56 vention delegates from the several magisterial districts
57 thereof and the chairman and secretary of the conven-

58 tion shall promptly certify the names and addresses of
59 the persons so selected as delegates to the state conven-
60 tion to the chairman of the state executive committee
61 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
2 state, auditor, treasurer, attorney general, commissioner
3 of agriculture, United States senator, judge of the su-
4 preme court of appeals, or in any office created or made
5 elective, to be filled by the voters of the entire state,
6 or judge of a circuit court, a common pleas, intermedi-
7 ate, criminal or other inferior court, shall be filled by
8 the governor of the state by appointment. If the unex-
9 pired term of a judge of the supreme court of appeals,
10 or a judge of the circuit court, a common pleas, inter-
11 mediate, criminal or other inferior court, be for less than
12 two years; or if the unexpired term of any other office
13 named in this section be for a period of less than two
14 years and six months, the appointment to fill the va-
15 cancy shall be for the unexpired term. If the unexpired
16 term of any office be for a longer period than above
17 specified, the appointment shall be until the next gen-
18 eral election and until the election and qualification of
19 a successor to the person appointed, at which election
20 the vacancy shall be filled by election for the unexpired
21 term. Proclamation of any election to fill an unexpired
22 term shall be made by the governor of the state, and,
23 in the case of an office to be filled by the voters of the
24 entire state, shall be published prior to such election as
25 a Class II-0 legal advertisement in compliance with the
26 provisions of article three, chapter fifty-nine of this code,
27 and the publication area for such publication shall be
28 each county of the state. If the election be to fill a
29 vacancy in the office of judge of a circuit court, the
30 proclamation shall be published prior to such election
31 as a Class II-0 legal advertisement in compliance with
32 the provisions of article three, chapter fifty-nine of this
33 code, and the publication area for such publication shall
34 be each county in the judicial circuit. If the election

35 be to fill a vacancy in the office of judge of a common
36 pleas, intermediate, criminal or other inferior court, the
37 proclamation shall be published prior to such election
38 as a Class II-0 legal advertisement in compliance with
39 the provisions of article three, chapter fifty-nine of this
40 code, and the publication area for such publication shall
41 be the county in which such court is located. Candidates
42 to fill any vacancy in any office named in this section
43 shall be nominated in the manner provided in this
44 article for nominating candidates to fill a vacancy in the
45 office of governor, to be voted for at a general election,
46 but, in selecting candidates for the office of judge to serve
47 in a single county, the county executive committee of
48 the county shall perform the duties relating thereto,
49 and, in selecting candidates for the office of judge of a
50 circuit court in circuits embracing more than one county,
51 the county executive committees of the counties con-
52 cerned shall resolve themselves into a judicial circuit
53 committee for discharge of the duties relating to such
54 nominations.

§3-10-4. Vacancies in representation in Congress.

1 If there be a vacancy in the representation from this
2 state in the House of Representatives in the Congress of
3 the United States, the governor shall, within ten days
4 after the fact comes to his knowledge, give notice thereof
5 by proclamation, to be published prior to such election
6 as a Class II-0 legal advertisement in compliance with
7 the provisions of article three, chapter fifty-nine of this
8 code, and the publication area for such publication shall
9 be each county in the congressional district. In such
10 proclamation he shall appoint some day, not less than
11 thirty nor more than seventy-five days from the date
12 thereof, for holding the election to fill such vacancy.
13 Nominations to fill such vacancy shall be made in the
14 manner prescribed for nominating a candidate to fill a
15 vacancy in the office of governor, to be voted for at a
16 special election. The congressional district executive
17 committee of a party shall perform the duties devolving
18 upon the state executive committee in filling a state of-
19 fice.

§3-10-5. Vacancies in state Legislature.

1 Any vacancy in the office of state senator or member
2 of the house of delegates shall be filled by appointment by
3 the governor, in each instance from a list of three legally
4 qualified persons submitted by the county party execu-
5 tive committee in the case of a member of the house
6 of delegates who is elected from a county that is not sit-
7 uated in a delegate district, by the party executive com-
8 mittee of the delegate district in the case of a member
9 of the house of delegates who is elected from such dele-
10 gate district, and by the party executive committee of
11 the state senatorial district in the case of a state senator,
12 of the party with which the person holding the office im-
13 mediately preceding the vacancy was affiliated, and of
14 the county, delegate district or state senatorial district,
15 respectively, in which he resided at the time of his elec-
16 tion or appointment. The appointment to fill a vacancy
17 in the house of delegates shall be for the unexpired term.
18 If the unexpired term in the office of the state senator be
19 for less than two years and two months, the appointment
20 shall be for the unexpired term. If the unexpired term
21 be for a period longer than two years and two months,
22 the appointment shall be until the next general election
23 and until the election and qualification of a successor to
24 the person appointed, at which general election the va-
25 cancy shall be filled by election for the unexpired term.
26 Notice of an election to fill a vacancy in the office of state
27 senator shall be given by the governor by proclamation
28 and shall be published prior to such election as a Class
29 II-0 legal advertisement in compliance with the provi-
30 sions of article three, chapter fifty-nine of this code, and
31 the publication area for such publication shall be each
32 county in the senatorial district. Nominations for can-
33 didates to fill such vacancy shall be made in the manner
34 prescribed for nominating a candidate to fill a vacancy
35 in the office of governor to be voted for at a general elec-
36 tion. The state senatorial district executive committee
37 of the political party shall discharge the duties incident
38 to state senator nominations devolving upon the party
39 state executive committee in nominating a candidate for
40 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 cir-
2 cuit court, the circuit court, or the judge thereof in vaca-
3 tion, shall fill the same by appointment until the next
4 general election, and the person so appointed shall hold
5 office until his successor is elected and qualified. At such
6 general election a clerk shall be elected for the unexpired
7 term. The circuit court, or the judge thereof in vacation,
8 shall cause a notice of such election to be published prior
9 to such election as a Class II-0 legal advertisement in com-
10 pliance with the provisions of article three, chapter fifty-
11 nine of this code, and the publication area for such pub-
12 lication shall be the county involved. If the vacancy oc-
13 curs before the primary election held to nominate candi-
14 dates to be voted for at the general election, at which
15 any such vacancy is to be filled, candidates to fill such
16 vacancy shall be nominated at such primary election in
17 accordance with the time requirements and the provisions
18 and procedures prescribed in article five of this chapter.
19 Otherwise, they shall be nominated by the county execu-
20 tive committee in the manner provided in section nine-
21 teen, article five, of this chapter, as in the case of filling
22 vacancies in nominations, and the names of the persons,
23 so nominated and certified to the clerk of the circuit court
24 of such county, shall be placed upon the ballot to be voted
25 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
2 of commodities and printing that is estimated to exceed
3 two thousand dollars. No spending unit shall issue a
4 series of requisitions which would circumvent this two

5 thousand dollar maximum. Bids shall be obtained by
6 public notice published as a Class II legal advertisement
7 in compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for such
9 publication shall be the county where the department or
10 agency making the requisition is located. Such notice
11 shall be so published within the fourteen days next pre-
12 ceding the final date of submitting bids. The notice may
13 also be published by any other advertising medium the
14 director may deem advisable. The director may also
15 solicit sealed bids by sending requests by mail to pro-
16 spective suppliers and by posting notice on a bulletin
17 board in his office: *Provided*, That the director shall,
18 without competitive bidding, purchase commodities and
19 printing produced and offered for sale by nonprofit work-
20 shops, as defined in section one of article one of this
21 chapter, which are located in this state: *Provided, how-*
22 *ever*, That such commodities and printing shall be of a
23 price and quality comparable to other commodities and
24 printing otherwise available.

**§5A-3-23. Disposition by director of obsolete, etc., commodi-
ties; application of proceeds from sale.**

1 The director shall have the exclusive power and author-
2 ity to make disposition of commodities or expendable
3 commodities now owned or in the future acquired by the
4 state, when any such commodities are or shall become
5 obsolete, unusable or are not being used, or need to be
6 replaced, and are so reported in writing by the depart-
7 ment owning or having custody or control thereof as avail-
8 able for the director's disposition.

9 It shall be the duty of the director to determine what
10 commodities or expendable commodities should be dis-
11 posed of and he shall make such disposition in the man-
12 ner which in his opinion will be most advantageous to
13 the state, either by transferring the particular commodi-
14 ties or expendable commodities between departments,
15 by trading in such commodities as a part payment on the
16 purchase of new commodities, or by sale thereof to the
17 highest bidder by means of public auctions, or sealed bids
18 after having first advertised the time, terms and place of

19 such sale as a Class II legal advertisement in compliance
20 with the provisions of article three, chapter fifty-nine of
21 this code, and the publication area for such publication
22 shall be the county wherein the sale is to be conducted.
23 The sale may also be advertised in such other advertising
24 medium as the director may deem advisable. The direc-
25 tor shall have the authority to sell to the highest bidder
26 or to any one or more of the highest bidders, if there be
27 more than one, or, if in his opinion the best interest of
28 the state will be served, to reject all bids. Upon the trans-
29 fer of commodities or expendable commodities between
30 departments, the director shall set the price to be paid
31 by the receiving department with due consideration given
32 to current market prices. The proceeds of such sales or
33 transfers shall be deposited in the state treasury to the
34 credit on a prorata basis of the fund or funds out of which
35 the purchase of the particular commodities or expendable
36 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 appointment of deputy sheriff; removal of conservators.

- 1 (a) (1) The clerk of the supreme court of appeals, or
2 of any circuit, criminal, common pleas, intermediate or
3 county court, or of any tribunal established by law in lieu
4 thereof, may, with the consent of the court, or such tri-
5 bunal, duly entered of record, appoint any person or per-
6 sons his deputy or deputies.
- 7 (2) A sheriff, surveyor of lands, or assessor may, with
8 the consent of the county court duly entered of record,
9 appoint any person or persons his deputy or deputies.
- 10 (3) A sheriff, when in the opinion of the judge of the
11 circuit court the public interest requires it, may, with the
12 assent of said court, duly entered of record, appoint any

13 person or persons his deputy or deputies to perform any
14 temporary service or duty.

15 (4) Each deputy so appointed shall take the same oath
16 of office required of his principal, and may, during his
17 continuance in office, perform and discharge any of the
18 official duties of his principal, and any default or misfea-
19 sance in office of the deputy shall constitute a breach of
20 the conditions of the official bond of his principal.

21 (5) A sheriff in any county in which there are more
22 than four deputies shall devote his full time to the per-
23 formance of the services or duties required by law of such
24 sheriff, and he shall not receive any compensation or re-
25 imbursement, directly or indirectly, from any person,
26 firm or corporation for the performance of any private
27 or public services or duties: *Provided*, That any such
28 sheriff may retain or make any investment and receive
29 income therefrom, unless such investment is otherwise
30 prohibited by law or will impair his independence of
31 judgment in the exercise of, or might reasonably tend
32 to conflict with the proper discharge of, the services or
33 duties of his office. A sheriff in any county in which
34 there are four or fewer deputies, or a deputy sheriff in
35 any county irrespective of the number of deputies, need
36 not devote his full time to the services or duties of his
37 office as sheriff or his employment as deputy sheriff, as
38 the case may be; but any such sheriff or deputy sheriff
39 shall not engage in any business or transaction, accept
40 other employment or make any investment which is oth-
41 erwise prohibited by law or which will impair his in-
42 dependence of judgment in the exercise of, or might
43 reasonably tend to conflict with the proper discharge of,
44 the services or duties of his office as sheriff or his em-
45 ployment as deputy sheriff, as the case may be. A
46 sheriff and his deputies in any county, irrespective of
47 the number of deputies, shall receive for the performance
48 of their public services and duties no compensation or
49 remuneration except such as may be regularly provided
50 and paid out of public funds to the amount and in the
51 manner provided by law. No sheriff or deputy sheriff
52 in any county, irrespective of the number of deputies,

53 may receive, directly or indirectly, any gift or donation
54 from any person, firm or corporation.

55 (6) Except as hereinafter expressly provided by sub-
56 section (b) of this section no sheriff shall appoint or con-
57 tinue the appointment of any deputy contrary to the pro-
58 visions hereof. Any sheriff or deputy sheriff who shall
59 violate any of the provisions of this section shall be guilty
60 of a misdemeanor, and, upon conviction thereof, shall be
61 fined not less than five hundred dollars nor more than
62 five thousand dollars, or confined in jail not to exceed
63 one year, or both, in the discretion of the court.

64 (7) Circuit courts shall have jurisdiction in equity and
65 mandamus, and the supreme court of appeals shall have
66 jurisdiction in mandamus, upon the filing of a petition
67 by the prosecuting attorney, the attorney general, or any
68 three or more citizens of the county, to require any sher-
69 iff and the county court to vacate the appointment of any
70 deputy, the appointment of which is made or continued
71 in violation of the provisions hereof. Any such proceed-
72 ing may be instituted and prosecuted by the attorney
73 general either in the circuit court of Kanawha county or
74 in the county for which such appointment was made.

75 (b) (1) Any resident or group of residents of any
76 unincorporated community, as hereinafter defined, may
77 petition the sheriff for the appointment of a local con-
78 servator of the peace and such sheriff, when in his opin-
79 ion the public interests require it, may with the assent
80 of said county court and the judge of the circuit court
81 duly entered of record, either in term or vacation of any
82 such court, appoint any person or persons a local conser-
83 vator or conservators of the peace to perform the duties
84 of a conservator of the peace outside of any incorporated
85 city, town or village. No person shall be appointed such
86 local conservator of the peace who has not been a bona
87 fide resident and taxpayer of the county for at least one
88 year prior to his appointment. Such local conservator
89 of the peace during his continuance in office, may perform
90 and discharge any of the official duties of the sheriff, sub-
91 ject nevertheless to the provisions of this section. No
92 local conservator so appointed shall be subject to the
93 direction or control of any person other than his princi-

94 pal and he shall not perform any services or duties, either
95 private or public, except the duties required by law of
96 conservators of the peace pursuant to the provisions
97 hereof, for any person, firm, or corporation. No such
98 local conservator shall be entitled to collect or receive
99 any fees provided by law to be paid to the sheriff or to
100 a deputy sheriff, but all fees provided by law for the
101 sheriff, when such duties and services are rendered by
102 such local conservator, shall be paid to the sheriff as reg-
103 ular collections of the sheriff's office. The local conser-
104 vator shall be paid for the public services performed by
105 him a salary of not less than seventy-five dollars per
106 month out of the county treasury from a fund to be paid
107 into such treasury by a resident or the residents of the
108 community for which he is appointed, for the sole pur-
109 pose of compensating such local conservator or conser-
110 vators and no such local conservator shall receive any
111 other compensation, directly or indirectly, from any per-
112 son, firm, or corporation, for any private or public serv-
113 ice, except the salary payable to him for his public serv-
114 ices and duties and from such fund, except that he shall
115 be entitled to witness and mileage fees when a witness
116 in a court of record. Each local conservator so appointed
117 shall take the same oath of office required of his princi-
118 pal and any default or misfeasance in the office of such
119 local conservator shall constitute a breach of the condi-
120 tions of the official bond of his principal.

121 (2) When the sheriff shall have been petitioned for the
122 appointment of a local conservator and has determined
123 that the appointment is proper, he shall select the per-
124 son whom he proposes to have appointed such conser-
125 vator and shall notify the county court of the community
126 for which such conservator is to be appointed and the
127 name of the person proposed for such appointment. The
128 county court shall thereupon cause notice that the sher-
129 iff has recommended the appointment of the person
130 named as conservator for the community named to be
131 published as a Class II legal advertisement in complinace
132 with the provisions of article three, chapter fifty-nine
133 of this code, and the publication area for such publica-
134 tion shall be the county. The notice shall designate a

135 day not less than five days after the date of the last pub-
136 lication when the county court will act upon the petition
137 and recommendation. Neither the county court nor the
138 judge of the circuit court shall assent and approve the
139 appointment of such local conservator until such pub-
140 lication has been made. The costs of the publication
141 shall be paid by the person or persons petitioning for the
142 appointment of the conservator.

143 No local conservator shall be appointed except it be
144 made to appear to the satisfaction of the county court
145 and the judge of the circuit court that because of the lack
146 of sufficient funds, geographical location of the unincor-
147 porated community for which such conservator is to be
148 appointed, or other good reason, the sheriff and his reg-
149 ular deputies and the constables of the county are not
150 sufficient to afford proper local policing of such commu-
151 nity and that the person or persons moving for the ap-
152 pointment of such local conservator have made satisfac-
153 tory arrangements to compensate him for his services as
154 such local conservator of the peace.

155 (3) Such local conservator of the peace shall have
156 all the powers and duties of a regularly appointed dep-
157 uty sheriff except that he shall not execute any civil
158 process except such process as may be necessary to bring
159 parties before the court in any action at law or suit in
160 equity and subpoenas for witnesses within the unincor-
161 porated community for which he is appointed and within
162 a distance of one mile outside the boundaries thereof,
163 except as hereinafter expressly provided, but he shall
164 not participate in any strike, unemployment boycott, or
165 other industrial or labor dispute, nor serve any court
166 process of any character relating thereto. He shall act
167 as such local conservator only in the unincorporated
168 community for which he is appointed, and within a dis-
169 tance of one mile from the boundaries thereof as fixed
170 by the county court: *Provided, however,* That the au-
171 thority of one local conservator shall not extend into any
172 other unincorporated community for which another local
173 conservator is appointed and acting, except as otherwise
174 expressly provided by subdivision (6) of this subsection,
175 except that in fresh pursuit he may affect arrests anywhere

176 in the county. He may also exercise the powers of a
177 regularly appointed deputy anywhere in the county when
178 required to guard or assist in guarding a payroll, or any
179 other property of value in transit to or from the unin-
180 corporated community for which he is appointed. Any
181 person arrested by such local conservator shall, with all
182 convenient speed, be turned over to the sheriff, or one
183 of his regular deputies, or to a regular constable of the
184 county to be dealt with according to law, and his author-
185 ity for that purpose shall be coextensive with the county.

186 (4) Any local conservator appointed to perform the
187 duties of conservator of the peace shall be a public offi-
188 cer and the payment, or contribution to the payment of
189 compensation of such local conservator shall not consti-
190 tute the person, firm or corporation making such pay-
191 ment or contribution the employer of such local conser-
192 vator and no person, firm or corporation paying, or con-
193 tributing to the payment of compensation to such local
194 conservator shall be answerable in law or in equity for
195 any damages to person or property resulting from any
196 official act of such local conservator.

197 (5) No person appointed such local conservator shall
198 thereby be entitled to carry weapons, but such local con-
199 servator may carry weapons when he shall be duly li-
200 censed and shall have given bond as provided by section
201 two, article seven, chapter sixty-one of the code of West
202 Virginia, one thousand nine hundred thirty-one.

203 (6) Not more than one local conservator of the peace
204 shall be appointed, to perform the duties of conservator
205 of the peace, for each two thousand five hundred inhab-
206 itants of the county as ascertained by the last regular
207 decennial census after deducting the number of inhabit-
208 ants of the county residing in the incorporated cities,
209 towns and villages in such county. Not more than one
210 local conservator shall be appointed for any unincorpo-
211 rated community unless the population thereof exceed
212 fifteen hundred people and in such case not more than
213 two conservators shall be appointed for such commu-
214 nity.

215 (7) The phrase "unincorporated community" within
216 the meaning of this section shall mean any center of

217 population wherein three hundred or more persons re-
218 side within an area of not more than one square mile.

219 (8) The county court and the judge of the circuit
220 court in approving the appointment of a local conservator
221 shall enter of record an order making such appointment
222 and shall show therein the necessity for the appointment,
223 the person or persons on whose motion the appointment
224 is made, the arrangement for the payment of compen-
225 sation to such local conservator, the unincorporated com-
226 munity, or communities, for which the appointment is
227 made, including the general boundary of each unincor-
228 porated community for which he is appointed.

229 (9) No local conservator shall act as an election offi-
230 cial or remain in, about or near any voting place or place
231 of political convention, further than is necessary for him
232 to promptly cast his vote and retire from the voting
233 place.

234 (10) Any local conservator violating any of the pro-
235 visions of subdivisions (3) and (9) of this subsection shall
236 be guilty of a misdemeanor, and, upon conviction thereof,
237 shall be fined not less than fifty dollars nor more than
238 three hundred dollars, or be confined in the county jail
239 not more than six months, or both, in the discretion of
240 the court; and it shall be the duty of the sheriff and the
241 county court to forthwith revoke his appointment irre-
242 spective of any criminal prosecution. A proceeding in
243 mandamus or injunction shall lie in the circuit court
244 and a proceeding in mandamus shall lie in the supreme
245 court of appeals at the instance of the prosecuting at-
246 torney, the attorney general, or of any three or more
247 citizens of the community for which such conservator is
248 appointed, to require the performance of such duty by
249 the sheriff and the county court.

250 (11) Such local conservator shall serve during the
251 joint will and pleasure of the sheriff and the county court
252 and his appointment may be revoked by order entered
253 of record by the county court either with or without the
254 assignment of cause therefor.

255 A local conservator may be removed by the judge of
256 the circuit court, either in term or vacation, for drunk-
257 enness, gross immorality, incompetence, neglect of duty,

258 or other good cause, upon the petition of three or more
 259 residents of the community for which he has been ap-
 260 pointed. The petition shall set forth the cause or causes
 261 for which such removal is asked and shall show that de-
 262 mand for removal has been made of the sheriff and the
 263 county court and that the sheriff and the county court
 264 have failed to remove the local conservator. At least
 265 three copies of the petition shall be filed, and upon the
 266 filing of the petition the judge shall fix a time and place
 267 for a hearing thereon, which time shall not be less than
 268 ten days after the filing of the petition, and shall cause
 269 a copy thereof to be served upon the sheriff and such
 270 local conservator at least ten days before the hearing
 271 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 con-
 2 ferred by law upon county courts, such courts are hereby
 3 authorized and empowered to install, construct, repair,
 4 maintain and operate waterworks, water mains, sewer

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

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

46 verified of the persons, firms or corporations owning
47 not less than sixty per cent of the frontage of the lots
48 abutting on both sides of all streets or alleys, or por-
49 tions thereof included by said county court in said
50 unit and project.

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

66 Upon petition in writing duly verified, of the persons,
67 firms or corporations owning not less than sixty per
68 cent of the frontage of the lots abutting on one side
69 of any street between any two cross-streets or between
70 a cross-street and an alley in any unincorporated com-
71 munity requesting the county court so to do according
72 to plans and specifications submitted with such peti-
73 tion and offering to have their property so abutting
74 assessed with the total cost thereof, the county court
75 may cause any sidewalk to be improved, or paved, or
76 repaved, substantially with such materials according to
77 such plans and specifications and the total cost in-
78 cluding labor and materials, engineering and legal service
79 of improving, grading, paving, or repaving such side-
80 walk and assessing the cost thereof shall, when the
81 work is completed and accepted, be assessed against
82 the owners of the lots or fractional part of lots abutting
83 on such sidewalk, in such portion of the total cost as
84 the frontage in feet of each owner's land so abutting
85 bears to the total frontage of all lots so abutting on such
86 sidewalk so paved or improved, as aforesaid, which

87 computation shall be made by the county engineer
88 or surveyor and certified by him to the clerk of said
89 court.

90 Upon petition in writing duly verified, of the persons,
91 firms or corporations owning not less than sixty per
92 cent of the frontage of the lots abutting on both sides
93 of any street or alley, in any unincorporated community
94 requesting the county court so to do according to
95 plans and specifications submitted with such petition
96 and offering to have their property so abutting assessed
97 with the cost, as hereinafter provided, the county court
98 may lay and construct sanitary sewers in any street
99 or alley with such materials and substantially accord-
100 ing to such plans and specifications and when such
101 sewer is completed and accepted, the county engineer
102 or surveyor shall report to the county court, in writing,
103 the total cost of such sewer and a description of the
104 lots and lands, as to the location, frontage, depth and
105 ownership liable for such sewer assessment, so far as
106 the same may be ascertained, together with the amount
107 chargeable against each lot and owner, calculated in
108 the following manner: The total cost of constructing
109 and laying the sewer including labor, materials, legal
110 and engineering services shall be borne by the owners
111 of the land abutting upon the streets and alleys, in which
112 the sewer is laid according to the following plan:
113 Payment is to be made by each landowner on either
114 side of such portion of a street or alley in which such
115 sewer is laid, in such proportions as the frontage of
116 his land upon said street or alley bears to the total
117 frontage of all lots so abutting on such street or alley.
118 In case of a corner lot, frontage is to be measured along
119 the longest dimensions thereof abutting on such street or
120 alley in which such sewer is laid. Any lot having a depth
121 of two hundred feet or more, and fronting on two streets,
122 or alleys, one in the front and one in the rear of said
123 lot, shall be assessed on both of said streets or alleys
124 if a sewer is laid in both such streets and alleys.
125 Where a corner lot has been assessed on the end
126 it shall not be assessed on the side for the same
127 sewer and where it has been assessed on the side

128 it shall not be assessed on the end for the same
129 sewer.

130 If the petitioners request the improvement of any such
131 street, alley or sidewalk in a manner which does not
132 require the permanent paving or repaving thereof, the
133 county court shall likewise have authority to improve
134 such street, alley or sidewalk, substantially as re-
135 quested in such petition, and the total cost thereof in-
136 cluding labor, materials, engineering and legal services
137 shall be assessed against the abutting owners in the
138 proportion which the frontage of their lots abutting
139 upon such street, alley or sidewalk bears to the total
140 frontage of all lots abutting upon such street, alley
141 or sidewalk, so improved.

142 Upon the filing of such petition and before work is
143 begun, or let to contract, the county court shall fix a
144 time and place for hearing protests and shall require
145 the petitioners to post notice of such hearing in at least
146 two conspicuous places on the street, alley or sidewalk
147 affected, and to give notice thereof by publication of
148 such notice as a Class I legal advertisement in com-
149 pliance with the provisions of article three, chapter
150 fifty-nine of this code, and the publication area for such
151 publication shall be the county in which the im-
152 provement is to be made. The hearing shall be held
153 not less than ten nor more than thirty days after the filing
154 of such petition.

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

169 Any owner of property abutting upon said street, alley
170 or sidewalk aggrieved by such order shall have the
171 right to review the same on the record made before
172 the county court by filing within ten days after the
173 entry of such order, a petition with the clerk of the
174 circuit court assigning errors and giving bond in a pen-
175 alty to be fixed by the circuit court to pay any costs or
176 expenses incurred upon such appeal should the order
177 of the county court be affirmed. The circuit court
178 shall proceed to review the matter as in other cases
179 of appeal from the county court.

180 All assessments made under this section shall be cer-
181 tified to the county clerk and recorded in a proper trust
182 deed book and indexed in the name of the owner of
183 any lot or fractional part of a lot so assessed. The
184 assessment so made shall be a lien on the property liable
185 therefor, and shall have priority over all other liens
186 except those for taxes, and may be enforced by a civil
187 action in the name of the contractor performing the
188 work in the same manner as provided for other liens
189 for permanent improvements. Such assessment shall
190 be paid in not more than ten equal annual installments,
191 bearing interest at the rate of six per cent per annum
192 as follows: The first installment, together with interest
193 on the whole assessment, shall be paid not later
194 than one year from the date of such assessment, and
195 a like installment with interest on the whole amount
196 remaining unpaid each year thereafter until the prin-
197 cipal and all interest shall have been paid in
198 full.

199 The county court may issue coupon-bearing certifi-
200 cates payable in not more than ten equal annual in-
201 stallments for the amount of such assessment and the
202 interest thereon, to be paid by the owner of any lot
203 or fractional part thereof, fronting on such street, alley
204 or sidewalk which has been improved, paved, or repaved
205 or in which a sewer has been laid, as aforesaid,
206 and the holder of said certificate shall have a lien having
207 priority over all other liens except those for taxes upon
208 the lot or part of lot fronting on such street, alley or
209 sidewalk, and such certificate shall likewise draw in-

210 terest from the date of assessment at the rate of six
211 per cent per annum, and payment thereof may be en-
212 forced in the name of the holder of said certificate by
213 proper civil action in any court having jurisdiction
214 to enforce such lien.

215 Certificates authorized under this section may be
216 issued, sold or negotiated to the contractor doing the
217 work, or to his assignee, or to any person, firm, or cor-
218 poration: *Provided*, That the county court in issuing
219 such certificates shall not be held as a guarantor, or
220 in any way liable for the payment thereof. Certificates
221 so issued shall contain a provision to the effect that
222 in the event of default in the payment of any one
223 or more of said installments, when due, said default
224 continuing for a period of sixty days, all unpaid install-
225 ments shall thereupon become due and payable, and
226 the owner of said certificates may proceed to col-
227 lect the unpaid balance thereof in the manner here-
228 inbefore provided.

229 In all cases where petitioners request paving or re-
230 paving, or the laying of sewers under the provisions of
231 this section, the county court shall let the work of
232 grading, paving, curbing or sewerage to contract to the
233 lowest responsible bidder. In each such case the county
234 court shall require a bond in the penalty of the contract
235 price guaranteeing the faithful performance of the work
236 and each such contract shall require the contractor
237 to repair any defects due to defective workmanship
238 or materials discovered within one year after the
239 completion of the work.

240 Upon presentation to the clerk of the county court
241 of the certificates evidencing the lien, duly cancelled
242 and marked paid by the holder thereof, or evidence of
243 payment of the assessment if no certificates have been
244 issued, said clerk shall execute and acknowledge a
245 release of the lien which release may be recorded, as
246 other releases in the office of the clerk of the
247 county court.

248 The owner of any lot or fractional part of a lot
249 abutting upon such street, alley or sidewalk so improved,
250 paved, repaved or sewerage shall have the right to an-

251 ticipate the payment of any such assessment or certifi-
252 cate by paying the principal amount due, with interest
253 accrued thereon to date of payment, and also to pay
254 the entire amount, without interest at any time,
255 within thirty days following the date of the as-
256 sessment.

257 Nothing in this section contained shall be construed
258 to authorize the county courts of the various counties
259 to acquire any road construction, ditching, or paving
260 equipment. The county courts are hereby authorized
261 to rent from the state road commissioner or any other
262 person, firm or corporation such equipment as may be
263 necessary from time to time, to improve any street or
264 sidewalk which petitioners do not desire to have paved
265 in a permanent manner, and for such purpose to
266 employ such labor as may be necessary but no
267 expense connected therewith shall be charged to
268 any county funds.

269 No county court shall be under any duty after the
270 paving, repaving or improvement of any street, alley or
271 sidewalk or the laying of any sanitary sewer under
272 the provisions of this section, to maintain or repair
273 the same, but any such court shall have authority upon
274 petition duly verified, signed by at least sixty per cent
275 of the owners of property abutting upon any improve-
276 ment made under this section, to maintain or repair
277 such improvement or sewer and to assess the cost thereof
278 against the owners of such abutting property in the
279 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-
2 plication of any landowner whose land abuts on any
3 unused road, street, or other travel way designated on
4 any map or plat of a subdivision of land or otherwise
5 within such county but outside of incorporated towns
6 or cities thereof, is hereby authorized to close and va-
7 cate any part or all of any such unused road, street or
8 other designated travel way by order entered of record

9 after hearing as hereinafter provided. Before acting to
10 close and vacate any such road, street or travel way, the
11 county court shall consider the application and shall
12 fix a time and place for hearing on such application.
13 Such hearing shall be held not less than fifteen days after
14 the hearing date and place have been so fixed. The ap-
15 plicant shall cause notice of the time and place of such
16 hearing and the purpose thereof to be published as a
17 Class I legal advertisement in compliance with the pro-
18 visions of article three, chapter fifty-nine of this code,
19 and the publication area for such publication shall be
20 the county. The notice shall be published at least fifteen
21 days before such hearing. The applicant shall also cause
22 to be served, at least fifteen days before such hearing,
23 in the manner provided by law for the service of notices
24 and process, a notice showing the time, place and pur-
25 pose of such hearing, upon every owner of property,
26 and every person holding a lien thereon, abutting on such
27 unused road, street or other travel way. The affidavit
28 of publication of such notice shall be filed with the
29 county court at or before the hearing as a part of the
30 record in the proceedings.

31 At the time and place fixed for the hearing, the county
32 court shall hear any evidence relating to the use of and
33 rights or claims in or to any such road, street or other
34 designated travel way sought to be closed and vacated.
35 If the county court concludes and finds upon the record
36 and evidence in the proceedings that the use and rights
37 of no person or persons in such road, street or other
38 travel way will be impaired or lost by the closing and
39 vacation thereof, the county court shall proceed to enter
40 an order closing and vacating such road, street or other
41 travel way and shall cause a copy of said order to be
42 prepared and certified for entry of record in the office
43 of the clerk of such county court. The applicant shall
44 pay the recording fee thereon.

45 Any person aggrieved by the action of the county
46 court in any such case may seek review thereof in the
47 circuit court of the county as provided in article three
48 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 incorpo-
2 rated, or of a district in a county, are desirous to change
3 the name of such town, village or district, they may
4 petition the county court, or other tribunal established
5 in lieu thereof, of the county wherein such town, village
6 or district is situated; and if it appear to such court or
7 other tribunal that a majority of the actual resident voters
8 of such town, village or district is in favor of such
9 change, it shall cause the following described notice to
10 be published as a Class I legal advertisement in com-
11 pliance with the provisions of article three, chapter
12 fifty-nine of this code, and the publication area for such
13 publication shall be the town, village or district, as the
14 case may be. The notice shall be published at least thirty
15 days prior to the sitting of such court or tribunal. The
16 notice shall state the fact that a petition has been pre-
17 sented to the court or tribunal by the people of such
18 town, village or district, praying for such change, and
19 that unless those interested in the change appear at the
20 next term, or such term as the court or tribunal may
21 designate, and show cause why such change should not
22 be made, there will be an order rendered granting such
23 change, which notice shall be signed by the president
24 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
2 by law authorized to sell or dispose of any property,
3 either real or personal, belonging to the county or held
4 by it for the use of any district thereof, the same shall
5 be sold at public auction, at the front door of the court-

6 house of the county, and such sale shall be conducted by
7 the president of the county court, but before making any
8 such sale, notice of the time, terms and place of sale,
9 together with a brief description of the property to be
10 sold, shall be published as a Class II legal advertisement
11 in compliance with the provisions of article three, chap-
12 ter fifty-nine of this code, and the publication area for
13 such publication shall be the county: *Provided, however,*
14 That this section shall not apply to the sale of any one
15 item of property of less value than one thousand dollars:
16 *Provided further,* That the provisions of this section
17 concerning sale at public auction shall not apply to a
18 county court selling or disposing of its property for a
19 public use to the United States of America, its instru-
20 mentalities, agencies or political subdivisions or to the
21 state of West Virginia, or its political subdivisions, in-
22 cluding county boards of education, for an adequate con-
23 sideration without considering alone the present com-
24 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.

1 The county court of every county, within four weeks
2 after the first session held after the beginning of each
3 fiscal year, shall prepare on a form to be prescribed
4 by the state tax commissioner, and cause to be published
5 a statement revealing (a) the receipts and expenditures
6 of the county during the previous fiscal year arranged
7 under descriptive headings, (b) the name of each firm,
8 corporation, and person who received more than fifty
9 dollars from any fund during the previous fiscal year,
10 together with the amount received and the purpose for
11 which paid, and (c) all debts of the county, the purpose
12 for which each debt was contracted, its due date, and
13 to what date the interest thereon has been paid. Such
14 statement shall be published as a Class I-0 legal advertise-
15 ment in compliance with the provisions of article three,

16 chapter fifty-nine of this code, and the publication area
17 for such publication shall be the county.

18 The county court shall transmit to any resident of the
19 county requesting the same a copy of the published
20 statement for the fiscal year designated, supplemented
21 by a list of the names of each firm, corporation, and
22 person who received less than fifty dollars from any
23 fund during such fiscal year showing the amount paid
24 to each and the purpose for which paid.

25 If a county court wilfully fail or refuse to perform the
26 duties hereinbefore named, every member of such court,
27 concurring in such failure or refusal, shall be guilty of
28 a misdemeanor, and, upon conviction thereof, shall be
29 fined not less than fifty nor more than one hundred dol-
30 lars; and the prosecuting attorney of any such county
31 shall, when such failure or refusal shall come to his
32 knowledge, immediately present the evidence thereof to
33 the grand jury if in session, and if not in session, he
34 shall institute proper criminal proceedings before a jus-
35 tice against any such offender, and cause such failure or
36 refusal to be investigated by the next succeeding grand
37 jury.

ARTICLE 8. JAIL AND JAILER.

Section

7. Jail physician; clothing for indigent prisoners.

§7-8-7. Jail physician; clothing for indigent prisoners.

1 The county court for every county may appoint a
2 physician to attend all persons confined in jail as lunatics,
3 or persons charged with felony or misdemeanor, and such
4 physician shall furnish all medicines and drugs for, and
5 give proper attention to, all such persons at a stipu-
6 lated, fixed and exclusive annual allowance. The appoint-
7 ment of such physician shall be made in open court. The
8 court, or president thereof in vacation, shall cause notice
9 of the days during court when sealed bids will be received
10 to be published as a Class I legal advertisement in com-
11 pliance with the provisions of article three, chapter fifty-
12 nine of this code, and the publication area for such
13 publication shall be the county. The bids shall be opened
14 only in court, on the day specified in the notice, if the

15 court then be in session, and, if not, on the first day of
16 the session thereafter, and the appointment awarded to
17 the lowest responsible bidder; and such court shall
18 have the right to reject any or all bids. The person re-
19 ceiving the appointment shall give bond with sufficient
20 surety, to be approved by the court, for the faithful
21 performance of the trust and agreement. The court shall
22 have power to vacate the appointment for failure or
23 neglect of duty; but such vacation shall in no manner
24 affect the liability on the bond. All of the proceedings
25 shall be entered in the order book of the court. The
26 county court may also, after examination, when a per-
27 son in its jail charged with or convicted of an offense
28 is unable to provide himself with sufficient clothing,
29 direct the jailer to provide him clothing, and allow there-
30 for not exceeding twenty dollars in one year. Allowances
31 under this section, on being certified by the court, shall
32 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.

1 Contributions may be made to the authority from time
2 to time by the county court of the county or any municipi-
3 pal corporation therein, and by any persons, firms or cor-
4 porations which shall desire to do so. All such funds and
5 all other funds received by the authority shall be de-
6 posited in such bank or banks as the authority may direct
7 and shall be withdrawn therefrom in such manner as the
8 authority may direct. The authority shall keep strict
9 account of all its receipts and expenditures and shall each
10 quarter make a quarterly report to the county court and
11 municipalities containing an itemized statement of its
12 receipts and disbursements during the preceding quar-
13 ter. Within sixty days after the end of each fiscal year,
14 the authority shall make an annual report containing an
15 itemized statement of its receipts and disbursements for
16 the preceding year, and such annual report shall be pub-
17 lished as a Class I legal advertisement in compliance with
18 the provisions of article three, chapter fifty-nine of this
19 code, and the publication area for such publication shall
20 be the county in which the county development author-
21 ity is located. The books, records and accounts of the
22 authority shall be subject to audit and examination by
23 the office of the state tax commissioner of West Vir-
24 ginia and by any other proper public official or body in
25 the manner provided by law.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

2. **Creation, Alteration, Dissolution and Powers of Municipal Corporations.**
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.**
9. **Alternate Method for Street and Sewer Improvements.**
11. **Airports and Avigation.**
12. **Waterworks.**
13. **Combined Waterworks and Sewerage Systems.**

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
2 set the same for hearing not sooner than ten days and
3 not later than thirty days thereafter, and petitioners shall
4 cause notice of the filing of said petition and of the time
5 and place of hearing thereon, to be published as a Class
6 II legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be the terri-
9 tory sought to be incorporated.

10 Upon the day set for hearing, the county court shall
11 hear evidence for and against the proposed incorpora-
12 tion, and if it shall determine that the requirements of
13 sections one and two of this article have not been met,
14 it shall forthwith enter an order dismissing said peti-
15 tion.

§8-2-5. Election—Time of election; precincts; supplies; commissioners and clerks; notice.

1 Upon receiving such report of said enumerators, the
2 county court shall forthwith fix a day, not later than
3 thirty days thereafter, on which all qualified electors re-
4 siding within the territory shall vote upon the question
5 of incorporation between such hours as may be fixed
6 by order of said court. For the purpose of conducting
7 said election, the county court shall divide the territory
8 into one or more precincts, consisting of not more than
9 five hundred qualified voters in each precinct; shall ar-
10 range for and provide at its expense polling places, reg-
11 istration books, challenges and other election supplies
12 as provided for by law in general elections, and shall
13 appoint three commissioners of election and two clerks
14 from the qualified electors of said territory for each pre-
15 cinct so established dividing the election officials as nearly

16 as possible equally between those favoring incorpora-
17 tion and those opposed to incorporation, and shall give
18 notice of the day and place of election by publication
19 of such notice as a Class II-0 legal advertisement in
20 compliance with the provisions of article three, chapter
21 fifty-nine of this code, and the publication area for such
22 publication shall be the territory sought to be incor-
23 porated.

§8-2-15. Same—Hearing and notice.

1 When it shall have completed its draft of charter, a
2 charter board shall conduct a public hearing thereon.
3 Notice of the time, place and purpose of the hearing
4 shall be given by publication of such notice at least ten
5 days prior to the date set for the hearing as a Class I
6 legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be the terri-
9 tory to be incorporated. The notice shall state where
10 copies of the draft of charter may be obtained. The
11 hearing may be continued by the charter board by ad-
12 journments over a period not exceeding fourteen days.

§8-2-17. Same—Special election; time of election; notice.

1 The proposed charter shall be submitted to the voters
2 for approval at a special election to be held not less than
3 thirty days nor more than ninety days following filing
4 of the completed charter with the clerk of the county
5 court, at which election the officers provided by said
6 charter shall be voted upon in the manner provided by
7 said charter. Notice of the time, place and purpose of a
8 charter election shall be given by publication of such
9 notice as a Class II-0 legal advertisement in compliance
10 with the provisions of article three, chapter fifty-nine
11 of this code, and the publication area for such publica-
12 tion shall be the territory incorporated. The first of said
13 publications shall be made not less than thirty days prior
14 to the date fixed for the election. Each such notice of
15 election shall state that any qualified voter of said terri-
16 tory may obtain a copy of the proposed charter, from a
17 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

15 such publication shall be the city. The notice shall state
16 the general title or titles of said ordinance, the time and
17 place of the proposed final adoption, and the place or
18 places where, within the city, the entire ordinance will
19 be available for public inspection; a reasonable number
20 of copies of the proposed ordinance shall be kept at such
21 place and be made available for public inspection.

§8-4-14. Conditions to granting of franchise by council or county court; term of franchise.

1 No franchise shall hereafter be granted by the county
2 court of any county, or other tribunal acting in lieu
3 thereof, or by the council of any town incorporated under
4 the laws of this state where the application for such
5 franchise has not been filed, with the clerk of such court
6 or council, at least thirty days prior to the time when it
7 is to be acted upon by such county court or council, and
8 where notice of such application, stating the object of
9 such franchise, has not been given by publication thereof
10 as a Class II legal advertisement in compliance with the
11 provisions of article three, chapter fifty-nine of this code,
12 for which publication the publication area shall be the
13 county or town, as the case may be, wherein such fran-
14 chise is to be granted. Nor shall such franchise be
15 granted within thirty days after the application has been
16 filed, nor until an opportunity has been given any citizen
17 or corporation interested in the granting or refusing of
18 such franchise to be heard. Nor shall any franchise here-
19 after be granted by any county court, or other tribunal
20 acting in lieu thereof, or by any council of any such town,
21 for a longer term than fifty years: *Provided, however,*
22 *That nothing in this section shall prevent the renewal*
23 *of any such franchise for a term not exceeding fifty*
24 *years, when the same shall have expired. No franchise*
25 *hereafter granted for any longer term than fifty years*
26 *shall be of any force or validity.*

§8-4-20. Charges for municipal services.

1 The governing authority of every municipal corpora-
2 tion that furnishes any essential or special municipal
3 service, including police and fire protection, parking
4 facilities on the streets or otherwise, recreational facil-

5 ities, street cleaning, street lighting, sewerage and sew-
6 age disposal, and the collection and disposal of garbage,
7 ashes or other waste materials, may by ordinance pro-
8 vide for the continuance, maintenance, installation or
9 improvement of such service, may make reasonable
10 regulations with respect thereto, may impose upon
11 the users of such service reasonable rates, fees and
12 charges to be collected in the same manner as municipi-
13 pal taxes are collected or in some other manner speci-
14 fied in the ordinance, and may provide penalties for
15 any violation of such ordinance. The municipal cor-
16 poration shall not, however, have a lien on any
17 property as security for payments due under such
18 ordinance: *Provided, however,* That any ordinance
19 enacted under the provisions of this section shall be
20 published as a Class II legal advertisement in compli-
21 ance with the provisions of article three, chapter fifty-
22 nine of this code, and the publication area for such
23 publication shall be such municipality. In the event
24 thirty per cent of the registered voters by written peti-
25 tion duly signed by them and filed with the municipal
26 authority within fifteen days after the expiration of
27 such publishing protest against such ordinance, the
28 ordinance shall not become effective until it shall be
29 ratified by a majority of the votes cast by the duly
30 qualified voters of such municipality at an election duly
31 and regularly held as provided by the laws and ordinances
32 of the municipality and the result of such election
33 ascertained and declared. Such election shall be held
34 after notice of such submission shall be given by
35 publication as above provided for the publication of
36 the ordinance when adopted. The powers hereby given
37 to such municipalities and to the authorities thereof
38 are in addition to and supplemental of the powers named
39 in the respective charters thereof: *Provided,* That
40 in the event fees and charges herein provided for, shall
41 be imposed by the governing body of any municipal
42 corporation for the purpose of, and in amounts approxi-
43 mately sufficient, to replace in its general fund such
44 amounts as shall be appropriated to be paid out of ad
45 valorem taxes upon property within the municipality

46 pursuant to an election duly called and held under the
47 constitution and laws of the state to authorize the
48 issuance and sale of general obligation bonds of the
49 municipality for public improvement purposes, in the
50 call for which election it shall be stated that the
51 governing body of the municipality proposes to impose
52 fees and charges in specified amounts under this section
53 for the use of one or more of the services above specified,
54 which shall be related to the public improvement
55 proposed to be made with the proceeds of the bonds,
56 no notice, publication of notice, or referendum or
57 election or other condition or prerequisite to the imposi-
58 tion of such rates shall be required or necessary other
59 than the legal requirements for issuance and sale of
60 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
2 system, electric light plant or other public utility, and
3 the council thereof shall deem it for the best interest
4 of such town that such utility be sold, leased or rented,
5 it shall be lawful for the council, by ordinance legally
6 passed, to submit to the legal voters of such munici-
7 pality, at any regular election or at any special election
8 called for that purpose, the question of making such
9 sale, lease or renting. In such case the council shall,
10 in the ordinance submitting such question to a vote,
11 set forth in full the terms of such proposed sale, lease
12 or renting, the name of the proposed purchaser or lessee,
13 the date of such election, and such ordinance shall be
14 published as a Class II-0 legal advertisement in compli-
15 ance with the provisions of article three, chapter fifty-
16 nine of this code, and the publication area for such pub-
17 lication shall be such town. Such election shall be held
18 in all respects in compliance with the provisions of
19 chapter three of this code, so far as the same are appli-
20 cable and not inconsistent herewith. If a majority of
21 the votes cast at such election upon such question be
22 in favor of the proposed sale, lease or renting of such
23 utility, the council, upon the ascertainment of the result
24 of such election, shall have full power and authority

25 to proceed to execute such sale, lease or renting in
26 accordance with the terms and conditions prescribed
27 in the ordinance aforesaid, and shall have power to
28 do any and all things necessary or incident thereto:
29 *Provided, however,* That if at any time after such elec-
30 tion and before the execution of the authority under
31 the ordinance, any person, firm or corporation should
32 present to the council and offer to buy such public utility
33 or plant at a greater price than the sale price which
34 shall have been so voted upon and authorized or to
35 lease the same upon terms which the council, in its
36 discretion, shall consider more advantageous to the
37 municipality than the terms of the lease which shall
38 have been authorized by vote as aforesaid, the council
39 shall have the power to accept such subsequent offer,
40 and to make such sale or such lease to the person making
41 the offer, without resubmitting the question to a vote.
42 But, if a sale shall have been authorized by vote as
43 aforesaid, and such subsequent proposition be for a
44 lease, or, if a lease shall have been so authorized, and
45 the subsequent proposition shall be for a sale, the
46 council shall have no power to accept the same with-
47 out submitting the question thereof to a vote of the
48 people as first above provided. And before any such
49 second or subsequent proposition shall be submitted to
50 vote, after a sale or lease shall have been author-
51 ized at an election held hereunder, the person making
52 such proposition shall execute bond with security to
53 be approved by the council, in a penalty of not less
54 than twenty-five per cent of such proposed bid, con-
55 ditioned to carry such proposition into execution, if the
56 same shall be approved at the election to be called
57 thereon. In any case where such public utility as is
58 mentioned in this section shall be sold, leased, or rented
59 by the council as hereinabove provided, no part of the
60 moneys derived from such sale, lease or renting shall
61 be applied to the payment of current expenses of
62 the municipality; but the proceeds of such sale or lease
63 shall be applied in payment and discharge of any bonded
64 indebtedness created in respect to such public utility;
65 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, accord-
6 ing 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

25 to proceed to execute such sale, lease or renting in
26 accordance with the terms and conditions prescribed
27 in the ordinance aforesaid, and shall have power to
28 do any and all things necessary or incident thereto:
29 *Provided, however,* That if at any time after such elec-
30 tion and before the execution of the authority under
31 the ordinance, any person, firm or corporation should
32 present to the council and offer to buy such public utility
33 or plant at a greater price than the sale price which
34 shall have been so voted upon and authorized or to
35 lease the same upon terms which the council, in its
36 discretion, shall consider more advantageous to the
37 municipality than the terms of the lease which shall
38 have been authorized by vote as aforesaid, the council
39 shall have the power to accept such subsequent offer,
40 and to make such sale or such lease to the person making
41 the offer, without resubmitting the question to a vote.
42 But, if a sale shall have been authorized by vote as
43 aforesaid, and such subsequent proposition be for a
44 lease, or, if a lease shall have been so authorized, and
45 the subsequent proposition shall be for a sale, the
46 council shall have no power to accept the same with-
47 out submitting the question thereof to a vote of the
48 people as first above provided. And before any such
49 second or subsequent proposition shall be submitted to
50 vote, after a sale or lease shall have been author-
51 ized at an election held hereunder, the person making
52 such proposition shall execute bond with security to
53 be approved by the council, in a penalty of not less
54 than twenty-five per cent of such proposed bid, con-
55 ditioned to carry such proposition into execution, if the
56 same shall be approved at the election to be called
57 thereon. In any case where such public utility as is
58 mentioned in this section shall be sold, leased, or rented
59 by the council as hereinabove provided, no part of the
60 moneys derived from such sale, lease or renting shall
61 be applied to the payment of current expenses of
62 the municipality; but the proceeds of such sale or lease
63 shall be applied in payment and discharge of any bonded
64 indebtedness created in respect to such public utility;
65 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, accord-
6 ing 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

5 (a) set forth a brief and general description of the works,
6 and if the same are to be constructed, a reference
7 to the preliminary report or plans and specifications
8 which shall theretofore have been prepared; (b) set
9 forth the estimated cost thereof; (c) order the con-
10 struction, acquisition, extension or improvement of
11 such works; (d) direct that revenue bonds of the
12 municipality be issued pursuant to this article, in such
13 amount as may be found necessary to pay the cost of
14 the works; and (e) contain such other provisions as
15 may be necessary or proper in the premises. Before
16 such ordinance shall become effective, it shall be pub-
17 lished as a Class II legal advertisement in compliance
18 with the provisions of article three, chapter fifty-nine
19 of this code, and the publication area for such publica-
20 tion shall be such municipality. Said notice shall
21 specify a time and place for a public hearing, the time
22 being not less than ten days after the first publication
23 of said notice at which time and place all parties and
24 interests may appear before the municipal authorities,
25 and may be heard as to whether or not said ordinance
26 shall be put into effect. At such hearing all objections
27 and suggestions shall be heard and the governing body
28 shall take such action as it shall deem proper in the
29 premise: *Provided, however,* That if at such hearing
30 written protest is filed by thirty per cent or more of
31 the owners of real estate situate in said municipality,
32 then the governing body of said municipality shall not
33 take further action unless four fifths of the members of
34 said governing body assent thereto: *Provided further,*
35 That in case written protest is filed by thirty per cent
36 or more of owners of real estate as herein provided, the
37 governing body shall have authority to appoint a com-
38 mittee to consist of one proponent, one opponent and
39 the third to be selected by these two, to determine
40 whether or not thirty per cent of the property owners
41 have in fact protested and said committee shall report
42 its findings to the governing body.

§8-4A-17. Charges for services rendered by works.

1 Municipal authorities shall have the power and it

2 shall be their duty, by ordinance or resolution, to estab-
3 lish and maintain just and equitable rates or charges
4 for the use and services rendered, or the improvement
5 or protection of property, provided or afforded by such
6 works, to be paid by the person using the same,
7 receiving the services thereof, or owning the property
8 improved or protected thereby, and may readjust such
9 rates or charges from time to time. Rates or charges
10 heretofore or hereafter established and maintained for
11 the improvement or protection of property, provided
12 or afforded by a municipal flood control system, to be
13 paid by the person owning the property improved or
14 protected thereby, shall be collectible and enforceable
15 from the time provided in such ordinance or resolution,
16 any provision of this or any other law to the contrary
17 notwithstanding, if, at such time, such works, though
18 not yet fully constructed, are nearing completion and
19 such municipal authorities are reasonably assured that
20 such works will be completed and placed in operation
21 without reasonable delay. Such rates or charges shall
22 be sufficient in each year for the payment of the proper
23 and reasonable expenses of operation, repair, replace-
24 ments and maintenance of the works, and for the
25 payment of the sums herein required to be paid into
26 the sinking fund.

27 Revenues collected pursuant to this section shall be
28 deemed the revenues of the works. No such rates or
29 charges shall be established until after a public hearing
30 at which all the users of the works and/or owners of
31 the property served, or to be served thereby, and others
32 interested, shall have an opportunity to be heard con-
33 cerning the proposed rates or charges. After intro-
34 duction of proposal of the ordinance or resolution fixing
35 such rates or charges and before the same is finally
36 enacted or passed, notice of such hearing, setting forth
37 the proposed schedule of such rates or charges, shall
38 be given by publishing same as a Class II-0 legal
39 advertisement in compliance with the provisions of
40 article three, chapter fifty-nine of this code, and the
41 publication area for such publication shall be such
42 municipality. The first publication of said notice shall

43 be at least ten days before the date fixed in such notice
44 for the hearing, which hearing may be adjourned from
45 time to time. No other or further notice to parties at
46 interest shall be required. After such hearing the
47 ordinance or resolution establishing rates or charges,
48 either as originally proposed or introduced, or as modi-
49 fied and amended, shall be passed or adopted and put
50 into effect. A copy of the schedule of such rates and
51 charges so established shall be kept on file in the office
52 of the board having charge of the operation of such
53 works, and also in the office of the municipal authorities,
54 and shall be open to inspection by all parties interested.
55 The rates or charges so established for any class of
56 users or property served, shall be extended to cover
57 any additional class of users or property thereafter
58 served which fall within the same class, without the
59 necessity of any hearing or notice. Any change or read-
60 justment of rates may be made in the same manner as
61 such rates or charges were originally established as
62 hereinabove provided. The aggregate of the rates or
63 charges shall always be sufficient for such expense of
64 operation, repairs and maintenance, and for such sink-
65 ing fund payments. If any service rate, charge or fee
66 so established shall not be paid within thirty days after
67 the same is due, the amount thereof may be recovered
68 by the board in a civil action in the name of the
69 municipality, and in the case of charges due for services
70 rendered, such charges, if not paid when due, may, if
71 council so provide in the ordinance provided for under
72 section six of this article, constitute a lien upon the
73 premises served by such works, which lien may be fore-
74 closed against such lot, parcel of land or building so
75 served, in accordance with the laws relating to the fore-
76 closure of liens on real property. Upon failure of any
77 person receiving any such service to pay for same when
78 due, the board may discontinue such service without
79 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.

§8-5-18. Same—Notice and public hearing.

1 Prior to the adoption of a comprehensive plan, the com-
2 mission shall give notice and hold a public hearing on the
3 plan and a proposed ordinance for its enforcement.

4 At least thirty days prior to the date set for hearing,
5 the commission shall publish a notice of the time and
6 place of the hearing as a Class I legal advertisement in
7 compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for such
9 publication shall be the city or county, as the case may be.

§8-5-44. Same—Final report; notice and hearing; action.

1 After the final report has been submitted by the plan-
2 ning commission the governing body of a city or the
3 county court shall afford all interested persons an op-
4 portunity to be heard with reference to it at public hear-
5 ings convenient for all persons affected to be held at times
6 and places to be specified in notices to be published, with-
7 in fourteen consecutive days next preceding the time set
8 for the hearings, as a Class II legal advertisement in com-
9 pliance with the provisions of article three, chapter fifty-
10 nine of this code, and the publication area for such pub-
11 lication shall be the city or county, as the case may be.
12 The notices shall state the time and places of the hearings,
13 that the report contains a comprehensive zoning ordinance
14 for the city or county, that written objections to the final
15 report filed with the clerk of the governing body of a city
16 or with the county clerk at or before the hearings will be
17 heard and that the hearings will be continued from time
18 to time as may be found necessary. During the period
19 between the date of the first publication of the notice and
20 the date of the hearing, the final report shall be on file
21 in the office of the planning commission for public ex-
22 amination. Upon completion of the public hearings, the
23 governing body of a city or the county court shall proceed
24 to the consideration of the ordinance.

§8-5-48. Election on zoning ordinance; form of ballot; procedure.

1 If within sixty days following the approval of the zoning
2 ordinance by the county court or the governing body of
3 the city a petition is filed with the county clerk praying

4 for the submission of such zoning ordinance for approval
5 or rejection to the electors residing in the area within the
6 jurisdiction of the city or county planning commission,
7 such ordinance shall not take effect until the same shall
8 have been approved by a majority of the electors voting
9 in said election at any regular or special election called
10 for that purpose. The petition provided herein may be
11 in any number of counterparts and must be signed by a
12 number of registered voters residing in the area affected
13 by the proposed zoning equal to not less than fifteen per
14 cent of the total votes cast in the affected area for all
15 candidates for governor at the last preceding general
16 election at which a governor was elected. Only registered
17 voters residing in the area affected by the proposed
18 ordinance shall be eligible to vote in said election.

19 Upon the ballots cast at such election there shall be
20 written or printed the following:

- 21 For zoning.
22 Against zoning.

23 If a majority of the votes cast upon the question be for
24 zoning, the provisions of said zoning ordinance shall, upon
25 the day the results of such an election are declared, be
26 effective. If a majority of the votes cast be against zoning,
27 the question may again be submitted to a vote at any
28 regular election or election for officers in the manner
29 herein provided.

30 Elections for the purpose of voting upon the question
31 of zoning may be held at any general, primary or special
32 election which the governing body of a city or the county
33 court in its order submitting the same to a vote may
34 designate.

35 Notice of all zoning elections shall be given by publi-
36 cation of the order calling such election as a Class II-0
37 legal advertisement in compliance with the provisions of
38 article three, chapter fifty-nine of this code, and the pub-
39 lication area for such publication shall be the area in
40 which the election is to be held.

41 Elections shall be held at the voting precincts estab-
42 lished for holding general elections. All the provisions
43 of the general election laws of this state concerning gen-
44 eral, primary or special elections, when not in conflict

45 with the provisions of this article, shall apply to elections
46 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.

1 Every municipal corporation having a population of
2 more than two thousand, within four weeks after the
3 beginning of each fiscal year, shall prepare on a form to
4 be prescribed by the state tax commissioner, and cause to be
5 published a sworn statement revealing (a) the receipts and
6 expenditures of the municipality during the previous fiscal
7 year arranged under descriptive headings, (b) the name
8 of each firm, corporation, and person who received more
9 than fifty dollars from any fund during the previous fiscal
10 year, together with the amount received and the purpose
11 for which paid, and (c) all debts of the municipality, the
12 purpose for which each debt was contracted, its due date,
13 and to what date the interest thereon has been paid. Such
14 statement shall be published as a Class I legal advertise-
15 ment in compliance with the provisions of article three,
16 chapter fifty-nine of this code, and the publication area
17 for such publication shall be the municipality.

18 Every municipal corporation having a population of
19 more than two thousand shall transmit to any resident of
20 such municipality requesting the same a copy of any pub-
21 lished statement for the fiscal year designated, supple-
22 mented by a list of the names of each firm, corporation,
23 and person who received less than fifty dollars from any
24 fund during such fiscal year showing the amount paid
25 to each and the purpose for which paid.

26 Each municipal corporation having a population of
27 two thousand or less, within four weeks after the begin-
28 ning of each fiscal year, shall prepare on a form to be
29 prescribed by the state tax commissioner a sworn state-
30 ment revealing (a) the receipts and expenditures of the
31 municipality during the previous fiscal year arranged un-
32 der decriptive headings, (b) the name of each firm, cor-

33 poration, and person who received money from any fund
34 during the previous fiscal year, together with the amount
35 received and the purpose for which paid, and (c) all debts
36 of the municipality, the purpose for which each debt was
37 contracted, its due date, and to what date the interest
38 thereon has been paid.

39 Every municipal corporation subject to the provisions
40 of the preceding paragraph shall transmit to any resident
41 of such municipality requesting the same a copy of any
42 such statement for the fiscal year designated.

43 The statement required under the first paragraph of
44 this section and the statement required under the third
45 paragraph of this section shall be sworn to by the re-
46 corder or clerk of the municipality and the mayor or other
47 executive head thereof and two members of the govern-
48 ing body of such municipality. As soon as practicable
49 following the close of the fiscal year, a copy of any state-
50 ment herein required shall be filed by the municipality
51 with the state tax commissioner, the clerk of the county
52 court and the clerk of the circuit court. If the governing
53 body fail or refuse to perform any of the duties set forth
54 in this section, every member of such governing body
55 and the recorder or clerk thereof concurring in such
56 failure or refusal shall be guilty of a misdemeanor, and,
57 upon conviction thereof, shall be fined not less than ten
58 nor more than one hundred dollars. If any of the pro-
59 visions of this section are violated, it shall be the duty
60 of the prosecuting attorney of the county in which such
61 violations occur to immediately present the evidence
62 thereof to the grand jury if in session, and if not in ses-
63 sion, he shall cause such violations to be investigated by
64 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.

1 If the petitioner has stated in the petition that he
 2 desires the total cost to be apportioned among all of
 3 the abutters, the council shall, as soon as the petition
 4 is granted, cause notice to be given to all abutters that
 5 the petition has been granted, that the engineer's
 6 memorandum, certifying reasonable necessity, plans
 7 and specifications, and cost estimates, will be recon-
 8 sidered, before work is started, at a public meeting of
 9 the council at a time and place named in the notice,
 10 and that all abutters will be given an opportunity to
 11 protest or be heard concerning any or all particulars
 12 of the engineer's memorandum at that meeting or an
 13 adjournment thereof.

14 The above-mentioned notice to the abutters may be
 15 by personal service on abutters at least ten days before
 16 the protest meeting. In lieu of personal service of such
 17 notice, the following described notice, or one in sub-
 18 stantially the same form, may be given, and shall be
 19 deemed to have been served on all such abutters,
 20 by publication, within fourteen consecutive days next pre-
 21 ceding said meeting, of the following notice as a Class II
 22 legal advertisement in compliance with the provisions of
 23 article three, chapter fifty-nine of this code, and the publi-
 24 cation area for such publication shall be such municipality:

25 "NOTICE TO ALL PERSONS OWNING PROPERTY
 26 ABUTTING ON _____ (here describe the portions
 27 of the streets, alleys, public ways or easements to be
 28 improved) IN THE MUNICIPALITY OF _____
 29 (name of municipality);

30 A petition has been conditionally granted by the
 31 _____ (common council, board of directors, com-
 32 missioners or other governing body) of the municipality
 33 of _____ (name of municipality) to improve the
 34 _____ (street, alley, public way or easement)

35 above described in _____ (name of municipality)
36 by _____ (grading, regrading, constructing storm
37 sewers or other general description of the proposed
38 improvement), as specifically described in the en-
39 gineer's memorandum certifying the reasonable neces-
40 sity of the proposed improvement, the plans and speci-
41 fications thereof, and the estimate of the items of cost
42 thereof, and to apportion the cost of such improvement
43 among the owners, as of _____ (the date of the
44 first publication of this notice), of the abutting prop-
45 erty.

46 The engineer's memorandum above described will be
47 reconsidered by the _____ (governing body) at
48 a public meeting to be held on _____ (date) at
49 _____ (time) at _____ (place). Any abut-
50 ting owner or interested party will be given an
51 opportunity to protest or be heard at said meeting
52 or an adjournment thereof.

53 _____ (name of the clerk or recorder), _____
54 (official position)."

55 An affidavit of publication of the notice, made by the
56 newspaper publisher, and a copy of the notice shall be
57 made a part of the minutes of the governing body and
58 spread on its records of the meeting described in the
59 notice. The service of said notice upon all persons,
60 firms or corporations owning any interest in any prop-
61 erty abutting upon any portion of said street, alley,
62 public way or easement to be improved shall conclusively
63 be deemed to have been given when such newspaper
64 publication shall have been completed: *Provided*, That
65 where any foreign railroad or other foreign corporation
66 is the owner of property abutting upon any street, alley,
67 public way or easement sought to be improved under
68 the provisions hereof, notice shall be given to such rail-
69 road or other foreign corporation as prescribed by sec-
70 tion one, article ten, chapter eight of the code of West
71 Virginia, one thousand nine hundred thirty-one, before
72 the adoption of any ordinance or resolution relating
73 to, and providing for, such improvements.

74 Any part or parts of the engineer's memorandum may
75 be modified or remodified at the protest meeting in

76 accordance with the evidence introduced at such meet-
77 ing, including the extent of the portions of the streets,
78 alleys, public ways or easements proposed to be im-
79 proved as designated in the engineer's memorandum.
80 If, after modification at such protest meeting, the
81 memorandum indicates that the proposed improvement
82 is not reasonably necessary and/or that its estimated total
83 cost is more than one thousand dollars, then the peti-
84 tion shall be automatically revoked; and the petitioner
85 shall be charged with all municipal expense in connec-
86 tion therewith except salaries and wages of regular
87 municipal employees, which charge shall be made by
88 ordinance or resolution of the council; and a statement
89 of said charge shall be mailed to the petitioner at the
90 address listed in the petition unless the petitioner shall
91 have notified the council in writing of a change in
92 his actual mailing address, in which case the state-
93 ment shall be mailed according to such change.

94 If the engineer's memorandum has not been so modi-
95 fied at the protest meeting as to render the petition
96 automatically revoked as provided above, the council
97 shall order by ordinance or resolution the proper municip-
98 al authorities to proceed with the accomplishment of
99 the improvement according to the plans and specifications
100 in the engineer's memorandum, as modified at the pro-
101 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.

1 Where the petitioner has indicated in the petition his
2 desire to have the total cost apportioned among all of the
3 abutters, the engineer shall, as soon as the council has
4 ordered the proper municipal authorities to proceed under
5 section eight of this article, determine or cause to be
6 determined the several frontages abutting on the im-
7 provement, a brief description thereof, and the owners
8 of such frontages as of the date of the first publication of
9 the notice described in section eight of this article; and he
10 shall keep an account of all items of cost connected there-
11 with that affect the total cost. As soon as the improvement

12 is completed and the account mentioned in section nine
13 of this article is given to him, the engineer shall compute
14 the actual total cost of the improvement.

15 The total cost shall be personally borne by such abut-
16 ters, including the petitioner, as of the date of the first
17 publication of the notice described in section eight of
18 this article; and the amount of the assessment against
19 each shall be apportioned by the engineer on the basis of
20 the following formula. Each lot or parcel of land so
21 abutting shall be assessed with that portion of the total
22 cost of the entire project which is represented by the pro-
23 portion which the abutting frontage in feet of such lot or
24 parcel bears to the total abutting frontage in feet of all
25 the lots or parcels of land abutting on the streets, public
26 ways, alleys or easements so improved: *Provided, how-*
27 *ever,* That if the character of the improvements shall be
28 substantially different upon different streets, public ways,
29 easements or alleys, or portions thereof, the cost may be
30 equitably apportioned to the respective streets, public
31 ways, alleys, easements, or portions thereof, in proportion
32 to the character and cost of the improvements respectively
33 thereon; and as a part of the cost so apportioned to each
34 respective street, public way, easement, or alley, or portion
35 thereof, shall be apportioned to and assessed against the
36 respective lots or parcels of land abutting thereupon in
37 the proportion as hereinabove provided: *Provided further,*
38 That if any part of the street, alley, easement or public
39 way improved is used by a railway then the cost of the
40 portion of the improvements between the rails and for
41 two feet outside said rails shall be assessed against and
42 wholly borne by the owner of the railway: *Provided*
43 *further,* That if there be any land or other property abut-
44 ting on the portion of the street or alley so improved
45 which it has been determined by the governing body of
46 the municipality, and, shown in the ordinance or resolu-
47 tion authorizing the improvement, not to be specially
48 benefited by the improvement, or for other reasons would
49 not be liable to assessment for any of the cost of im-
50 provement, then the cost of the improvements abutting
51 such part of said street or alley, as is so determined to be
52 nonassessable shall be apportioned among, assessed and

53 borne by the remaining property abutting upon the por-
54 tion of the street, alley, public way or easement improved
55 in proportion to the frontage of such remaining abutting
56 property as hereinabove provided: *Provided further*, That
57 if such improvement includes the construction or recon-
58 struction of sidewalks on only one side of a street, alley,
59 public way or easement, then the cost of such sidewalk
60 shall be assessed only on the property abutting on that
61 side where the sidewalks are so constructed: *Provided*
62 *further*, That if there be land or other property abutting
63 the street, alley, easement or public way so improved
64 which is owned by the United States of America, and for
65 that reason not legally subject to assessment, then the
66 municipality shall pay the proportionate part of the cost
67 of the improvement which otherwise would be assessable
68 against such federally owned land or property: *Provided*
69 *further*, That if the actual total cost exceeds one thousand
70 dollars, the municipality shall be responsible for such
71 excess over one thousand dollars; and that, notwithstand-
72 ing that the actual total cost is less than one thousand
73 dollars, if the actual total cost exceeds the estimated
74 total cost by more than ten per cent of the latter, the
75 municipality shall be responsible for such excess over
76 one hundred ten per cent of the estimated total cost.

77 The engineer shall formulate a report showing the
78 chargeable total cost to be borne by the abutters, the
79 names of the abutters (including the petitioner), the sev-
80 eral frontages owned by said abutters and a brief descrip-
81 tion thereof, and the proper amount of the chargeable
82 total cost to be assessed personally against each abutter,
83 and shall deliver such report to the council. The council
84 shall thereupon give notice to the abutters to be assessed,
85 that, on or after a date named in said notice, an assess-
86 ment may be laid personally against the abutters as em-
87 bodied in said report. Said notice shall state that the
88 abutters so named, or other interested party, may on said
89 date appear before the council to move the correction or
90 revision of such proposed assessment. Said notice shall
91 show the same facts embodied in the engineer's report
92 hereinabove described and shall be published as a Class
93 II legal advertisement in compliance with the provisions

94 of article three, chapter fifty-nine of this code, and the
 95 publication area for such publication shall be the county
 96 in which the municipality is located. On or after the
 97 date so advertised, the council may revise, amend, cor-
 98 rect and verify the report according to the evidence in-
 99 troduced by appealing abutters or by the engineer, and
 100 shall thereafter proceed by ordinance or resolution to lay
 101 the assessments, as corrected and verified, against the
 102 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:

22 "NOTICE TO ALL PERSONS OR CORPORATIONS
 23 OWNING PROPERTY ABUTTING ON.....
 24 (here describe the portion of
 25 the street, alley, public way or easement to be improved)
 26 IN THE (town or city) OF
 27 (name of municipality).

28 Proposals have been made to the
 29 (common council, board of directors, commissioners, or
 30 other governing body) of the (town
 31 or city) of (name of municipality)
 32 to permanently improve the portion of the street (alley,
 33 public way or easement) above described in
 34 (name of municipality) by (grading,
 35 paving, constructing sanitary or storm sewers, construct-
 36 ing sidewalks, or other general description of the pro-
 37 posed improvements) as the (council,
 38 board of directors, commissioners, or other governing
 39 body) may deem proper, and to assess the cost of such
 40 improvements on the property abutting said portion of
 41 said street (alley, public way or easement).

42 The proposals to make such improvements, and the
 43 plans, specifications, profiles and estimates will be con-
 44 sidered by the (governing body) at a pub-
 45 lic meeting to be held on the day of,
 46 19....., at M. at Any abutting
 47 owner or interested party will be given an opportunity
 48 to protest or be heard at said meeting or an adjournment
 49 thereof.

50 (name of the clerk or
 51 recorder) (official position)."

52 An affidavit of publication of the notice, made by the
 53 newspaper publisher, and a copy of the notice shall be
 54 made a part of the minutes of the governing body and
 55 spread on its records of the meeting described in the no-
 56 tice. The service of said notice upon all persons, firms or
 57 corporations owning any interest in any property abut-
 58 ting upon any portion of said street, alley, public way or
 59 easement to be improved shall conclusively be deemed
 60 to have been given when such newspaper publication shall
 61 have been completed: *Provided*, That where any foreign
 62 railroad or other foreign corporation is the owner of

63 property abutting upon any street, alley, public way or
64 easement sought to be improved under the provisions
65 hereof, notice shall be given to such railroad or other
66 foreign corporation as prescribed by section one, article
67 ten, chapter eight of the code of West Virginia, one thou-
68 sand nine hundred thirty-one, before the adoption of any
69 ordinance or resolution relating to, and providing for,
70 such improvements.

§8-8-8. Report on completion; notice to abutting owners of assessments; hearing; correcting and laying assessments.

1 When the improvement of such street, alley, easement,
2 or public way has been completed, the governing body
3 shall cause the engineer, or other person charged by the
4 governing body with the supervision of the work of im-
5 provement, to make a report showing the several front-
6 ages abutting thereon, and the total cost, and showing
7 the respective amounts chargeable upon each lot or parcel
8 of land assessed abutting thereon, and showing the proper
9 amounts to be assessed against the respective abutting
10 lots or parcels of land as provided herein, with a descrip-
11 tion of the abutting lots and lands as to ownership, front-
12 age and location. The governing body of the municipality
13 shall thereupon give notice to the owners of the property
14 to be assessed that on or after a date named in said notice
15 an assessment may be laid against the property so im-
16 proved as embodied in said report. Said notice shall
17 state that the owner or owners whose property is to be
18 assessed, or other interested party, may on said date ap-
19 pear before the governing body to move the revision or
20 correction of such proposed assessment. Such notice
21 shall be published as a Class II legal advertisement in
22 compliance with the provisions of article three, chapter
23 fifty-nine of this code, and the publication area for such
24 publication shall be the county in which the municipality
25 is located. The notice shall show the total cost of the
26 improvement, the several frontages abutting thereon and
27 the respective amounts to be assessed against the abut-
28 ting property, with a description of the respective abut-
29 ting lots and lands as to ownership, frontage and location.
30 On or after the date so advertised, the governing body

31 may revise, amend, correct and verify the report and pro-
32 ceed by resolution or ordinance to lay the assessments as
33 corrected and verified.

ARTICLE 9. ALTERNATE METHOD FOR STREET AND SEWER IMPROVEMENTS.

Section

- 2. Assessments for paving or other permanent street improvements; liens.
- 5. Resolution for improvements; publication; special assessments; how payable; sale and assignment of assessments; lien of assessment; assessments nontaxable.
- 6. Notice of resolution for improvements; how served.

§8-9-2. Assessments for paving or other permanent street improvements; liens.

1 Whenever the council of any such municipal corpora-
 2 tion shall deem it expedient to cause any street or alley
 3 in such corporation, or portion thereof, to be curbed or
 4 recurbed, paved or repaved, macadamized or remacadam-
 5 ized or otherwise improved or reimproved in a perma-
 6 nent manner, upon the petition in writing of persons own-
 7 ing the greater amount of the frontage of the lots abut-
 8 ting on both sides of any street or alley, between any two
 9 cross streets or between a cross street and an alley, it
 10 shall order the work done in the following manner and
 11 upon the following terms: After due advertisement in
 12 which the council shall reserve the right to reject any
 13 and all bids, the contract for such improvement, if let,
 14 shall be let to the lowest responsible bidder. The con-
 15 tractor shall look only to the town for the payment of the
 16 work, and in no sense to the abutting landowners. Sub-
 17 ject to the provisions of section ten of this article, the
 18 total cost of curbing, grading and paving or otherwise
 19 improving or reimproving any such street or alley, with
 20 the exception, in the case of a street occupied by street-
 21 car tracks or other railways, of the distance between the
 22 rails and two additional feet outside of each rail, which
 23 portion shall, unless otherwise provided by an ordinance
 24 of such town or by the franchise of such streetcar or other
 25 railway company, be borne and paid entirely by the
 26 streetcar or other railway company operating such street-
 27 car or other railway, shall be borne by the owners of land
 28 abutting upon such street, alley or portion thereof, ac-

29 cording to the following plan: Payment is to be made
30 by all landowners on either side of such portion of a
31 street or block so paved or improved, in such portion of
32 the total cost, less the portion, if any, chargeable to such
33 streetcar or other railway company, as the frontage in feet
34 of his land so abutting bears to the total frontage of all
35 land so abutting on such street, alley or portion thereof
36 so paved or improved as aforesaid: *Provided, however,*
37 That where a foreign railroad or other foreign corpora-
38 tion is the owner of property abutting upon such street
39 or alley, notice shall be given to such corporation, in the
40 manner provided in article ten of this chapter, of the in-
41 tention to improve such street or alley, before the enact-
42 ment or adoption of any ordinance or resolution relating
43 to such work.

44 When the paving or repaving of any street, or alley, or
45 portion thereof, shall have been let to contract, and the
46 work done as hereinbefore provided, it shall be the duty
47 of the engineer of such town to cause the several frontages
48 abutting thereon to be measured and to calculate the as-
49 sessment upon each and every landowner so abutting and
50 to certify the same to the council showing the proper
51 amount to be determined as provided in the foregoing
52 plan. It shall be the duty of the council to examine and
53 compare such assessment, amounts and names so certi-
54 fied to it, and thereupon such council shall publish the
55 following described notice as a Class II-0 legal adver-
56 tisement in compliance with the provisions of article
57 three, chapter fifty-nine of this code, and the publication
58 area for such publication shall be the town. The notice
59 shall state that an assessment under this section is about
60 to be laid against the abutting property for paving, re-
61 paving or improvements done on such streets or alleys,
62 describing the location of such paving, repaving, or im-
63 provements, and that any owner or owners thereof shall
64 have the right to appear before such council, within two
65 weeks from the first publication thereof and move such
66 council to correct any apportionment or assessment ex-
67 cessive or improperly made as charged, which corrections
68 such council shall have the power to make, and if found
69 to be correct or when corrected by the council, as afore-

70 said, it shall enter the same together with a description
71 of the lots of land as to location, frontage, depth and own-
72 ership, so far as the same may be ascertained, upon its
73 records and enter in its records that such owners and lots
74 be assessed and chargeable with the amounts so ascer-
75 tained to be borne by them, respectively, and when so
76 approved, certified and entered of record the same shall
77 be and constitute an assessment against such owners and
78 lots for such respective amounts. And it shall be the
79 duty of the council immediately to certify such assess-
80 ment to the treasurer for collection as herein provided,
81 and a copy of such order shall be certified by the recorder
82 to the clerk of the county court of the county wherein
83 such property is situated, who shall be required to record
84 and index the same in the proper trust deed book in the
85 name of each person against whose property assessments
86 appear therein. The amount so assessed against such
87 abutting landowners shall be paid in ten payments as fol-
88 lows: One tenth of such amount, together with interest
89 on the whole assessment for one year, shall be paid into
90 the treasury of the town before the first day of May next
91 after such work is completed and after such assessments
92 have been certified to the county clerk. And a like one
93 tenth together with interest for one year upon the whole
94 amount remaining unpaid shall be paid on or before the
95 first day of May in each succeeding year thereafter until
96 all has been paid. And each of such installments of one
97 tenth, beginning with the first, shall, until paid, bear in-
98 terest on the amount of such installment at six per cent
99 per annum from the date of the record of same in the
100 office of the clerk of the county court: *Provided, how-*
101 *ever,* That any abutting owner so liable for any portion
102 of the cost of such improvements shall have the right at
103 any time after the same is certified as aforesaid to the
104 treasurer for collection to anticipate the payment of any
105 or all of such assessments and shall be allowed to pay the
106 face of such assessment with interest at six per cent per
107 annum only to the time of payment.

108 To each of such installments of assessments remaining
109 unpaid in the treasurer's hands on the days herein speci-
110 fied for the payment thereof, a penalty of ten per cent

111 shall be added, and any assessments so remaining unpaid
112 in the treasurer's hands on such date shall be taken up
113 by council, on such settlements had with the treasurer
114 on such dates, and thereupon such council shall place
115 such assessments, with the penalty added thereto, in the
116 hands of the sergeant or other officer of such town whose
117 duty it is to collect assessments, to be treated and consid-
118 ered, and payment thereof enforced in all respects as here-
119 inbefore provided for the collection of taxes due the town,
120 and they shall be a lien upon the property liable therefor
121 the same as a lien for taxes, which lien may be enforced
122 in the same manner as provided for taxes.

123 The liens hereinbefore provided for shall have priority
124 over all other liens except those for taxes. Whenever all
125 such assessments for such improvements shall be paid in
126 full to the treasurer he, on behalf of the municipality,
127 shall execute and deliver to the party paying the same
128 a release of the lien therefor, which may be recorded in
129 the office of the clerk of the county court as other releases
130 of liens; and whenever any such assessments shall not be
131 in the hands of the treasurer for collection, but the same
132 shall be shown, to the satisfaction of the town auditor or
133 other official performing the duties of auditor, to have
134 been paid in full to any officer entitled to receive the same,
135 such auditor or the mayor, in cases where the corporation
136 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.

1 Whenever it is deemed expedient by the council to pro-
2 vide for grading, paving, curbing, sewerage, macadamiz-
3 ing or otherwise improving or reimproving any street or
4 alley therein, to be paid for in whole or in part by special
5 assessments, such council shall declare by resolution,
6 three fifths of the whole number elected thereto concur-
7 ring, by an aye and no vote, the necessity for such im-
8 provement. At the time of the passage of such resolu-
9 tion, the council shall have on file, in the office of the
10 recorder or clerk of the town, plans, specifications, esti-
11 mates and profiles of the proposed improvements, show-

12 ing the proposed grade of the street and the proposed im-
13 provement, after completion, with reference to the prop-
14 erty abutting thereon, which plans, specifications, esti-
15 mates and profiles shall be open to the inspection of all
16 persons interested. Such resolution shall determine the
17 general nature of the improvement, what shall be the
18 grade of the street, alley or other public place to be im-
19 proved, as well as the grade or elevation of the curbs, and
20 such council shall approve the plans, specifications, esti-
21 mates and profiles for the proposed improvement.

22 The council shall also determine in such resolution the
23 method of paying for the work contemplated in such
24 plans and specifications, whether by an appropriation
25 from funds in the treasury unappropriated, or by the is-
26 suance of certificates as hereinafter provided, or whether
27 or not the bonds shall be issued in anticipation of the
28 collection of special assessments to be made against the
29 abutting property owners, as provided for in section two
30 of this article. But before any such resolution shall be
31 passed, providing that improvements shall be made, the
32 same to be paid for by assessments against abutting prop-
33 erty, at least thirty days' written notice of the intention
34 to pass such resolution shall be served on each of the
35 abutting property owners in the manner provided in sec-
36 tions one and two, article two, chapter fifty-six of this
37 code: *Provided, however,* That where a foreign railroad
38 or other foreign corporation is an abutting property
39 owner, notice to such corporation shall be given in the
40 manner provided in article ten of this chapter. And such
41 owner or owners shall have the right to be heard for or
42 against the passage thereof.

43 Assessments shall be payable in ten installments as
44 provided for in section two of this article, and shall be
45 recorded and constitute a lien as provided in sections two
46 and four of this article. The resolution herein provided
47 for declaring the necessity for such improvement shall be
48 published as a Class II-0 legal advertisement in compli-
49 ance with the provisions of article three, chapter fifty-
50 nine of this code, and the publication area for such pub-
51 lication shall be the town in which such improvements
52 are to be made. An affidavit of the publisher showing

53 publication for such time, together with a copy of such
54 notice attached, shall be filed with the recorder or clerk
55 of the council and spread upon the record of the minutes
56 of the next meeting of the council. Such resolution shall
57 be in effect from and after the first publication thereof as
58 herein provided for.

59 In all cases where an assessment is made upon the prop-
60 erty abutting on the street or alley improved in accord-
61 ance with the provisions contained in this section and in
62 sections two and three of this article, the council may by
63 resolution entered of record by it, sell, assign and trans-
64 fer to any person or persons, for a cash consideration, all
65 or any of the assessments perfected as herein provided,
66 and apply the amount received thereby to the payment
67 of costs of such improvements. But no such sale and
68 assignment shall be made until either bonds or certificates
69 of indebtedness shall have been issued for such assess-
70 ment, which shall be described in detail in the notice of
71 the lien thereof to be recorded in the trust deed record in
72 the office of the clerk of the county court. But no sale
73 or transfer of such assessment shall be at a greater dis-
74 count than five per cent of the aggregate sum represented
75 by such sale. When authorized to do so by the council,
76 the mayor of such town may make an assignment and
77 transfer of such assessments, so evidenced by such bonds
78 or certificates of indebtedness as aforesaid; and, when so
79 made and recorded in the trust deed book in the office
80 where such assessments are recorded, the purchaser of
81 such assessments shall be and remain until the payment
82 thereof subrogated to all of the rights and remedies, with-
83 out recourse on such town, as were obtained by recording
84 such assessments in the first instance, and such council
85 may issue against each of the several properties upon
86 which such assessments have been made, bonds or cer-
87 tificates of indebtedness corresponding in denomination
88 and otherwise to the annual sum to be paid on each of the
89 properties so assessed, and the assessments on such prop-
90 erties shall, when so made and recorded, remain and be a
91 lien thereon until all such bonds or certificates of indebt-
92 edness are discharged. The lien created by such assessment
93 and by the issuance of any bonds or certificates issued

94 therefor may be released as provided by law in the case
95 of other liens, and, in addition thereto, upon presentation
96 to the clerk of the county court of the county wherein
97 the real estate subject to such lien is situated all the bonds
98 or certificates issued thereunder, as to any specific real
99 estate therein described or located, showing that the same
100 have all been paid, such clerk is hereby empowered to
101 release the lien of such assessment as to any such real
102 estate, by noting a release thereof on the record of the lien
103 as to such real estate on the margin of the trust deed book,
104 where the same is recorded, and such annotation by such
105 clerk shall have the effect to release such real estate from
106 such lien as effectively as a regularly executed and re-
107 corded release thereof. The proceeds of the sale of such
108 bonds or certificates of indebtedness shall be applied to
109 the payment of the indebtedness incurred in making the
110 improvements on account of which such bonds or certifi-
111 cates of indebtedness were issued. Should such govern-
112 ing body of any town decide to issue bonds or certificates
113 of indebtedness, as herein provided, it may call upon the
114 attorney general of this state for a proper form, and it
115 shall be the attorney general's duty to furnish a proper
116 form for all such bonds or certificates of indebtedness.

117 In addition to the methods hereinbefore and hereinafter
118 prescribed for the payment of the cost of construction
119 and improvement of streets, sewers and sewer systems,
120 the council may order any street, alley, or portion thereof,
121 to be graded and paved, repaved, or otherwise perma-
122 nently improved or reimproved or may order any sewer
123 constructed and laid in any street, alley or in any right
124 of way or easement, or portion thereof, and the council
125 may order to be issued a certificate for each installment
126 of the amount of the assessment to be paid by the owner
127 of any lot or fractional part thereof abutting on the street,
128 or alley so improved, or on the street, alley, right of way
129 or easement, or portion thereof, in which such sewer is
130 laid. The amount specified in such assessment shall be
131 a lien as aforesaid in the hands of the holder of such cer-
132 tificate upon such abutting lot or part of lot, and such
133 certificate shall draw interest from the date of such as-
134 sessment and the payment may be enforced in the name

135 of the holder of such certificate by proper suit in equity
136 in any court having jurisdiction to enforce such lien. The
137 council shall fix the amount of such assessment, adver-
138 tise for bids and do all other things in connection there-
139 with as are hereinbefore and hereinafter provided in this
140 chapter, except (a) that the amount of such certificate
141 shall include the whole cost of such improvement, includ-
142 ing the cost of grading, paving and curbing squares at
143 intersections of streets, the costs of which intersections
144 shall be apportioned against the several properties abut-
145 ting upon the street or portion thereof so improved, but
146 such cost, if any, as is chargeable to streetcar or railway
147 companies shall be charged to and paid by such compa-
148 nies; (b) when a sewer is completed, the cost of which
149 is to be paid by the issuance of certificates, payment is to
150 be made by such landowner on either side or such por-
151 tion of a street, alley, right of way or easement in which
152 such sewer is laid, in such proportion as such frontage of
153 his land upon such street, alley, right of way or easement
154 bears to the total frontage of all lands so abutting on such
155 street, alley, right of way or easement. In case of a cor-
156 ner lot, frontage is to be measured along the longest di-
157 mensions thereof abutting on such street, alley, right of
158 way or easement in which such sewer is laid. Any lot
159 having a depth of two hundred feet or more and fronting
160 on two streets, alleys, right of ways or easements, one in
161 front and one in the rear of such lot shall be assessed on
162 both of said streets, alleys, right of ways or easements,
163 if a sewer is constructed in both such streets, alleys, right
164 of ways or easements. Where a corner lot has been as-
165 sessed on the end it shall not be assessed on the side, and
166 where it has been assessed on the side, it shall not be
167 assessed on the end; (c) the cost of a sewer system shall
168 be calculated in every respect in the same manner as the
169 cost of the construction of a single sewer, except that such
170 a system shall be deemed to include all elements of the
171 system which serve to drain a definite drainage area as
172 specified in the order of the council directing the work
173 to be done, and the owner of property abutting upon
174 either side of such portion of a street or right of way in
175 which any part of such system is laid shall be assessed
176 in the proportion that the frontage of his abutting land

177 bears to the total frontage of all lands so abutting on such
178 street or right of way. Paving certificates shall be issued
179 in the same number of installments and payable at the
180 same time as other paving assessments provided for in
181 this chapter. Sewerage certificates shall be issued in
182 such number of installments as the council may deter-
183 mine, the aggregate amount of such certificates to be pay-
184 able in not less than one nor more than five years, and
185 to be divided in as nearly equal installments as practic-
186 able. Nothing contained in this section shall be construed
187 as imposing a time limit upon the enforcement by appro-
188 priate suit of any lien for public improvements, hereto-
189 fore or hereafter created.

190 Certificates authorized by this section may be issued,
191 sold or negotiated to the contractor doing the work, or to
192 any other person if the council deem it expedient: *Pro-*
193 *vided*, That the town in issuing such certificates shall not
194 be held as guarantor or in any way liable for payment
195 thereof, except upon the direct action of the council ex-
196 pressed by resolution of record before sale.

197 Certificates so issued shall contain a provision to the
198 effect that in the event of default in the payment of any
199 one of such certificates when due, and such default con-
200 tinuing for a period of sixty days, then all unpaid certifi-
201 cates shall become due and payable and the holder of such
202 certificates may proceed to collect all of such unpaid cer-
203 tificates in the manner hereinbefore provided. Certifi-
204 cates issued in pursuance of this section shall be negoti-
205 able at any bank in the town by which they are issued.

206 Such certificates or assessments shall be exempt from
207 state, county, district or municipal taxes.

208 The owner of the land or lot of land assessed under this
209 section may at any time anticipate and pay such assess-
210 ment or certificate with accrued interest thereon.

§8-9-6. Notice of resolution for improvements; how served.

1 A notice of the passage of the resolution required in the
2 preceding section embodying a copy of such resolution,
3 shall be served upon the owner of each piece of property
4 to be assessed, such service to be made in the manner
5 provided in section one, article two, chapter fifty-six of

6 this code: *Provided*, That if any of the owners or per-
7 sons be not residents of the county wherein such improve-
8 ment is proposed, or if it appears by the return, in any
9 case, that the owner cannot be found, then a notice of the
10 passage of such resolution shall be published as a Class
11 II-0 legal advertisement in compliance with the provi-
12 sions of article three, chapter fifty-nine of this code, and
13 the publication area for such publication shall be the
14 town in which such improvement is proposed to be made.
15 Such notice, whether by service or publication, shall be
16 completed at least three days before such improvement
17 is begun or the assessment is levied, and the return of the
18 officer serving such notice or a certified copy of such re-
19 turn, or where published, the certificate of the publisher
20 of such newspaper, shall be prima facie evidence of the
21 service of the notice as herein required: *Provided further*,
22 That if the owner be a railroad company or other corpora-
23 tion, notice shall be served upon such agent or attorney
24 for such railroad company or corporation within the
25 county wherein such town is situate, if there be such agent
26 or attorney within such county; and such service shall be
27 made two weeks before such improvement is begun or
28 the assessment is levied. Notice upon infants may be
29 served on their guardians and upon insane persons by
30 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.

1 The state, acting through the aeronautics commission,
2 or any county, incorporated city, town or village owning,
3 either severally or jointly with other like governmental
4 units, an airport and any grounds used or useful in con-
5 nection therewith may severally or jointly lease the same,
6 for use as such airport and for any other purposes inci-
7 dental to and not inconsistent therewith, for a term not
8 exceeding thirty years: *Provided, however*, That no
9 lease shall be executed by such owner or owners of any

10 such airport or grounds unless and until such owner or
11 owners shall have given notice by publication of the fol-
12 lowing described notice as a Class II legal advertisement
13 in compliance with the provisions of article three, chap-
14 ter fifty-nine of this code, and the publication area for
15 such publication shall be the state if it is the state which
16 proposes to make such lease or the political subdivision
17 or subdivisions involved if it is a political subdivision or
18 subdivisions which propose to make such lease. The no-
19 tice shall state its or their intent to lease said airport or
20 grounds, shall accurately describe what is proposed to be
21 leased, the purpose or purposes for which it may be used
22 and the terms of said lease, and shall state the time and
23 place for the public opening of proposals for such lease,
24 and shall reserve the right to reject any and all proposals.
25 Nothing herein contained, however, shall prevent such
26 owner or owners of such airport or grounds from grant-
27 ing or renting landing rights for airplanes, hangar space,
28 gasoline storage, or handling facilities, ticket or general
29 office space, or any other facilities or rights in connection
30 with such airport or grounds, covering or affecting less
31 than the whole thereof, without notice and upon such
32 terms as such owner or owners may deem advisable. All
33 income received by a county court, or incorporated city,
34 town or village under the terms of any such lease or grant
35 shall be paid to the state sinking fund commission to re-
36 tire the bonded indebtedness, if any, created for the ac-
37 quisition, building and construction of such airport or
38 grounds. And if there be no such outstanding bonded in-
39 debtedness, then such income to be paid into the general
40 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.
4. Publication of adoption of ordinance; hearing.

§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 pop-
- 2 ulation of less than ten thousand of the state of West Vir-

3 ginia is hereby prohibited from selling, leasing or dispos-
4 ing of its municipally owned water plant, unless upon
5 submission of the question of the proposed sale or lease to
6 the voters of said municipality for ratification or rejec-
7 tion at any general or special election, three fifths of the
8 votes cast shall be in favor of ratification. Should any
9 such municipality desire to sell, lease or dispose of its
10 water plant, it shall publish the following described no-
11 tice immediately prior to the general election or the spe-
12 cial election, as fixed by the council, as a Class II legal
13 advertisement in compliance with the provisions of ar-
14 ticle three, chapter fifty-nine of this code, and the publi-
15 cation area for such publication shall be such municipal-
16 ity. The notice shall set forth the terms and conditions
17 of such sale, lease or disposition of said water plant, the
18 price which has been agreed upon, the name of the pur-
19 chaser or purchasers or lessee or lessees, and such other
20 information to the voters of said municipality as the coun-
21 cil may deem necessary, and at such election each voter
22 desiring to vote shall deposit a ballot in a ballot box to
23 be provided for that purpose which ballot shall have writ-
24 ten or printed thereon the following words:

25 For ratification.

26 Against ratification.

27 Such election shall be held under the superintendence
28 of the commissioners of election appointed by the govern-
29 ing body of such municipality and the results of such
30 election shall be certified under oath and returned by said
31 election commissioners to the governing body of said
32 municipality as soon as may be after such election. In
33 the event of a vacancy due to the failure or refusal to act
34 of any election commissioner, such vacancy may be filled
35 by the other commissioners.

36 In the event that the sale, lease or disposition of said
37 water plant is ratified by three fifths of the voters voting
38 at said special or general election, the governing body of
39 said municipality having control of such water plant shall
40 proceed to consummate the lease or sale to the purchaser
41 or purchasers upon the terms and provisions as have been
42 agreed upon.

§8-12-4. Publication of adoption of ordinance; hearing.

1 After such ordinance shall have been adopted, the or-
2 dinance, together with the following described notice,
3 shall be published as a Class II legal advertisement in
4 compliance with the provisions of article three, chapter
5 fifty-nine of this code, and the publication area for such
6 publication shall be such municipality. The notice to be
7 published with said ordinance shall state that said ordi-
8 nance has been adopted, and that the municipality con-
9 templates the issuance of the bonds described in the or-
10 dinance, and that any person interested may appear be-
11 fore the governing body, upon a certain date which shall
12 not be less than ten days subsequent to the date of the
13 last publication of such ordinance and notice, and present
14 protests. At such hearing all objections and suggestions
15 shall be heard and the governing body shall take such ac-
16 tion as it shall deem proper in the premises: *Provided,*
17 *however,* That if at such hearing written protest is filed
18 by thirty per cent or more of the owners of real estate
19 situate in said municipality, then the governing body of
20 said municipality shall not take further action unless four
21 fifths of the qualified members of said governing body
22 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
2 has been adopted and approved, it shall be published as
3 a Class I legal advertisement in compliance with the pro-
4 visions of article three, chapter fifty-nine of this code, and
5 the publication area for such publication shall be the
6 municipality undertaking such project. If no petition is
7 filed with the clerk of the governing body as hereinafter
8 provided, within ten days after the publication of such
9 ordinance, then after the expiration of such ten-day pe-
10 riod such ordinance shall be in full force and effect, but
11 if within such period of ten days a petition is filed with

12 the clerk of such municipality signed by fifteen per cent
 13 of the number of voters voting at the last preceding gen-
 14 eral municipal election, asking that the question of ac-
 15 quiring, constructing, extending or improving or combin-
 16 ing such waterworks and sewerage systems as provided
 17 in such ordinance and the issuance of revenue bonds in
 18 connection therewith, be submitted to the legal voters of
 19 the municipality, the governing body of such municipality
 20 shall call a special election in the manner provided by
 21 law to vote upon such question. If it appears upon the
 22 canvass of the election by the governing body that a ma-
 23 jority of the voters voting upon such question at such
 24 election voted in favor thereof then such ordinance shall
 25 be in full force and effect, but if a majority of the votes
 26 cast are unfavorable, then such municipality shall proceed
 27 no further under such ordinance.

CHAPTER 8A. MUNICIPAL HOME RULE.

Article

2. Home Rule Procedure; Charter Elections.
3. Home Rules Charters; Ordinances.
4. Powers of Home Rule Cities.
6. Consolidation.

ARTICLE 2. HOME RULE PROCEDURE; CHARTER ELECTIONS.

Section

4. Notice of election.
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.

§8A-2-4. Notice of election.

1 The notice of an election on the question of whether a
 2 charter shall be framed shall consist of the initiatory or-
 3 dinance and a brief prefatory statement setting out the
 4 purpose and date of the election, naming the candidates,
 5 if any, nominated by the governing body for membership
 6 on the charter board and stating how and within what
 7 time limit other nominations may be made. It shall be
 8 published as a Class II-0 legal advertisement in compli-
 9 ance with the provisions of article three, chapter fifty-
 10 nine of this code, and the publication area for such publi-
 11 cation shall be the city. The first publication shall be
 12 made not less than thirty days prior to the date fixed for
 13 the election.

§8A-2-9. Public hearing on draft of charter.

1 When it shall have completed its draft of charter a
2 charter board shall conduct a public hearing thereon.
3 Notice of the time, place and purpose of the hearing and
4 of where copies of a draft of the charter may be obtained
5 shall be given by publication of such notice 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 city. The
9 date of the last publication of notice shall be at least ten
10 days prior to the date set for the hearing. The hearing
11 may be continued by the charter board by adjournments
12 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
2 at a special election to be held at the time determined by
3 the charter board. Notice of the time, place and purpose
4 of a charter election shall be given by publication of such
5 notice as a Class II-0 legal advertisement in compliance
6 with the provisions of article three, chapter fifty-nine of
7 this code, and the publication area for such publication
8 shall be the city. The first of said publications shall be
9 made not less than thirty days prior to the date fixed for
10 the election. Each such notice of election shall state that
11 any qualified voter of the city may obtain a copy of the
12 proposed charter, from a designated officer and place, upon
13 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,
2 as defined under section four, article one, chapter eight-a
3 of this code, shall deem it expedient to amend the char-
4 ter of any such city, either in whole or in part, it shall, by
5 ordinance or resolution, set out in its proper record book
6 the proposed amendments in full. The council shall set
7 a time and place for a public hearing thereon, which date
8 shall not be less than thirty days after the date of the
9 first publication hereinafter required. The proposed
10 amendments, together with a notice of the time and place
11 fixed for the hearing thereon, shall be published as a Class

12 II legal advertisement in compliance with the provisions
13 of article three, chapter fifty-nine of this code, and the
14 publication area for such publication shall be the city.
15 The notice shall also state that the proposed amendments
16 will be considered at the time and place fixed by the
17 council and any elector of the city may appear and file
18 objections, in writing, and also that if no objections are
19 filed the said amendment shall become operative on and
20 after a date to be fixed in the notice, which date shall be
21 not less than ten days after the date of the hearing. If no
22 objections are filed, or if objections are filed and with-
23 drawn at the time of the hearing, or within ten days
24 thereafter, the council shall, by ordinance, adopt the
25 amendments as amendments to the charter, and cause a
26 transcript of the proceedings to be certified to the clerk
27 of the house of delegates, as keeper of the rolls, and a
28 copy thereof to be recorded in the office of the clerk of
29 the county court.

30 If, at the time and place set for the hearing, objections
31 to the amendments are filed and not withdrawn ten days
32 thereafter, the council may abandon the proposed amend-
33 ments to which objections have been filed, or it may sub-
34 mit the proposed amendments, either as a unit or sepa-
35 rately, at the next regular city election, or at a special elec-
36 tion, if the date of the regular election shall be more than
37 six months from such date, for ratification or rejection.
38 A notice of an election shall set out the proposed amend-
39 ments at length or state that copies may be obtained by
40 any qualified voter from a designated officer at a stated
41 place, upon request. Notice of such election shall be pub-
42 lished as a Class II-0 legal advertisement in compliance
43 with the provisions of article three, chapter fifty-nine of
44 this code, and the publication area for such publication
45 shall be the city.

46 The amendments, or such of them as may be adopted,
47 shall take effect on the date that the canvass and decla-
48 ration of result showing approval by the voters has been
49 made and entered in the minutes of the governing body.
50 A transcript of the proceedings shall be filed and recorded
51 as hereinbefore provided.

52 The method of charter amendment provided by this

53 section is not in lieu of but in addition to the other meth-
54 ods prescribed in the preceding section.

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
2 cases specified in section nine of this article in accord-
3 ance with the following requirements:

4 (1) An ordinance shall be read at not less than two
5 meetings with at least one week intervening between each
6 meeting;

7 (2) At least five days before the meeting at which such
8 ordinance is finally adopted the governing body shall
9 cause notice of the proposed adoption of said ordinance to
10 be published as a Class I legal advertisement in compliance
11 with the provisions of article three, chapter fifty-nine of
12 this code, and the publication area for such publication
13 shall be the city. The notice shall state the subject mat-
14 ter of such ordinance and the time and place of the pro-
15 posed final vote on adoption, and the place or places with-
16 in the city where such ordinance may be inspected by
17 the public;

18 (3) An ordinance shall not be finally passed until after
19 three days from the date of the publication and until all
20 interested parties have been given an opportunity to at-
21 tend a meeting of the council and be heard with respect
22 to such ordinance;

23 (4) An ordinance shall not be materially amended at
24 the same meeting at which finally passed.

25 The governing body of any municipality may adopt
26 building codes, housing codes, plumbing codes, sanitary
27 codes, electrical codes, fire prevention codes, or any other
28 technical codes dealing with general public health, safety
29 or welfare, or a combination of the same, by ordinance, in
30 the manner herein prescribed. Before any such code shall
31 be adopted, it shall be either printed or typewritten and
32 shall be presented in pamphlet form to the governing
33 body of the municipality at a regular meeting, and
34 copies shall be made available for public inspection. The

35 ordinance adopting such code shall not set out said code
36 in full, but shall merely identify the same. The vote on
37 passage of said ordinance shall be the same as on any
38 other ordinance. After its adoption, such code or codes
39 shall be certified to by the chief executive officer and
40 shall be filed as a permanent record in the office of the
41 clerk, who shall not be required to transcribe and record
42 the same in the ordinance book as other ordinances. It
43 shall not be necessary that such ordinance adopting such
44 code or the code itself be published in full, but before
45 final passage of such ordinance, notice of the proposed
46 adoption of such code shall be given by publication as
47 herein provided for other ordinances, which notice shall
48 state where, within the city, the code or codes will be
49 available for public inspection.

50 A home rule charter may prescribe a procedure for the
51 enactment of ordinances in greater detail than prescribed
52 by this section, but the provisions of this section shall be
53 required. A governing body may enact an ordinance
54 under suspension of the rules prescribed by this section
55 only in the case of a pressing public emergency making
56 a procedure in accordance with the section dangerous
57 to the public health, safety, or morals, and by affirmative
58 vote of two thirds of the members elected to the govern-
59 ing body. The nature of the emergency shall be set out
60 in full in the ordinance.

ARTICLE 4. POWERS OF HOME RULE CITIES.

Section

28. Franchises.

§8A-1-28. Franchises.

1 A city shall have power to grant franchises or rights
2 to use the streets, waters, water front, public ways and
3 public places in the city. No franchise shall be granted
4 for a period in excess of twenty-five years, nor until
5 after a public hearing has been held thereon after notice
6 of the time, place and purpose of the hearing shall have
7 been published as a Class II legal advertisement in com-
8 pliance with the provisions of article three, chapter fifty-
9 nine of this code, and the publication area for such
10 publication shall be the city.

ARTICLE 6. CONSOLIDATION.**Section**

- 7. Certification by circuit court; filing; publication.
- 11. Commission on wards and election districts.
- 21. Petition for annexation.

§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,

23 within forty-five days from the date of its organization,
24 make a report and certificate over the signatures of a
25 majority of its members, and shall file the same in the
26 office of the clerk of the county court. The certificate
27 shall set forth and accurately describe the ward lines,
28 if any, and election district lines fixed by the commission,
29 and shall contain a proper map of the new municipality
30 with such lines set out thereon. The clerk of the com-
31 mission shall cause a copy of the certificate to be
32 filed in the office of the secretary of state.

33 The lines fixed and determined by the commission shall
34 be those of the new municipality until changed in ac-
35 cordance with law. Wards, if any, shall be formed of
36 contiguous territory. No election district shall be in
37 more than one ward. In dividing the new municipality
38 into wards and election districts, the commission shall
39 have regard for, and shall take into consideration, the
40 election laws of the state, as well as the area and pop-
41 ulation in all wards and election districts, and shall
42 divide and arrange the same so that each will
43 contain, as nearly as possible, an equal number of
44 inhabitants.

45 A notice setting forth the ward lines, if any, and
46 election district lines as fixed by the commission shall
47 be published by the clerk thereof as a Class I legal adver-
48 tisement in compliance with the provisions of article
49 three, chapter fifty-nine of this code, and the publication
50 area for such publication shall be each of the munici-
51 palities concerned. The notice shall be published within
52 seven consecutive days next succeeding the filing of the
53 certificate with the clerk of the county court. The ex-
54 penses of the publication shall be paid by the new munici-
55 pality. Upon the completion of the publication, the wards
56 and election districts of the consolidating municipalities
57 shall be superseded. The commission shall appoint, in
58 accordance with the charter of the new municipality,
59 election officers to serve at the election provided for by
60 section twelve of this article.

61 The commission may employ an engineer and an attor-
62 ney to assist in performing its duties. The commission
63 may provide for compensation to be allowed to its clerk,

64 engineer and attorney, which shall be paid by the new
65 municipality. The commission members shall not receive
66 compensation for their services, but all expenses incurred
67 by them in the performance of their duties, when item-
68 ized and sworn to by the chairman and clerk, shall be
69 paid by the new municipality.

§8A-6-21. Petition for annexation.

1 Ten per cent of the inhabitants of the municipality
2 may file a petition, in writing and signed by them, with
3 the governing body, setting forth by metes and bounds
4 the territory proposed to be annexed and asking that a
5 vote be taken upon the proposed annexation. Upon the
6 filing of the petition, the governing body shall order a
7 vote of the qualified voters of the municipality to be
8 taken upon the proposed annexation at a time to be
9 named in the order, but not less than twenty nor more
10 than sixty days from the date of the order. The govern-
11 ing body shall, at the same time, order a vote of all the
12 qualified voters residing in the contiguous territory, and
13 of all the qualified voters owning any part of such ter-
14 ritory whether resident thereon or not, to be taken upon
15 the question on the same day at some convenient place
16 on or near such contiguous territory. The orders shall
17 be published, at the cost of the municipality, as a Class
18 II-0 legal advertisement in compliance with the provisions
19 of article three, chapter fifty-nine of this code, and the
20 publication area for such publication shall be the munici-
21 pality and the contiguous territory. The first publication
22 shall be at least fourteen days prior to the date the vote
23 is to be taken. The orders so published shall contain an
24 accurate description by metes and bounds of the territory
25 proposed to be annexed, and, if practicable, shall contain
26 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.

1 Before any board shall construct, acquire, improve, ex-
2 tend or equip any athletic establishment under this ar-
3 ticle, the board shall adopt a resolution which shall (a)
4 set forth a brief general description of the athletic estab-
5 lishment, and if the same is to be constructed a refer-
6 ence to the preliminary report or plans and specifications
7 which shall theretofore have been prepared; (b) set forth
8 the estimated cost thereof; (c) order the construction,
9 acquisition, extension, improvement or equipment of such
10 establishment; (d) direct that revenue bonds of the
11 county board of education be issued pursuant to this ar-
12 ticle; in such amount as may be found necessary to pay
13 the costs of such athletic establishment; and (e) contain
14 such other provisions as may be necessary or proper in
15 the premises. Before such resolution shall become effec-
16 tive it, together with the following described notice, shall
17 be published as a Class II legal advertisement in compli-
18 ance with the provisions of article three, chapter fifty-nine
19 of this code, and the publication area for such publica-
20 tion shall be the county in which such board of education
21 is located. The notice shall specify a time and place for
22 a public hearing, the time being not less than ten days
23 after the first publication of said notice; at which time
24 and place all parties and interests may appear before
25 the board, and may be heard as to whether or not said
26 resolution shall be put into effect. At such hearing all
27 objections and suggestions shall be heard and the board
28 shall take such action as it shall deem proper in the prem-
29 ises: *Provided, however,* That if at such hearing a writ-
30 ten protest is filed by thirty per cent or more of the own-
31 ers of real estate situate in said county, then the board
32 of education shall not take further action unless four
33 fifths of the members of said board assent thereto: *And*
34 *provided further,* That in case written protest is filed pur-
35 porting to have been signed by or on behalf of thirty per
36 cent or more of the owners of real estate in said county,
37 the board shall have authority to appoint a subcommit-
38 tee to consist of one proponent, one opponent and the
39 third to be selected by these two, to determine whether

40 or not thirty per cent of the property owners have in fact
41 protested, and said subcommittee shall report its findings
42 to the board.

CHAPTER 11. TAXATION.

Article

- 3. Assessments Generally.
- 8. Levies.
- 12. License Taxes.
- 17. Excise Tax on Sale of Cigarettes.
- 19. Soft Drinks Tax.

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
5 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

28 writing, and signed by the president of the court, of the
29 intention to make the increase. Service upon the prop-
30 erty owner shall be sufficient, or upon his agent or attor-
31 ney in person, or if sent by registered mail to such
32 property owner, his agent, or attorney, at the last known
33 place of abode. If he be not found and have no known
34 place of abode, then notice shall be given by publication
35 thereof as a Class I legal advertisement in compliance
36 with the provisions of article three, chapter fifty-nine
37 of this code, and the publication area for such publica-
38 tion shall be the county. The date of the publication
39 shall be at least five days prior to the increase. When
40 it is desired to increase the entire valuation in any one
41 district by a general increase, notice shall be given by
42 publication thereof as a Class II-0 legal advertisement
43 in compliance with the provisions of article three, chap-
44 ter fifty-nine of this code, and the publication area for
45 such publication shall be the county. The date of the
46 last publication shall be at least five days prior to the
47 increase in valuation. When an increase is made, the
48 same valuation shall not again be changed unless notice
49 is again given as heretofore provided.

50 The clerk of the county court shall publish notice of
51 the time, place and general purpose of the meeting as
52 a Class II legal advertisement in compliance with the
53 provisions of article three, chapter fifty-nine of this code,
54 and the publication area for such publication shall be
55 the county involved. The expense of publication shall
56 be paid out of the county treasury.

57 If any person fails to apply for relief at this meeting,
58 he shall have waived his right to ask for correction in
59 his assessment list for the current year, and shall not
60 thereafter be permitted to question the correctness of
61 his list as finally fixed by the county court, except on
62 appeal to the circuit court. After the county court com-
63 pletes the review and equalization of the property books,
64 a majority of the court shall sign a statement that it is
65 the completed assessment of the county for the year;
66 then the property books shall be delivered to the assessor
67 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
 2 the election, as a Class II-0 legal advertisement in com-
 3 pliance with the provisions of article three, chapter
 4 fifty-nine of this code, and the publication area for such
 5 publication shall be the territory in which the election
 6 is held. Such notice shall be so published within four-
 7 teen consecutive days next preceding the election. All
 8 the provisions of the law concerning general elections
 9 shall apply so far as they are practicable, except as
 10 follows: Where a special election is held, the local
 11 levying body, having due regard to the minimum ex-
 12 pense involved, shall determine the number of elec-
 13 tion officials necessary to properly conduct said election,
 14 which number shall in no case be less than three com-
 15 missioners and two clerks, and shall appoint the same
 16 and fix and pay their compensation, but otherwise the
 17 election officials shall be such as are appointed to serve
 18 with respect to the general election held at the same
 19 time. The local levying body, however, shall provide
 20 the election supplies necessary for such election and shall
 21 canvass the returns thereof. A separate ballot shall be
 22 used at a levy election held in connection with any other
 23 election. The ballot shall be entitled: "Special election
 24 to authorize additional levies for the year(s) _____
 25 _____ and for the purpose of _____
 26 according to the order of the _____
 27 entered on the _____ day of _____"

28 The additional levy shall be on Class I property _____
 29 cents; on Class II property _____ cents; on Class III
 30 property (if any) _____ cents; on Class IV property
 31 (if any) _____ cents.

§11-8-32. Publication.

1 The requirement of publication under this article shall

2 be met by publication as a Class II-0 legal advertise-
3 ment in compliance with the provisions of article three,
4 chapter fifty-nine of this code, and the publication area
5 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
2 of the second month of the license tax year in every year,
3 publish a list of all corporations failing to pay the license
4 tax, or any part thereof, due therefrom on or before the
5 first day of the first month of the license tax year, as a
6 Class I legal advertisement in compliance with the pro-
7 visions of article three, chapter fifty-nine of this code,
8 and the publication area for such publication shall be
9 the state. Such list shall contain the names of such de-
10 linquent corporations, arranged in two classes, domestic
11 and foreign. The cost of such publication shall be paid
12 by the auditor, when allowed by the board of public
13 works, out of the moneys in the treasury. Any such
14 delinquent corporation may, on or before the first day
15 of the fifth month of the license tax year following or
16 at any time before judgment or decree is entered as
17 hereinafter provided, pay the amount of such tax and
18 a penalty of one per cent per month for each month or
19 fractional part thereof that such failure continued, but
20 the amount of such penalty shall not be less than five
21 dollars. After the publication of the list of delinquent
22 corporations by the auditor, he shall mail to the last
23 known post-office address of each of such corporations a
24 supplemental notice, together with a statement of the
25 total amount of tax and penalties due therefrom, which
26 notice shall be mailed at least thirty days before the first
27 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; collec-
tion 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
2 or employees authorized by him for the purpose shall
3 discover any cigarettes, subject to tax as provided by
4 this article and upon which the tax has not been paid as
5 herein required, the commissioner, or such deputy or
6 employee is hereby authorized and empowered forthwith
7 to seize and take possession of such cigarettes, which
8 shall thereupon be deemed to be forfeited to the state
9 and the commissioner shall within a reasonable time
10 thereafter sell such forfeited cigarettes, and from the
11 proceeds of such sale shall collect the tax due thereon
12 together with a penalty of fifty per centum thereof and
13 all expenses and costs incurred in such proceedings, and
14 deduct and pay any other sums due the tax commis-
15 sioner by the person in possession of said forfeited ciga-
16 rettes, and pay the balance, if any, to such possessor:
17 *Provided, however,* That such seizure and sale shall not
18 be deemed to relieve any person from fine or imprison-
19 ment provided herein for violation of any provision of
20 this article. Such sale may be made in any county the
21 tax commissioner deems most convenient and economi-
22 cal. Notice of such sale shall be published as a Class I
23 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 the county
26 wherein such seizure was made and the county wherein
27 the sale is to take place. Notice shall be published at
28 least five days prior to the sale. All taxes and penalties
29 collected under the provisions of this section shall be
30 paid into the state treasury and treated as other taxes
31 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-

2 ized agents shall discover any soft drink syrups, subject
3 to tax as provided by this article and upon which the
4 tax has not been paid as herein required, the commis-
5 sioner or his duly authorized agent is hereby authorized
6 and empowered forthwith to seize and take possession
7 of such soft drink syrups, which shall thereupon be
8 deemed to be forfeited to the state and the commissioner
9 shall within a reasonable time thereafter sell such for-
10 feited soft drink syrups; and from the proceeds of such
11 sale shall collect the tax due thereon together with a
12 penalty of fifty per cent thereof and the cost incurred
13 in such proceedings, and pay the balance, if any, to the
14 person in whose possession such soft drink syrups were
15 found: *Provided, however,* That such seizure and sale
16 shall not be deemed to relieve any person from fine or
17 imprisonment provided herein for violation of any pro-
18 vision of this article. Such sale shall be made in the
19 county where most convenient and economical. Notice
20 of such sale shall be published as a Class I legal adver-
21 tisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, and the publication
23 area for such publication shall be the county wherein such
24 seizure was made and the county wherein the sale is
25 to take place. Notice shall be published at least five
26 days prior to the sale. All moneys collected under the
27 provisions of this section shall be paid into the state
28 treasury and treated as other taxes collected under this
29 article.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

Article

1. Accrual and Collection of Taxes.
2. Delinquency and Methods of Enforcing Payment.
3. Sale of Land for Taxes.
4. Sale of Lands for School Fund.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

Section

8. Notice of time and place for payment.

§11A-1-8. 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

3 ten days before the time appointed, that between July
4 fifteenth and August thirty-first he will attend at one
5 or more of the most public and convenient places in
6 each district, such places to be specified in the notice,
7 for the purpose of receiving taxes due by the people
8 residing or paying taxes in such district. The notice
9 shall also state that those who pay the first installment
10 of their taxes on or before September first will be en-
11 titled to a discount of two and one-half per cent. Like
12 notice may be given that between January fifteenth and
13 February twenty-eighth he will again appear in each
14 district for the collection of taxes, and that those who
15 pay their second installment on or before March first
16 will be entitled to the same discount. Failure of the
17 sheriff to post such lists shall not impair the right of
18 the state to collect such taxes.

19 The county court of any county may order that the
20 above notice shall also be given by advertisement. Such
21 an order, once entered, shall continue in effect until
22 rescinded by the county court. Upon entry of such order,
23 the sheriff shall, besides posting as required above, pub-
24 lish the proper notice as a Class II legal advertisement
25 in compliance with the provisions of article three, chap-
26 ter fifty-nine of this code, and the publication area for
27 such publication shall be the county. Such notice shall
28 be so published within fourteen consecutive days next
29 preceding the fifteenth day of July or the fifteenth day of
30 January as the case may be. For every failure so to
31 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.

§11A-2-10a. Notice of delinquency.

1 On or after April first of each year, the sheriff may
2 prepare and publish a notice stating in effect that the
3 taxes assessed for the previous year have become de-
4 linquent, and that unless paid by April thirtieth will be
5 included for publication in the forthcoming delinquent
6 lists, which notice, if published, shall be published as a

7 Class II-0 legal advertisement in compliance with the
8 provisions of article three, chapter fifty-nine of this code,
9 and the publication area for such publication shall be
10 the county.

§11A-2-13. Publication and posting of delinquent tax lists.

1 A copy of each of the delinquent lists shall be posted
2 at the front door of the courthouse of the county at least
3 two weeks before the session of the county court at which
4 they are to be presented for examination. At the same
5 time a copy of each list shall be published as a Class I-0
6 legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be the county.
9 Only the aggregate amount of the taxes owed by each
10 person need be published. To cover the costs of
11 preparing, publishing and posting the delinquent lists,
12 a charge of two dollars and fifty cents shall be added to
13 the taxes and interest already due on each item listed.

14 Any person, whose taxes were delinquent on May
15 first, may have his name removed from the delinquent
16 lists prior to the time the same is delivered to the news-
17 papers for publication, by paying to the sheriff the full
18 amount of the taxes and costs owed by such person at
19 the date of such redemption. The sheriff shall collect
20 a charge of only fifty cents if redemption is made before
21 the list is delivered for publication. Costs collected by
22 the sheriff hereunder which are not expended for pub-
23 lication 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.
24. Service of notice.
41. Publication by sheriff of sales list.

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 On or before September tenth of each year, the sheriff
2 shall prepare a second list of delinquent lands, which
3 shall include all real estate in his county remaining
4 delinquent as of September first, together with a notice
5 of sale, in form or effect as follows:

6 Notice is hereby given that the following described
 7 tracts or lots of land or undivided interests therein in
 8 the County of _____ which are delinquent for
 9 the nonpayment of taxes for the year (or years) 19_____,
 10 will be offered for sale by the undersigned sheriff (or
 11 collector) at public auction at the front door of the
 12 courthouse of the county, between the hours of ten in
 13 the morning and four in the afternoon, on the _____
 14 day of _____, 19_____.

15 Each unredeemed tract or lot, or each unredeemed
 16 part thereof or undivided interest therein, will be sold
 17 at public auction to the highest bidder for cash in an
 18 amount which shall not be less than the taxes, in-
 19 terest and charges which shall be due thereon to the
 20 date of sale, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale
---	---------------------	----------------------	---

21 Any of the aforesaid tracts or lots, or part thereof
 22 or an undivided interest therein, may be redeemed by the
 23 payment to the undersigned sheriff (or collector) before
 24 sale, of the total amount of taxes, interest and charges
 25 due thereon up to the date of redemption.

26 Given under my hand this _____ day of _____,
 27 19_____.

28 _____
 29 Sheriff (or collector)

30 The sheriff shall publish the list and notice prior to
 31 the sale date fixed in the notice as a Class III-0 legal
 32 advertisement in compliance with the provisions of article
 33 three, chapter fifty-nine of this code, and the pub-
 34 lication area for such publication shall be the county.

35 To cover the costs of preparing and publishing the de-
 36 linquent list, a charge of three dollars and fifty cents shall
 37 be added to the taxes, interest and charges already due
 38 on each item listed. The sum of the taxes, interest to the
 39 date of sale, and other charges shall be stated in the list
 40 as the total amount due.

41 Any person, whose taxes were delinquent on Sep-
42 tember first, may have his name removed from the de-
43 linquent list prior to the time the same is delivered to
44 the newspapers for publication by paying to the sheriff
45 the full amount of taxes and costs owed by such person
46 at the date of such redemption. In such case, the sheriff
47 shall include but fifty cents of the costs provided in this
48 section in making such redemption. Costs collected by
49 the sheriff hereunder which are not expended for pub-
50 lication shall be paid into the general county fund.

§11A-3-24. Service of notice.

1 As soon as the clerk has prepared the notice provided
2 for in the preceding section, he shall cause it to be
3 served upon the following persons: (1) The person in
4 whose name the real estate was returned delinquent
5 and sold, or, in case of his death, his heir or devisee
6 and his personal representative, if such there be; (2)
7 any grantee of such person, or his heir or devisee and
8 his personal representative, if such there be, if a con-
9 veyance of such real estate is recorded or filed for record
10 in the office of the clerk; (3) any person having a lien
11 upon such real estate disclosed by any paper recorded
12 in the clerk's office; and (4) any other person having
13 such an interest in the property as would entitle
14 him to redeem, if the existence of such interest ap-
15 pears of record.

16 The notice shall be personally served upon all such
17 persons residing or found in the state in the manner
18 provided for serving process commencing a suit, on or
19 before the first day of February following the request
20 for such notice. If any person entitled to notice is a
21 nonresident of the state or if his residence is unknown
22 to the clerk and cannot by due diligence be discovered,
23 the notice shall be served by publication as a Class III-0
24 legal advertisement in compliance with the provisions
25 of article three, chapter fifty-nine of this code, and the
26 publication area for such publication shall be the county
27 in which such real estate is located. If service by pub-
28 lication is necessary, publication shall be commenced
29 within two weeks after February first, and a copy of

30 the notice shall at the same time be sent by registered
 31 mail, return receipt requested, to the last known address
 32 of the person served. The return of service of such notice
 33 and the affidavit of publication, if any, shall be in the
 34 manner provided for process generally and shall be filed
 35 and preserved by the clerk in his office, together with
 36 any return receipts for notices sent by registered mail.

§11A-3-41. Publication by sheriff of sales list.

1 Within one month after completion of the sale, the
 2 sheriff shall prepare and publish a list of all the sales
 3 made by him, in form or effect as follows, which list
 4 shall be published as a Class II-0 legal advertisement
 5 in compliance with the provisions of article three,
 6 chapter fifty-nine of this code, and the publication
 7 area for such publication shall be the county.

8 List of real estate sold in the county of _____,
 9 in the month (or months) of _____, 19_____, for
 10 nonpayment of taxes thereon for the year (or years)
 11 19 _____, and purchased by individuals or by the state of
 12 West Virginia:

Name of person charged with taxes	Local description of lands	Quantity of land charged	Quantity of land sold	Name of purchaser	Whole amount paid by purchaser
-----------------------------------	----------------------------	--------------------------	-----------------------	-------------------	--------------------------------

13 The owner of any real estate listed above, or any
 14 other person entitled to pay the taxes thereon, may,
 15 however, redeem such real estate as provided by law.

16 Given under my hand this _____ day of _____,
 17 19_____.

18 To cover the costs of preparing and publishing
 19 such list, a charge of three dollars shall be added to the
 20 taxes, interest and charges already due on each item
 21 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.

1 Upon the institution of a suit as provided in section
2 ten of this article, the clerk of the circuit court shall
3 enter an order of publication, without the filing of any
4 affidavit by the deputy commissioner as required in
5 other cases. Such order of publication shall give the
6 style of the suit, as, state of West Virginia v. A. B., et
7 al; shall state that the object of the suit is to obtain
8 a decree of the circuit court ordering the sale for the
9 benefit of the school fund of all lands included in the
10 suit; shall list all such lands, setting forth as to each
11 item its local description, the former owner in whose
12 name the land was forfeited, or was returned delinquent
13 and sold, or escheated, as the case may be, and the
14 names of such other defendants as may be interested
15 therein; and shall require all the named defendants,
16 and all unknown parties who are or may be interested
17 in any of the lands included in the suit to appear within
18 one month after the date of the first publication
19 thereof and do what is necessary to protect their
20 interests.

21 The order shall be published as a Class III-0 legal
22 advertisement in compliance with the provisions of
23 article three, chapter fifty-nine of this code, and the
24 publication area for such publication shall be the
25 county. The cost of such publication shall be charged
26 rateably to each item listed in the suit, and shall be
27 taxed to the state as part of its costs in the suit and
28 paid as hereinafter provided.

29 In view of the fact that the state has absolute title to
30 all forfeited land, to all land sold to the state for non-
31 payment of taxes and become irredeemable, to all
32 escheated land, and to all waste and unappropriated
33 land, and must under the constitution have such an
34 absolute title before the land may be sold for the benefit
35 of the school fund; and in view of the fact that the for-
36 mer owner of any such land, or any person claiming
37 under him, has no further interest therein nor rights
38 in respect thereto except such privilege of redemption

39 as may be extended to him by the Legislature as an
40 act of grace; and in view of the further fact that all
41 parties known and unknown who may claim an interest
42 in any of the lands included in the suit are given notice
43 thereof by the order of publication provided for above;
44 therefore, the Legislature deems it both expedient and
45 necessary to provide that failure to name any such
46 person as a defendant shall in nowise affect the validity
47 of any of the proceedings in the suit for the sale of the
48 state's title to such land; and in view of the fact that
49 the supreme court of appeals in a decision just rendered
50 has held that there is no constitutional requirement that
51 the former owner or any other interested person be per-
52 sonally served with process in a suit for the sale for
53 the benefit of the school fund of lands that are and must
54 be the absolute property of the state; and in view of the
55 further fact that in its last previous enactment of this
56 section the Legislature had no intention of requiring that
57 personal service of process on named defendants in
58 such a suit should be a mandatory condition precedent
59 to the validity of any step or proceeding in such suit,
60 but on the contrary expressly stated that failure to
61 serve the summons on any named defendant should in
62 nowise affect the validity thereof; now therefore, the
63 Legislature also deems it both expedient and necessary
64 to provide that the failure to obtain such personal serv-
65 ice on any named defendant in any suit instituted under
66 the provisions of this article prior to the effective date
67 hereof shall in no way affect the validity of any step or
68 proceeding in any such suit or the validity of the title
69 acquired by the purchaser of land sold under any decree
70 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
2 sale, the deputy commissioner shall, beginning at least
3 fifteen days before the day on which the court has or-
4 dered that any lands be sold, publish a list of all such
5 lands as a Class III-0 legal advertisement in compliance
6 with the provisions of article three, chapter fifty-nine
7 of this code, and the publication area for such publica-

8 tion shall be the county. At the head of the list shall
9 be a notice of the sale in form or effect as follows:

10 Notice is hereby given that, pursuant to the order of
11 the Circuit Court of _____ County, the following
12 described tracts or lots of land, or undivided interests
13 therein, will unless sooner redeemed be sold for cash
14 to the highest bidder. Such sale will be held at
15 _____ (here insert place of sale fixed by the
16 court) beginning at ten o'clock in the morning on the
17 _____ day of _____, 19____.

18 The list shall set forth as to each item its quantity,
19 local description and, except in the case of waste and
20 unappropriated lands, the name of the former owner.
21 The cost of such publication shall be taxed to the state
22 as part of its costs in the suit and shall be paid as here-
23 inafter provided.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article

- * 1. Bond Issues for Original Indebtedness.
- 3. State Sinking Fund Commission.

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.

§13-1-8. Publication of notice of election.

1 Notice of all bond elections shall be given by publi-
2 cation, within fourteen consecutive days next preceding
3 the date of the election, of the order provided for in sec-
4 tion four of this article as a Class II-0 legal advertise-
5 ment in compliance with the provisions of article three,
6 chapter fifty-nine of this code, and the publication area
7 for such publication shall be the political division in
8 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
2 such bonds shall sell the same and collect the proceeds,

3 which proceeds shall be deposited with its treasurer.
4 Whenever any bonds are to be sold, the body authorized
5 to sell the same shall, before offering them to the public,
6 offer them in writing to the secretary of state for pur-
7 chase by any of the governmental agencies of the state
8 authorized by law to purchase such bonds, which offer
9 shall be held to be an offer to sell the bonds at their
10 par value to the state sinking fund commission and to
11 any other of the governmental agencies of the state
12 authorized by law to purchase such bonds. If, after such
13 offer is made, the governing body of the political divi-
14 sion making the offer shall be notified in writing that
15 none of such agencies of the state has elected to pur-
16 chase such bonds, or after ten days have elapsed after
17 such offer of sale has been made without an acceptance
18 by any of such agencies of the state, then the governing
19 body of the political division shall advertise such bonds
20 for sale, on sealed bids, which advertisement shall be
21 published as a Class II legal advertisement in compli-
22 ance with the provisions of article three, chapter fifty-
23 nine of this code, and the publication area for such pub-
24 lication shall be the political division. The first publi-
25 cation shall be made at least fourteen days before the
26 date fixed for the reception of bids. Such advertisement
27 shall also be published in a financial paper published
28 either in the city of New York or the city of Chicago, or
29 in a newspaper published in a city of this state having
30 a population of not less than twenty thousand inhabitants,
31 according to the last federal census. The governing body
32 may reject any and all bids. If the bonds be not sold
33 pursuant to such advertisement, they may, within sixty
34 days after the date advertised for the reception of bids,
35 be sold by the governing body at private sale, but no
36 private sale shall be made at a price less than the highest
37 bid which shall have been received. If not sold, such
38 bonds shall be readvertised in the manner herein pro-
39 vided. In no event shall bonds be sold for less than their
40 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
2 bonds under this article shall, as soon as practicable after
3 the result of the election authorizing their issuance shall
4 have been officially ascertained, transmit to the attorney
5 general a duly certified copy of all orders, ordinances,
6 proclamations, notices, advertisements, affidavits, resolu-
7 tions and records of all the proceedings connected with
8 or pertaining to such bond issue, and any other matters
9 relative thereto which the attorney general may require.
10 The attorney general shall thereupon either approve or
11 disapprove the validity of such bond issue, and shall im-
12 mediately notify the governing body of the political divi-
13 sion which authorized the issuance of the bonds of his
14 action by mail, and as soon as practicable notify the peo-
15 ple of such political division of his approval or disap-
16 proval of such bond issue, by causing notice thereof to
17 be published as a Class II legal advertisement in com-
18 pliance with the provisions of article three, chapter fifty-
19 nine of this code, and the publication area for such pub-
20 lication 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
2 shall be made from funds specified in section eight of
3 this article. The place or places of payment of such bonds
4 and coupons shall be in accordance with the provisions
5 of articles one and two of this chapter. In the event of
6 the insolvency, threat of insolvency, death, or discontin-
7 uance from business of the paying agent or in the case
8 of discontinuance of the place of payment as designated
9 by the terms of such bonds, it shall be the duty of the
10 sinking fund commission to appoint another paying agent
11 or designate another place of payment. Such action by

12 the commission shall be valid only if sanctioned by the
13 recorded votes of three fourths of the commission's mem-
14 bership. Upon appointment of a substitute paying agent,
15 it shall be the duty of the commission to publish notice
16 of such action as a Class II legal advertisement in com-
17 pliance with the provisions of article three, chapter fifty-
18 nine of this code, and the publication area for such pub-
19 lication shall be the county in which the former paying
20 agent had residence. Upon designation of another place
21 of payment, publication of notice shall be made in the
22 county in which was located the former place of pay-
23 ment.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 1. CLAIMS DUE THE STATE.

Section

- 8. Sale of real estate under execution—notice; place.
- 28. Notice of sale of claims.

§14-1-8. Sale of real estate under execution—Notice; place.

1 When a levy is so made upon real estate, the officer
2 making it shall publish notice thereof and of the time
3 and place of sale as a Class III-0 legal advertisement in
4 compliance with the provisions of article three, chapter
5 fifty-nine of this code, and the publication area for such
6 publication shall be the county. The sale shall take place
7 at the premises or at the front door of the courthouse, as
8 the officer may deem most advisable.

§14-1-28. Notice of sale of claims.

1 The sheriff, after having received a transcript of the
2 account which is to be sold, shall give notice by publica-
3 tion as a Class III-0 legal advertisement in compliance
4 with the provisions of article three, chapter fifty-nine of
5 this code, and the publication area for such publication
6 shall be the county. Such notice shall be so published
7 within the twenty-one consecutive days next preceding
8 the date of sale. The notice shall state that he will pro-
9 ceed to sell to the highest bidder the claims or accounts
10 mentioned in such notice. Such notice shall show the
11 name of the sheriff or other officer and his sureties, in
12 case there is evidence of his having executed a bond, the
13 year or years for which he was indebted to the state, upon

14 what account such indebtedness exists, and the amount
15 shown to be due thereon by the auditor's books, exclusive
16 of interest, as well as the amount appearing to be due,
17 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-
2 charged, or discharged dishonorably; but in no case may
3 an enlisted man be dishonorably discharged unless by
4 sentence of a general court-martial, except as hereinafter
5 provided. No enlisted man shall be honorably discharged
6 from service unless he produces the certificate of his im-
7 mediate commanding officer that he has turned over or
8 satisfactorily accounted for all property issued to him.

9 b. Whenever any enlisted man of the national guard
10 shall have performed service therein for the term of his
11 enlistment or reenlistment, and has turned in to the
12 proper officer all state or military property for which he is
13 responsible, his commanding officer shall grant him a full
14 and honorable discharge, except in time of insurrection
15 or invasion or other emergency declared by the governor,
16 when his enlistment shall be automatically extended for
17 the period he shall be in the active service of the state,
18 and until released therefrom by proper order. Discharge
19 for physical disability shall be granted pursuant to ap-
20 plicable rules and regulations. The governor may au-
21 thorize for sufficient reason, and in his discretion, the dis-
22 charge of enlisted men, with or without their consent, at
23 any time, upon the recommendation of the commanding
24 officer of the unit of organization to which they belong.
25 An enlisted man who cannot, after due diligence, be
26 found, or who shall remove his residence from the state,
27 or to such a distance from the armory of his organization,
28 as to render it impracticable for him to perform properly
29 military duties, or who shall be convicted of a felony, may
30 be discharged by order of the governor.

31 c. A dishonorable discharge from service in the na-
32 tional guard shall operate as a complete expulsion from
33 the guard, a forfeiture of all exemptions and privileges
34 acquired through membership therein, and disqualifica-
35 tion for any military office under the state. The names
36 of all persons dishonorably discharged shall be published
37 in orders by the adjutant general at the time of such dis-
38 charge, and as a Class I legal advertisement in compliance
39 with the provisions of article three, chapter fifty-nine of
40 this code, and the publication area for such publication
41 shall be the county in which such dishonorably dis-
42 charged person resides. No person so discharged shall
43 be admitted to any armory or other meeting place of the
44 national guard or to the immediate vicinity of any en-
45 campment, drill or parade of troops. All commanding
46 officers are hereby required to enforce these prohibitions.

CHAPTER 16. PUBLIC HEALTH.

Article

10. Sterilization of Mental Defectives.
12. Sanitary Districts for Sewage Disposal.
13. Sewage Works of Municipal Corporations and Sanitary Districts.
- 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
2 state institutions, namely, the Weston state hospital, the
3 Huntington state hospital, the Spencer state hospital,
4 the Lakin State hospital, the West Virginia industrial
5 school for boys or the West Virginia industrial home for
6 girls, shall be of the opinion that it is for the best interests
7 of the inmates of the institution of which he is superintend-
8 ent and of society that any inmate of such institution who
9 is afflicted with any hereditary form of insanity that is
10 recurrent, idiocy, imbecility, feeble-mindedness or epi-
11 lepsy should be sexually sterilized, such superintendent

12 shall present to the board of health of this state a written
13 petition stating the facts of the case and the grounds of
14 his opinion, verified by his affidavit to the best of his
15 knowledge and belief, and praying that an order may be
16 entered by said board requiring him to perform, or to
17 have performed by some competent physician or surgeon
18 to be designated by him in his petition or by the board
19 in its order, upon such inmate named in such petition,
20 the operation of vasectomy if upon a male and of salping-
21 ectomy if upon a female.

22 A copy of such petition shall be served upon such in-
23 mate named therein, together with a notice in writing
24 designating the time and place in said institution, not
25 less than thirty days before the presentation of such pe-
26 tition to the West Virginia board of health, when and
27 where the board will hear and act upon such petition.
28 If such inmate has a parent, child, brother, sister, guard-
29 ian or committee residing in this state whose name and
30 place of residence are known to such superintendent,
31 a copy of such petition and notice shall be served upon
32 such parent or parents, child, brother, sister, guardian,
33 or committee. If such notice cannot be so served, the
34 superintendent shall file a copy of such petition in the
35 office of the clerk of the county court of the county where
36 the inmate last resided, and shall cause such notice to be
37 published as a Class II legal advertisement in compliance
38 with the provisions of article three, chapter fifty-nine of
39 this code, and the publication area for such publication
40 shall be the county in which the inmate last resided.
41 Such publication shall be completed thirty days be-
42 fore the presentation of said petition to the board.
43 Costs of the publication shall be paid out of the county
44 treasury of the county wherein published. Such notice
45 shall be in the following form:

46 To the next kin of _____, (here name
47 inmate or inmates if more than one.)

48 Notice is given pursuant to law that the superintendent
49 of _____ (name of the institution
50 filing the petition) will, on the _____ day of _____,
51 19_____, file a petition before the West Virginia board of
52 health to be heard at _____ (name place

53 of hearing), asking for an order directing the sterilization
54 of _____ (name of inmate), at which
55 time and place any valid reason for not entering such
56 order may be offered.

57 A copy of said petition is filed in the office of the clerk
58 of the county court of this county.

59

60

Superintendent of _____

61 Any number of cases from the same county may be
62 included in the same notice.

63 After the notice required by this article shall have been
64 given as herein provided, the West Virginia board of
65 health, at the time and place named therein, with such
66 reasonable continuances from time to time and from
67 place to place as the board may determine, shall proceed
68 to hear and consider the said petition and the evidence
69 offered in support of and against the same. For every
70 such inmate the board shall appoint a guardian ad litem
71 who must be present at the hearing to defend the rights
72 and interests of such inmate. And the board shall see
73 to it that such inmate shall have leave and opportunity
74 to attend such hearings in person, if desired by him, or
75 by his parent, guardian or committee served with such
76 petition as aforesaid.

77 The West Virginia board of health may receive and con-
78 sider as evidence at such hearing the commitment papers
79 and other records of such inmate in any of the aforesaid
80 state institutions as certified by the superintendent or
81 superintendents thereof, together with such other legal
82 evidence as may be offered by any party to the proceed-
83 ing. Any member of the board shall have the power to
84 administer oaths to the witnesses at such hearings. Dep-
85 ositions may be taken by any party after due notice as
86 in pending cases and such depositions may be read in
87 evidence if pertinent to the issue: *Provided, however,*
88 That no deposition shall be read against such inmate,
89 except with the consent of his guardian ad litem, unless
90 it be taken in the presence of the guardian ad litem or
91 upon interrogatories agreed on by him. The board shall
92 preserve and keep all record evidence offered at such
93 hearings, and shall have all oral evidence heard thereat

94 reduced to writing and preserved and kept with its rec-
 95 ords. Any party to the proceedings shall have the right
 96 to be represented by counsel at such hearings.

97 The West Virginia board of health may deny the prayer
 98 of said petition or, if the board shall find that such inmate
 99 is insane, idiotic, imbecile, feeble-minded or epileptic,
 100 and by the laws of heredity is the probable potential
 101 parent of socially inadequate offspring likewise afflicted;
 102 that such inmate may be sexually sterilized without detri-
 103 ment to his or her general health; and that the welfare
 104 of such inmate and of society will be promoted by such
 105 sterilization, it may order such superintendent to per-
 106 form, or cause to be performed by some competent phy-
 107 sician or surgeon named in such order, upon such inmate,
 108 after not less than thirty days from the date of such or-
 109 der, the operation of vasectomy, if such inmate be a male,
 110 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.

1 That whenever any area of contiguous territory shall
 2 contain one or more incorporated cities, towns and/or vil-
 3 lages, and shall be so situated that the construction and
 4 maintenance of a plant or plants for the purification and
 5 treatment of sewage and the maintenance of one or more
 6 outlets for the drainage thereof, after having been so
 7 treated and purified by and through such plant or plants
 8 will conduce to the preservation of the public health, com-
 9 fort and convenience, the same may be incorporated as
 10 a sanitary district under this article in the manner fol-
 11 lowing, to wit:

12 Any four hundred legal voters, residents within the
13 limits of such proposed sanitary district, may petition the
14 county court of the county in which the proposed sanitary
15 district, or the major portion thereof, is located, to cause
16 the question to be submitted to the legal voters of such
17 proposed sanitary district, whether such proposed terri-
18 tory shall be organized as a sanitary district under this
19 article; such petition shall be addressed to the county
20 court and shall contain a definite description of the bound-
21 aries of the territory to be embraced in the such sanitary
22 district, and the name of such proposed sanitary district:
23 *Provided, however,* That no territory shall be included
24 within more than one sanitary district organized under
25 this article.

26 Notice shall be given by such county court within ten
27 days after receiving the petition, of the time and place
28 when a hearing on the petition for a sanitary district
29 will be held, by publication of such notice 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 area
33 of the sanitary district. The first publication shall be made
34 at least twenty days prior to such hearing. The hearing on
35 the petition for a sanitary district shall be held not later
36 than thirty days after the county court receives the said
37 petition. At such hearing the president of the county court
38 shall preside, and all persons resident within the limits
39 of such proposed sanitary district shall have an oppor-
40 tunity to be heard upon the question of the location and
41 boundary of such proposed sanitary district, and to make
42 suggestions regarding the same, and the said county court,
43 after hearing statements, evidence and suggestions, shall
44 fix and determine the limits and boundaries of such pro-
45 posed sanitary district as stated in the original petition un-
46 less by a vote of the majority of the legal voters resident
47 within the limits of such proposed sanitary district, present
48 at the said hearing, it should be decided to altar and amend
49 such petition to change and redetermine the limits and
50 boundaries of such proposed sanitary district.

51 After such determination by the county court, the same
52 shall be incorporated in an order which shall be spread

53 at length upon the records of the county court. Upon
54 the entering of such order, the county court shall submit
55 to the legal voters of the proposed sanitary district, the
56 question of organization and establishment of the pro-
57 posed sanitary district as determined by said county
58 court, at a special election, to be held within sixty days
59 after the entering of such order, notice whereof shall
60 be given by the county court at least twenty days prior
61 thereto by publication of such notice as a Class II-0 legal
62 advertisement in compliance with the provisions of
63 article three, chapter fifty-nine of this code, and the pub-
64 lication area for such publication shall be the area of
65 the proposed sanitary district. Such notice shall specify
66 briefly the purpose of such election, with a description
67 of such proposed sanitary district, and the time and place
68 for holding such election.

69 Each legal voter resident within such proposed sani-
70 tary district shall have the right to cast a ballot at such
71 election. Ballots at elections held under this section shall
72 be in substantially the following form, to wit:

73 For sanitary district.

74 Against sanitary district.

75 The ballots so cast shall be issued, received, returned
76 and canvassed in the same manner and by the same
77 officers as is provided by law in the case of ballots cast
78 for county officers, except as herein modified. The county
79 court shall cause a statement of the result of such elec-
80 tion to be spread on the records of the county court. If
81 a majority of the votes cast upon the question of the
82 incorporation of the proposed sanitary district shall be
83 in favor of the proposed sanitary district, such proposed
84 sanitary district shall thenceforth be deemed an organized
85 sanitary district under this article. All courts in this
86 state shall take judicial notice of the existence of all
87 sanitary districts organized under this article.

88 The expenses of holding said special election shall be
89 paid by the county court of said county, in which said
90 proposed sanitary district, or the major portion thereof,
91 is located, out of the general funds of said county: *Pro-*
92 *vided, however,* That in the event such sanitary district
93 is established and incorporated under this article, then

94 said sanitary district shall repay to said county the ex-
95 penses incurred in holding said special election within
96 two years from the date of incorporating said sanitary
97 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.

1 All ordinances imposing any penalty or making any
2 appropriations shall, within one month after they are
3 passed, be published as a Class II 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 sanitary district. No such
7 ordinance shall take effect until ten days after it is so
8 published, and all other ordinances, orders and resolu-
9 tions shall take effect from and after their passage un-
10 less otherwise provided therein.

11 All ordinances, orders and resolutions, and the date
12 of publication thereof, may be proven by certificate of
13 the clerk under the seal of the corporation, and when
14 printed in book or pamphlet form, and purporting to be
15 published by the board of trustees, such book or pamphlet
16 shall be received as evidence of the passage and legal
17 publication of such ordinances, orders and resolutions,
18 as of the dates mentioned in such book or pamphlet in
19 all courts and places without further proof.

§16-12-9. Borrowing money; procedure for issuance of revenue or tax obligation bonds; debt limitation.

1 Said sanitary district may borrow money for corporate
2 purposes and may issue revenue and/or tax obligation
3 bonds therefor, but shall not become indebted in any
4 manner, or for any purpose whatsoever, beyond an
5 amount in the aggregate to exceed five per cent of the
6 valuation of the taxable property within said district,
7 to be ascertained by the last assessment for state and
8 county taxes, previous to incurring of said indebtedness.
9 Whenever the board of trustees of such sanitary district
10 desires to issue bonds hereunder they shall order an elec-

11 tion to be held in such sanitary district upon the ques-
 12 tion. Notice of such election shall be given by said
 13 board of trustees by publication of such notice as a
 14 Class II-0 legal advertisement in compliance with the
 15 provisions of article three, chapter fifty-nine of this code,
 16 and the publication area for such publication shall be
 17 the sanitary district. The first publication shall be made
 18 at least twenty days prior to said election. The notices
 19 of election shall state the amount of bonds to be issued
 20 and the polling places at which the election shall be held.
 21 The board of trustees shall appoint judges and clerks for
 22 such election and the return of such election shall be filed
 23 with the clerk of the board of trustees and be canvassed
 24 and the result ascertained by said board and entered upon
 25 the records of the sanitary district. If it shall appear that
 26 a majority of the voters voting at said election on said
 27 question shall have voted in favor of the issue of
 28 the said bonds, the board of trustees shall order and
 29 direct the execution of the bonds for and on behalf of
 30 said sanitary district. All bonds issued hereunder shall
 31 mature in not exceeding thirty annual installments. The
 32 ballots at elections held under this section shall be in
 33 substantially the following form, to wit:

34 Proposition to issue bonds of _____ sanitary
 35 district to the amount of _____ dollars.

36 Yes.

37 No.

§16-12-11. Letting contracts; manner and cost of building additions or extensions.

1 All contracts for work to be done by such sanitary
 2 district, the expense of which will exceed five hundred
 3 dollars, shall be let to the lowest responsible bidder
 4 therefor. The board of trustees shall cause to be pub-
 5 lished a notice informing the public and contractors of
 6 the general nature of the work and of the fact that
 7 detailed plans, drawings and specifications are on file
 8 in the office of such board of trustees and calling for
 9 sealed proposals for the construction of the work to be
 10 done at a date not earlier than ten days after the last of
 11 such publications, such notice to be published as a Class II

12 legal advertisement in compliance with the provisions
13 of article three, chapter fifty-nine of this code, and the
14 publication area for such publication shall be the sanitary
15 district. Said board of trustees shall require each bidder to
16 deposit with his respective bid a certified check for an
17 amount not less than two and one-half per cent of the en-
18 gineer's estimate of such work to insure the execution of
19 the contract for which such bid is made. The board of
20 trustees may impose such conditions as it may deem neces-
21 sary upon the bidders with regard to bond and surety,
22 guaranteeing the good faith and responsibility of such bid-
23 ders, and the faithful performance of such work accord-
24 ing to contract, or for any other purpose. The board
25 of trustees shall have the right to reject any and all
26 bids, but if it does reject all bids, before other bids
27 may be received notices shall be published as originally
28 required. The board of trustees shall have power to let
29 portions of said proposed work under different contracts.

30 Any additions or extensions to any sewage disposal
31 plant, or sewers or drains or any other work constructed
32 under the provisions of this article, shall be built un-
33 der contract entered into under the provisions of this
34 section in the same manner as the contract for the origi-
35 nal plant or work. The cost of such additions or exten-
36 sions, and of any additional lands or right of ways ac-
37 quired by said board, may be met by the sale of addi-
38 tional bonds to be issued and sold by the trustees, and
39 the levy of taxes and/or the collection of service charges
40 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
- 2 ordinance, together with the following described notice,
- 3 shall be published as a Class II legal advertisement in com-

4 pliance with the provisions of article three, chapter fifty-
5 nine of this code, and the publication area for such publica-
6 tion shall be the municipality. The notice shall state
7 that said ordinance has been adopted, and that the
8 municipality contemplates the issuance of the bonds de-
9 scribed in the ordinance, and that any person interested
10 may appear before the governing body upon a certain
11 date which shall not be less than ten days subsequent
12 to the last date of publication of such ordinance and
13 notice, and present protests. At such hearing all objec-
14 tions and suggestions shall be heard and the governing
15 body shall take such action as it shall deem proper in
16 the premises: *Provided, however,* That if at such a hear-
17 ing written protest is filed by thirty per cent or more
18 of the owners of real estate situate in said municipality,
19 then the governing body of said municipality shall not
20 take further action unless four fifths of the qualified
21 members of the said governing body assent thereto.

**§16-13-16. Rates for service; change or readjustment; hearing;
lien and recovery; discontinuance of services.**

1 The governing body shall have power, and it shall be
2 its duty, by ordinance, to establish and maintain just
3 and equitable rates or charges for the use of and the
4 service rendered by such works, to be paid by the owner
5 of each and every lot, parcel of real estate or building
6 that is connected with and uses such works by or through
7 any part of the sewerage system of the municipality,
8 or that in any way uses or is served by such works, and
9 may change and readjust such rates or charges from time
10 to time. Such rates or charges shall be sufficient in
11 each year for the payment of the proper and reasonable
12 expense of operation, repair, replacements and main-
13 tenance of the works and for the payment of the sums
14 herein required to be paid into the sinking fund. Reve-
15 nues collected pursuant to this section shall be deemed
16 the revenues of the works. No such rates or charges
17 shall be established until after a public hearing, at
18 which all the users of the works and owners of property
19 served or to be served thereby and others interestd
20 shall have an opportunity to be heard concerning the

21 proposed rates or charges. After introduction of the
22 ordinance fixing such rates or charges, and before the
23 same is finally enacted, notice of such hearing, setting
24 forth the proposed schedule of such rates or charges,
25 shall be given by publication as a Class II-0 legal adver-
26 tisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code, and the publica-
28 tion area for such publication shall be the municipal-
29 ity. The first publication shall be made at least ten days
30 before the date fixed in such notice for the hearing. After
31 such hearing, which may be adjourned from time to time,
32 the ordinance establishing rates or charges, either as orig-
33 inally introduced or as modified and amended, shall be
34 passed and put into effect. A copy of the schedule of such
35 rates and charges so established shall be kept on file in
36 the office of the board having charge of the operation of
37 such works, and also in the office of the clerk of the munic-
38 ipality, and shall be open to inspection by all parties inter-
39 ested. The rates or charges so established for any class of
40 users or property served shall be extended to cover any
41 additional premises thereafter served which fall within the
42 same class, without the necessity of any hearing or notice.
43 Any change or readjustment of such rates or charges may
44 be made in the same manner as such rates or charges were
45 originally established as hereinbefore provided: *Provided,*
46 *however,* That if such change or readjustment be made
47 substantially pro rata, as to all classes of service, no hear-
48 ing or notice shall be required. The aggregate of the rates
49 or charges shall always be sufficient for such expense of
50 operation, repair and maintenance and for such sinking
51 fund payments. All such rates or charges, if not paid when
52 due, shall constitute a lien upon the premises served by
53 such works. If any service rate or charge so established
54 shall not be paid within thirty days after the same is due,
55 the amount thereof, together with a penalty of ten per cent,
56 and a reasonable attorney's fee, may be recovered by the
57 board in a civil action in the name of the municipality, and
59 in connection with such action said lien may be foreclosed
59 against such lot, parcel of land or building, in accordance
60 with the laws relating thereto: *Provided, however,* That
61 where both water and sewer services are furnished by any

62 municipality to any premises the schedule of charges
63 may be billed as a single amount or individually itemized
64 and billed for the aggregate thereof. Whenever any rates,
65 rentals or charges for services or facilities furnished shall
66 remain unpaid for a period of thirty days after the
67 same shall become due and payable, the property and
68 the owner thereof, as well as the user of the services
69 and facilities shall be delinquent until such time as all
70 such rates and charges are fully paid. The board collect-
71 ing such charges shall be obligated under reasonable
72 rules and regulations, to shut off and discontinue both
73 water and sewer services to all delinquent users of either
74 water facilities, or sewer facilities, or both, and shall not
75 restore either water facilities or sewer facilities to any
76 delinquent user of either until all delinquent charges
77 for both water facilities and sewer facilities, including
78 reasonable interest and penalty charges, have been paid
79 in full

§16-13-18a. Publication of financial statement.

1 Every sanitary board shall prepare a financial state-
2 ment and cause the same to be published as a Class I
3 legal advertisement in compliance with the provisions
4 of article three, chapter fifty-nine of this code, and the
5 publication area for such publication shall be the sani-
6 tary district. Such statement shall contain an item-
7 ized account of the receipts and expenditures of the
8 board during the previous fiscal year, showing the source
9 from which all money was derived, and the name of the
10 person to whom an order was issued, together with the
11 amount of such order, and why such order was issued,
12 arranging the same under distinct heads, and including
13 all money received and expended from the sale of bonds,
14 and also a specific statement of the debts of such board,
15 showing the purpose for which any debt was contracted,
16 the amount of money in all funds at the end of the
17 preceding year, and the amount of uncollected service
18 charges. Such statement shall be prepared and pub-
19 lished by the board as soon as practicable after the close
20 of the fiscal year: *Provided*, That such statement for the
21 fiscal year ending June thirtieth, one thousand nine hun-

22 dred fifty-six, may be published any time during the
23 year one thousand nine hundred fifty-seven. The state-
24 ment shall be sworn to by the chairman and secretary
25 and treasurer of the board. If a board fails or refuses
26 to perform the duties hereinbefore named, every member
27 of the board concurring in such failure or refusal shall
28 be guilty of a misdemeanor, and, upon conviction there-
29 of, shall be fined not less than one hundred nor more
30 than five hundred dollars and the circuit court or crimi-
31 nal court and justices of the peace, of the county where
32 the offense was committed, shall have concurrent juris-
33 diction 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
2 article, and in addition thereto, the governing body of
3 any municipal corporation which has received or which
4 hereafter receives an order issued by the chief of the divi-
5 sion of water resources or the state water resources board
6 requiring such municipal corporation to cease the pollu-
7 tion of any stream or waters, is hereby authorized and em-
8 powered to fix, establish and maintain, by ordinance, just
9 and equitable rates or charges for the use of the services
10 and facilities of the existing sewer system of such municipi-
11 pal corporation, and/or for the use of the services and fa-
12 cilities to be rendered upon completion of any works and
13 system necessary by virtue of said order, to be paid by the
14 owner, tenant or occupant of each and every lot or parcel
15 of real estate or building that is connected with and uses
16 any part of such sewer system, or that in any way uses or
17 is served thereby, and may change and readjust such rates
18 or charges from time to time. Such rates or charges shall
19 be sufficient for the payment of all the proper and rea-
20 sonable costs and expenses of the acquisition and con-
21 struction of plants, machinery and works for the collec-
22 tion and/or treatment, purification and disposal of sew-
23 age, and the repair, alteration and extension of existing
24 sewer facilities, as may be necessary to comply with such
25 order of the chief of the division of water resources or the
26 state water resources board, and for the operation, main-

27 tenance and repair of the entire works and system; and
28 the governing body shall create, by ordinance, a sinking
29 fund to accumulate and hold any part or all of the pro-
30 ceeds derived from rates or charges until completion of
31 said construction, to be remitted to and administered by
32 the state sinking fund commission by expending and pay-
33 ing said costs and expenses of construction and operation
34 in the manner as provided by said ordinance; and after
35 the completion of the construction such rates or charges
36 shall be sufficient in each year for the payment of the
37 proper and reasonable costs and expenses of operation,
38 maintenance, repair replacement, and extension from time
39 to time, of the entire sewer and works. No such rates or
40 charges shall be established until after a public hearing, at
41 which all the potential users of the works and owners of
42 property served or to be served thereby and others inter-
43 ested shall have an opportunity to be heard concerning the
44 proposed rates or charges. After introduction of the ordi-
45 nance fixing such rates or charges, and before the same is
46 finally enacted, notice of such hearing, setting forth the
47 proposed schedule of such rates or charges, shall be given
48 by publication of such notice as a Class II-0 legal adver-
49 tisement in compliance with the provisions of article three,
50 chapter fifty-nine of this code, and the publication area
51 for such publication shall be the municipality. The first
52 publication shall be made at least ten days before the date
53 fixed therein for the hearing. After such hearing, which
54 may be adjourned from time to time, the ordinance estab-
55 lishing the rates or charges, either as originally introduced
56 or as modified and amended, may be passed and put into
57 effect. A copy of the schedule of such rates and charges
58 so established shall be kept on file in the office of the sani-
59 tary board having charge of the construction and opera-
60 tion of such works, and also in the office of the clerk of the
61 municipality, and shall be open to inspection by all parties
62 interested. The rates or charges so established for any class
63 of users or property served shall be extended to cover any
64 additional premises thereafter served which fall within the
65 same class, without the necessity of any hearing or notice.
66 Any change or readjustment of such rates or charges
67 may be made in the same manner as such rates or charges
68 were originally established as hereinbefore provided: *Pro-*

69 *vided, however,* That if such change or readjustment be
70 made substantially pro rata, as to all classes of service, no
71 hearing or notice shall be required. If any rate or charge
72 so established shall not be paid within thirty days after
73 the same is due, the amount thereof, together with a pen-
74 alty of ten per cent, and a reasonable attorney's fee, may
75 be recovered by the sanitary board of such municipal cor-
76 poration in a civil action in the name of the municipality.
77 Any municipal corporation exercising the powers given
78 herein shall have authority to construct, acquire, improve,
79 equip, operate, repair and maintain any plants, machinery,
80 or works necessary to comply with such order of the state
81 water resources board, and the authority provided herein
82 to establish, maintain and collect rates or charges shall be
83 construed as a further additional and alternative method
84 of financing such works and matters, and shall be inde-
85 pendent of any other provision of this article insofar as
86 such article provides for or requires the issuance of
87 revenue bonds or the imposition of rates and charges in
88 connection with such bonds: *Provided, however,* That
89 except for the method of financing such works and mat-
90 ters, the construction, acquisition, improvement, equip-
91 ment, custody, operation, repair and maintenance of any
92 plants, machinery or works in compliance with an order
93 of the state water resources board, and the rights, powers,
94 and duties of such municipal corporation and the respec-
95 tive officers and departments thereof, including the sani-
96 tary board, shall be governed by the provisions of this
97 article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

Section

2. Creation of districts by county court; enlarging or reducing district; consolidation; agreements, etc., infringing upon powers of county court.
7. Acquisition and operation of district properties.

§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

4 order a description sufficient to identify the territory to
5 be embraced therein and the name of such proposed
6 district, or any one hundred legal voters resident within
7 and owning real property within the limits of such pro-
8 posed public service district within one or more counties
9 may petition for the creation thereof, which petition
10 shall contain a description sufficient to identify the ter-
11 ritory to be embraced therein and the name of such
12 proposed district. Any territory may be included re-
13 gardless of whether or not such territory includes one
14 or more cities, incorporated towns or other municipal
15 corporations which own and operate any public service
16 properties and regardless of whether or not it includes
17 one or more cities, incorporated towns or other municipal
18 corporations being served by privately owned public
19 service properties: *Provided, however,* That no terri-
20 tory shall be included within more than one public
21 service district organized under this article and the
22 boundaries shall conform to or follow magisterial district
23 lines except where less than a whole of any magisterial
24 district is to be included, in which latter case that part
25 of any such boundary shall conform to other natural
26 boundary lines, or the lines of a fixed survey: *And*
27 *provided further,* That no city, incorporated town or other
28 municipal corporation shall be included within the
29 boundaries of such proposed district except upon the
30 adoption of a resolution of the governing body of such
31 city, incorporated town or other municipal corpora-
32 tion consenting thereto.

33 Such petition shall be filed in the office of the clerk
34 of the county court of the county in which the territory
35 to constitute the proposed district is situated, and if such
36 territory is situated in more than one county then such
37 petition shall be filed in the office of the clerk of the
38 county court of the county in which the major portion
39 of such territory extends, and a copy thereof (omitting
40 signatures) shall be filed with each of the clerks of the
41 county courts of the other county or counties into
42 which the territory extends. It shall be the duty of the
43 clerk of the county court receiving such petition to pre-
44 sent same to the county court of such county at

45 the first regular meeting after such filing or at a special
46 meeting called for the consideration thereof.

47 When the county clerk of any county enters an order
48 on its own motion proposing the creation of a public
49 service district, as aforesaid, or when a petition for such
50 creation is presented, as aforesaid, the county court shall
51 at the same session fix a date of hearing in such county
52 on the creation of the proposed public service district,
53 which date so fixed shall be not more than forty days
54 nor less than twenty days from the date of such action.
55 If the territory proposed to be included is situated
56 in more than one county, the county court, when
57 fixing a date of hearing, shall provide for notifying the
58 county court and clerk thereof of each of the other coun-
59 ties into which the territory extends of the date so
60 fixed. The clerk of the county court of each county
61 in which any territory in the proposed public service
62 district is located shall cause notice of such hearing and
63 the time and place thereof, and setting forth a descrip-
64 tion of all of the territory proposed to be included
65 therein to be given by publication as a Class I legal ad-
66 vertisement in compliance with the provisions of article
67 three, chapter fifty-nine of this code, and the pub-
68 lication area for such publication shall be each county
69 in which any territory in the proposed public service
70 district is located. The publication shall be at least ten
71 days prior to such hearing. In all cases where proceed-
72 ings for the creation of such public service districts are
73 initiated by petition as aforesaid the person filing
74 the petition shall advance or satisfactorily indemnify
75 the payment of the costs and expenses of publishing the
76 hearing notice, and otherwise the costs and expenses of
77 such notice shall be paid in the first instance by
78 the county court out of contingent funds or any other
79 funds available or made available for that pur-
80 pose. In addition to the notice required herein to be pub-
81 lished, there shall also be posted in at least five conspicu-
82 ous places in the proposed public service district, a notice
83 containing the same information as is contained in the
84 published notice. The posted notices shall be posted not
85 less than ten days before said hearing.

86 All persons residing in or owning or having any in-
87 terest in property in such proposed public service district
88 shall have an opportunity to be heard for and against
89 its creation. At such hearing the county court be-
90 fore which the hearing is conducted shall consider
91 and determine the feasibility of the creation of the pro-
92 posed district. When it shall have been thus determined
93 that the construction or acquisition by purchase or
94 otherwise, and maintenance, operation, improvement,
95 and extension of public service properties by such public
96 service district will be conducive to the preservation
97 of public health, comfort and convenience of such area,
98 then such county court shall by order create such public
99 service district, and such order shall be conclusive and
100 final in that regard. If the court shall, after due con-
101 sideration, determine that the proposed district will not
102 be conducive to the preservation of public health, com-
103 fort or convenience of such area, or that the creation
104 of the proposed district as set forth and described in
105 the petition or order is not feasible, it may refuse to
106 enter an order creating the same, or it may enter an
107 order amending the description of the proposed dis-
108 trict, and create said district as amended. The clerk of
109 the county court of each county into which any part
110 of such district extends shall retain in his office an
111 authentic copy of the order creating the same: *Provided,*
112 *however,* That if at such hearing written protest is filed
113 by thirty per cent or more of the qualified voters reg-
114 istered and residing within said district, then the county
115 court shall not take any further action in creating such
116 district unless the creation of such district shall be
117 approved by a majority vote of the qualified registered
118 voters voting at a referendum to be called by the
119 county court for such purpose. Such referendum shall
120 be called and held in the manner provided in the general
121 election laws of the state of West Virginia applicable
122 thereto and the funds therefor shall be supplied from any
123 county funds available for such purpose, or from funds
124 supplied from the persons who petitioned for the creation
125 of such district. If a majority of the qualified registered
126 electors participating in said election shall vote against

127 the creation of said district, then such district shall not be
128 created. If, however, a majority of the qualified registered
129 voters participating in such referendum vote in favor of
130 the creation of such district, then the county court shall
131 duly enter its order creating such district.

132 After the creation of such district the county court
133 may, if in its discretion it deems it necessary, feasible
134 and proper, enlarge the said district to include additional
135 areas, reduce the area of said district, where facilities,
136 equipment, service or materials have not been extended,
137 or establish or consolidate two or more such districts:
138 *Provided*, That where the county court determines on its
139 own motion by order entered of record, or there is a
140 petition, to enlarge the district or reduce the area of
141 the district, all of the applicable provisions of this article
142 providing for hearing, notice of hearing and protest shall
143 apply with like effect as if a district were being created.
144 The districts may not enter into any agreement, con-
145 tract or covenant that infringes upon, impairs, abridges or
146 usurps the duties, rights or powers of the county court,
147 as set forth in this article, or conflicts with any provision
148 of this article.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision
2 and control of all public service properties acquired or
3 constructed by the district and shall have power, and it
4 shall be its duty, to maintain, operate, extend and im-
5 prove the same. All contracts involving the expendi-
6 ture by the district of more than two thousand dollars
7 for construction work or for the purchase of equipment
8 and improvements, extensions or replacements, shall be
9 entered into only after notice inviting bids shall have
10 been published as a Class I legal advertisement in com-
11 pliance with the provisions of article three, chapter fifty-
12 nine of this code, and the publication area for such publi-
13 cation shall be the district. The publication shall not be
14 less than ten days prior to the making of any such con-
15 tract. Any obligations incurred of any kind or character
16 shall not in any event constitute or be deemed an in-
17 debtedness within the meaning of any of the provisions or

18 limitations of the constitution but all such obligations
19 shall be payable solely and only out of revenues derived
20 from the operation of the public service properties of the
21 district or from proceeds of bonds issued as hereinafter
22 provided. No continuing contract for the purchase of
23 materials or supplies or for furnishing the district with
24 electrical energy or power shall be entered into for a
25 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.

1 Bonds of an authority shall be authorized by its reso-
2 lution and may be issued in one or more series and shall
3 bear such date or dates, mature at such time or times,
4 bear interest at such rate or rates, not exceeding six
5 per cent per annum, be in such denomination or denomi-
6 nations, be in such form, either coupon or registered,
7 carry such conversion or registration privileges, have
8 such rank or priority, be executed in such manner, be
9 payable in such medium of payment, at such place or
10 places, and be subject to such terms of redemption (with
11 or without premium) as such resolution, its trust inden-
12 ture or mortgage may provide.

13 The bonds shall be sold at not less than par at pub-
14 lic sale held after notice published as a Class I legal
15 advertisement in compliance with the provisions of arti-
16 cle three, chapter fifty-nine of this code, and the publica-
17 tion area for such publication shall be the city or county,
18 as the case may be. The notice shall be published at
19 least five days prior to such sale. The notice shall also
20 be published in a financial newspaper published in the
21 city of New York, New York: *Provided, however,* That
22 such bonds may be sold to the federal government at

23 private sale at not less than par and, in the event less
24 than all of the bonds authorized in connection with any
25 project or projects are sold to the federal government,
26 the balance of such bonds may be sold at private sale
27 at not less than par at an interest cost to the authority
28 of not to exceed the interest cost to the authority of the
29 portion of the bonds sold to the federal government.

30 In case any of the commissioners or officers of the
31 authority whose signatures appear on any bonds or
32 coupons shall cease to be such commissioners or officers
33 before the delivery of such bonds, such signatures shall,
34 nevertheless, be valid and sufficient for all purposes, the
35 same as if they had remained in office until such deliv-
36 ery. Any provisions of any law to the contrary notwith-
37 standing, any bonds issued pursuant to this article shall
38 be negotiable.

39 In any suit, action or proceedings involving the valid-
40 ity or enforceability of any bond of an authority or the
41 security therefor, any such bond reciting in substance
42 that it has been issued by the authority to aid in financ-
43 ing a housing project to provide dwelling accommoda-
44 tions for persons of low income shall be conclusively
45 deemed to have been issued for a housing project of such
46 character, and said project shall be conclusively deemed
47 to have been planned, located and constructed in accord-
48 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.
10. Bonds.

§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

9 has, by resolution, declared such area to be a slum
10 or blighted area in need of redevelopment.

11 (c) An authority shall not recommend a redevelop-
12 ment plan to the governing body of the community in
13 which the redevelopment project area is located until
14 a general plan for the development of the community
15 has been prepared.

16 (d) The authority may itself prepare or cause to be
17 prepared a redevelopment plan or any person or agency,
18 public or private, may submit such a plan to an author-
19 ity. A redevelopment plan shall be sufficiently complete
20 to indicate its relationship to definite local objectives
21 as to appropriate land uses, improved traffic, public
22 transportation, public utilities, recreational and com-
23 munity facilities and other public improvements and the
24 proposed land uses and building requirements in the
25 redevelopment project area, and shall include without
26 being limited to:

27 (1) The boundaries of the redevelopment project
28 area, with a map showing the existing uses and condi-
29 tions of the real property therein;

30 (2) A land use plan showing proposed uses of the
31 area;

32 (3) Information showing the standards of population
33 densities, land coverage and building intensities in the
34 area after redevelopment;

35 (4) A statement of the proposed changes, if any, in
36 zoning ordinances or maps, street layouts, street levels
37 or grades, building codes and ordinances;

38 (5) A site plan of the area; and

39 (6) A statement as to the kind and number of addi-
40 tional public facilities or utilities which will be required
41 to support the new land uses in the area after rede-
42 velopment.

43 (e) Prior to recommending a redevelopment plan
44 to the governing body for approval, an authority shall
45 submit such plan to the planning commission of the
46 community in which the redevelopment project area is
47 located for review and recommendations as to its con-

48 formity with the general plan for the development of
49 the community as a whole. The planning commission
50 shall submit its written recommendations with respect
51 to the proposed redevelopment plan to the authority
52 within thirty days after receipt of the plan for review.
53 Upon receipt of the recommendations of the planning
54 commission or, if no recommendations are received within
55 said thirty days, then without such recommendations,
56 an authority may recommend the redevelopment
57 plan to the governing body of the community for ap-
58 proval.

59 (f) Prior to recommending a redevelopment plan
60 to the governing body for approval, an authority shall
61 consider whether the proposed land uses and building
62 requirements in the redevelopment project area are
63 designed with the general purpose of accomplishing, in
64 conformance with the general plan, a coordinated, ad-
65 justed and harmonious development of the community
66 and its environs which will, in accordance with present
67 and future needs, promote health, safety, morals, order,
68 convenience, prosperity and the general welfare, as well
69 as efficiency and economy in the process of development;
70 including, among other things, adequate provision for
71 traffic, vehicular parking, the promotion of safety from
72 fire, panic and other dangers, adequate provision for light
73 and air, the promotion of the healthful and convenient
74 distribution of population, the provision of adequate
75 transportation, water, sewerage and other public utilities,
76 schools, parks, recreational and community facilities and
77 other public requirements, the promotion of sound
78 design and arrangement, the wise and efficient expendi-
79 ture of public funds, the prevention of the recurrence
80 of insanitary or unsafe dwelling accommodations, slums,
81 or conditions of blight, and the provision of adequate,
82 safe and sanitary dwelling accommodations.

83 (g) The recommendation of a redevelopment plan
84 by an authority to the governing body shall be accom-
85 panied by the recommendations, if any, of the planning
86 commission concerning the redevelopment plan; a state-
87 ment of the proposed method and estimated cost of
88 the acquisition and preparation for redevelopment of

89 the redevelopment project area and the estimated
90 proceeds or revenues from its disposal to redevel-
91 opers; a statement of the proposed method of fi-
92 nancing the redevelopment project; and a statement of
93 a feasible method proposed for the relocation of families
94 to be displaced from the redevelopment project
95 area.

96 (h) The governing body of the community shall hold
97 a public hearing on any redevelopment plan or sub-
98 stantial modification thereof recommended by the au-
99 thority, after public notice thereof by publication as a
100 Class II legal advertisement in compliance with the
101 provisions of article three, chapter fifty-nine of this code,
102 and the publication area for such publication shall be
103 the community. The last publication shall be at least
104 ten days prior to the date set for the hearing. The
105 notice shall describe the time, date, place and purpose
106 of the hearing and shall also generally identify the area
107 to be redeveloped under the plan. All interested parties
108 shall be afforded at such public hearing a reasonable
109 opportunity to express their views respecting the pro-
110 posed redevelopment plan.

111 (i) Following such hearing, the governing body may
112 approve a redevelopment plan if it finds that said plan
113 is feasible and in conformity with the general plan for
114 the development of the community as a whole: *Pro-*
115 *vided*, That if the redevelopment project area is a blighted
116 area, the governing body must also find that a shortage
117 of housing of sound standards and designs, adequate
118 for family life, exists in the community; the need for
119 housing accommodations has been or will be increased
120 as a result of the clearance of slums in other areas under
121 redevelopment; the conditions of blight in the redevelop-
122 ment project area and the shortage of decent, safe and
123 sanitary housing cause or contribute to an increase
124 in and spread of disease and crime and constitute a
125 menace to the public health, safety, morals or welfare;
126 and that the development of the blighted area for pre-
127 dominantly residential uses is an integral part of and
128 essential to the program of the community for the elimi-
129 nation of slum areas. A redevelopment plan which has

130 not been approved by the governing body when recom-
131 mended by the authority may again be recommended
132 to it with any modifications deemed advisable.

133 (j) A redevelopment plan may be modified at any
134 time by the authority: *Provided*, That if modified after
135 the lease or sale of real property in the redevelopment
136 project area, the modification must be consented to by
137 the redeveloper or redevelopers of such real property
138 or his successor, or their successors in interest affected
139 by the proposed modification. Where the proposed
140 modification will substantially change the redevelopment
141 plan as previously approved by the governing body the
142 modification must similarly be approved by the govern-
143 ing body.

§16-18-7. Disposal of property in redevelopment project.

1 (a) An authority may sell, lease, exchange or other-
2 wise transfer real property or any interest therein in
3 a redevelopment project area to any redeveloper for
4 residential, recreational, commercial, industrial or other
5 uses or for public use in accordance with the redevelop-
6 ment plan, subject to such covenants, conditions and
7 restrictions as it may deem to be in the public interest
8 or to carry out the purposes of this article: *Provided*,
9 That such sale, lease, exchange or other transfer, and
10 any agreement relating thereto, may be made only after,
11 or subject to, the approval of the redevelopment plan
12 by the governing body of the community. Such real
13 property shall be sold, leased or transferred at its fair
14 value for uses in accordance with the redevelopment
15 plan notwithstanding such value may be less than the
16 cost of acquiring and preparing such property for rede-
17 velopment. In determining the fair value of real prop-
18 erty for uses in accordance with the redevelopment plan,
19 an authority shall take into account and give consider-
20 ation to the uses and purposes required by such plan;
21 the restrictions upon, and the covenants, conditions and
22 obligations assumed by the redeveloper of, such prop-
23 erty; the objectives of the redevelopment plan for the
24 prevention of the recurrence of slum or blighted areas;
25 and such other matters as the authority shall specify

26 as being appropriate. In fixing rentals and selling prices,
27 an authority shall give consideration to appraisals of the
28 property for such uses made by land experts em-
29 ployed by the authority.

30 (b) An authority shall publish the following notice
31 as a Class II legal advertisement in compliance with the
32 provisions of article three, chapter fifty-nine of this code,
33 and the publication area for such publication shall be
34 the community. The notice shall be published prior to
35 the consideration of any redevelopment contract proposal,
36 and shall invite proposals from, and make available all
37 pertinent information to private redevelopers or any
38 persons interested in undertaking the redevelopment of
39 an area, or any part thereof, which the governing body
40 has declared to be in need of redevelopment. Such notice
41 shall identify the area, and shall state that such further
42 information as is available may be obtained at the office
43 of the authority. The authority shall consider all rede-
44 velopment proposals and the financial and legal ability
45 of the prospective redevelopers to carry out their pro-
46 posals and may negotiate with any redevelopers for pro-
47 posals for the purchase or lease of any real property in
48 the redevelopment project area. The authority may
49 accept such redevelopment contract proposal as it deems
50 to be in the public interest and in furtherance of the
51 purposes of this article: *Provided*, That the authority
52 has, not less than thirty days prior thereto, notified the
53 governing body in writing of its intention to accept such
54 redevelopment contract proposal. Thereafter, the au-
55 thority may execute such redevelopment contract in ac-
56 cordance with the provisions of subsection (a) and de-
57 liver deeds, leases and other instruments and take all
58 steps necessary to effectuate such redevelopment con-
59 tract. In its discretion, the authority may, without re-
60 gard to the foregoing provisions of this subsection, dis-
61 pose of real property in a redevelopment project area
62 to private redevelopers for redevelopment under such
63 reasonable competitive bidding procedures as it shall
64 prescribe, subject to the provisions of subsection
65 (a).

66 (c) In carrying out a redevelopment project, an
67 authority may:

68 (1) Convey to the community in which the project
69 is located, such real property as, in accordance with the
70 redevelopment plan, is to be laid out into streets, alleys,
71 and public ways;

72 (2) Grant servitudes, easements and right of ways,
73 for public utilities, sewers, streets and other similar
74 facilities, in accordance with the redevelopment plan;
75 and

76 (3) Convey to the municipality, county or other ap-
77 propriate public body, such real property as, in accordance
78 with the redevelopment plan, is to be used for parks,
79 schools, public buildings, facilities or other public
80 purposes.

81 (d) An authority may temporarily operate and main-
82 tain real property in a redevelopment project area pend-
83 ing the disposition of the property for redevelopment,
84 without regard to the provisions of subsections (a) and
85 (b) above, for such uses and purposes as may be deemed
86 desirable even though not in conformity with the rede-
87 velopment plan.

§16-18-10. Bonds.

1 (a) An authority shall have power to issue bonds
2 from time to time in its discretion for any of its cor-
3 porate purposes including the payment of principal and
4 interest upon any advances for surveys and plans for
5 redevelopment projects. An authority shall also have
6 power to issue refunding bonds for the purpose of pay-
7 ing or retiring or in exchange for bonds previously is-
8 sued by it. An authority may issue such types of bonds
9 as it may determine, including (without limiting the
10 generality of the foregoing) bonds on which the prin-
11 cipal and interest are payable:

12 (1) Exclusively from the income, proceeds and reve-
13 nues of the redevelopment project financed with the pro-
14 ceeds of such bonds; or

15 (2) Exclusively from the income, proceeds, and
16 revenues of any of its redevelopment projects whether

17 or not they are financed in whole or in part with the
18 proceeds of such bonds: *Provided*, That any such bonds
19 may be additionally secured by a pledge of any loan,
20 grant or contributions, or parts thereof, from the federal
21 government or other sources, or a mortgage of any rede-
22 velopment project or projects of the authority.

23 (b) Neither the commissioners of an authority nor
24 any person executing the bonds shall be liable per-
25 sonally on the bonds by reason of the issuance thereof.
26 The bonds and other obligations of the authority (and
27 such bonds and obligations shall so state on their face)
28 shall not be a debt of the municipality, the county, or
29 the state and neither the municipality, the county, nor
30 the state shall be liable thereon, nor in any event shall
31 such bonds or obligations be payable out of any funds
32 or properties other than those of said authority acquired
33 for the purposes of this article. The bonds shall not
34 constitute an indebtedness within the meaning of any
35 constitutional or statutory debt limitation or restriction.
36 Bonds of an authority are declared to be issued for an
37 essential public and governmental purpose and to be
38 public instrumentalities and, together with interest there-
39 on and income therefrom, shall be exempt from all taxes.
40 Such bonds need not be offered by the authority to
41 the state sinking fund commission at any time and
42 an authority shall not be required to turn over
43 any surplus or sinking funds to the state sinking
44 fund commission.

45 (c) Bonds of an authority shall be authorized by its
46 resolution and may be issued in one or more series and
47 shall bear such date or dates, be payable upon demand or
48 mature at such time or times, bear interest at such rate
49 or rates, not exceeding six per centum per annum, be
50 in such denomination or denominations, be in such form
51 either coupon or registered, carry such conversion or
52 registration privileges, have such rank or priority, be
53 executed in such manner, be payable in such medium
54 of payment, at such place or places, and be subject to
55 such terms of redemption (with or without premium)
56 as such resolution, its trust indenture or mortgage may
57 provide.

58 (d) The bonds shall be sold at not less than par at
59 public sale held after notice published as a Class I legal
60 advertisement in compliance with the provisions of arti-
61 cle three, chapter fifty-nine of this code, and the pub-
62 lication area for such publication shall be the area of
63 operation. Such publication shall be made at least ten days
64 prior to such sale. The notice may be published in such
65 other medium of publication as the authority may deter-
66 mine: *Provided*, That such bonds may be sold to the fed-
67 eral government at private sale at not less than par, and,
68 in the event less than all of the bonds authorized in con-
69 nection with any project or projects are sold to the federal
70 government, the balance of such bonds may be sold at pri-
71 vate sale at not less than par at an interest cost to the au-
72 thority of not to exceed the interest cost to the authority of
73 the portion of the bonds sold to the federal government.

74 (e) In case any of the commissioners or officers of
75 the authority whose signatures appear on any bonds or
76 coupons shall cease to be such commissioners or officers
77 before the delivery of such bonds, such signatures shall,
78 nevertheless, be valid and sufficient for all purposes,
79 the same as if such commissioners or officers had re-
80 mained in office until such delivery. Any provision of
81 any law to the contrary notwithstanding, any bonds
82 issued pursuant to this article shall be fully nego-
83 tiable.

84 (f) In any suit, action or proceedings involving the
85 validity or enforceability of any bond of an authority
86 or the security therefor, any such bond reciting in sub-
87 stance that it has been issued by the authority to aid
88 in financing a redevelopment project, as herein defined,
89 shall be conclusively deemed to have been issued for
90 such purpose and such project shall be conclusively
91 deemed to have been planned, located and carried out in
92 accordance with the purposes and provisions of this
93 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
3 and control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other agen-
5 cies of the state, political subdivisions of the state, other
6 states, agencies of the federal government, industries,
7 and with affected groups in furtherance of the declared
8 purposes of this article;

9 (3) To encourage and conduct such studies and re-
10 search relating to air pollution and its control and abate-
11 ment as the commission may deem advisable and
12 necessary;

13 (4) To adopt and to promulgate reasonable regula-
14 tions, not inconsistent with the provisions of this article,
15 relating to the control of air pollution: *Provided*, That
16 no rule or regulation of the commission shall specify
17 the design of equipment, type of construction, or par-
18 ticular method which a person shall use to reduce the
19 discharge of air pollutants, nor shall any such rule or
20 regulation apply to any aspect of an employer-employee
21 relationship;

22 (5) To enter orders requiring compliance with the
23 provisions of this article and the regulations lawfully
24 promulgated hereunder;

25 (6) To consider complaints, subpoena witnesses, ad-
26 minister oaths, make investigations, and hold hearings
27 relevant to the promulgation of regulations and the
28 entry of compliance orders hereunder;

29 (7) To encourage voluntary cooperation by munici-
30 palities, counties, industries and others in preserving the
31 purity of the air within the state;

32 (8) To employ personnel, including specialists and
33 consultants, purchase materials and supplies, and enter
34 into contracts necessary, incident or convenient to the
35 accomplishment of the purposes of this article;

36 (9) To enter at reasonable times upon any private
37 or public property for the purpose of investigating an

38 alleged statutory air pollution: *Provided, however,* That
39 no such investigation shall extend to information re-
40 lating to secret processes or methods of manufacturing
41 or production;

42 (10) Upon reasonable evidence of a violation of this
43 article, which presents an imminent and serious hazard
44 to public health, to give notice to the public or to that
45 portion of the public which is in danger by any and all
46 appropriate means;

47 (11) To cooperate with, receive and expend money
48 from the federal government and other sources;

49 (12) To represent the state in any and all matters
50 pertaining to plans, procedures and negotiations for
51 interstate compacts in relation to the control of air pol-
52 lution; and

53 (13) To appoint technical advisory councils from such
54 areas of the state as it may determine. Each such coun-
55 cil so appointed shall consist of not more than five
56 members for each area so designated, at least two of
57 whom shall be truly representative of industries op-
58 erating within such area, and may advise and consult
59 with the commission about all matters pertaining to
60 the regulation, control and abatement of air pollution
61 within such area.

62 The attorney general and his assistants and the prose-
63 cuting attorneys of the several counties shall render to
64 the commission without additional compensation such
65 legal services as the commission may require of them to
66 enforce the provisions of this article.

67 No rule or regulation of the commission pertaining to
68 the control, reduction or abatement of air pollution shall
69 become effective until after at least one public hearing
70 thereon shall have been held by the commission within
71 the state. Notice to the public of the time and place
72 of any such hearing shall be given by the commission
73 at least thirty days prior to the scheduled date of such
74 hearing by advertisement published as a Class II legal
75 advertisement in compliance with the provisions of arti-
76 cle three, chapter fifty-nine of this code, and the publi-
77 cation area for such publication shall be the county

78 wherein such hearing is to be held. Full opportunity
79 to be heard shall be accorded to all persons in attendance
80 and any person, whether or not in attendance at such
81 hearing, may submit in writing his views with respect
82 to any such rule or regulation to the commission within
83 thirty days after such hearing. After such thirty-day
84 period, no views or comments shall be received in writing
85 or otherwise, unless formally solicited by the commission.
86 The proceedings at the hearing before the commission
87 shall be recorded by mechanical means or otherwise as
88 may be prescribed by the commission. Such record of
89 proceedings need not be transcribed unless requested by
90 an interested party, in which event the prevailing rates
91 for such transcripts will be required from such interested
92 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, etc.; bidding procedure.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

1 All work of construction and reconstruction of state
2 roads and bridges, and the furnishing of all materials and
3 supplies therefor, and for the repair thereof shall be done
4 and furnished pursuant to contract except that the com-
5 missioner shall not be required to award any contract
6 for work, which can be done advantageously, economi-
7 cally and practicably by commission forces or prison
8 labor and by use of state road equipment, or for mate-
9 rials and supplies, which are manufactured, processed
10 or assembled by the commissioner: *Provided, however,*
11 That the commissioner shall not be required to award
12 any contract for work, materials or supplies for an
13 amount less than three thousand dollars. In all such
14 work, the commissioner shall utilize state road forces or
15 prison labor and state road equipment and shall manu-

16 facture, process and assemble all such materials and
17 supplies for such work whenever and wherever the com-
18 missioner, in his discretion, finds such work and services
19 advantageous, economical and practicable in the state
20 road program.

21 When the commissioner is about to construct, recon-
22 struct, or improve any road or highway, he shall cause
23 to be filed with the clerk of the county court, or of the
24 municipality, as the case may be, in which such road
25 lies, a certified copy of the plans and specifications there-
26 for, and a notice that the commissioner is about to enter
27 upon and proceed with the work in question. If the
28 work is to be done, or the materials therefor are to be
29 furnished by contract, the commissioner shall thereupon
30 publish the following described advertisement as a
31 Class II legal advertisement in compliance with the pro-
32 visions of article three, chapter fifty-nine of this code,
33 and the publication area for such publication shall be
34 the county or municipality in which the road lies. Such
35 advertisement shall also be published at least once in
36 at least one daily newspaper published in the city of
37 Charleston and in such other journals or magazines as
38 may to the commissioner seem advisable. The advertise-
39 ment shall solicit sealed proposals for the construction
40 or other improvement of such road, and for the furnish-
41 ing of materials therefor, accurately describing the same,
42 and stating the time and place for opening such pro-
43 posals and reserving the right to reject any and all pro-
44 posals: *Provided, however,* That whenever the esti-
45 mated amount of any contract for work or for materials
46 or supplies is less than three thousand dollars, the com-
47 missioner shall not be required to advertise the letting
48 of said contract in newspapers as above required, but
49 may award the contract to the lowest responsible bidder,
50 when two or more sealed proposals or bids have been
51 received by him without such advertisement, but such
52 contract shall not be so awarded unless the bid of the
53 successful bidder is three thousand dollars or less. The
54 commissioner shall have the power to prescribe proper
55 prequalifications of contractors bidding on state road
56 construction work. To all sealed proposals there shall

57 be attached the certified check of the bidder or bidder's
 58 bond acceptable to the commissioner, in such amount
 59 as the commissioner shall specify in the advertisement,
 60 but not to exceed five per cent of the aggregate amount
 61 of the bid; but such amount shall never be less than
 62 five hundred dollars. Such proposals shall be publicly
 63 opened and read at the time and place specified in the
 64 advertisement, and the contract for such work, or for
 65 the supplies or materials required therefor shall, if let,
 66 be awarded by the commissioner to the lowest respon-
 67 sible bidder for the type of construction selected. In
 68 case all bids be rejected, the commissioner may there-
 69 after do the work with commission forces or with prison
 70 labor, or may readvertise in the same manner as before
 71 and let a contract for such work pursuant thereto.

**ARTICLE 10. COUNTY COURTS; GENERAL AUTHORITY AND
 DUTIES AS TO ROADS.**

Section

8. Contracts—advertisement for letting.
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.

§17-10-8. Contracts—Advertisement for letting.

1 In case the county court desires to contract for the
 2 construction, reconstruction or maintenance of a road
 3 or bridge or for the purchase of supplies and equip-
 4 ment, it shall advertise for the letting of the contract
 5 by publishing such advertisement as a Class II legal
 6 advertisement in compliance with the provisions of article
 7 three, chapter fifty-nine of this code, and the publication
 8 area for such publication shall be the county. Such pub-
 9 lication shall be so made within fourteen consecutive days
 10 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
 2 and bridges under the control of the county court shall
 3 be received at the courthouse of the county at the time

4 specified in the advertisement, and shall be opened only
5 in open court, and the amount and items comprising
6 each bid shall be publicly announced, and the contract,
7 if let, shall be awarded to the lowest bidder for the type
8 of construction selected. The contractor shall give bond
9 with security to be approved by the court in an amount
10 equal to fifty per cent of the contract price, conditioned
11 for the faithful performance of the contract.

12 After such bids have been opened the county court
13 shall publish immediately the names of all persons bid-
14 ding on such contract, together with the itemized amount
15 of their respective bids, designating the person to whom
16 such contract was awarded, if awarded, together with
17 the amount of his bid. Such information shall be pub-
18 lished as a Class II legal advertisement in compliance
19 with the provisions of article three, chapter fifty-nine
20 of this code, and the publication area for such publication
21 shall be the county.

22 The court may reject any and all bids, and may there-
23 after have the work done in any other manner that it
24 may deem advisable. If there be two bids of the same
25 amount for any section of road, or for any other im-
26 provement thereon, the court shall have the power to
27 accept either of such bids.

28 The court may reserve from payment not more than
29 twenty per cent of the amount accruing on the contract
30 until the work has been completed and approved.

31 Any person who shall open any of the bids at any
32 other time or place than herein provided, or shall make
33 known the name of the bidder, or the amount of his
34 bid, otherwise than as herein provided, shall be guilty
35 of a misdemeanor, and, upon conviction thereof, shall
36 be fined not less than fifty nor more than two hundred
37 dollars, and be imprisoned in the county jail not less than
38 one nor more than six months. Any member of the
39 county court who shall violate any of the provisions of
40 this section shall be deemed guilty of a misdemeanor,
41 and, upon conviction, shall in addition to the penalties
42 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
2 in section thirteen-c and for the supplemental retire-
3 ment benefits provided for in section thirteen-f of this
4 article, as well as for other insurance benefits for any
5 and all persons employed by it at institutions of higher
6 learning under its control, the state board of education
7 shall solicit proposals for the coverage sought, which
8 proposals shall be obtained by public notice published
9 as a Class II legal advertisement in compliance with the
10 provisions of article three, chapter fifty-nine of this
11 code, and the publication area for such publication shall
12 be the state. Such notice shall be so published within
13 fourteen consecutive days next preceding the final date for
14 submitting proposals. The board may also solicit proposals
15 by sending requests by mail to prospective insurers. Upon
16 receipt and consideration of such proposals as may be
17 submitted the board shall have the authority to accept
18 the proposal of and contract with the insurer offering
19 the insurance program or programs determined by the
20 board, in its judgment, to be the most desirable to the
21 beneficiaries thereof, whether such insurer be then
22 licensed as an insurance company in this state or not:
23 *Provided*, That no contract shall be made effective un-
24 less and until the insurance company becomes licensed
25 as a life insurance company in accordance with article
26 three, chapter thirty-three of this code, as amended:
27 *Provided further*, That if such insurer shall be a life
28 insurance company organized and operated without
29 profit to any private shareholder or individual exclu-
30 sively 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-

39 ing the amount paid to each and the purpose for which
40 paid.

CHAPTER 19. AGRICULTURE.

Article

- 4. Cooperative Associations.
- 9. Diseases Among Domestic Animals.
- 17. Fences
- 21. Drainage Districts.
- 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
2 or more regular meetings annually. The board of direc-
3 tors shall have the right to call a special meeting at
4 any time; and ten per cent of the members or stock-
5 holders may file a petition stating the specific business
6 to be brought before the association and demand a special
7 meeting at any time. Such meeting must thereupon be
8 called by the directors. Notice of all meetings, together
9 with a statement of the purposes thereof, shall be mailed
10 to each member at least ten days prior to the meeting:
11 *Provided, however,* That the bylaws may require in-
12 stead that such notice may be given as provided by this
13 section, namely, as a Class I legal advertisement in com-
14 pliance with the provisions of article three, chapter
15 fifty-nine of this code, and the publication area for such
16 publication shall be the county in which the principal
17 place of business of the association is located.

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

Section

- 15. Establishment of general quarantine.

§19-9-15. Establishment of general quarantine.

1 A general quarantine may be established and main-
2 tained whenever any communicable disease of domestic
3 animals shall exist in any locality in the state larger
4 in extent than that which may be included in a
5 special quarantine. A general quarantine shall be estab-

6 lished and maintained by order of the commissioner
7 only; but in establishing and maintaining such quarantine
8 the commissioner may act through and by an officer or
9 agent employed by him, to whom such power is delegated,
10 and the establishment and maintenance of such quar-
11 antine by any officer, agent or employee of the com-
12 missioner shall be prima facie the establishment and
13 maintenance of quarantine by the commissioner. Such
14 quarantine shall include such premises, locality or ter-
15 ritorial district, and such animals, and shall continue
16 for such time, as may be deemed necessary by the com-
17 missioner. Whenever any premises or any locality or
18 territorial district shall be placed under a general quar-
19 antine, it shall be the duty of the officer, agent or em-
20 ployee by whom the order of quarantine is executed, to
21 post at least ten notices in the most public places within
22 the premises, locality or territorial district quarantined,
23 declaring the quarantine and the duration thereof,
24 the extent and limits of the premises, locality, or ter-
25 ritorial district so quarantined, and the animals subject
26 thereto. A copy of such notice shall be published as a
27 Class I legal advertisement in compliance with the pro-
28 visions of article three, chapter fifty-nine of this code,
29 and the publication area for such publication shall
30 be the quarantined area. If the quarantine shall be for
31 the purpose of preventing the spread of rabies or
32 hydrophobia, and in the case of other communicable dis-
33 eases, if the commissioner deems such action necessary,
34 the notice shall require all dogs within the quarantined
35 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.

- 1 All rivers and streams, and parts thereof, within this
2 state, which are lawful fences at the time this code takes
3 effect, under existing laws, shall continue such until
4 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.

Section

4. Appointment of engineer; duties and compensation thereof; notice 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 other lands; report of appraisers; compensation.
14. Publication of appraisers' report.
21. When taxes payable; suit by supervisors to collect delinquent taxes; suit by bondholder.

§19-21-4. Appointment of engineer; duties and compensation thereof; notice of application to form drainage district.

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

11 ascertain in a general manner the limits of the region
12 which will be benefited by the proposed improvements,
13 and the names of the landowners and the approximate
14 acreage of each landowner's holdings, as nearly as they
15 can be determined without actual survey, and file a
16 report of his findings with the clerk of the circuit court
17 at the earliest date practicable. In his report the engi-
18 neer shall give a general idea of the improvements re-
19 quired and an approximate estimate of their cost, to-
20 gether with such other suggestions as he may think will
21 be of service to the court in passing on the prayer of
22 the petitioners. For service rendered in this connection
23 the compensation of the engineer shall be fixed by the
24 court.

25 Immediately upon the filing of the engineer's report,
26 the clerk of the circuit court shall give notice by causing
27 publication to be made as a Class II legal advertise-
28 ment in compliance with the provisions of article three,
29 chapter fifty-nine of this code, and the publication area
30 for such publication shall be each county in which are
31 situated lands of the proposed district. The last publi-
32 cation shall be made at least fifteen days prior to the
33 first day of the next regular or special term of the circuit
34 court at which such petition is to be heard. Such notice
35 shall be substantially in the following form which shall
36 be deemed sufficient for all purposes of this article:

37 NOTICE OF APPLICATION TO FORM
38 DRAINAGE DISTRICT.

39 Notice is hereby given to all persons interested in the
40 following described real estate in _____ county
41 of West Virginia (here describe the property as set out
42 in the petition) that a petition asking that the foregoing
43 lands and other property be formed into a drainage dis-
44 trict under the provisions of the statutes of West Vir-
45 ginia, and that the lands and other property above de-
46 scribed will be affected by the formation of such drain-
47 age district and be rendered liable for taxation for the
48 purposes of paying the expenses of organizing, making
49 and maintaining the improvements that may be found
50 necessary to drain, protect and reclaim the lands and
51 other property in said district, and you and each of

52 you are hereby notified to appear at a term of the circuit
53 court of _____ county, to be held on the
54 _____ day of _____, 19____, at the court-
55 house thereof, and show cause, if any there be, why
56 such drainage district, as set forth in the petition, should
57 not be organized.

58 _____
59 Clerk of the Circuit Court _____ County.

60 The circuit court of the county in which the petition
61 shall have been filed shall thereafter maintain and have
62 original and exclusive jurisdiction coextensive with the
63 boundaries and limits of such district, without regard
64 to county lines, for all purposes of this article.

**§19-21-6. First meeting of owners; election of board of super-
visors.**

1 Within thirty days after any drainage district shall
2 have been organized and established under the provi-
3 sions of this article the circuit clerk of the court organiz-
4 ing such district shall call a meeting of the owners of
5 real estate or other property situate in such district,
6 at a day and hour specified, in some public place in the
7 county in which the district was organized, for the pur-
8 pose of electing a board of three supervisors, to be com-
9 posed of owners of real estate in such district, two of
10 whom at least shall be residents of the county or counties
11 in which such district is situate, or some adjoining coun-
12 ties. Notice of such meeting shall be given by such clerk
13 by causing publication thereof to be made as a Class II
14 legal advertisement in compliance with the provisions
15 of article three, chapter fifty-nine of this code, and the
16 publication area for such publication shall be each county
17 in which lands of the district are situate. The last publi-
18 cation shall be at least ten days before the day of such
19 meeting. The landowners, when assembled, shall organ-
20 ize by the election of a chairman and a secretary of the
21 meeting who shall conduct the election. At such election
22 each owner shall be entitled to one vote in person or by
23 proxy for every acre of land or mile of right of way
24 owned by him in such district, and the three persons
25 receiving the highest number of votes shall be declared

26 elected as supervisors. Such supervisors shall immedi-
27 ately by lot determine the terms of their office, which
28 shall be respectively one, two and three years, and they
29 shall serve until their successors shall have been elected
30 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
2 previous section, the appraisers shall begin their duties;
3 and the chief engineer or one of his assistants shall
4 accompany such appraisers at all times and shall render his
5 opinion in writing when called for. The appraisers shall
6 proceed to view the premises and determine the value of
7 all land and other property, within or without the dis-
8 trict, to be acquired and used for right of ways or other
9 works set out in "the plan for reclamation" and shall
10 assess the amount of benefits, and the amount of dam-
11 ages, if any, that will accrue to each parcel of land,
12 public highway, railroad and other right of way, rail-
13 road, roadway and other property, from carrying out
14 and putting into effect "the plan for reclamation" hereto-
15 fore adopted. The appraisers, in assessing the benefits
16 to right of ways, railroad, roadway and other right of
17 ways, railroad, roadway and other property not traversed
18 by such works and improvements as provided for in
19 "the plan for reclamation," shall not consider what
20 benefits will be derived by such property after other
21 drains, ditches, improvements or other plans for recla-
22 mation shall have been constructed, but they shall assess
23 only such benefits as will be derived from the construc-
24 tion of the works and improvements set out in "the plan
25 for reclamation," or as the same may afford protection
26 from overflow to such property. The appraisers shall
27 give due consideration and credit to any other ditch
28 or other systems of reclamation, which may have already
29 been constructed and which afford partial or complete
30 protection to any tract or parcel of land in the new
31 district, and if the appraisers shall find that any drain or
32 other works have been constructed under any general
33 or special law of this state, which can be used in making

34 the drains and improvements herein contemplated, they
35 shall include the same in their report, and thereafter
36 the board of supervisors may order such drains or such
37 works to be used, so far as they extend, for the purpose
38 of the drainage district in which they are situated, and
39 that the district or other owners of such drains or other
40 improvements or persons having an interest therein by
41 virtue of having contributed money, material or labor in
42 the construction of the same, shall be allowed, in pro-
43 portion to the interest held or owned in said drains or
44 improvements, a compensation which shall not exceed
45 the amount of such drainage district's indebtedness as
46 evidenced by outstanding script, bonds or other evi-
47 dences of indebtedness. The railroad and other right
48 of ways, railroad and other property shall be assessed
49 according to the increased physical efficiency and de-
50 creased maintenance cost by reason of the protection to
51 be derived from the proposed works and improvements.
52 The appraisers shall also assess all damages that will
53 accrue to any landowner by reason of the proposed
54 improvement, including all injury to lands taken or
55 damaged; and when they return no such assessment
56 of damages as to any tract of land, it shall be deemed
57 a finding by them that no damage will be sustained.

58 If the board of appraisers finds that other lands not
59 embraced within the boundaries of the district will be
60 affected by the proposed improvement, they shall assess
61 the estimated benefits and damages to such land and
62 shall specifically report to the court the assessments
63 which they have made on the lands beyond the bound-
64 aries of the district as already established. It shall then
65 be the duty of the clerk of the circuit court to give the
66 following described notice by publication as a Class II-0
67 legal advertisement in compliance with the provisions
68 of article three, chapter fifty-nine of this code, and the
69 publication area for such publication shall be the county
70 where such lands lie. The notice shall describe the lands
71 which have been assessed, and the owners of real prop-
72 erty so assessed shall be allowed twenty days after the
73 publication of such notice to file with the clerk of the
74 circuit court their protest against being included within

75 the district. The circuit court shall at its next session
76 investigate the question whether the lands beyond the
77 boundaries of the district so assessed by the appraisers
78 will in fact be benefited or damaged by the making of
79 the improvement; and from its findings in that regard
80 either the property owners affected by the assessment of
81 the appraisers or the district may within twenty days
82 file an appeal. If the finding is in favor of the district,
83 the limits of the district shall be extended so as to em-
84 brace any lands that may be affected by the making of
85 the improvements, and such lands shall be subject to the
86 taxes provided for in section eleven of this article. The
87 appraisers shall have no power to change "the plan for
88 reclamation" heretofore provided for.

89 The board of appraisers shall prepare a report of
90 their findings, which shall be arranged in tabular form,
91 the columns of which shall be headed as follows: Column
92 one, "owner of property assessed"; column two, "descrip-
93 tion of property assessed"; column three, "number of
94 acres assessed"; column four, "amount of benefits assessed
95 expressed in dollars and cents"; column five, "number
96 of acres taken for right of way"; column six, "value of
97 property taken"; column seven, "damages assessed."
98 They shall also, by and with the advice of the engineer
99 of the district, estimate the cost of works set out in
100 "the plan for reclamation," which estimate shall include
101 the cost of property required for right of ways and dam-
102 ages and the actual expenses of organization and ad-
103 ministration, as estimated by the board of supervisors,
104 and shall itemize and tabulate the same. Such reports
105 shall be signed by at least a majority of the appraisers
106 and filed in the office of the circuit clerk in which the
107 petition was filed. The secretary of the board of super-
108 visors, or his deputy, shall accompany such appraisers
109 while engaged in their duties, and shall perform all the
110 clerical work of such board; he shall also, under the
111 advice, supervision and direction of the attorney for the
112 district, prepare their report. The board of appraisers
113 shall report to the board of supervisors the number of
114 days each had been employed and the actual expenses
115 incurred. Each appraiser shall be paid five dollars per

116 day for his services, and necessary expenses in addition
117 thereto.

§19-21-14. Publication of appraisers' report.

1 Upon the filing of the report of the appraisers, the
2 clerk of such court shall give notice thereof by causing
3 publication of such report to be made as a Class II-0
4 legal advertisement in compliance with the provisions
5 of article three, chapter fifty-nine of this code, and the
6 publication area for such publication shall be each
7 county in the district. Notice shall be in form as
8 follows:

9 NOTICE OF FILING OF APPRAISERS'
10 REPORT

11 For _____ Drainage District.

12 Notice is hereby given to all persons interested in any
13 land and property included within _____ Drain-
14 age District in _____ county (or counties),
15 West Virginia, that the appraisers heretofore appointed
16 to assess benefits and damages to the property and lands
17 situated in such drainage district and to appraise the
18 cash value of the land necessary to be taken for right
19 of ways and other works of such district, within or with-
20 out the limits of such district, filed their report in this
21 office on the ____ day of _____, 19____, as follows:
22 (Here insert report of appraisers.) And you and each
23 of you are hereby notified that you may examine such
24 report and file exceptions to all or any part thereof, as
25 provided by law.

26
27 Clerk of the Circuit Court of _____ County, West
28 Virginia.

29 *Provided*, That where lands in different counties are
30 contained in such report, it shall not be necessary to
31 publish in each county the appraisers' report on all of
32 such lands in such district, but only that part relating
33 to property situate in the respective counties.

§19-21-21. When taxes payable; suit by supervisors to collect delinquent taxes; suit by bondholder.

1 All taxes levied under the terms of this article shall

2 be payable between the first day of October and the
3 last day of December of each year; and if any taxes
4 levied by the board of supervisors in pursuance to this
5 article are not paid at maturity, the sheriff shall not
6 embrace such taxes in the taxes for which he shall sell
7 the lands, but he shall report such delinquencies
8 to the board of supervisors of such district, who
9 shall add to the amount of the tax a penalty of
10 twenty-five per cent. The board of supervisors shall
11 enforce the collection of such delinquent taxes by chan-
12 cery proceedings in the circuit court of the county in
13 which the lands are situated; and said court shall give
14 judgment against such lands, or other property, for the
15 amount of such taxes and the penalty of twenty-five
16 per cent, and interest on the same, from the end of the
17 period allowed for the collection thereof, at the rate
18 of six per cent per annum, and all costs of the
19 proceedings. Such judgment shall provide for the sale
20 of such delinquent lands for cash, by a commissioner
21 of the court, after advertisement hereinafter set out.
22 Such proceeds and judgment shall be in the nature
23 of proceedings in rem, and it shall be immaterial
24 that the ownership of such lands be incorrectly alleged
25 in such proceedings, and such judgment shall be en-
26 forced wholly against such lands or other property so
27 assessed, and not against any other property or estate
28 of the defendant. All or any part of such delinquent
29 lands or other property for each of such counties may be
30 included in one suit for each county, instituted for the
31 collection of such delinquent taxes, together with
32 interest, penalties and costs, as aforesaid; and notice
33 of the pendency of such suit shall be given by pub-
34 lication before judgment is entered for the sale of
35 such lands or other property, which notice shall be
36 published as a Class III-0 legal advertisement in com-
37 pliance with the provisions of article three, chapter
38 fifty-nine of this code, and the publication area for such
39 publication shall be the county where such suits may
40 be pending. The public notice may be in the following
41 terms:

42 Board of Supervisors, _____ Drainage District

43 v.

44 Delinquent lands.

45 All persons having or claiming an interest in any of
46 the following described lands are hereby notified that
47 suit is pending in the circuit court of _____
48 county, West Virginia, to enforce the collection of certain
49 drainage taxes on the subjoined list of lands, the name
50 of each supposed owner having been set opposite his or
51 her or its lands, together with the amounts severally due
52 from each, to wit:

53 (Then shall follow a list of supposed owners, with a
54 descriptive list of such delinquent lands, and the
55 amounts due thereon respective as aforesaid, and
56 such public notice may conclude in the following
57 form:)

58 All persons and corporations interested in such lands
59 are hereby notified that they are required by law to
60 appear within thirty days after the first publication
61 hereof and make defense to such suit, or the same will
62 be taken for confessed and final judgment will be
63 entered directing the sale of such lands for the purpose
64 of collecting such taxes, together with the payment of
65 interest, penalty and costs allowed by law.

66

67

Clerk of said Court.

68 Such suit shall be set for trial at the first term of
69 court after the completion of such publication, unless
70 a continuance be granted for good cause shown, within
71 the discretion of the court; and such continuance may
72 be granted as to a part of such lands or defendants,
73 without affecting the duty of the court to dispose finally
74 of the others as to whom no continuance may be granted,
75 and in all cases where notice has been properly given
76 as aforesaid, and where no answer has been filed, or if
77 filed, and the cause decided for the plaintiff, the court
78 by its decree shall grant the relief as prayed for in the
79 complaint and shall direct such commissioner to sell the
80 lands or other property described in the complaint
81 at the front door of the courthouse of the county

82 wherein the decree is entered, at public outcry, to the
83 highest and best bidder for cash in hand, after having
84 first advertised such sale (such advertisement may in-
85 clude all the lands described in the decree) as a Class
86 III-0 legal advertisement in compliance with the provi-
87 sions of article three, chapter fifty-nine of this code, and
88 the publication area for such publication shall be the
89 county. If all the lands or other property be not sold
90 on the day as advertised, such sale shall continue from
91 day to day until completed. The commissioner shall
92 sell such lands as directed, and the court, upon approval
93 and confirmation of such sale, shall appoint a commis-
94 sioner to execute proper deeds conveying to the pur-
95 chaser the lands and other property so sold, and the title
96 to such lands and other property shall thereupon become
97 vested in such purchaser as against all others whomso-
98 ever, saving to infants and to insane persons having no
99 guardian or committee the right they now have by law
100 to appear and except to such proceedings within three
101 years after their disabilities are removed.

102 In all suits brought under this section a reasonable
103 attorney's fee shall be taxed in favor of the attorney for
104 the plaintiff, which fee shall be added to the amount
105 of the costs.

106 In case the supervisors shall fail to commence suit
107 within sixty days after the taxes become delinquent,
108 the holder of any bond issued by the district shall have
109 right to bring suit for collection of the delinquent as-
110 sessments, and the proceedings in such suit brought by
111 the bondholder shall in all respects be governed by the
112 provisions applicable to suits by the supervisors.

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

Section

3. Definitions.

§19-21A-3. Definitions.

1 Wherever used or referred to in this article, unless
2 a different meaning clearly appears from the context:

3 (1) "District" or "soil conservation district" means
4 a subdivision of this state, organized in accordance with
5 the provisions of this article, for the purposes, with the

6 powers, and subject to the restrictions hereinafter set
7 forth.

8 (2) "Supervisor" means one of the members of the
9 governing body of a district, elected or appointed in ac-
10 cordance with the provisions of this article.

11 (3) "Committee" or "state soil conservation com-
12 mittee" means the agency created in section four of this
13 article.

14 (4) "Petition" means a petition filed under the pro-
15 visions of subsection (a), of section five of this article for
16 the creation of a district.

17 (5) "State" means the state of West Virginia.

18 (6) "Agency of this state" includes the government
19 of this state and any subdivision, agency, or instru-
20 mentality, corporate or otherwise, of the government of
21 this state.

22 (7) "United States" or "agencies of the United States"
23 includes the United States of America, the soil conserva-
24 tion service of the United States department of agricul-
25 ture, and any other agency or instrumentality, corporate
26 or otherwise, of the United States of America.

27 (8) "Landowners" or "owners of land" includes any
28 person or persons, firm, or corporation who shall hold
29 title to three or more acres of any lands lying within a
30 district organized under the provisions of this article.

31 (9) "Land occupier" or "occupier of land" includes
32 any person, firm, or corporation who shall hold title to,
33 or shall be in possession of, any lands lying within a
34 district organized under the provisions of this article,
35 whether as owner, lessee, renter, or tenant.

36 (10) "Due notice" means notice published as a Class
37 II legal advertisement in compliance with the provisions
38 of article three, chapter fifty-nine of this code, and the
39 publication area for such publication shall be the county
40 in which is located the appropriate area. At any hearing
41 held pursuant to such notice at the time and place desig-
42 nated in such notice, adjournment may be made from
43 time to time without the necessity of renewing such
44 notice for such adjournment dates.

45 (11) The terms "soil conservation," "erosion control,"
46 or "erosion prevention projects," when used throughout
47 the article, shall denote those projects that have been
48 established by federal agencies in cooperation with state
49 agencies for the purpose of demonstrating soil erosion
50 control and water conservation practices.

51 (12) The term "governing body" means the super-
52 visors of any soil conservation district, town or city,
53 council, city commission, county court, or body acting
54 in lieu of a county court, in this state, and the term "gov-
55 ernmental division" means any soil conservation district,
56 town, city, or county in this state.

57 (13) "Works of improvement" means such structures
58 as may be necessary or convenient for flood prevention
59 or the conservation, development, utilization or disposal
60 of water.

ARTICLE 23. HORSE RACING.

Section

8. Disposition of funds for payment of outstanding pari-mutuel tick-
ets; 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 out-
2 standing pari-mutuel tickets, if not claimed within ninety
3 days after the close of any race meeting, shall be turned
4 over by the licensee to the commission within fifteen
5 days after the expiration of such ninety-day period, and
6 the licensee shall give such information as the com-
7 mission may require concerning such outstanding and
8 unredeemed tickets. All such moneys shall be deposited
9 by the commission and kept by it in a special account
10 to be known as "West Virginia Racing Commission Spe-
11 cial Account—Unredeemed Pari-Mutuel Tickets." Notice
12 of the amount, time and place of such deposit shall be
13 given by the commission, in writing, to the state treasurer.
14 The commission shall cause to be published a notice to
15 the holders of such unredeemed tickets, notifying them
16 to present such tickets for the payment at the office of
17 the commission in the city of Charleston within ninety

18 days from the date of the publication of such notice.
19 Such notice shall be published in the week following
20 the close of any race meeting as a Class I legal adver-
21 tisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code, and the publication
23 area for such publication shall be the county in which
24 such race meeting was held.

25 Any such tickets that shall not be presented for pay-
26 ment within ninety days from the date of the publication
27 of the notice shall thereafter be irredeemable, and the
28 moneys theretofore held for the redemption of such
29 tickets shall become the property of the commission, and
30 be deposited, as aforesaid, and be expended as follows:

31 To the owner of the winning horse in any horse race,
32 at any horse race track licensed in this state, provided
33 that the owner of such horse is at the time, of such
34 race, a bona fide resident of this state, a sum equal to
35 ten per cent of the purse won by such horse.

36 To the breeder, that is the owner of the mare, of the
37 winning horse in any horse race, at any horse race track
38 licensed in this state, provided, that such breeder was,
39 at the time such winning horse was foaled, a bona fide
40 resident of this state, a sum equal to ten per cent of the
41 purse won by such horse.

42 To the owner of the stallion which sired the winning
43 horse in any horse race, at any horse race track licensed
44 in this state, provided, that the mare which foaled such
45 winning horse, was served by such stallion in this state,
46 and the owner of such stallion, was, at the time of such
47 service, a bona fide resident of this state, a sum equal to
48 ten per cent of the purse won by such horse.

49 One person may qualify for any one or all of the
50 awards aforesaid.

51 The cost for the publication of the notice provided for
52 by this section shall be paid from the funds in the hands
53 of the state treasurer collected from the license tax on
54 pari-mutuel wagering, when not otherwise provided in
55 the budget; but no such costs shall be paid unless an
56 itemized account thereof, under oath, be first filed with
57 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
2 effective, shall construct a race track where horse race
3 meetings are to be held and the pari-mutuel system of
4 wagering conducted, as provided in article twenty-three
5 of this chapter, unless and until such person shall first
6 have applied for and obtained from the West Virginia
7 racing commission a construction permit which may be
8 issued by said commission in strict accordance with the
9 provisions of this article, and not otherwise. Any person
10 desiring to obtain such construction permit shall prepare
11 and file with the West Virginia racing commission an
12 application therefor in such form and to such effect as
13 said commission may require or approve. Among other
14 things, said application shall specify:

15 (1) The names and addresses of all persons who are
16 financially interested in the proposed race track, includ-
17 ing the names of all partners, if the applicant be a part-
18 nership, and of all stockholders, if the applicant be a cor-
19 poration, and the names of any persons who have agreed
20 to lend the applicant money for use in connection with
21 such race track;

22 (2) The county where the race track is to be estab-
23 lished; and

24 (3) Plans showing, in such detail as the commission
25 may require, the proposed race track and all buildings and
26 improvements to be used in connection therewith. The
27 commission shall prescribe blank forms for use in making
28 such application.

29 When such application shall have been prepared and
30 filed in accordance with the foregoing requirements, the
31 commission shall consider the same, and if the commis-
32 sion be of opinion that the applicant intends to proceed
33 in good faith to establish a race track complying in all
34 particulars with the laws of this state, that the plans

35 therefor are adequate and have been prepared with due
36 regard to the safety of all persons who will use such race
37 track, and that the applicant is financially able to com-
38 plete such race track in accordance with the plans shown
39 on such application, the commission shall enter an order
40 giving its tentative approval to such application, or, if
41 the commission be not satisfied in the particulars above
42 set forth, it shall refuse such application.

43 If such application be refused, the commission shall en-
44 ter an order on its records specifying the reasons for its
45 refusal thereof and such order shall be attached to said
46 application and both the application and such order shall
47 be open to inspection, upon application to the commission,
48 of anyone desiring to inspect the same. The action of the
49 commission in refusing any application shall be subject
50 to review by mandamus in any court of this state having
51 jurisdiction, with the right of appeal to the supreme court
52 of appeals in the manner prescribed by law.

53 If the commission shall give tentative approval to such
54 application, it shall prepare and publish a notice to the
55 public that the commission has given tentative approval
56 to the application and that the commission will confirm
57 such tentative approval and issue a construction permit
58 to the applicant at the expiration of sixty days from the
59 date of the first publication of such notice (which date
60 shall be specified in said notice), unless within said time
61 an application for a local option election shall have been
62 filed with the county court of the county in which said
63 race track is proposed to be established in accordance
64 with the provisions of this article. Such notice shall be
65 published as a Class II legal advertisement in compliance
66 with the provisions of article three, chapter fifty-nine of
67 this code, and the publication area for such publication
68 shall be the county in which such race track is to be es-
69 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.

1 In addition to all other powers, duties and responsibil-
2 ities granted and assigned to the director in this chapter
3 and elsewhere by law, the director is hereby authorized
4 and empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the
8 conservation of the natural resources of the state which
9 best effectuates the purpose of this chapter and which
10 makes adequate provisions for the natural resources laws
11 of the state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or agree-
14 ment with the federal government or its departments or
15 agencies, subdivisions of the state, corporations, associa-
16 tions, partnerships or individuals;

17 (3) Conduct research in improved conservation meth-
18 ods and disseminate information matters to the residents
19 of the state;

20 (4) Conduct a continuous study and investigation of
21 the habits of wildlife, and for purposes of control and pro-
22 tection to classify by regulation the various species into
23 such categories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be
26 taken, or chased, unless otherwise specified by this chap-
27 ter;

28 (6) Fix by regulation the open seasons and the bag,
29 creel, size, age, weight and sex limits with respect to wild-
30 life in this state;

31 (7) Hold at least six meetings each year at such times
32 and at such points within the state, as in the discretion
33 of the director may appear to be necessary and proper
34 for the purpose of giving interested persons in the vari-
35 ous sections of the state an opportunity to be heard con-
36 cerning open seasons for their respective areas, before
37 such seasons and bag limits are fixed;

38 (8) Suspend open hunting seasons upon any or all wild-
39 life in any or all counties of the state with the prior ap-

40 proval of the governor in case of an emergency such as
41 a drought, forest fire hazard or epizootic of disease among
42 wildlife. The suspension shall continue during the ex-
43 istence of the emergency and until rescinded by the
44 director. Suspension, or reopening after such suspension,
45 of open seasons may be made upon twenty-four hours'
46 notice by delivery of a copy of the order of suspension
47 or reopening to the wire press agencies at the state cap-
48 itol;

49 (9) Supervise the fiscal affairs and responsibilities of
50 the department;

51 (10) Designate such localities as he shall determine to
52 be necessary and desirable for the perpetuation of any
53 species of wildlife;

54 (11) Enter private lands to make surveys or inspec-
55 tions for conservation purposes, to investigate for viola-
56 tions of provisions of this chapter, to serve and execute
57 warrants and processes, to make arrests and to otherwise
58 effectively enforce the provisions of this chapter;

59 (12) Acquire for the state in the name of the "depart-
60 ment of natural resources" by purchase, condemnation,
61 lease or agreement, or accept or reject for the state, in
62 the name of the department of natural resources, gifts,
63 donations, contributions, bequests or devises of money,
64 security or property, both real and personal, and any in-
65 terest in such property, including lands and waters, which
66 he deems suitable for the following purposes:

67 (a) For state forests for the purpose of growing tim-
68 ber, demonstrating forestry, furnishing or protecting wa-
69 tersheds or providing public recreation;

70 (b) For state parks or recreation areas for the purpose
71 of preserving scenic, esthetic, scientific, cultural, archae-
72 ological or historical values or natural wonders, or pro-
73 viding public recreation;

74 (c) For public hunting, trapping, or fishing grounds or
75 waters for the purpose of providing areas in which the
76 public may hunt, trap or fish, as permitted by the pro-
77 visions of this chapter, and the rules and regulations is-
78 sued hereunder;

79 (d) For fish hatcheries, game farms, wildlife research
80 areas and feeding stations;

81 (e) For the extension and consolidation of lands or
82 waters suitable for the above purposes by exchange of
83 other lands or waters under his supervision;

84 (f) For such other purposes as may be necessary to
85 carry out the provisions of this chapter;

86 (13) Capture, propagate, transport, sell or exchange
87 any species of wildlife as may be necessary to carry out
88 the provisions of this chapter;

89 (14) Sell, with the approval in writing of the governor,
90 timber for not less than the value thereof, as appraised
91 by a qualified appraiser appointed by the director, from
92 all lands under the jurisdiction and control of the direc-
93 tor, except those lands that are designated as state parks.
94 The appraisal shall be made within a reasonable time
95 prior to any sale, reduced to writing, filed in the office
96 of the director and shall be available for public inspec-
97 tion. When the appraised value of the timber to be sold
98 is more than five hundred dollars, the director, before
99 making sale thereof, shall receive sealed bids therefor,
100 after notice by publication as a Class II legal advertise-
101 ment in compliance with the provisions of article three,
102 chapter fifty-nine of this code, and the publication area
103 for such publication shall be each county in which the
104 timber is located. The timber so advertised shall be sold
105 at not less than the appraised value to the highest respon-
106 sible bidder, who shall give bond for the proper per-
107 formance of the sales contract as the director shall desig-
108 nate; but the director shall have the right to reject any
109 and all bids and to readvertise for bids. If the foregoing
110 provisions of this section have been complied with, and
111 no bid equal to or in excess of the appraised value of
112 the timber is received, the director may, at any time, dur-
113 ing a period of six months after the opening of the bids,
114 sell the timber in such manner as he deems appropriate,
115 but the sale price shall not be less than the appraised
116 value of the timber advertised. No contract for sale of
117 timber made pursuant to this section shall extend for a
118 period of more than ten years. And all contracts hereto-
119 fore entered into by the state for the sale of timber shall
120 not be validated by this section if the same be otherwise
121 invalid. The proceeds arising from the sale of the tim-

122 ber so sold, shall be paid to the treasurer of the state of
123 West Virginia, and shall be credited to the department
124 and used exclusively for the purposes of this chapter;

125 (15) Sell or lease with the approval in writing of the
126 governor, coal, oil, gas, sand, gravel and any other min-
127 erals that may be found in the lands under the jurisdic-
128 tion and control of the director, except those lands that
129 are designated as state parks. The director, before mak-
130 ing sale or lease thereof, shall receive sealed bids there-
131 for, after notice by publication as a Class II legal adver-
132 tisement in compliance with the provisions of article three,
133 chapter fifty-nine of this code, and the publication area
134 for such publication shall be each county in which such
135 lands are located. The minerals so advertised shall be
136 sold or leased to the highest responsible bidder, who shall
137 give bond for the proper performances of the sales con-
138 tract or lease as the director shall designate; but the di-
139 rector shall have the right to reject any and all bids and
140 to readvertise the bids. The proceeds arising from any
141 such sale or lease shall be paid to the treasurer of the
142 state of West Virginia and shall be credited to the de-
143 partment and used exclusively for the purposes of this
144 chapter;

145 (16) Exercise the powers granted by this chapter for
146 the protection of forests, and regulate fires and smoking
147 in the woods or in their proximity at such times and in
148 such localities as may be necessary to reduce the danger
149 of forest fires;

150 (17) Cooperate with departments and agencies of
151 state, local and federal governments in the conservation
152 of natural resources and the beautification of the state;

153 (18) Report to the governor each year all information
154 relative to the operation and functions of his department
155 and he shall make such other reports and recommenda-
156 tions as may be required by the governor, including an
157 annual financial report covering all receipts and disburse-
158 ments of the department of each fiscal year, and he shall
159 deliver such report to the governor on or before the first
160 day of December next after the end of the fiscal year so
161 covered. A copy of such report shall be delivered to each

162 house of the Legislature when convened in January next
163 following;

164 (19) Keep a complete and accurate record of all pro-
165 ceedings, record and file all bonds and contracts taken
166 or entered into, and assume responsibility for the custody
167 and preservation of all papers and documents pertaining
168 to his office, except as otherwise provided by law;

169 (20) Offer and pay, in his discretion, rewards for in-
170 formation respecting the violation, or for the apprehen-
171 sion and conviction of any violators, of any of the pro-
172 visions of this chapter;

173 (21) Require such reports as he may deem to be nec-
174 essary from any person issued a license or permit under
175 the provisions of this chapter, but no person shall be re-
176 quired to disclose secret processes or confidential data of
177 competitive significance;

178 (22) Purchase as provided by law all equipment neces-
179 sary for the conduct of his department;

180 (23) Conduct and encourage research designed to fur-
181 ther new and more extensive uses of the natural resources
182 of this state and to publicize the findings of such re-
183 search;

184 (24) Encourage and cooperate with other public and
185 private organizations or groups in their efforts to pub-
186 licize the attractions of the state;

187 (25) Accept and expend, without the necessity of ap-
188 propriation by the Legislature, any gift or grant of money
189 made to the department for any and all purposes speci-
190 fied in this chapter, and he shall account for and report
191 on all such receipts and expenditures to the governor;

192 (26) Cooperate with the state historian and other ap-
193 propriate state agencies in conducting research with ref-
194 erence to the establishment of state parks and monu-
195 ments of historic, scenic and recreational value, and to
196 take such steps as may be necessary in establishing such
197 monuments or parks as he deems advisable;

198 (27) Maintain in his office at all times, properly in-
199 dexed by subject matter, and also, in chronological se-
200 quence, all rules and regulations made or issued under
201 the authority of this chapter. Such records shall be avail-

202 able for public inspection on all business days during the
203 business hours of working days as prescribed by the state
204 board of public works;

205 (28) Delegate the powers and duties of his office, ex-
206 cept the power to execute contracts, to appointees and
207 employees of the department, who shall act under the
208 direction and supervision of the director and for whose
209 acts he shall be responsible;

210 (29) Conduct schools, institutes and other educational
211 programs, apart from or in cooperation with other gov-
212 ernmental agencies, for instruction and training in all
213 phases of the natural resources programs of the state;
214 and

215 (30) Promulgate rules and regulations, in accordance
216 with the provisions of chapter twenty-nine-a of this code,
217 to implement and make effective the powers and duties
218 vested in him by the provisions of this chapter and take
219 such other steps as may be necessary in his discretion for
220 the proper and effective enforcement of the provisions
221 of this chapter: *Provided*, That all rules and regula-
222 tions relating to articles five and five-a of this chapter
223 shall be promulgated by the water resources board.

ARTICLE 2. GAME AND FISH.

Section

16. Dogs chasing deer.

§20-2-16. Dogs chasing deer.

1 No person shall permit his dog to hunt or chase deer.
2 A conservation officer shall take into possession any dog
3 known to have hunted or chased deer and the director
4 shall advertise that such dog is in his possession, giving
5 a description of the dog and stating the circumstances
6 under which it was taken. Such notice shall be published
7 as a Class I legal advertisement in compliance with the
8 provisions of article three, chapter fifty-nine of this code,
9 and the publication area for such publication shall be the
10 county. He shall hold the dog for a period of ten days
11 after the date of the publication. If, within ten days, the
12 owner does not claim the dog, the director shall destroy
13 it. In this event the cost of keeping and advertising shall
14 be paid by the director. If, within ten days, the owner

15 claims the dog, he may repossess it on the payment of
16 costs of advertising and the cost of keep, not exceeding
17 fifty cents per day. A conservation officer, or any officer
18 or employee of the director authorized to enforce the pro-
19 visions of this section, after a bona fide but unsuccessful
20 effort to capture dogs detected chasing or pursuing deer,
21 may kill such dogs.

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

Section

19. Protection of forests against destructive insects and diseases;
purposes and intent of section.

§20-3-19. Protection of forests against destructive insects and diseases; purposes and intent of section.

1 In order to protect and preserve forest resources of the
2 state of West Virginia from ravages of bark beetles, de-
3 foliators, rusts, blights, wilts and other destructive forest
4 pests and diseases, and thereby enhance the growth and
5 maintenance of forests; promote the stability of forest-
6 using industries and employment associated therewith;
7 reduce the fire risk created by dying and dead trees in-
8 jured or killed by insects or diseases; conserve forest
9 cover on watersheds and protect recreational and other
10 forest values, it shall be the policy of the state of West
11 Virginia independently and through cooperation with
12 adjoining states, the federal government, and private tim-
13 ber owners and other private organizations, to prevent,
14 retard, control, suppress, or eradicate incipient, potential
15 or emergency outbreaks of destructive insects and dis-
16 eases on, or threatening, all forest land irrespective of
17 ownership.

18 (a) *Authority.*—The director is authorized either di-
19 rectly or in cooperation with other agencies, subject to
20 such conditions as he may deem necessary and using such
21 funds as have been, or may hereafter be made available
22 for those purposes, to conduct surveys on any forest land
23 to detect and appraise infestations of forest insect pests
24 and tree diseases, to determine the measures which should
25 be applied on such lands, in order to prevent, retard, con-
26 trol, suppress or eradicate incipient, threatening, poten-
27 tial or emergency outbreaks of such insects or disease
28 pests, and to plan, organize, direct and carry out such

29 measures as he may deem necessary to accomplish the
30 objectives and provisions of this section: *Provided*, That
31 actual control measures shall be conducted with the co-
32 operation and consent of the quarantine and regulatory
33 official of the department of agriculture.

34 (b) *Establishing control zone; notice to landowners.*—
35 Where an insect infestation or disease infection is be-
36 lieved to exist on a forest land within this state, the di-
37 rector shall investigate the condition. Whenever he finds
38 that an infestation or infection exists, he shall request
39 the quarantine officials of the state department of agri-
40 culture to declare the same a public nuisance. When
41 same has been declared a public nuisance he shall estab-
42 lish a control zone of the forest land wherein the same
43 is found, and shall give notice thereof by publication as
44 a Class II legal advertisement in compliance with the pro-
45 visions of article three, chapter fifty-nine of this code,
46 and the publication area for such publication shall be
47 each county in which the area or areas are located in
48 which the control zone is established. Such notice shall
49 also be given by mail or otherwise to forest landowners
50 within the control zone, advising them of the nature of
51 the infestation or infection, recommending control meas-
52 ures and offering technical advice on methods of carry-
53 ing out the control measures.

54 (c) *Institution of control measures.*—If, after notifica-
55 tion by the director, any landowner fails, neglects, or is
56 unable to carry out the control measures recommended
57 by the director as set forth in subdivision (b), the direc-
58 tor may, through his agents, institute and carry out such
59 control measures.

60 (d) *Appeals.*—Any person damaged or aggrieved by
61 any action of any officer or employee of the department
62 under the provisions of this section shall have the right
63 to appeal from such action to the director and then to
64 the circuit court of the county in which such person resides
65 in which he owns forest land affected by such action. The
66 court, after hearing the evidence in the case, may make
67 such orders as may be appropriate to protect the inter-
68 ests of the appellant, adjacent forest landowners, or the
69 state.

70 (e) *Cooperation with individuals and public agencies.*—

71 The director is authorized to cooperate with landowners
72 and appropriate authorities of town, city, county, adjoining
73 state and the United States government, and other
74 agencies having jurisdiction of state lands, concerning
75 forest tree insect and disease investigation and control,
76 and to accept money, gifts and donations, and to disburse
77 the same for the purpose of carrying out the provisions
78 of this section.

79 (f) *Annual appropriation; forest pest control fund.*—

80 There is hereby created in the state treasury a special
81 fund to be known as the forest pest control fund. Such
82 fund shall consist of all moneys appropriated thereto by
83 the Legislature and all moneys received and deposited
84 with the state treasurer under the provisions of this sec-
85 tion. All such funds are hereby appropriated to the de-
86 partment of natural resources to be used to carry out the
87 purposes of this section.

88 (g) *Definitions.*—As used in this section, unless the con-
89 text clearly requires otherwise:

90 (1) "Forest trees" means only those trees which are a
91 part of and constitute a stand of potential, immature, or
92 mature commercial timber trees: *Provided*, That the
93 term "forest trees" shall be deemed to include shade trees
94 of any species around houses, along highways and within
95 cities and towns if the same constitute an insect or disease
96 menace to nearby timber trees or timber stands;

97 (2) "Forest land" means land on which forest trees
98 occur;

99 (3) "Control zone" means an area of potential or actual
100 infestation or infection, the boundaries of which are fixed
101 and clearly described in a manner to definitely identify
102 the zone;

103 (4) "Infestation" means infestation by means of any
104 insect in any stage of growth which is determined to be
105 dangerously injurious to forest trees; and

106 (5) "Infection" means infection by any disease affect-
107 ing forest trees which is determined to be dangerously
108 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
2 shall be issued or put in circulation, nor shall any order
3 be accepted or liability incurred for the delivery of any
4 petroleum, crude or refined, unless the amount of such
5 petroleum represented in or by such receipt, certificate,
6 accepted order, or other voucher or liability, shall have
7 been actually received by and shall then be in the tanks
8 and lines, custody and control of the company issuing or
9 putting in circulation such receipt, certificate, accepted
10 order or voucher, or written evidence of liability. No
11 duplicate receipt, certificate, accepted order or other
12 voucher shall be issued or put in circulation, or any lia-
13 bility incurred for any petroleum, crude or refined, while
14 any former liability remains in force, or any former re-
15 ceipt, certificate, accepted order or other voucher shall
16 be outstanding and uncanceled, except such original pa-
17 pers shall have been lost, in which case a duplicate, plain-
18 ly marked "duplicate" upon the face, and dated and
19 numbered as the lost original was dated and numbered,
20 may be issued. No receipt, voucher, accepted order, cer-
21 tificate or written evidence of liability of such company
22 on which petroleum, crude or refined, has been delivered,
23 shall be reissued, used or put in circulation. No petro-
24 leum, crude or refined, for which a receipt, voucher, ac-
25 cepted order, certificate or liability incurred, shall have
26 been issued or put in circulation, shall be delivered, ex-
27 cept upon the surrender of the receipt, voucher, order or
28 liability representing such petroleum, except upon affi-
29 davit of loss of such instrument made by the former
30 holder thereof. No duplicate receipt, certificate, voucher,
31 accepted order or other evidence of liability, shall be
32 made, issued or put in circulation until after notice of the
33 loss of the original, and of the intention to apply for a
34 duplicate thereof, shall have been given by advertisement
35 over the signature of the owner thereof as a Class II legal

36 advertisement in compliance with the provisions of ar-
37 ticle three, chapter fifty-nine of this code, and the pub-
38 lication area for such publication shall be the county
39 where such duplicate is to be issued. Every receipt,
40 voucher, accepted order, certificate or evidence of liabil-
41 ity, when surrendered or the petroleum represented
42 thereby delivered, shall be immediately canceled by
43 stamping and punching the same across the face in large
44 and legible letters with the word "canceled," and giving
45 the date of such cancellation; and it shall then be filed and
46 preserved in the principal office of such company for a
47 period of six years.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

Section

4. Procedure for changing rates.

§24-2-4. Procedure for changing rates.

1 No public utility subject to this chapter shall change,
2 suspend or annul any rate, joint rate, charge, rental or
3 classification except after thirty days' notice to the com-
4 mission and the public, which notice shall plainly state
5 the changes proposed to be made in the schedule then
6 in force and the time when the changed rates or charges
7 shall go into effect. But the commission may enter an
8 order suspending the proposed rate as hereinafter pro-
9 vided. The proposed changes shall be shown by print-
10 ing new schedules, or shall be plainly indicated upon
11 the schedules in force at the time, and kept open to
12 public inspection: *Provided, however,* That the com-
13 mission may, in its discretion, and for good cause shown,
14 allow changes upon less time than the notice herein
15 specified, or may modify the requirements of this sec-
16 tion in respect to publishing, posting and filing of tariffs,
17 either by particular instructions or by general order.

18 Whenever there shall be filed with the commission
19 any schedule stating a change in the rates or charges,
20 or joint rates or charges, or stating a new individual
21 or joint rate or charge or joint classification or any new
22 individual or joint regulation or practice affecting any

23 rate or charge, the commission shall have authority,
24 either upon complaint or upon its own initiative with-
25 out complaint, to enter upon a hearing concerning the
26 propriety of such rate, charge, classification, regulation
27 or practice; and, if the commission so orders, it may
28 proceed without answer or other form of pleading by
29 the interested parties, but upon reasonable notice, and,
30 pending such hearing and the decision thereon, the com-
31 mission, upon filing with such schedule and delivering
32 to the public utility affected thereby a statement in
33 writing of its reasons for such suspension, may suspend
34 the operation of such schedule and defer the use of such
35 rate, charge, classification, regulation or practice, but not
36 for a longer period than one hundred and twenty days
37 beyond the time when such rate, charge, classification,
38 regulation or practice would otherwise go into effect;
39 and after full hearing, whether completed before or
40 after the rate, charge, classification, regulation or prac-
41 tice goes into effect, the commission may make such or-
42 der in reference to such rate, charge, classification, regu-
43 lation or practice as would be proper in a proceeding
44 initiated after the rate, charge, classification, regulation
45 or practice had become effective: *Provided*, That if any
46 such hearing and decision thereon cannot be concluded
47 within the period of suspension, as above stated, such
48 rate, charge, classification, regulation or practice shall
49 go into effect at the end of such period. In such case
50 the commission may require such public utility to enter
51 into a bond in an amount deemed by the commission
52 to be reasonable and conditioned for the refund to the
53 persons or parties entitled thereto of the amount of the
54 excess, plus interest at the rate of six per cent per an-
55 num, if such rates so put into effect are subsequently
56 determined to be higher than those finally fixed for such
57 utility. No such accrued interest paid shall be deemed
58 part of the cost of doing business in a subsequent appli-
59 cation for changing rates or any decision thereon. At
60 any hearing involving a rate sought to be increased or
61 involving the change of any fare, charge, classification,
62 regulation or practice, the burden of proof to show that
63 the increased rate or proposed increased rate, or the

64 proposed change of fare, charge, classification, regula-
65 tion or practice is just and reasonable shall be upon the
66 public utility making application for such change. When
67 in any case pending before the commission all evidence
68 shall have been taken, and the hearing completed, the
69 commission shall, within three months, render a deci-
70 sion in such case.

71 Where more than twenty members of the public are
72 affected by a proposed change in rates, it shall be a
73 sufficient notice to the public within the meaning of
74 this section if such notice is published as a Class II legal
75 advertisement in compliance with the provisions of arti-
76 cle three, chapter fifty-nine of this code, and the publi-
77 cation area for such publication shall be the community
78 where the majority of the resident members of the public
79 affected by such change reside or, in case of nonresidents,
80 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.

1 (a) *Required; application; hearing; granting.*—It shall
2 be unlawful for any contract carrier by motor vehicle
3 to operate within this state without first having obtained
4 from the commission a permit. Upon the filing of an
5 application for such permit, the commission shall fix a
6 time and place for hearing thereon: *Provided, however,*
7 That the commission may, after giving notice as herein-
8 after provided and if no protest is received, waive formal
9 hearing on such application. Said notice shall be by
10 publication which shall state that formal hearing may
11 be waived in the absence of protest to such application.
12 Such notice shall be published as a Class I legal adver-
13 tisement in compliance with the provisions of article
14 three, chapter fifty-nine of this code, and the publication
15 area for such publication shall be the area of operation.
16 Such notice shall be published at least ten days prior to

17 the date of hearing. After hearing or waiver of hearing as
18 aforesaid, as the case may be, the commission shall grant
19 or deny the permit prayed for or grant it for the partial
20 exercise only of the privilege sought, and may attach to
21 the exercise of the privilege granted by such permit such
22 terms and conditions as in its judgment are proper and
23 will carry out the purposes of this chapter. No permit
24 shall be granted unless the applicant has established to the
25 satisfaction of the commission that the privilege sought
26 will not endanger the safety of the public or unduly inter-
27 fere with the use of the highways or impair unduly the
28 condition or unduly increase the maintenance cost of such
29 highways, directly or indirectly, or impair the efficient
30 public service of any authorized common carrier or com-
31 mon carriers adequately serving the same territory.

32 (b) *Rules and regulations; evidence at hearing.*—The
33 commission shall prescribe such rules and regulations as
34 it may deem proper for the enforcement of the provisions
35 of this section and may designate any of its employees
36 to take evidence at the hearing on any application for
37 a permit and submit findings of fact as a part of report or
38 reports to be made to the commission.

39 (c) *Permit not franchise, etc.; assignment or transfer.*
40 —No permit issued in accordance with the terms of this
41 chapter shall be construed to be either a franchise or
42 irrevocable or to confer any proprietary or property
43 rights in the use of the public highways. No permit
44 issued under this chapter shall be assigned or otherwise
45 transferred without the approval of the commission.
46 Upon the death of a person holding a permit, his personal
47 representative or representatives may operate under
48 such permit while the same remains in force and effect
49 and, with the consent of the commission, may transfer
50 such permit.

51 (d) *Suspension, revocation or amendment.*—The com-
52 mission may at any time, for good cause, suspend and,
53 upon not less than fifteen days' notice to the grantee of
54 any permit and an opportunity to be heard, revoke or
55 amend any permit.

56 (e) *Notice of cessation or abandonment.*—Every con-
57 tract carrier by motor vehicle who shall cease operation

58 or abandon his rights under a permit issued shall notify
59 the commission within thirty days of such cessation or
60 abandonment.

CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

Article

1. Supervision and Control of State Institutions.
3. Claims of Citizens Against United States Government for Illegal Tax Payments.

ARTICLE 1. SUPERVISION AND CONTROL OF STATE INSTI- TUTIONS.

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,
2 homes or refectories shall be so construed or interpreted
3 as to authorize or permit the incurring of state debt of
4 any kind or nature as contemplated by the constitution
5 of this state in relation to the state debt. The dormitories,
6 homes or refectories herein are of the character described
7 as self-liquidating projects under the laws of the United
8 States.

9 Any state agency authorized to issue bonds under the
10 provisions of this article is authorized and empowered
11 to accept loans or grants or temporary advances for the
12 purpose of paying part or all of the cost of construction
13 of the dormitories, homes or refectories and the other
14 purposes herein authorized, from the United States of
15 America or such federal or public agency or department
16 of the United States or any private agency, corporation
17 or individual, which temporary advances may be repaid
18 out of the proceeds of the bonds authorized to be issued
19 under the provisions of this article and to enter into the
20 necessary contracts and agreements to carry out the
21 purposes hereof with the United States of America or
22 such federal or public agency or department of the United
23 States, or with any private agency, corporation or indi-
24 vidual: *Provided, however,* That if such bonds are

25 not sold to and purchased by the United States of Amer-
26 ica or any such federal or public agency or department,
27 then the state agency shall advertise such bonds for
28 sale, on sealed bids, which advertisement shall be pub-
29 lished as a Class II legal advertisement in compliance
30 with the provisions of article three, chapter fifty-nine of
31 this code, and the publication area for such publication
32 shall be the state. Such advertisement shall be so pub-
33 lished within the fourteen consecutive days next pre-
34 ceding the date fixed for the reception of bids. Such ad-
35 vertisement shall also be published in a financial paper
36 published either in the city of New York, in the state of
37 New York, or the city of Chicago, in the state of Illinois.
38 The state agency may reject any and all bids. If the bonds
39 be not sold pursuant to such advertisement, they may,
40 within sixty days after the date advertised for the recep-
41 tion of bids, be sold by the state agency at private sale,
42 but no private sale shall be made at a price less than the
43 highest bid which shall have been received pursuant to
44 such advertisement. If not sold, such bonds shall be re-
45 advertised in the manner herein provided.

46 The provisions and parts of this act are separable and
47 are not matters of mutual essential inducement, and it
48 is the intention to confer the whole or any part of the
49 powers herein provided for, and if any of the sections or
50 provisions, or parts thereof, are for any reason illegal or
51 invalid, it is the intention that the remaining sections
52 and provisions or parts thereof shall remain in full force
53 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.

1 Upon receipt of such funds from the United States by
2 the treasurer of this state, it shall be the duty of the state
3 commissioner of public institutions to give notice to all
4 claimants thereof by publication as a Class II legal adver-
5 tisement in compliance with the provisions of article three,
6 chapter fifty-nine of this code, and the publication area for

7 such publication shall be each county of the state. Such
8 notices shall set forth that such moneys have been col-
9 lected and shall notify all claimants of the same to pro-
10 pound their claims in writing by filing them with said
11 commissioner, and the commissioner shall warn all claim-
12 ants and persons interested therein that a failure so to file
13 their respective claims within a period of two years from
14 the date on which such moneys were paid into the treasury
15 of this state shall forever bar their respective rights to
16 such funds, or any part thereof, and that in default of the
17 filing of such claims such funds shall escheat to and be-
18 come 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.

1 In order to provide employment for convicts not em-
2 ployed as provided in the two preceding sections, the
3 state commissioner of public institutions may let and hire
4 the labor of such convicts, on the piece price system or
5 otherwise, in such branches of business, and for the manu-
6 facture of such articles, as in his judgment will best ac-
7 complish the ends and subserve the interests of the state.
8 Such letting and hiring shall be advertised by the com-
9 missioner of public institutions as a Class II legal adver-
10 tisement in compliance with the provisions of article
11 three, chapter fifty-nine of this code, and the publication
12 area for such publication shall be the state. The letting
13 and hiring may also be advertised in such other manner
14 as said commissioner may determine. The advertisement
15 shall specify the number of convicts to be let, the length
16 of time of the hiring or letting, which shall not exceed
17 five years, the last day, at twelve o'clock meridian, on
18 which bids will be received and such other information as
19 the commissioner may desire. The commissioner may in
20 his discretion designate what articles or class of articles
21 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,
2 no agency shall make any rule unless and until
3 notice thereof has been given to all persons who, in the
4 manner hereinafter provided in this section, have request-
5 ed notice of any proposed rule. The notice shall either
6 contain the express terms of the proposed rule, or shall
7 contain an informative summary thereof. The notice
8 shall be given by mail as specified in section two, article
9 seven of this chapter. The notice shall include a state-
10 ment of the time, date and place at which interested
11 persons may submit data, objections, suggested amend-
12 ments, views, evidence and arguments orally or in writ-
13 ing concerning the proposed rule, and such notice must
14 be given not less than thirty nor more than sixty days
15 prior to the date fixed. The request by any person to
16 receive notice shall be in writing and shall request the
17 agency to notify him of any rule proposed by such agency
18 during the calendar year in which the request is made.
19 Each agency by rule may prescribe the form of such
20 written request for notification, and may require an
21 annual fee in an amount not to exceed one dollar to
22 accompany each such written request. All such fees
23 shall be deposited in the state treasury to the credit of
24 the state general fund. An agency may, in its discre-
25 tion, also publish the required notice, at the expense of
26 the agency. If an agency determines to give notice also
27 by publication, the notice shall be published as a Class I
28 legal advertisement in compliance with the provisions
29 of article three, chapter fifty-nine of this code, and the
30 publication area for such publication shall be the state,
31 or, if the rule has only local application, the publication
32 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

1. Provisions Relating to Corporations Generally.
2. Railroad Companies.
3. Boom Companies.
4. Banking Institutions.
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

19 in person or by proxy shall be necessary to constitute
20 a quorum at any meeting of members of the corpora-
21 tion; and (iii) that any specified action may be taken
22 or authorized upon the concurrence of a specified num-
23 ber or proportion of the votes of all members or of all
24 of a specified class or classes of members. Such provi-
25 sions may be different from what is otherwise required
26 under this article; and any action taken or authorized
27 in accordance with any such charter provisions shall be
28 valid and effective.

29 (2) In any case in which the charter of any nonstock
30 corporation does not provide for members thereof as
31 such and such corporation has in fact no members other
32 than the members of its governing body (by whatever
33 names they or it may be called), the members for the
34 time being of its governing body shall, for the purposes
35 of any statutory provision or rule of law relating to
36 members of a nonstock corporation, be considered to be
37 the members of such corporation, as well as members of
38 such governing body, and may meet as members of such
39 corporation and exercise all of the rights and powers
40 of members thereof.

41 (3) In any case in which the charter of any nonstock
42 corporation provides for a definite minimum number
43 of members, whenever the membership is reduced be-
44 low the prescribed number the corporation shall not
45 on that account be dissolved, but the vacancies shall
46 be filled either in the manner provided in its charter or
47 by the surviving or continuing members, so long as the
48 number thereof is one or more.

49 (4) A member of a nonstock corporation who
50 is entitled to vote on any matter shall have but
51 one vote, and shall not be entitled to cumulate his
52 vote in the election of members of its governing
53 body.

54 (5) In any case in which there shall be doubt con-
55 cerning the number and identity of the persons, firms
56 and corporations entitled to membership or to member-
57 ship in a class or classes of members, in a nonstock
58 corporation, and the determination of those so entitled

59 is deemed necessary by its governing body, the circuit
60 court of the county in which the principal office of a
61 nonstock corporation is located, or the judge thereof
62 in vacation, shall have jurisdiction in equity, on applica-
63 tion by the corporation by petition in a summary way,
64 notice of the hearing on the application having been
65 given as directed by the court or judge, to determine
66 who are at that time members of the corporation or of
67 such class or classes of members, and to make such orders
68 and decrees as may seem reasonable and proper.

69 (6) If a meeting of the members of any nonstock
70 corporation shall be duly called for any lawful purpose
71 and at such meeting there is not present in person or by
72 proxy the number of members entitled to vote required
73 by the charter (or, in the absence of an applicable char-
74 ter provision, by the provisions of this article) to consti-
75 tute a quorum or to take the proposed action, then, if
76 the notice of such meeting states that the procedure
77 authorized by this subdivision may be invoked, the mem-
78 bers entitled to vote who are present at such meeting
79 in person or by proxy may by majority vote call a fur-
80 ther meeting of the members for the same purpose. A
81 notice of the time, place and purpose of such further
82 meeting shall be given by publication of such notice as
83 a Class II legal advertisement in compliance with the
84 provisions of article three, chapter fifty-nine of this code,
85 and the publication area for such publication shall be
86 the county of the principal office of the corporation. At
87 such further meeting the members entitled to vote
88 who are present in person or by proxy shall constitute
89 a quorum, and by majority vote may take the proposed
90 action and may also take any other action which might
91 have been taken at the original meeting if a sufficient
92 number of members entitled to vote had been present;
93 and the notice of such further meeting shall so state.

94 (7) The charter of a nonstock corporation may pro-
95 vide for the disposition of its assets upon its dissolu-
96 tion. In any case in which a resolution to dissolve has
97 been adopted by the members of a nonstock corporation
98 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

12 subscriber, or by advertisement, as hereinafter provided,
13 unless notice is waived as hereinafter provided. If notice
14 is given by advertisement, such notice shall be published
15 as a Class II legal advertisement in compliance with the
16 provisions of article three, chapter fifty-nine of this
17 code, and the publication area for such publication shall
18 be the county in which the principal office of the corpo-
19 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.

32 Such reduction of the capital of the corporation may be
33 effected by retiring or reducing the outstanding shares
34 of any class or by drawing the necessary number of the
35 outstanding shares of any class by lot for retirement,
36 or by the exchange by the holders of outstanding shares
37 of any class of the shares of such class held by them
38 for a decreased number of shares of stock of the same
39 or of a different class of stock, or by the exchange of
40 shares having par value for shares having no par value,
41 or of shares without par value for shares with par
42 value, or by reducing (in conjunction with appropriate
43 action under section eleven of this article) the par value
44 of the shares of any class of stock having par value, or
45 where the amount of capital represented by shares of
46 stock having par value exceeds such par value, by re-
47 ducing the amount of capital represented by such shares
48 by an amount not greater than such excess, or by re-
49 ducing the amount of capital represented by shares of
50 stock having no par value, or, in case the capital shall
51 have been increased by the transfer thereto from surplus
52 and the transfer shall not have been made in respect of
53 any designated class or classes of stock, by retransferring
54 to surplus all or any part of the amount by which capital
55 shall have been so increased, or by the purchase of shares
56 for retirement, either pro rata from all holders of shares
57 of that class of stock or by purchasing such shares from
58 time to time in the open market or at private sale in
59 both cases at not exceeding such price or prices as may
60 be fixed or approved by the stockholders entitled to vote
61 upon the reduction of capital to be effected in that
62 manner, or by retiring shares owned by the corporation.
63 If such reduction of capital of the corporation be effected
64 by retiring shares, then, if the resolution or resolutions
65 of stockholders above referred to shall so provide, an
66 amount not exceeding that part of the capital of the
67 corporation represented by such shares may be charged
68 against or paid out of the capital of the corporation in
69 respect of such shares.

70 When any corporation shall decrease the amount of
71 its capital as hereinbefore provided, the above-mentioned
72 certificate of the secretary of state shall be published

73 by the corporation as a Class II legal advertisement
74 in compliance with the provisions of article three, chapter
75 fifty-nine of this code, and the publication area for such
76 publication shall be the county in which the principal
77 office of the corporation is located. The first publication
78 shall be made within fifteen days after the issuance of
79 such certificate. In default thereof the directors of the
80 corporation shall be jointly and severally liable to any
81 creditors of the corporation who shall suffer loss by
82 reason of the noncompliance with the provisions of this
83 section and the stockholders shall be similarly liable up
84 to the amount of such sums as they may respectively
85 receive of the amount so reduced: *Provided*, That no such
86 decrease of capital shall release the liability of any stock-
87 holder, whose shares have not been fully paid, for debts
88 of the corporation theretofore contracted.

89 If the principal office of any corporation mentioned in
90 this section is not located within West Virginia, the
91 publication area for the notice provided by the fore-
92 going paragraph shall be any county in this state in
93 which it has an office or does business; and if it neither
94 has any office nor does any business in any county in
95 this state, then the publication area for such notice shall
96 be the county of this state wherein the seat of govern-
97 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,

14 then by mailing to each stockholder, at least ten days
15 prior to the date of the meeting, a written notice thereof;
16 or by publication of such notice as a Class II legal adver-
17 tisement in compliance with the provisions of article
18 three, chapter fifty-nine of this code, and the publication
19 area for such publication shall be the county of the prin-
20 cipal office or place of business of the corporation. Special
21 meetings may be held at such places and after such
22 notice as the bylaws prescribe, or, if none, then at the
23 same place and after the same notice as a regular meet-
24 ing. Special meetings of the stockholders may be called
25 by the board of directors, the president and secretary,
26 or any number of stockholders owning in the aggregate
27 at least one tenth of the number of shares outstanding.
28 The notice of special meetings shall state the business
29 to be transacted, and no business other than that included
30 in the notice or incidental thereto shall be transacted at
31 such meeting.

32 Regular meetings of the board of directors may be
33 held at such time and place as the bylaws may pre-
34 scribe, or the board may from time to time designate
35 by resolution.

36 Special meetings of the board of directors may be
37 called by the president, vice president, any two direc-
38 tors of a stock or nonstock corporation, or by any two
39 members of a nonstock corporation. Notice of such
40 meetings shall be given as required by the bylaws, and
41 if none is prescribed therein, then by mailing a written
42 notice to each director at his last known post-office ad-
43 dress at least five days before the time of the meeting.

44 A quorum of the stockholders shall consist of at least
45 a majority of all of the shares of stock entitled to vote.
46 Unless otherwise prescribed in the bylaws, or provided
47 in the charter, a quorum of the directors shall consist of
48 a majority of the board of directors. Any number less
49 than a quorum present may adjourn any stockholders'
50 or directors' meeting until a quorum is present: *Provided,*
51 *however,* That a quorum of the stockholders or members
52 of a cooperative association organized under the pro-
53 visions of this chapter shall consist of at least fifteen per
54 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
2 call upon his stock which may have been properly as-
3 sessed thereon by the directors, at the time when such
4 payment is due, the directors may collect the amount
5 of such installment or call, or any balance thereof re-
6 maining unpaid, from the stockholder by an action at
7 law, or they may sell at public sale such part of the
8 shares of such delinquent stockholder as will pay all
9 assessments then due from him with interest and all in-
10 cidental expenses, and shall transfer the shares so sold
11 to the purchaser, who, upon payment of the same, shall
12 be entitled to a certificate therefor. Notice of the time
13 and place of such sale and of the sum due on each share
14 shall be given by publication thereof as a Class II legal
15 advertisement in compliance with the provisions of
16 article three, chapter fifty-nine of this code, and the pub-
17 lication area for such publication shall be the county
18 wherein the principal office or place of business of such
19 corporation is located. Such notice shall be so published
20 within fourteen consecutive days next preceding the sale.
21 Such notice shall also be mailed by the treasurer of the
22 corporation to such delinquent stockholder at his last
23 known post-office address at least twenty days before such
24 sale. If no bidder can be had to pay the amount due on
25 the stock, and if the amount is not collected by an action
26 at law, brought within the county or city wherein the
27 principal office of such corporation is located, or in which
28 the delinquent stockholder resides, within six months
29 from the date of the bringing of such action at law, such
30 stock shall be forfeited to the corporation and the amount
31 previously paid in by the delinquent on the stock shall be
32 forfeited to the corporation. A sale of the shares of stock
33 may be made without resorting to the action at law
34 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
2 to have a certificate, signed by, or in the name of the
3 corporation by, the president or a vice president and

4 the treasurer or an assistant treasurer, or the secretary
5 or an assistant secretary of such corporation, certifying
6 the number of shares owned by him in such corpora-
7 tion: *Provided, however,* That where such certificate is
8 signed by a transfer agent or an assistant transfer agent
9 or by a transfer clerk acting on behalf of such corpora-
10 tion and a registrar, the signature of any such president,
11 vice president, treasurer, assistant treasurer, secretary
12 or assistant secretary may be facsimile. In case any
13 officer or officers who shall have signed, or whose fac-
14 simile signature or signatures shall have been used on,
15 any such certificate or certificates shall cease to be such
16 officer or officers of such corporation, whether because
17 of death, resignation or otherwise, before such certificate
18 or certificates shall have been delivered by such corpo-
19 ration, such certificate or certificates may nevertheless be
20 adopted by such corporation and be issued and delivered
21 as though the person or persons who signed such certifi-
22 cate or certificates or whose facsimile signature shall
23 have been used thereon had not ceased to be such officer
24 or officers of such corporation.

25 All certificates for stock which is given any preference,
26 priority or preferred rights over any other shares as to
27 dividends or otherwise, or which contains any limitation
28 or restriction of voting or other rights, shall contain
29 an accurate statement of all such preferences, priorities
30 or preferred rights, restrictions and limitations. No
31 certificate for any share of stock shall be issued or de-
32 livered to the stockholder until his subscription or sale
33 price for such share is paid in full.

34 A certificate may be issued in lieu of a certificate lost
35 or destroyed upon such terms and conditions as may
36 be prescribed by the bylaws of the corporation, upon
37 compliance with such terms and conditions by the per-
38 son who appears by the books of the corporation to be
39 the owner of the lost or destroyed certificate; and the
40 owner may require the officers of the corporation to
41 issue a certificate in the place and stead of one lost or
42 destroyed upon the following conditions: (a) He shall
43 file with the officers of the corporation, first, an affidavit
44 setting forth the time, place and circumstances of the

45 loss to the best of his knowledge and belief; second,
46 proof of his having advertised the loss as a Class II legal
47 advertisement in compliance with the provisions of article
48 three, chapter fifty-nine of this code, for which adver-
49 tisement the publication area shall be the county in
50 which is located the principal office of the corporation;
51 (b) he shall execute and deliver to the corporation a
52 bond with good security in a penalty of at least the value
53 of the shares of stock represented by the lost or destroyed
54 certificate conditioned to indemnify the corporation and
55 all persons whose rights may be affected by the issuance
56 of the new certificate against any loss in consequence
57 of the new certificate being issued: *Provided, however,*
58 That a new certificate may be issued in lieu of the one
59 lost, in the discretion of the board of directors, without
60 requiring the publication of the above notice or the giving
61 of a bond.

62 Whenever a certificate for shares of the capital stock
63 of a corporation of this state which has heretofore been
64 or may hereafter be issued to a person as agent or trustee,
65 and as to which the stock ledger of such corporation does
66 not disclose the principal or cestui que trust, is lost or
67 destroyed, and no person, except the administrator of
68 the person to whom such certificate was issued as agent
69 or trustee, has made claim to it against the corporation
70 for more than twenty-five years, and such corporation
71 has been a going concern for more than ten years during
72 such period of twenty-five years, and has declared five
73 or more dividends upon its capital stock during the
74 last twenty-five years, and such dividends declared upon
75 the shares of stock alleged to be lost or destroyed have
76 not been paid to any person, and such agent or trustee,
77 the holder of such certificate, is dead, then, and in such
78 case, the administrator of the person to whom the
79 alleged lost or destroyed certificate was issued as agent
80 or trustee aforesaid, and who is still the owner of record
81 of such certificate, shall, after ten days' written notice to
82 such corporation demanding the issuance of a new
83 certificate of stock to him as such administrator, be
84 entitled to receive, in his name as administrator, such
85 new certificate in place of the one alleged to be

86 lost or destroyed, and such administrator shall be en-
87 titled to receive all dividends that may have been de-
88 clared upon such certificate or number of shares
89 of stock alleged to be lost or destroyed and remaining
90 unpaid, under and upon the following conditions: (a)
91 If such administrator of such holder of record as agent
92 or trustee of such certificate of stock has given the afore-
93 said ten days' notice in writing to the corporation, he
94 shall cause to be advertised, as hereinafter provided,
95 the fact that he gave to such corporation the required
96 ten days' notice in writing; that more than twenty-five
97 years prior thereto a certificate for the number of shares
98 of the capital stock of such corporation was issued to
99 his intestate as agent or trustee; that it is unknown to
100 him who such principal or cestui que trust may be;
101 that no person except the administrator of such agent
102 or trustee has made claim to such certificate for more
103 than twenty-five years; that such certificate has been
104 lost or destroyed; that such stock represented by the
105 certificate lost or destroyed and all dividends payable
106 in respect thereto are claimed by such administrator
107 for the purpose of distributing and accounting for the
108 same to the person or persons entitled thereto; that at
109 least two weeks after the last publication thereof such
110 administrator, unless such corporation issues and delivers
111 unto him such new certificate in the place of the one
112 lost or destroyed and pays over and delivers to him as
113 such administrator all dividends payable in respect
114 thereto, will institute suit for the same; and such notice
115 shall warn any and all persons, except such administrator,
116 to produce to such corporation, on or before the ex-
117 piration of two weeks after the last publication thereof
118 as aforesaid, a statement in writing under oath of such
119 claimant or his administrator, of the origin, circumstances
120 and grounds upon which his claim as principal or cestui
121 que trust to such stock and dividends is asserted, as well
122 as the reasons for his delay in asserting title thereto;
123 (b) if within such period of time for producing such
124 certificate to such corporation such statement, satisfac-
125 tory to such corporation, be not forthcoming, such
126 corporation shall issue and deliver to such admin-

127 istrator a new certificate of stock in the place and
128 stead of that alleged to be lost or destroyed and also
129 deliver and pay over to him all dividends payable in
130 respect thereto. The notice required to be published
131 by this paragraph shall be published as a Class II legal
132 advertisement in compliance with the provisions of
133 article three, chapter fifty-nine of this code, and the
134 publication area for such publication shall be the
135 county wherein he was granted his letters of admin-
136 istration.

137 Such issuance and delivery of a new certificate and
138 the payment of such dividends by the corporation to
139 such administrator shall relieve such corporation from
140 any and all liability whatsoever to any person claiming
141 in any capacity such shares of stock represented by the
142 certificates lost or destroyed or such dividends in respect
143 thereto.

144 The procedure provided in this section is cumulative
145 and not exclusive, and nothing herein contained shall
146 be taken or construed as limiting in any way the right
147 of any party who claims to be entitled to a new certifi-
148 cate of stock in the place of a lost or destroyed certificate,
149 or the accumulated dividends thereon, which was issued
150 in the manner hereinbefore provided, to have his or its
151 rights to such new certificate and dividends determined
152 and adjudicated without regard to this section by resort
153 to any court of law or equity having jurisdiction to
154 determine and adjudicate such rights, before the corpo-
155 ration shall have paid such dividends and issued a new
156 certificate under the requirements of this section. The
157 right to prosecute any suit pending at the time this
158 article takes effect and growing out of the loss of a cer-
159 tificate of stock issued in the name of the trustee or
160 agent shall not be impaired by anything herein contained.

§31-1-63. Consolidation or merger of domestic corporations.

1 Any two or more corporations organized under the
2 provisions of this chapter, or existing under the laws
3 of this state, for the purpose of carrying on any kind of
4 business, may consolidate or merge into a single corpo-
5 ration which may be any one of such constituent cor-

6 porations or a new corporation to be formed by means
7 of such consolidation or merger as shall be specified
8 in the agreement hereinafter required. The directors,
9 or a majority of them, of such corporations as desire
10 to consolidate or merge, may enter into an agreement
11 signed by them and under the corporate seals of the
12 respective corporations, prescribing the terms and condi-
13 tions of consolidation or merger, the mode of carrying
14 the same into effect, and stating such other facts re-
15 quired or permitted by the provisions of this article
16 to be set out in an agreement of incorporation, as can
17 be stated in the case of a consolidation or merger, stated
18 in such altered form as the circumstances of the case
19 require, as well as the manner of converting the shares
20 of each of the constituent corporations into shares of
21 the consolidated or merged corporation, with such other
22 details and provisions as are deemed necessary.

23 Such agreement shall be submitted to the stockholders
24 of each constituent corporation, at a meeting thereof,
25 called separately for the purpose of taking the same
26 into consideration; of the time, place and object of which
27 meeting due notice shall be given by publication as a
28 Class II legal advertisement in compliance with the pro-
29 visions of article three, chapter fifty-nine of this code,
30 and the publication area for such publication shall be the
31 county wherein each such corporation either has its
32 principal office or conducts its business. A copy of such
33 notice shall also be mailed to the last known post-office
34 address of each stockholder of each such corporation,
35 at least twenty days prior to the date of such meeting:
36 *Provided, however,* That in the consolidation or merger
37 of banking institutions as defined in this chapter, in
38 the case of emergency, and upon the order of the com-
39 missioner of banking, the meeting may be held upon
40 at least twelve hours' notice sent by mail or telegraph
41 to the last known post-office address of each stockholder,
42 and without publication.

43 At any such stockholders' meeting of any corporation
44 said agreement shall be considered and a vote by ballot,
45 in person or by proxy, taken for the adoption or rejec-

46 tion of the same, each share entitling the holder thereof
47 to one vote; and if the votes of stockholders of each such
48 corporation representing two thirds of the total num-
49 ber of shares of its capital stock then issued and out-
50 standing shall be for the adoption of such agreement,
51 then that fact shall be certified on such agreement by
52 the secretary of each such corporation under the seal
53 thereof; and the agreement so adopted and certified
54 shall be signed by the president and secretary of each
55 of such corporations under the corporate seals thereof and
56 acknowledged by the president of each of such corpo-
57 rations before any officer authorized by the laws of this
58 state to take acknowledgments of deeds to be the re-
59 spective act, deed and agreement of each of such corpo-
60 rations, and the agreement so certified and acknowledged
61 shall be filed in the office of the secretary of state, and
62 shall thence be taken and deemed to be the agreement
63 and act of consolidation or merger of the said corporations;
64 and a copy of such agreement and act of consolidation
65 or merger, duly certified by the secretary of state under
66 the seal of his office, shall also be recorded in the offices
67 of the clerks of the county courts of the counties of this
68 state in which the respective corporations so consolidat-
69 ing or merging shall have their original certificates of
70 incorporation recorded, if any, or if any of the corpo-
71 rations shall have been specially created by a public
72 act of the Legislature, then such agreement shall be
73 recorded in the county where such corporation shall have
74 had its principal place of business, if any, and such rec-
75 ord, or a certified copy thereof, shall be evidence of the
76 agreement and act of consolidation or merger of such
77 corporations, and of the observance and performance
78 of all acts and conditions necessary to have been ob-
79 served and performed precedent to such consolidation
80 or merger.

81 When an agreement shall have been signed, acknowl-
82 edged, filed and recorded as herein required, for all
83 purposes of the laws of this state, the separate exist-
84 ence of all the constituent corporations, parties to said
85 agreement, or of all such constituent corporations except
86 the one into which the other or others of such constit-

87 uent corporations have been merged, or consolidated,
88 as the case may be, shall cease and the constituent
89 corporations shall become a new corporation, or be
90 merged into one of such corporations, as the case may
91 be, in accordance with the provisions of said agreement,
92 possessing all the rights, privileges, powers, franchises
93 and trust and fiduciary duties, powers and obligations,
94 as well of a public as of a private nature, and being sub-
95 ject to all the restrictions, disabilities and duties of each
96 of such corporations so consolidated or merged, and all
97 and singular the rights, privileges, powers, franchises,
98 and trust and fiduciary rights, powers, duties and obli-
99 gations, of each of said corporations; and all property,
100 real, personal and mixed, and all debts due to any of
101 said constituent corporations on whatever account, as
102 well for stock subscriptions as all other things in action
103 or belonging to each of such corporations shall be vested
104 in the corporation resulting from or surviving such
105 consolidation or merger; and all property, rights, privi-
106 leges, powers, and franchises, and all and every other
107 interest shall be thereafter as effectually the property
108 of the resulting or surviving corporation as they were
109 of the several and respective constituent corporations;
110 and the title to any real estate, whether vested by deed
111 or otherwise, under the laws of this state, vested in any
112 of such constituent corporations, shall not revert or be
113 in any way impaired by reason of this chapter: *Provided,*
114 *however,* That all rights of creditors and all liens upon
115 any property of any of said constituent corporations
116 shall be preserved unimpaired, and all debts, liabilities
117 and duties of the respective constituent corporations shall
118 thenceforth attach to said resulting or surviving cor-
119 poration, and may be enforced against it to the same
120 extent as if said debts, liabilities and duties had been
121 incurred or contracted by it.

§31-1-80. Procedure upon voluntary dissolution of domestic corporation.

1 At any time during the fiscal year in which any cor-
2 poration may be created and before it engages in the
3 transaction of business and acquires any property other

4 than the amounts paid in on subscriptions to its stock,
5 the incorporators may abandon the corporation and by
6 indorsing and signing a statement of the intention so to
7 do on the certificate and returning the same to the secre-
8 tary of state, the secretary of state on receipt thereof
9 shall cancel and preserve such certificate of incorpora-
10 tion and the corporation created thereby shall be dis-
11 solved. If such charter shall have been recorded in the
12 office of the clerk of the county court of any county in
13 the state, the incorporators shall execute and acknowl-
14 edge a writing setting forth the facts of the surrender
15 and dissolution of the corporation and cause such writing
16 to be recorded in the office of the clerk of the county
17 court in which the certificate of incorporation is re-
18 corded, and the clerk shall note on the margin of the
19 record book in which the certificate of incorporation is
20 engrossed the fact of the dissolution of the corporation.

21 The stockholders at any time may resolve to discon-
22 tinue the business of the corporation, at least sixty per
23 cent of the shares of capital stock entitled to vote being
24 present at the meeting and voting in favor of such dis-
25 continuance, and may divide the property and assets
26 among those entitled thereto after paying all the debts
27 and liabilities of the corporation. A copy of the resolu-
28 tion shall be certified by the president, or a vice presi-
29 dent under his hand and the seal of the corporation, to
30 the secretary of state, who shall file the same in his
31 office and shall issue a certificate under his hand and
32 the great seal of the state reciting such resolution and
33 certifying the dissolution of the corporation, but such
34 certificate of dissolution shall not be issued unless and
35 until the corporation has paid into the state treasury any
36 amount it may owe as license tax, including interests
37 and penalties. The officers of the corporation shall cause
38 the certificate of dissolution to be recorded in the office
39 of the clerk of each county court of the state in which
40 the certificate of incorporation is recorded and the clerk
41 of the court shall note on the margin of the record book
42 in which the certificate of incorporation is engrossed the
43 fact and the date of the dissolution of the corporation.
44 As soon as practicable after the passage of such resolu-

45 tion the directors and officers of the corporation shall
46 cause the corporate assets to be applied to the payment
47 of the corporate debts and liabilities, and no division of
48 the assets among the stockholders shall be made until
49 ample provision has been made for the payment of all
50 the debts and liabilities and until notice of the resolution
51 of dissolution shall have been published as a Class II legal
52 advertisement in compliance with the provisions of ar-
53 ticle three, chapter fifty-nine of this code, and the publi-
54 cation area for such publication shall be the county in
55 which the principal office or place of business of the cor-
56 poration is located. The right of the state or of any
57 county, district or city therein for any license taxes ac-
58 crued unto the date of dissolution, or any other taxes or
59 claims, or the remedies for the collection thereof, shall
60 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
2 property and transact business in this state, it may sur-
3 render to the state its authority therefor, in the follow-
4 ing manner: It shall publish a notice of its intention to
5 withdraw from the state, such notice to be published as
6 a Class II legal advertisement in compliance with the
7 provisions of article three, chapter fifty-nine of this code,
8 and the publication area for such publication shall be
9 some county in the state where it carries on its business.
10 After such publication it shall make application to the
11 secretary of state for a certificate of withdrawal, which
12 application shall be signed by the president of the cor-
13 poration, sealed with its corporate seal, and attested by
14 its secretary, and be accompanied by a copy of such
15 notice and the publisher's certificate of such publication.
16 The secretary of state shall file the same in his office
17 and issue to such corporation a certificate of withdrawal;
18 but such certificate of withdrawal shall not be issued
19 unless and until the corporation has paid into the state
20 treasury any amount it may owe as license tax, includ-
21 ing all interest and penalties. The issuance of such cer-
22 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.

§31-2-15. 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 passage 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,

2 have the exclusive privilege of maintaining a suitable
3 boom or booms, with or without piers, dam or dams,
4 across the stream designated, within two miles above its
5 principal boom, for the purpose of stopping and securing
6 boats, rafts, sawlogs and other timber of value, but such
7 boom or booms shall be so constructed as to permit boats,
8 rafts and other timber, when desired by the owner, to pass
9 them without unavoidable delay and without paying toll,
10 boomage or other charges, and may erect their booms
11 on the rivers and other streams, and may dredge and
12 clear the channels thereof, and remove obstructions
13 therefrom; and such corporation may build sawmills on
14 lands acquired in any other way than by condemnation;
15 and may manufacture and sell lumber and construct
16 tram-railways and dams, and do such other work as may
17 be necessary for the purpose of getting logs and lumber
18 to, down and from the river and its branches, on which
19 such boom is located; and, in the event the lands neces-
20 sary for such tram-railways cannot be purchased from
21 the owner or owners thereof at a reasonable price, then
22 such corporation may have the same condemned for such
23 purpose in the manner now provided by law for cases
24 of a similar nature: *Provided*, That nothing in this sec-
25 tion shall be so construed as to prevent any boom com-
26 pany from using water surface for two miles below its
27 boom for assorting and bunching its own and other boats,
28 rafts, sawlogs and other timber of value, and that no
29 company shall so construct its boom as to deprive another
30 company of such right, nor shall any boom company which
31 may construct a boom within two miles below a boom
32 heretofore constructed have exclusive privileges of the
33 water or stream above such other boom.

34 Boomage or toll shall be charged at a rate not less than
35 twenty-five cents nor more than one dollar per thousand
36 feet board measure; or not less than twenty nor more
37 than eighty cents per one hundred cubic feet, except as
38 hereinafter provided, which rate shall be determined by
39 a commission in the manner following to wit: The cir-
40 cuit court of each county, the timber of which can be
41 floated into the boom, or the judge of such court in va-

42 cation, shall appoint one person, and such corporation
43 shall appoint a person and if such persons are unable
44 to agree, they shall choose another person. None of the
45 persons so selected shall be a stockholder or interested
46 in such corporation. The persons so appointed and chosen
47 shall be versed in the timber and lumber business, and
48 be qualified to make such measurements and calculations
49 as may be necessary. Persons so appointed or chosen
50 shall constitute a commission, whose duty it shall be to
51 fix the rates of boomage which the corporation may
52 charge; and in determining this rate they shall take into
53 consideration the ease or difficulty, as the case may be,
54 of booming logs, etc., in such boom, and also any extra-
55 ordinary expenditure of money which the corporation
56 may have made to facilitate its business; and such com-
57 missioners shall fix a rate, which shall be in their judg-
58 ment a fair and just compensation to the corporation for
59 the capital invested and labor performed in booming
60 logs, timber, etc., in the limits above described. And
61 such commissioners may, in their discretion, or when
62 requested to do so by parties interested, fix the separate
63 rate which shall be charged for logs, ties, lumber, staves,
64 or any other specific kind of lumber or timber which
65 may be floated in such boom, by the hundred, thousand,
66 or by bulk, as the case may be. The report of such com-
67 missioners shall be filed in the office of the clerk of the
68 circuit court of each county in which a commissioner
69 was appointed, and published within ten days after the
70 report has been agreed upon as a Class I legal adver-
71 tisement in compliance with the provisions of article
72 three, chapter fifty-nine of this code, and the publication
73 area for such publication shall be each county interested
74 in such boom. Should the corporation or any interested
75 party not be satisfied with the report of the commission-
76 ers, they may take exceptions thereto, which exceptions
77 may be heard by the judge of the circuit court of any
78 county interested, in term time or in vacation, and, if
79 it appear to the court or judge that the rates established
80 by the commissioners are unjust, either to the corpora-
81 tion or private persons, such report may be set aside and
82 a new commission appointed. But unless exceptions are

83 taken to the report of such commissioners within sixty
84 days after the filing of the same, the report shall be taken
85 as confirmed, and be binding upon all parties interested.
86 Any boom company organized under the provisions of
87 this chapter, or any party interested, may, if it so desire,
88 ask for a commission once every five years, to revise the
89 rate of boomage; such commission to be constituted as
90 provided for in this section. When the stream boomed
91 lies wholly in one county, there shall be two commis-
92 sioners appointed by the circuit court of that county,
93 who, together with the one appointed by the corporation,
94 as hereinbefore provided, shall constitute such commis-
95 sion. If any controversy shall arise between such cor-
96 poration and any person or persons having timber or
97 other lumber in such boom, on account of such lumber,
98 or the rates of boomage, the commissioners authorized
99 to be appointed by this section may, if the parties inter-
100 ested and such corporation so desire it, act as arbitrators
101 to settle the same in such manner and with such result
102 as the law provides in other cases of arbitration. The
103 commissioners appointed under this section shall receive
104 three dollars per day for their services, to be paid by
105 such corporation, except that, after the rates have been
106 fixed, any subsequent commission shall be paid by the
107 party asking it.

108 Such corporation shall have a lien on all sawlogs and
109 other timber and lumber thus boomed for the payment
110 of all tolls for booming, until the same shall be paid.

111 If any timber shall have been boomed securely, as
112 aforesaid, and no person shall appear to claim the same,
113 and pay the tolls thereon, within ninety days, it shall
114 be lawful for the corporation, after advertising the same
115 as hereinafter provided, reciting the marks, if any, to
116 make application to any justice of the peace of such
117 county, whose duty it shall be, upon proper proof of the
118 publication of such notice, to direct a sale of such tim-
119 ber, and designate some officer or other person to make
120 such sale, either by public auction or by private sale,
121 as to the justice shall seem most advantageous to the
122 parties interested; and at any time within a year from

123 such sale, the owner shall be entitled to receive the pro-
124 ceeds thereof, after deducting the toll and expenses; but
125 if not claimed within one year, the proceeds shall inure
126 to and be vested in the general school fund. Such ad-
127 vertisement shall be published as a Class II legal adver-
128 tisement in compliance with the provisions of article
129 three, chapter fifty-nine of this code, and the publication
130 area for such publication shall be each county in which
131 such boom or booms are located.

132 Where several companies are operating on the same
133 stream, the upper companies shall pass free of charge
134 through or around their booms, with as little delay as
135 possible, all logs, lumber, etc., distinctly marked as be-
136 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.
16. Liability of stockholders.

§31-4-8. Certificate as to capital to be filed annually before exercising trust powers; penalty; notice of failure to comply.

1 No banking institution shall exercise any of the trust
2 powers mentioned in the preceding section until it shall
3 have filed with the secretary of state a duly authenticated
4 certificate, showing the unimpaired capital of such com-
5 pany to be at least one hundred thousand dollars and
6 a like duly authenticated certificate shall be filed with
7 the secretary of state and a copy thereof with the com-
8 missioner of banking in the month of January of each
9 year thereafter. If any banking institution shall exer-
10 cise, or attempt to exercise, any such powers or rights
11 without having complied with the requirements of this
12 section as to the filing of such certificate, it shall be guilty
13 of a misdemeanor, and, upon conviction thereof, shall
14 be fined not more than five hundred dollars; and in every
15 such case, whether or not there shall have been a prose-
16 cution or conviction of the company so offending, the
17 commissioner of banking, being satisfied of the facts,
18 may publish a notice of the fact that it has failed to

19 comply with the requirements of this section and is
20 therefore not entitled to exercise the trust powers and
21 rights mentioned in the preceding section. In the event
22 a notice is published as aforesaid, it shall be published
23 as a Class II legal advertisement in compliance with the
24 provisions of article three, chapter fifty-nine of this code,
25 and the publication area for such publication shall be
26 the county in which such institution is located.

§31-4-16. Liability of stockholders.

1 Each stockholder of any banking institution, organized
2 under the laws of this state, in addition to the liability
3 imposed upon him as a stockholder of a corporation under
4 the provisions of article one of this chapter, shall be liable
5 to the creditors of the banking institution, on obligations
6 accruing while he is a shareholder, to an amount equal
7 to the par value of the shares of stock held by him;
8 and no sale or transfer of the shares of stock
9 made by any such stockholder, after the liability of
10 the banking institution originated or accrued, shall
11 relieve the stockholder from the liability imposed by
12 this section. Any proceeding in equity to enforce the
13 liability of stockholders imposed by this section may be
14 prosecuted severally against any one stockholder or
15 jointly against any number of stockholders: *Provided*,
16 That the additional liability imposed upon such stock-
17 holders by this section shall not apply on and after the
18 first day of July, one thousand nine hundred thirty-nine,
19 with respect to any such institution, so long as such insti-
20 tution, in pursuance of the provisions of chapter seven-
21 teen, acts of the Legislature, one thousand nine hundred
22 thirty-five, has its deposits insured by the federal deposit
23 insurance corporation, or by any other similar federal
24 instrumentality that may be hereafter created, provided
25 there shall be such instrumentality in existence and avail-
26 able for the purpose: *Provided further*, That such addi-
27 tional liability shall not apply on and after the first day
28 of July, one thousand nine hundred thirty-nine, with
29 respect to any banking institution from and after the
30 time it shall obtain from the commissioner of banking
31 a certificate setting forth that such institution has, as

32 ascertained by him, an unimpaired surplus equal to at
33 least fifty per cent of the authorized capital of such in-
34 stitution. Upon application by any banking institution
35 to the commissioner of banking for such certificate, the
36 commissioner shall ascertain whether such institution has
37 in fact such unimpaired surplus, and if such unimpaired
38 surplus be found by him to exist, then he shall issue
39 such certificate. If impairment of such surplus shall
40 thereafter occur, such impairment shall not impose fur-
41 ther or additional liability upon the stockholders of such
42 institution: *And provided further*, That not less than
43 three months prior to the first day of July, one thousand
44 nine hundred thirty-nine, such institution shall have
45 caused notices of such prospective termination of liabil-
46 ity to be published as a Class I legal advertisement in
47 compliance with the provisions of article three, chapter
48 fifty-nine of this code, and the publication area for such
49 publication shall be the county in which such institu-
50 tion is located. If the institution fails to give such notice,
51 as and when above provided, a termination of such addi-
52 tional liability may thereafter be accomplished as of the
53 date three months subsequent to publication of the notice
54 in the manner above provided.

55 Nothing in this section shall affect or impair the author-
56 ity of the officers and directors of a banking institution
57 to cause to be made good any impairment of the capital
58 of such institution, under the provisions of section four-
59 teen, article eight of this chapter.

**ARTICLE 8. BUSINESS OPERATIONS AND SUPERVISION OF
BANKING INSTITUTIONS, INDUSTRIAL LOAN COM-
PANIES 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.
14. Impairment of capital of banking institution forbidden; how remedied.
- 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.

44. Appraisal of assets of banking institutions in conservatorship or receivership.

§31-8-10. Periodical reports of industrial loan companies and building and loan associations; publication.

1 Every industrial loan company and building and loan
2 association and every other corporation by law placed
3 under the supervision of the department of banking and
4 not covered in the next following section, engaged in busi-
5 ness in this state shall, at least twice a year, at the re-
6 quest of the commissioner of banking and as of a date
7 named by him, furnish, within fifteen days after such
8 request, a statement, verified by its president or secre-
9 tary, and approved by three of its directors, in such form
10 as may be prescribed by the commissioner of banking,
11 showing in detail the actual financial condition and the
12 amount of the assets and liabilities of such corporation,
13 and shall furnish such other information as to its busi-
14 ness and affairs as the commissioner of banking may re-
15 quire, which reports, in the same form in which they
16 are transmitted to the commissioner of banking, shall
17 be printed and circulated among all of the stockholders
18 of the corporation or published as a Class I 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 the county in which
22 the corporation is located.

**§31-8-11. Periodical reports of banking institutions; publica-
tion.**

1 Every banking institution organized and authorized to
2 transact business under this chapter shall make at least
3 four reports each year to the commissioner of banking.
4 Such reports shall be called for as nearly as conveniently
5 may be on the dates on which the comptroller of the cur-
6 rency shall call for reports by national banking associa-
7 tions, and be of such form and contain such details as
8 shall be prescribed by the commissioner of banking;
9 which reports shall be verified by oath of the president
10 or active vice president and cashier, and attested by the
11 signature of at least three directors of the banking institu-
12 tion. Each report shall show in detail, under appropriate

13 heads, the resources and liabilities of the banking insti-
14 tution at the close of the business on the date specified
15 by the banking commissioner, and shall be transmitted
16 to the office of the department of banking and super-
17 vision within five days from the receipt of the request
18 for the same.

19 Such report, in the same form in which it is made
20 to the commissioner of banking, shall be published
21 as a Class I legal advertisement in compliance with
22 the provisions of article three, chapter fifty-nine of
23 this code, and the publication area for such publication
24 shall be the county in which the banking institution
25 is located.

26 In lieu of such report and publication, the commis-
27 sioner of banking shall have discretion to accept from a
28 banking institution which is a member of the federal
29 reserve system a report, and the publication thereof re-
30 quired of such banking institution by the federal reserve
31 board or by its agency: *Provided*, That such report shall
32 show in detail, under appropriate heads, the resources
33 and liabilities of the banking institution at the close of
34 business on the day specified by the federal reserve board,
35 or by its agency, and shall contain such further details
36 as may be deemed necessary or desirable by the commis-
37 sioner of banking.

38 Any report and the publication thereof shall be at
39 the expense of the banking institution, and it shall furnish
40 to the commissioner of banking such proof of the publica-
41 tion as may be required by him.

**§31-8-14. Impairment of capital of banking institution for-
bidden; how remedied.**

1 The officers and directors of a banking institution
2 organized and authorized to transact business under this
3 chapter shall not pay out, disburse or withdraw, or per-
4 mit to be paid out, disbursed or withdrawn, in any man-
5 ner whatever, any part of the capital of the corporation
6 except in case of merger or consolidation, as hereinafter
7 provided. Whenever, from any cause, the capital of such
8 banking institution shall become impaired, it shall be
9 the duty of the officers and directors of such institution,

10 forthwith, to cause any such impairment to be made good,
11 by assessing the amount of the deficiency pro rata on
12 the shares of the capital stock outstanding, which assess-
13 ments shall be paid within thirty days after notice
14 thereof. If any stockholder shall neglect or refuse to
15 pay the assessment on his shares after thirty days' notice,
16 it shall be the duty of the board of directors to cause
17 a sufficient number of his shares of stock to be sold for
18 cash, at public outcry at the banking room of the banking
19 institution, to pay the amount of such assessment and
20 expenses of making the sale. Notice of such sale shall
21 be published as a Class II legal advertisement in com-
22 pliance with the provisions of article three, chapter fifty-
23 nine of this code, and the publication area for such
24 publication shall be the county in which the banking
25 institution is located. The first publication shall be made
26 at least ten days before the date of such sale. Any surplus
27 from the sale of any share shall be paid to the defaulting
28 stockholder and should such stock not sell for a sum
29 sufficient to pay such assessment and expense of making
30 such sale, the banking institution may recover the de-
31 ficiency by action at law from the stockholder whose
32 stock was so sold. A sale of stock as provided in this sec-
33 tion shall effect an absolute cancellation of the outstand-
34 ing certificate, or certificates, evidencing the stock so sold,
35 and shall make such certificate null and void, and a new
36 certificate shall be issued by the bank to the purchaser
37 of such stock.

**§31-8-25a. Permissive closing of banking institution on fixed
weekday; procedure.**

1 Any banking institution or trust company in this state,
2 or combined banking institution and trust company, in-
3 cluding national banking associations, may remain closed
4 on any one fixed weekday or portion of such day in each
5 calendar week, other than Sunday, which may be desig-
6 nated by the adoption of a resolution by the board of
7 directors thereof. Not less than fifteen nor more than
8 thirty days in advance of closing of any such weekday
9 or portion thereof, such banking institution shall post
10 a notice in a conspicuous place in its banking room

11 stating that on or after a day certain and until further
12 notice given in like manner, such banking institution
13 will remain closed on a fixed weekday or portion thereof.
14 Concurrently with the posting of such notice, such bank-
15 ing institution shall cause a notice to be published as
16 a Class II legal advertisement in compliance with the
17 provisions of article three, chapter fifty-nine of this code,
18 and the publication area for such publication shall be
19 the county in which the principal office of such bank is
20 located. Such notice shall set forth the weekday or por-
21 tion thereof on which said bank will remain closed and
22 the date when such closing becomes effective. A certified
23 copy of such resolution certified by the cashier or sec-
24 retary of such banking institution, together with an
25 affidavit of posting and proof of publication of the notice
26 herein required shall be filed with the commissioner
27 of banking.

28 Any fixed weekday or portion thereof on which any
29 banking institution shall elect to close pursuant to the
30 authority of this section shall constitute a legal holiday
31 or partial legal holiday with respect to such banking in-
32 stitution and not a business day for the purposes of the
33 law relating to negotiable instruments, and any act or
34 contract authorized, required or permitted to be carried
35 out or performed at, by or with respect to such banking
36 institution may be performed on the next business day,
37 and no liability or loss of rights on the part of any
38 person or banking institution shall result therefrom.

**§31-8-32. Liquidation of banking institutions and other corpor-
ations with impaired capital or insolvent.**

1 If the commissioner of banking shall ascertain from
2 any source that the capital of any banking institution
3 or other corporation by law placed under the supervi-
4 sion of the department of banking is substantially im-
5 paired, and that such institution or other corporation,
6 upon notice from him, does not promptly make good
7 such impairment, or that any banking institution or such
8 other corporation in this state is insolvent, he shall have
9 authority to appoint an employee of the department of
10 banking receiver of such banking institution or other

11 corporation to take charge of the papers, books, records,
12 moneys and assets of every description of such institu-
13 tion or other corporation; and immediately upon taking
14 charge of any such institution or other corporation, the
15 commissioner of banking shall make in duplicate a com-
16 plete inventory of all assets and an itemized list of all
17 liabilities of such institution or other corporation. The
18 original and copy of such list shall be subscribed and
19 sworn to by the persons making the same and the orig-
20 inal shall be filed with the department of banking and
21 one copy shall be furnished such receiver, and such re-
22 ceiver, upon assuming office, shall open and keep such
23 books and records as are prescribed by the commissioner
24 of banking.

25 Such receiver shall have all the powers vested in spe-
26 cial receivers by general law. The receiver, under the
27 authority of the commissioner of banking, shall institute
28 and prosecute any suit or suits necessary to obtain pos-
29 session of any property and to sell and dispose of the
30 same and to collect all obligations due such institution
31 or other corporation. The receiver in such suit, or by
32 separate suits, under the authority of the commissioner
33 of banking, shall enforce against the officers, directors
34 and stockholders any liability incurred by them and ex-
35 isting in favor of the creditors of such institution or other
36 corporation, and collect from such officers, directors and
37 stockholders any sums for which they are liable as afore-
38 said.

39 If it shall appear that the assets of such insolvent in-
40 stitution or other corporation are not sufficient to pay
41 in full all of its creditors and depositors, without waiting
42 to administer the assets of such institution or other cor-
43 poration, or delaying for any other cause, in the same
44 suit or in separate suits, to be forthwith instituted in the
45 same or any other jurisdiction in his name, the receiver,
46 under the authority of the commissioner of banking,
47 shall collect from each of the several stockholders of such
48 institution or other corporation all sums for which they
49 are severally liable to such institution or other corpo-
50 ration, for the benefit of its creditors.

51 If it shall be necessary to institute any suit against
52 any stockholder in the courts of any other state, the same
53 may be either instituted and prosecuted in the name of
54 the commissioner of banking, or, at his election, in the
55 name of the receiver or the corporate name of the in-
56 stitution or other corporation which is in process of
57 liquidation, and any such receiver may bring a suit in the
58 circuit court of the county where such institution or other
59 corporation is located, to ascertain the several depositors
60 and creditors of such institution or other corporation and
61 the amounts and priorities of their respective claims.
62 Such banking institution or other corporation and the
63 stockholders of such banking institution or other cor-
64 poration, residing in this state, shall be made defend-
65 ants to such suit, and all persons who shall file proofs
66 of claim shall be deemed parties thereto as though they
67 had been named as defendants. The court shall refer
68 the cause to a commissioner in chancery, and such com-
69 missioner shall thereupon cause to be published a notice
70 to all depositors and creditors of such banking institu-
71 tion or other corporation, requesting them to present
72 their claims to such commissioner for allowance. Such
73 notice shall be published as a Class II legal advertise-
74 ment in compliance with the provisions of article three,
75 chapter fifty-nine of this code, and the publication area
76 for such publication shall be the county wherein the
77 suit is pending. After publication of such notice is com-
78 pleted, such commissioner in chancery shall proceed as
79 promptly as possible to ascertain and report the several
80 depositors and creditors of such banking institution or
81 other corporation and the amounts and priorities of their
82 respective claims, if any, proven before him. All claims
83 as shall have been duly proved and allowed by the re-
84 ceiver or the commissioner of banking, before the de-
85 cree of reference, may be allowed and reported by the
86 commissioner in chancery without further proof, unless
87 the same shall be contested and disallowed for proper
88 cause. The commissioner in chancery shall also ascer-
89 tain and report what funds and assets of such banking
90 institution or other corporation have come into the hands
91 of the receiver, what disposition has been made of such

92 assets, and what dividends, if any, have been paid, and
93 settle the accounts of such receiver. When the report
94 of such commissioner is confirmed, the court shall enter
95 such orders and decrees and take such proceedings as
96 are proper to ascertain the several depositors and cred-
97 itors of such banking institution or other corporation,
98 and adjudicate their respective rights and direct the dis-
99 tribution of the assets and funds in the hands of the re-
100 ceiver and confirm any distribution made under orders
101 of the commissioner of banking, and may confirm any
102 and all sales made by such receiver, of property and
103 assets of such banking institution or other corporation.
104 Any creditor whose claim is not presented and allowed
105 before any decree of distribution becomes final shall be
106 forever barred from participating in the funds distrib-
107 uted under such decree, or theretofore distributed and
108 confirmed by such decree, and shall have no claim by
109 reason of such distribution against any creditor sharing
110 therein or against the commissioner of banking, the re-
111 ceiver, or any surety upon the receiver's bond. Any
112 claim which shall have been proved and allowed after
113 any dividend or distribution has been made by the re-
114 ceiver, shall be paid dividends equal or proportionate in
115 amount to those already received by the other creditors
116 of the same rank and priority, if the funds and assets
117 in the hands of the receiver are sufficient therefor, be-
118 fore such other creditors receive any further dividend
119 or distribution.

120 In any such suit brought by the receiver for the pur-
121 pose of ascertaining the several depositors and creditors
122 of such institution or other corporation, as hereinbefore
123 provided, the receiver may also proceed against the offi-
124 cers, directors and stockholders of the banking institu-
125 tion or other corporation to enforce their individual lia-
126 bilities as hereinabove provided, or for the adjudication
127 of any other pertinent matter involved in the adminis-
128 tration of the assets and affairs of such institution or
129 other corporation.

130 All of the assets of any such insolvent institution or
131 other corporation shall be administered under, applied

132 and paid out through the orders of the commissioner of
133 banking, as herein provided. The costs and expenses of
134 the receivership and of any suit or suits brought by the
135 receiver under the direction of the commissioner of bank-
136 ing shall be entitled to priority of payment out of the
137 assets of such institution or other corporation.

138 The receiver shall, by proper proceedings, ascertain
139 the several creditors and the amounts and priorities of
140 their respective claims against such institution or other
141 corporation, and shall, from time to time, as the assets
142 of such institution or other corporation are reduced to
143 possession, and converted into cash, pay the same to the
144 several creditors in the order and the manner in which
145 they are respectively entitled to payment: *Provided,*
146 *however,* That without regard to priority, the receiver
147 may at any time pay in full the claim of any creditor
148 which is less than five dollars.

149 If the assets of any such institution or other corpo-
150 ration, including any sums collected from the stockhold-
151 ers, shall more than suffice to pay all of the creditors
152 of such institution or other corporation who have pre-
153 sented and proved, or caused to be allowed, their several
154 demands, the surplus shall be disbursed as follows:
155 First, in the case of a banking institution, to the stock-
156 holders, who have paid in any sums upon their extra-
157 ordinary liability as stockholders, pro rata up to the re-
158 spective amounts paid by each of them. Second, if any-
159 thing shall remain thereafter it shall be paid to the stock-
160 holders of the institution or other corporation, in pro-
161 portion to the number of shares owned by them respec-
162 tively.

163 The salary of such receiver for the time devoted to
164 such receivership and all expenses incurred by such re-
165 ceiver in the discharge of his duties, including reason-
166 able fees paid for legal services, shall be paid out of the
167 assets of such institution or other corporation as a part
168 of the costs of the receivership. No other compensation
169 shall be paid to such officer for acting as receiver for
170 such institution or other corporation.

171 The receiver of any such insolvent institution or other

172 corporation, before entering upon the discharge of his
173 duties, or receiving into his possession any of the assets
174 of such insolvent institution or corporation, shall enter
175 into bond in favor of the state of West Virginia, in a
176 penalty fixed by and with corporate surety approved by
177 the governor, conditioned for the faithful discharge of
178 his duties as receiver, and for accounting for and pay-
179 ing over, as required by law, all properties, moneys and
180 funds which shall come into the hands of such receiver,
181 his agents, attorneys or representatives. The bond and
182 certificate of appointment of such receiver shall be re-
183 corded in the office of the clerk of the county court of
184 the county in which such banking institution or other
185 corporation is situated, and a certified copy thereof shall
186 be forthwith transmitted by the receiver to the commis-
187 sioner of banking.

188 Upon the appointment of a receiver for a banking in-
189 stitution engaged in business in this state and author-
190 ized to exercise trust powers, such trust powers and au-
191 thority shall end, and for every case where such banking
192 institution has acted as fiduciary, such receiver shall im-
193 mediately make a final settlement before the court in
194 which such banking institution qualified as such fiduci-
195 ary, which settlement shall cover all matters not included
196 in a prior settlement, if any. Thereupon such court shall
197 proceed as is provided in section six, article five, chapter
198 forty-four of this code, and no formal revoking or an-
199 nulling order shall be necessary.

200 Nothing in this section shall impair the right of any
201 court of chancery in any suit, on a proper showing, to
202 appoint a receiver for any such institution or other cor-
203 poration, in cases where the commissioner of banking has
204 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; re-organization.

1 Whenever the commissioner of banking shall deem it
2 necessary, in order to conserve the assets of any bank-

3 ing institution for the benefit of the depositors and other
4 creditors thereof, he may appoint a conservator for such
5 banking institution. The conservator may be an em-
6 ployee of the department of banking, and may be re-
7 quired to give such bond and security as the commis-
8 sioner deems proper.

9 The conservator, under the direction of the commis-
10 sioner of banking, shall take possession of the papers,
11 books, records and assets of every description of such
12 banking institution and take such action as may be
13 necessary to conserve such assets pending further dispo-
14 sition of the business of such institution.

15 The conservator shall have all the rights, powers and
16 privileges now possessed by or hereafter given receivers
17 of insolvent banking institutions and shall be subject to
18 all the liabilities, obligations and penalties, not incon-
19 sistent with the provisions of this article, to which re-
20 ceivers are now or may hereafter become subject.

21 During the period that such conservator remains in
22 possession of such banking institution, the legal rela-
23 tions of all parties with respect thereto shall, subject to
24 the other provisions of this section, be the same as if a re-
25 ceiver had been appointed therefor.

26 All expenses of any such conservatorship shall be
27 paid out of the assets of such banking institution
28 and shall be a lien thereon, which shall be prior
29 to any other lien. The conservator shall receive a
30 reasonable compensation for his services to be fixed
31 by the commissioner of banking, but in no event
32 shall such compensation exceed that paid to em-
33 ployees of the department of banking for similar
34 services.

35 (a) Immediately upon taking charge of such bank-
36 ing institution, the conservator, in conjunction with a
37 representative of the bank designated by the directors
38 thereof, shall make in duplicate a complete inventory of
39 all assets and an itemized list of all liabilities of such in-
40 stitution. The original and copy of such list shall be
41 subscribed and sworn to by the persons making the same
42 and the original shall be filed with the department of

43 banking as soon as practicable, and the copy shall be
44 retained by the conservator.

45 (b) If the commissioner of banking becomes satisfied
46 that such a course of action may be pursued safely and
47 that it will be in the public interest, he may, in his dis-
48 cretion, terminate the conservatorship and permit such
49 banking institution to resume the transaction of its busi-
50 ness subject to such terms, conditions, restrictions, and
51 limitations as he may prescribe.

52 (c) While such banking institution is in the hands
53 of the conservator, the commissioner of banking may
54 require such conservator to set aside and make avail-
55 able for withdrawal by depositors and payment to other
56 creditors, on a rateable basis, such amounts as in the
57 opinion of the commissioner may be used safely for this
58 purpose, subject to such priorities and preferences as
59 are provided by law. The commissioner may, in his
60 discretion, permit the conservator to receive deposits.
61 Such deposits shall not be subject to any limitation as
62 to payment or withdrawal. The deposits shall be segre-
63 gated and shall not be used either to liquidate any in-
64 debtedness of such banking institution existing at the
65 time that a conservator was appointed for it or any sub-
66 sequent indebtedness incurred for the purpose of liqui-
67 dating any indebtedness of such banking institution
68 existing at the time such conservator was appointed.

69 Deposits received while the banking institution is in
70 the hands of a conservator shall: (1) Be kept on hand
71 in cash or, (2) be deposited with a federal reserve bank
72 or deposited with such banking institution organized
73 under the United States National Bank Act, or the law
74 of this state as the commissioner of banking may, in
75 his discretion, designate or, (3) be invested in the direct
76 obligations of the United States or the state of West
77 Virginia or the funded obligations of any political sub-
78 division of this state approved by the commissioner of
79 banking.

80 (d) In any reorganization of any banking institu-
81 tion under a plan of a kind which, by its own terms or
82 under existing law, requires the consent, as the case may

83 be, (a) of depositors and other creditors; or (b) of stock-
84 holders; or (c) of both depositors and other creditors, and
85 stockholders, such reorganization shall become effective
86 only (1) when the commissioner of banking shall be
87 satisfied that the plan of reorganization is fair and equita-
88 ble to all depositors, other creditors and stockholders,
89 and that the plan is in the public interest and when he
90 shall have approved the plan subject to such conditions,
91 restrictions and limitations as he may prescribe; and
92 (2) when, after reasonable notice of such reorganization,
93 as the case may require, (a) depositors and other credi-
94 tors of such banking institution representing at least
95 seventy-five per cent in amount of its total deposits and
96 other liabilities; or (b) stockholders owning at least two
97 thirds in amount of its outstanding capital stock; or
98 (c) both depositors and other creditors representing at
99 least seventy-five per cent in amount of the total deposits
100 and other liabilities and stockholders owning at least
101 two thirds in amount of its outstanding capital stock,
102 shall, as the plan may require, have consented in writ-
103 ing to the plan of reorganization. Claims of depositors
104 or other creditors which will be satisfied in full under
105 the plan of reorganization shall not be included among
106 the total deposits and other liabilities of said banking
107 institution in determining the seventy-five per cent there-
108 of as above provided.

109 When such reorganization becomes effective, all books,
110 records, and assets of the bank shall be disposed of in
111 accordance with the provisions of the plan and the affairs
112 of the bank shall be conducted by its board of directors
113 in the manner provided by the plan and under the condi-
114 tions, restrictions and limitations which may have been
115 prescribed by the banking commissioner. In any re-
116 organization which shall have been approved and shall
117 have become effective as provided herein, all deposi-
118 tors and other creditors and stockholders of such bank,
119 whether or not they shall have consented to such plan
120 of reorganization, shall be fully and in all respects sub-
121 ject to and bound by its provisions, and claims of all
122 depositors and other creditors shall be treated as if they
123 had consented to such plan of reorganization.

124 (e) Fifteen days after the affairs of a banking institu-
125 tion shall have been turned back to its board of direc-
126 tors by the conservator, either with or without a reorgan-
127 ization as provided in subdivision (d) hereof, the provi-
128 sions of subdivision (c) hereof shall no longer be effec-
129 tive. Before the conservator shall turn back the affairs
130 of the institution to its board of directors he shall pub-
131 lish a notice in form approved by the commissioner,
132 stating the date on which the affairs of the banking in-
133 stitution will be returned to its board of directors and
134 that the said provisions of subdivision (c) will not be
135 effective fifteen days after such date. Such notice shall
136 be published as a Class I legal advertisement in com-
137 pliance with the provisions of article three, chapter
138 fifty-nine of this code, and the publication area for such
139 publication shall be the county in which such bank is
140 located. On the date of the publication of such notice
141 the conservator shall send a copy of such notice by regis-
142 tered mail to the last known address of every person
143 who is a depositor as shown by the records of the insti-
144 tution. The conservator shall send a similar notice in
145 like manner to every person making deposit in such in-
146 stitution under subdivision (c) after the date of such
147 newspaper publication and before the time when the
148 affairs of the bank are returned to its directors.

149 (f) Nothing in this section shall be construed to im-
150 pair in any manner any powers of the governor or the
151 commissioner of banking.

152 (g) The commissioner of banking is hereby author-
153 ized to prescribe such rules and regulations as he may
154 deem necessary in order to carry out the provisions of
155 this section.

**§31-8-44. Appraisal of assets of banking institutions in con-
servatorship or receivership.**

1 Within sixty days after an inventory shall have been
2 made of the assets of a banking institution in receiver-
3 ship its assets shall be appraised in the manner herein
4 provided and a copy filed with the commissioner of bank-
5 ing. The banking commissioner shall not approve or

6 consent to the reorganization, consolidation, merger or
7 sale of the business of a banking institution in conserva-
8 torship or receivership until an appraisal shall have been
9 made and published as provided in this section. Appraisal
10 shall be made on the basis of present true and actual
11 value by three appraisers: The conservator or receiver,
12 a representative of the banking institution designated by
13 its board of directors and a representative of the deposi-
14 tors, who was a depositor at the time the conservator
15 or receiver was appointed and shall not have disposed
16 of his claim, to be designated by the commissioner of
17 banking upon the nomination in writing of a majority
18 in amount of depositors or assigns if filed with the
19 commissioner not later than two weeks after inventory
20 in receivership or conservatorship. If no such nomina-
21 tion is made the commissioner shall designate the de-
22 positors' representative in his discretion. In the event
23 of disagreement as to a valuation the determination of
24 any two of the appraisers shall be final. A completed
25 appraisal shall be published, in form approved by the
26 commissioner of banking, as a Class I legal advertise-
27 ment in compliance with the provisions of article three,
28 chapter fifty-nine of this code, and the publication area
29 for such publication shall be the county in which the
30 banking institution is located. A copy of the appraisal
31 shall also be filed with the banking commissioner. The
32 expense of appraisal and publication shall be deemed
33 part of the cost of the conservatorship or receivership
34 and shall include reasonable compensation allowed the
35 appraisers, other than a conservator or receiver, by the
36 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 stray or boat.**

§34-1-1. Taking up estray or boat.

1 Any person may take up an estray found on his land,
2 or a boat or vessel adrift. He shall immediately post
3 notices at three public places in the district wherein the
4 property is so found, giving a description of the prop-
5 erty and stating when the same was so taken up;
6 and if the owner of such property shall not appear and
7 claim the same within two weeks from the posting of
8 such notice, then the person so taking such property up
9 shall cause a like notice to be published as a Class II
10 legal advertisement in compliance with the provisions
11 of article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be the county
13 where the property was taken up. In either case the
14 owner may have possession of such property upon pay-
15 ing the costs of such posting and publishing of such no-
16 tice and of keeping the property; and if the owner shall
17 not appear and claim such property within three weeks
18 from the date of the first publication of such notice in
19 a newspaper, the person taking the same up shall imme-
20 diately inform a justice of the district thereof, who
21 shall issue his warrant to three freeholders, requiring
22 them under oath to view and appraise such estray, or
23 boat or vessel, and certify the result, with a description
24 of the kind, marks, brand, stature, color and age of the
25 animal, or kind, burden and build of the boat or vessel.

ARTICLE 2. DERELICT PROPERTY.**Section****2. Notice of suit.****§34-2-2. Notice of suit.**

1 When any such suit as is mentioned in the preceding
2 section is instituted, the court shall cause a publication
3 to be made setting forth the nature of the claim, the
4 name and nativity (when known) of the deceased per-
5 son, or of the former owner of the property, if known,
6 as the case may be, and describing the property or estate
7 claimed, and requiring all persons claiming an interest
8 therein to appear and make themselves defendants, by a
9 given day of an ensuing term. Such publication shall

10 be made as a Class II legal advertisement in compliance
11 with the provisions of article three, chapter fifty-nine of
12 this code, and the publication area for such publication
13 shall be the county in which the seat of state govern-
14 ment 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
2 creating a lien thereon shall be made, the proper author-
3 ities of such church, religious sect, society, or denomina-
4 tion, or of any individual church, parish, congregation
5 or branch, shall cause to be published a notice describ-
6 ing the real estate and stating that the same will be sold
7 and conveyed, or subjected to a lien, as the case may
8 be, on or following a designated date. Such notice shall
9 be published as a Class II legal advertisement in compli-
10 ance with the provisions of article three, chapter fifty-
11 nine of this code, and the publication area for such publi-
12 cation shall be the county where the land is situated.
13 In lieu of such publication, the notice may be read at
14 the principal services of such church, parish, congregation
15 or branch, on at least two separate occasions during a
16 period of two weeks. No conveyance or instrument cre-
17 ating a lien shall be made or become effective until such
18 notice shall be published or read, as aforesaid. An affi-
19 davit setting forth the facts regarding such publication
20 or reading, shall accompany, and be recorded with, any
21 deed of conveyance or instrument creating a lien, and
22 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.**
- 8. **Uniform Disposition of Unclaimed Property Act.**

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

6 apply by petition, in a summary way, to the circuit court,
7 or to the judge thereof in vacation, or to any court of
8 concurrent jurisdiction with the circuit court, or to the
9 judge thereof in vacation, of the county in which the
10 estate proposed to be sold, leased or otherwise conveyed,
11 or some part thereof, may be. Such petitions shall de-
12 scribe the property sought to be sold, leased or other-
13 wise conveyed with reasonable certainty and shall set
14 forth the names of all persons interested in such prop-
15 erty, together with their respective interests or estates,
16 either vested, contingent or executory, so far as is known
17 by the plaintiff. Such petition shall also set forth the
18 facts which, in the opinion of the plaintiff, would jus-
19 tify the sale, lease or other conveyance of such property.
20 The petition shall be verified by the oath of the plain-
21 tiff or one of the plaintiffs, and all persons interested
22 shall be made defendants, and ten days' notice shall be
23 given to such defendants before such petition can be
24 heard: *Provided, however,* That in the case of nonresident
25 defendants and/or unknown or unascertainable parties
26 an order of publication may be entered, on proper affi-
27 davit as in any other chancery proceeding, requiring
28 publication of such notice, with respect to any nonresi-
29 dent defendants and/or any unknown or unascertainable
30 parties who may have or claim any interest or estate in
31 such property, as a Class III-0 legal advertisement in com-
32 pliance with the provisions of article three, chapter fifty-
33 nine of this code, and the publication area for such pub-
34 lication shall be the county in which the property or the
35 greater part of the property concerned is situate. Such
36 published notice, with the certificate of publication, when
37 filed with the record in said proceedings, shall be and
38 constitute valid and sufficient notice herein. All other
39 provisions of this article not inconsistent herewith shall
40 apply to and implement the procedures provided in this
41 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
2 the report required by section eleven, the state treasurer
3 shall cause notice to be published as a Class I legal ad-
4 vertisement in compliance with the provisions of article
5 three, chapter fifty-nine of this code, and the publication
6 area for such publication shall be the county in this state
7 in which is located the last known address of any per-
8 son to be named in the notice. If no address is listed or
9 if the address is outside this state, the publication area for
10 the notice shall be the county in which the holder of
11 the abandoned property has his principal place of busi-
12 ness within this state.

13 (b) The published notice shall be entitled "Notice of
14 Names of Persons Appearing to Be Owners of Abandoned
15 Property," and shall contain:

16 (1) The names in alphabetical order and last known
17 addresses, if any, of persons listed in the report and
18 entitled to notice within the county as hereinbefore speci-
19 fied.

20 (2) A statement that information concerning the
21 amount or description of the property and the name and
22 address of the holder may be obtained by any persons
23 possessing an interest in the property by addressing an
24 inquiry to the state treasurer.

25 (3) A statement that if proof of claim is not presented
26 by the owner to the holder and if the owner's right to
27 receive the property is not established to the holder's
28 satisfaction within sixty-five days from the date of the
29 second published notice, the abandoned property shall
30 be placed in the custody of the state treasurer, to whom
31 all further claims must thereafter be directed.

32 (c) The state treasurer is not required to publish in
33 such notice any item of less than fifty dollars unless he
34 deems such publication to be in the public interest.

35 (d) Within ten days after the first publication of the
36 notice required by subsection (a) of this section, the state
37 treasurer shall mail a notice to each person having an

38 address listed therein who appears to be entitled to prop-
39 erty of the value of fifty dollars or more presumed aban-
40 doned under this article.

41 (e) The mailed notice shall contain:

42 (1) A statement that, according to a report filed with
43 the state treasurer, property is being held to which the
44 addressee appears entitled.

45 (2) The name and address of the person holding the
46 property and any necessary information regarding
47 changes of name and address of the holder.

48 (3) A statement that, if satisfactory proof of claim is
49 not presented by the owner to the holder by the date
50 specified in the published notice, the property will be
51 placed in the custody of the state treasurer, to whom all
52 further claims must be directed.

53 (f) Within five days after the date specified in the
54 published notice, the state treasurer shall mail to each
55 holder a notice specifying the date on which the holder's
56 payment or delivery of abandoned property is due to the
57 state treasurer.

§36-8-17. Sale of abandoned property.

1 (a) All abandoned property other than money deliv-
2 ered to the state treasurer under this article shall within
3 one year after the delivery be sold by him to the highest
4 bidder at public sale in whatever city in the state affords
5 in his judgment the most favorable market for the prop-
6 erty involved. The state treasurer may decline the high-
7 est bid and reoffer the property for sale if he considers
8 the price bid insufficient. He need not offer any prop-
9 erty for sale if, in his opinion, the probable cost of sale
10 exceeds the value of the property.

11 (b) Any sale held under this section shall be pre-
12 ceded by a publication of notice thereof as a Class I legal
13 advertisement in compliance with the provisions of arti-
14 cle three, chapter fifty-nine of this code, and the publi-
15 cation area for such publication shall be the county where
16 the property is to be sold. The publication shall be at
17 least three weeks in advance of sale.

18 (c) The purchaser at any sale conducted by the state
 19 treasurer pursuant to this article shall receive title to
 20 the property purchased, free from all claims of the owner
 21 or prior holder thereof and of all persons claiming through
 22 or under them. The state treasurer shall execute all
 23 documents necessary to complete the transfer of title.

CHAPTER 37. REAL PROPERTY.

Article

6. Landlord and Tenant.

13. Removal, Transfer and Disposition of Remains in Graves Located Upon Privately Owned Lands.

ARTICLE 6. LANDLORD AND TENANT.

Section

24. Record of reentry; publication of certificate.

§37-6-24. Record of reentry; publication of certificate.

1 Where actual reentry shall be made, the party, by or
 2 for whom the same shall be made, shall return a writ-
 3 ten act of reentry, sworn to by the sheriff or other officer
 4 acting therein, to the clerk of the county court of the
 5 county wherein the lands or tenements shall be, who shall
 6 record the same in the deed book, and shall deliver, to
 7 the party making the reentry, a certificate setting forth
 8 the substance of such written act, and that the same
 9 had been left in his office to be recorded, which certifi-
 10 cate shall be published as a Class II legal advertisement
 11 in compliance with the provisions of article three, chapter
 12 fifty-nine of this code, and the publication area for such
 13 publication shall be such county. Such publication shall
 14 be proved by affidavit to the satisfaction of such clerk,
 15 who shall note the fact on the margin of the deed book
 16 against the record of the act of reentry in the words,
 17 "Publication made and proved according to law, A.....
 18 _____ B _____, Clerk,"
 19 and shall return the original act of reentry to the party
 20 entitled thereto. Such written act of reentry, when re-
 21 corded, and the record thereof, or a duly certified copy
 22 from such record, shall be evidence in all cases of the
 23 facts therein set forth.

ARTICLE 13. REMOVAL, TRANSFER AND DISPOSITION OF REMAINS IN GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

Section

3. Parties; notice.

§37-13-3. Parties; notice.

1 All owners, lessees and other persons having an inter-
 2 est in such lands, other than plaintiffs, and also the
 3 surviving next of kin, heirs at law, administrator, execu-
 4 tor, or personal representative of each deceased, so far
 5 as can be determined through reasonable and diligent
 6 effort, shall be made defendants in such action. Insofar
 7 as possible all defendants shall be served with notice of
 8 the institution of the action and the date of the first hear-
 9 ing upon the same, such service to be made in the same
 10 manner provided by law for the service of process in other
 11 civil actions. If the address of any defendant be unknown,
 12 or, if there be any unknown next of kin, heirs at law,
 13 administrator, executor or personal representative of any
 14 known or unknown person whose remains may be in-
 15 terred within any such grave, then, in such event, a copy
 16 of said notice shall be published prior to the hearing
 17 upon the same as a Class II legal advertisement in com-
 18 pliance with the provisions of article three, chapter fifty-
 19 nine of this code, and the publication area for such publi-
 20 cation shall be the county.

CHAPTER 38. LIENS.

Article

1. Vendor's and Trust Deed Liens.
2. Mechanics' Liens.
3. Judgment 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

4. Notice of sale.
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 trust-
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

11 assignee of the grantor, if, upon the hearing of such
12 application, the failure of the trustee to give such bond
13 be made to appear to the satisfaction of such court or
14 judge, by affidavits or otherwise. At least ten days' no-
15 tice in writing of such application shall be given to the
16 trustee, grantor, or assignee of the grantor, and to all
17 cestuis que trust in such deed if they be residents of the
18 county, stating the court or judge before whom such
19 application is to be made. If such trustee and grantor
20 or assignee of the grantor, or either of them, are not
21 residents of such county, the notice as to them, or the
22 one not a resident, may be published as a Class II legal
23 advertisement in compliance with the provisions of arti-
24 cle three, chapter fifty-nine of this code, and the publi-
25 cation 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.

1 In the event that any owner, upon whose real estate
2 or improvement thereof it is desired to take a lien under
3 this article, should be a nonresident of this state, or in
4 the event that any officer of this state authorized by law
5 to execute legal process should make return "not found"
6 upon any notice of a mechanic's lien which may be pre-
7 sented to him for service, then it shall be sufficient service
8 of any such notice of mechanic's lien upon such non-
9 resident owner, or upon such owner as to whom any such
10 return, of "not found" shall be made by any such officer,
11 to publish a copy of such notice as a Class II legal ad-
12 vertisement in compliance with the provisions of article
13 three, chapter fifty-nine of this code, and the publication
14 area for such publication shall be the county wherein the
15 real estate lies. A copy of such notice shall also be posted
16 in a conspicuous place upon the property sought to be
17 charged thereby, which publishing and posting shall be
18 sufficient, if commenced within the period provided by
19 this article for the filing of such notice. The costs of such

20 publication may be added to the account for which the
 21 lien is claimed, and, if included in the amount mentioned
 22 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.

1 No decree for the distribution of the proceeds of real
 2 estate in a suit in equity to enforce a judgment shall be
 3 made until a notice to all persons holding liens on the
 4 real estate of the judgment debtor be published, under
 5 a decree of the court, as hereinafter provided. Such no-
 6 tice shall be sufficient if it be in form or effect as follows:

7 To all persons holding liens by judgment or otherwise,
 8 on the real estate, or any part thereof, of A.....
 9 B.....:

10 In pursuance of a decree of the circuit court of
 11 county, made in a cause therein pending, to
 12 subject the real estate of the said A.....
 13 B..... to the satisfaction of the liens thereon,
 14 you are hereby required to present all claims held by
 15 you and each of you against the said A.....
 16 B....., which are liens on his real estate,
 17 or any part of it, for adjudication to me, at my office in
 18 the county (or city, town or village, as the case may be)
 19 of..... on or before the..... day of.....

20 Given under my hand, this..... day of.....
 21 C..... D....., Commissioner.

22 Such notice shall be published as a Class II legal ad-
 23 vertisement in compliance with the provisions of article
 24 three, chapter fifty-nine of this code, and the publica-
 25 tion area for such publication shall be the county. Pub-
 26 lishing of such notice shall be equivalent to the personal
 27 service thereof on all persons holding liens, on any such
 28 real estate, unless the court shall, in the decree directing
 29 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.

1 In any case where an officer shall distrain or levy upon
2 personal property, otherwise than under an execution
3 or order issued by a justice, or under an attachment, and
4 in any case in which he may be directed to sell personal
5 property by an order of a court or judge, unless such order
6 prescribes a different course, he shall fix upon a time
7 and place for the sale thereof, and publish notice of such
8 sale at least ten days by posting the same at the door of
9 the courthouse of his county and some other conspicuous
10 place near the residence of the owner, if he resides in
11 the county: *Provided*, That any sheriff or other officer,
12 proceeding to sell under a writ of fieri facias or vendi-
13 tioni exponas, if the property be of the value of five hun-
14 dred dollars or more, shall advertise the sale as a Class
15 II-0 legal advertisement in compliance with the provisions
16 of article three, chapter fifty-nine of this code, and the
17 publication area for such publication shall be the county.
18 If the property be perishable or expensive to keep, it
19 may be sold by order of the court, or the judge thereof
20 in vacation, upon such notice as the court or judge may
21 direct.

22 At the time and place so appointed the officer shall sell
23 to the highest bidder for cash, except as hereinafter pro-
24 vided in section twenty-three of this article, such personal
25 property, or so much thereof as may be necessary.

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

Section

8. Sale of real estate conveyed to officer.

§38-5-8. Sale of real estate conveyed to officer.

1 Real estate conveyed to an officer under this article
2 shall, unless such court direct otherwise, be sold, after
3 giving at least thirty days' notice, by posting the same
4 at the door of the courthouse of such officer's county and
5 some other conspicuous place, near the residence of the
6 owner, if he be a resident of the county, and by publishing
7 the same as a Class II legal advertisement in compliance

8 with the provisions of article three, chapter fifty-nine
9 of this code, and the publication area for such publication
10 shall be the county. The real estate shall be conveyed to
11 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.

1 Any person holding personal property in his possession
2 under a lien or pledge may satisfy such lien in any man-
3 ner agreed upon between the owner and the lienor, or, if
4 there be no such agreement, in the following manner:

5 The lienor or pledgee shall give a written notice to
6 the person on whose account the goods are held, and to
7 any other person known by the lienor to claim an interest
8 in the goods. Such notice shall be given by delivery in
9 person or by registered letter addressed to the last
10 known place of business or abode of the person to be
11 notified. The notice shall contain:

12 (a) An itemized statement of the lienor's or pledgee's
13 claim, showing the sum due at the time of the notice and
14 the date or dates when it became due;

15 (b) A brief description of the goods against which
16 the lien or pledge exists;

17 (c) A demand that the amount of the claim as stated
18 in the notice, and of such further claim as shall accrue,
19 shall be paid on or before a day mentioned, not less than
20 ten days from the delivery of the notice if it is personally
21 delivered, or from the time when the notice should reach
22 its destination, according to the due course of the post,
23 if the notice is sent by mail; and

24 (d) A statement that unless the claim is paid within
25 the time specified the goods will be advertised for sale
26 and sold by auction at a specified time and place.

27 In accordance with the terms of a notice so given, a
28 sale of the goods by auction may be had to satisfy any
29 valid claim of the lienor or pledgee for which he has a
30 lien or pledge on the goods. The sale shall be had in the

31 place where the lien or pledge was acquired, or, if such
32 place is manifestly unsuitable for the purpose, at the
33 nearest suitable place. After the time for the payment of
34 the claim specified in the notice to the depositor has
35 elapsed, an advertisement of the sale, describing the
36 goods to be sold, and stating the name of the owner or
37 person on whose account the goods are held, and the time
38 and place of the sale, shall be published as a Class II
39 legal advertisement in compliance with the provisions of
40 article three, chapter fifty-nine of this code, and the pub-
41 lication area for such publication shall be the place where
42 such sale is to be made. The sale shall not be held less
43 than fifteen days from the time of the first publication:
44 *Provided, however,* That if the property to be sold is of
45 the value of less than five hundred dollars, then it shall
46 not be necessary to advertise the sale in a newspaper as
47 hereinbefore provided, but notice of the sale may be
48 published by posting the same at least ten days before
49 such sale in three conspicuous places therein, one of
50 which places shall be the premises where the property is
51 sold.

52 From the proceeds of such sale or pledge the lienor or
53 pledgee shall satisfy his lien, including the reasonable
54 charges of notice, advertisement and sale. The balance,
55 if any, of such proceeds shall be held by the lienor or
56 pledgee and delivered on demand to the person to whom
57 he would have been bound to deliver or justified in
58 delivering the goods.

59 At any time before the goods are so sold any person
60 claiming a right of property or possession therein may
61 pay the lienor or pledgee the amount necessary to satisfy
62 his lien or pledge and to pay the reasonable expenses
63 and liabilities incurred in serving notices and advertising
64 and preparing for the sale up to the time of such pay-
65 ment. The lienor or pledgee shall deliver the goods to the
66 person making such payment, if he is a person entitled
67 to the possession of the goods or payment of charges
68 thereon. Otherwise the lienor or pledgee shall retain
69 possession of the goods according to the terms of the
70 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.

1 If a trustee in a trust deed which secures persons
 2 not named in the trust deed shall publish, as herein-
 3 after provided, a notice that he will, on a day named in
 4 such notice, such day to be not more than thirty nor
 5 less than ten days after the last publication of such no-
 6 tice, release such trust deed, such trustee may execute
 7 such release and make distribution of any funds in his
 8 hands as such trustee without any liability to any per-
 9 son not named in the trust deed nor known to the trust-
 10 tee to be a beneficiary of the trust. Such notice shall be
 11 published as a Class II legal advertisement in compli-
 12 ance with the provisions of article three, chapter fifty-
 13 nine of this code, and the publication area for such publi-
 14 cation shall be the county in which such trust deed is
 15 recorded.

ARTICLE 13. ASSIGNMENT BY INSOLVENT FOR THE BENEFIT OF ALL CREDITORS.**Section**

5. Notice by trustee to creditors; publication and mailing.
 9. Sales by trustee; creditors may prescribe manner and terms; powers of commissioner; compromising claims; continuing operation of business.

§38-13-5. Notice by trustee to creditors; publication and mailing.

1 Within ten days after the filing of the schedule the
 2 trustee shall cause to be published a notice reading sub-
 3 stantially as follows:

4 "To the Creditors of.....:

5 Take notice that a general assignment for the benefit
 6 of creditors was made by the above named debtor to
 7 _____, Trustee, on.....

8 and that said assignment has been duly recorded in the
 9 office of the Clerk of the County Court of.....
 10 County.

11 All persons having claims against the said debtor are
 12 hereby notified that the same shall be presented to the
 13 undersigned trustee on or before The
 14 estate has been referred to, Commis-
 15 sioner of Accounts, and the first meeting of the creditors
 16 will be held in his office at, in
 17County, West Virginia, on,
 18 ato'clock.....M. Dated this.....day of
 19

20 (Signed), Trustee
 21 (Address of Trustee)"

22 Said notice shall be published as a Class II legal ad-
 23 vertisement in compliance with the provisions of article
 24 three, chapter fifty-nine of this code, and the publica-
 25 tion area for such publication shall be the county in which
 26 the assignment, conveyance or transfer was recorded.

27 A copy of the said notice shall be mailed by the trust-
 28 tee on or before the date of the first publication thereof
 29 to every creditor whose name appears in the schedule
 30 or of whom the trustee has notice, to the assignor and
 31 to the commissioner of accounts, and an affidavit evi-
 32 dencing such mailing and publication shall be filed by
 33 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.

1 At the first meeting of creditors a majority in number
 2 and amount of the creditors present may prescribe in
 3 what manner and on what terms the property belonging
 4 to the estate shall be sold, and the trustee shall not sell,
 5 or otherwise dispose of, any property belonging to the
 6 estate prior to the first meeting of the creditors, unless
 7 expressly authorized to do so by the commissioner of
 8 accounts after good cause therefor has been shown. The
 9 trustee shall not sell or otherwise dispose of, the prop-
 10 erty belonging to the estate for less than seventy-five
 11 per cent of its appraised value without the approval of
 12 the commissioner. The trustee may compromise or com-
 13 pound any claim or debt belonging to the estate with the

14 approval of the commissioner. All sales by the trustee
15 shall be made at public auction, unless otherwise ordered
16 by the commissioner or authorized by the creditors. The
17 trustees shall give at least ten days' notice by mail to
18 all of the creditors of the time and place of sale of any
19 property belonging to the estate of the value of five
20 hundred dollars, or more, and shall advertise the sale
21 as a Class II legal advertisement in compliance with the
22 provisions of article three, chapter fifty-nine of this
23 code, and the publication area for such publication shall
24 be the county. Such notice and advertisement may be
25 waived by the creditors at their first meeting. Upon ap-
26 plication to the commissioner, and for good cause shown,
27 the trustee may be authorized to sell any portion of the
28 estate at private sale, in which case he shall keep an
29 accurate record of each article sold, the price received
30 therefor and to whom sold, which account he shall file
31 with the commissioner. Upon application by the trustee
32 or a creditor setting forth that a part or the whole of the
33 estate is perishable, the nature and location of such perish-
34 able property, and that there will be loss if the same is
35 not sold immediately, the commissioner, if satisfied, of
36 the facts stated and that the sale is required in the in-
37 terests of the estate, may order the same to be sold with-
38 out notice or with such notice as he may direct. Upon
39 application by the trustee or a creditor setting forth that
40 it is for the best interest of the estate that the trustee
41 continue to operate the business, the commissioner may
42 authorize the trustee to operate the business until the
43 first meeting of the creditors, at which meeting a majority
44 in number and amount of the creditors present shall de-
45 termine whether such operation is to be continued there-
46 after.

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

2 the time and place of the commencement of taking such
 3 testimony. A copy of which notice, together with the affi-
 4 davit of publication, shall be recorded in the book afore-
 5 said. Such notice shall be published as a Class II legal
 6 advertisement in compliance with the provisions of ar-
 7 ticle three, chapter fifty-nine of this code, and the publi-
 8 cation area for such publication shall be the county. The
 9 costs of publishing such notice shall be paid by the
 10 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 DECEDENTS.**

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.**

1 Each month the commissioner of accounts shall pub-
 2 lish a notice designating a convenient time and place
 3 when and where claims against the estate or estates
 4 referred to him during the previous calendar month may
 5 be presented, examined and allowed. The time so desig-
 6 nated by the commissioner shall not be less than four
 7 months nor more than six months from the date of the
 8 first publication of the notice hereinafter set forth. The
 9 notice shall be to the following effect:

10 To the Creditors and Beneficiaries of the Estate(s) of
 11: (Naming the decedent or de-
 12 cedents, as the case may be)

13 All persons having claims against the estate(s) of the
 14 said....., (Naming the de-
 15 cedent or decedents, as the case may be) deceased,
 16 whether due or not, are notified to exhibit same, with
 17 the voucher thereof, legally verified, to the undersigned,
 18 at (designating the place) on or before the.....day of

19 _____, 19____; otherwise they may by law
 20 be excluded from all benefit of said estate(s). All bene-
 21 ficiaries of said estate(s) may appear on or before said
 22 day to examine said claims and otherwise protect their
 23 interests.

24 Given under my hand this _____ day of _____,
 25 19_____

26 _____,
 27 Commissioner of Accounts,
 28 County of _____

29 Such notice shall be published as a Class II legal ad-
 30 vertisement in compliance with the provisions of arti-
 31 cle three, chapter fifty-nine of this code, and the publica-
 32 tion area for such publication shall be the county. The
 33 publication of such notice shall be equivalent to per-
 34 sonal service on the creditors, distributees and legatees,
 35 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.

1 Every commissioner of accounts shall, on the first
 2 Monday of every month, prepare a list of the fiduciaries
 3 whose accounts are at the date of such list before him
 4 for settlement, except those that may have been men-
 5 tioned in some previous list, stating the names of such
 6 fiduciaries, the nature of their accounts, whether as
 7 personal representative, guardian, curator, committee, or
 8 trustee, and the names of their decedents, or of the per-
 9 sons for whom they are guardians, curators, or committees
 10 or under whose deed or other instrument of trust they
 11 are acting; and shall also publish such list each month
 12 as a Class II legal advertisement in compliance with
 13 the provisions of article three, chapter fifty-nine of this
 14 code, and the publication area for such publication shall
 15 be the county. The first publication of such list shall be
 16 made on said first Monday of the month, or on some fol-
 17 lowing day of the same week. No account of any fiduciary
 18 shall be completed by any commissioner until it shall have

19 been mentioned in such a list, nor until the completion of
 20 such publication. Any commissioner of accounts who fails
 21 to publish such list shall be fined twenty dollars. The
 22 cost of the publication of such list shall be borne by
 23 the commissioner, but he may charge to, and collect from,
 24 each of the fiduciaries in the list his proportionate part
 25 of the cost thereof as and when the commissioner col-
 26 lects 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
 2 real estate of such deceased person among his creditors
 3 shall be made until there shall have been a reference
 4 to a commissioner in chancery to ascertain and report
 5 all the liens on the real estate or any part thereof, the
 6 holders of such liens, the amount due to each, and the
 7 priorities thereof, and report made of all general claims
 8 and the priorities of the same, and until a notice to all
 9 creditors to present and prove their claims shall have
 10 been published as hereafter provided, which notice shall
 11 be in the following form or to the following effect:

12 To all creditors of A..... B.....,
 13 deceased, including those holding liens by judgment or
 14 otherwise on his real estate, or any part thereof.

15 In pursuance of a decree of the.....court, of
 16 the county of....., made in a cause there-
 17 in pending, to subject the real estate of the said
 18 A..... B..... to the payment of
 19 his debts, including those which are liens on such real
 20 estate, or any part of it, you are hereby required to
 21 present your claims to the undersigned for adjudica-
 22 tion, at (designating place) on or before the.....day
 23 of.....; otherwise you may by law be
 24 excluded from all benefit of such real estate.

25 Given under my hand this.....day of.....,
 26 19_____.

27 C _____ D _____,
 28 Commissioner in chancery.

29 Such notice shall be published as a Class II legal ad-
 30 vertisement in compliance with the provisions of article
 31 three, chapter fifty-nine of this code, and the publica-
 32 tion area for such publication shall be the county in
 33 which the action is pending. The court shall designate
 34 the newspaper in which such notice shall be published.
 35 The court may direct such other notice to be given
 36 as it may deem proper. Such publication of such no-
 37 tice shall be equivalent to personal service thereof on all
 38 creditors, including those holding liens on such real
 39 estate, unless the court shall in the order directing
 40 publication otherwise order. Any creditor who may
 41 have filed his claim before a commissioner of accounts
 42 may withdraw the same and the proof thereof made
 43 before such commissioner, and may file such claim and
 44 proof before the commissioner in chancery, and such
 45 commissioner in chancery shall, unless there be objec-
 46 tion by any party to the suit, accept such proof for what
 47 the same may legally show. No other publication to
 48 creditors than the one provided by this section shall
 49 be necessary, and when any notice of the reference is
 50 required by law or by the court to be published, such
 51 notice of the reference shall be included in the above
 52 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.

1 Whenever letters testamentary or of administration
 2 are applied for on the estate of any person supposed
 3 to be dead on account of the existence of facts giving
 4 rise to the presumption of death, the county court or
 5 clerk thereof, if satisfied that the person applying there-
 6 for, or presenting a will or codicil of the supposed de-
 7 cedent for probate, would be entitled to such letters,

8 or to such probate, if the supposed decedent were in fact
9 dead, shall cause to be published, as hereinafter pro-
10 vided, a notice that such application has been made and
11 that on a day certain, which shall not be less than two
12 weeks after the last publication of such notice, the court
13 will hear evidence concerning the alleged absence of
14 the supposed decedent and the circumstances and dura-
15 tion thereof. Such notice shall be published as a Class II
16 legal advertisement in compliance with the provisions of
17 article three, chapter fifty-nine of this code, and the publi-
18 cation area for such publication shall be the county.

§44-9-9. Publication in such suit.

1 Such personal representative, upon the institution of
2 such suit, shall cause notice to the supposed decedent
3 to be issued by the clerk of the circuit court, that such
4 suit has been instituted and that such supposed dece-
5 dent, if alive, is required to appear on a certain day of
6 a regular or special term of said court not less than three
7 nor more than six months from the date of the first
8 publication of such notice as hereinafter required. Such
9 notice shall be published as a Class II legal advertise-
10 ment in compliance with the provisions of article three,
11 chapter fifty-nine of this code, and the publication area
12 for such publication shall be the county where the suit
13 is brought. When practicable, such notice shall also
14 be published once a week for two successive weeks in a
15 newspaper published at or near the place where such
16 supposed decedent was last known to reside beyond this
17 state, or in this state, if the supposed decedent was not
18 known to have left the same and such place is in a
19 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 transfer made.
7. What notice and evidence required before such transfer made.

§44-11-2. Affidavit as to publication of notice.

1 There shall be filed, with such officer or agent as is
2 mentioned in the preceding section, the affidavit of some
3 credible person that notice of the proposed transfer has

4 been published as a Class II legal advertisement in com-
5 pliance with the provisions of article three, chapter fifty-
6 nine of this code, and the publication area for such publi-
7 cation shall be the county in which are kept the books
8 upon which the transfer is proposed to be made. But if,
9 before such transfer be actually made, a notice in writ-
10 ing forbidding the same be served on such officer or
11 agent, such transfer only shall be made as would have
12 been lawful if this and the preceding section had not
13 been enacted.

**§44-11-5. Notice of application and evidence required before
order of transfer made.**

1 No such order as is mentioned in the two preceding
2 sections shall be made until notice of the application
3 shall have been published as a Class II legal advertise-
4 ment in compliance with the provisions of article three,
5 chapter fifty-nine of this code, and the publication area
6 for such publication shall be the county in which the
7 petition is filed; nor until it shall be shown by authen-
8 tic documentary evidence that such foreign guardian,
9 committee or trustee has, where he qualified, given bond,
10 with surety sufficient to insure his accountability for
11 the whole amount of the estate of such infant, insane
12 person, or cestui que trust in his hands, or which will
13 probably be received by him as such guardian, committee
14 or trustee; nor until the court shall be satisfied that the
15 removal of such money or property from this state will
16 not impair the rights or be prejudicial to the interests
17 of such infant, insane person or cestui que trust or of any
18 other person.

**§44-11-7. What notice and evidence required before such trans-
fer made.**

1 No such order as is mentioned in the preceding sec-
2 tion shall, when applied for by petition, be made until
3 notice of the application shall have been given to all
4 persons interested in such trust estate, either by per-
5 sonal service or by publication of such notice as a Class II
6 legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 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
 12 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
2 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 brand to be used
6 in my (or our, etc.,) business as timber dealer (or dealers),
7 to wit: (Here insert the words, letters, figures, etc., con-
8 stituting the brand, or if it be any device other than
9 words, letters or figures, insert a facsimile thereof.)

10 Dated this _____ day of _____,
11 19_____.

12 A. _____ B. _____.

13 Such writing shall be acknowledged or proved for rec-
14 ord in the same manner as deeds are acknowledged or
15 proved, and shall be recorded in the office of the clerk of
16 the county court of the county in which the principal
17 office or place of business of such timber dealer may be,
18 and also in the office of the secretary of state, and a copy
19 thereof shall be published as a Class II legal advertise-
20 ment in compliance with the provisions of article three,
21 chapter fifty-nine of this code, and the publication area
22 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,
2 or judge thereof in vacation, the same shall be ordered
3 filed with the clerk of such court, and the court or judge

4 thereof shall appoint a day for the hearing of such petition
5 and the examination under oath of the parties in interest.
6 And the court or judge thereof may adjourn the hear-
7 ing of such petition or the examination of the parties
8 in interest from time to time, as the nature of the case
9 may require. Between the time of the filing of the
10 petition for adoption and the hearing thereon, the court
11 may cause a discreet inquiry to be made respecting
12 the child, for the purpose of ascertaining whether such
13 child is a proper subject for adoption and shall cause a
14 discreet inquiry to be made respecting the home of the
15 petitioner or petitioners to determine whether it is a
16 suitable home for such child. Such inquiry shall be made
17 by any suitable person or agency designated by the
18 court, and the results thereof shall be embodied in a full
19 written report and shall be submitted to the court at or
20 prior to the hearing upon the petition and shall be filed
21 with the records of the proceeding and become a part
22 thereof. If it shall be necessary, under the provisions
23 of this article, that a discreet and suitable person shall
24 be appointed to act as the next friend of the child sought
25 to be adopted, then and in that case the court or judge
26 thereof shall order a notice of the petition and of the
27 time and place when and where the appointment of
28 next friend will be made, to be published as a Class II
29 legal advertisement in compliance with the provisions
30 of article three, chapter fifty-nine of this code, and the
31 publication area for such publication shall be the county
32 where such court is located. At the time and place so
33 named and upon due proof of the publication of such
34 notice, the court or judge thereof shall make such appoint-
35 ment, and shall thereupon assign a day for the hear-
36 ing of such petition and the examination of the parties
37 interested. Upon the day so appointed the court or
38 judge thereof shall proceed to a full hearing of the peti-
39 tion and examination of the parties in interest, under
40 oath and of such other witnesses as the court or the judge
41 thereof may deem necessary to fully develop the stand-
42 ing of the petitioners and their responsibility, and the
43 status of the child sought to be adopted; and if the court
44 or judge thereof shall be of the opinion from the testi-

45 many that the facts stated in the petition are true, and
46 if upon examination the court or the judge thereof is
47 satisfied that the petitioner is, or the petitioners are, of
48 good moral character, and of respectable standing in the
49 community, and are able properly to maintain and edu-
50 cate the child sought to be adopted, and that the best
51 interests of the child would be promoted by such adop-
52 tion, then and in such case the court or judge thereof
53 shall make a decree reciting at length the facts proved
54 and the name by which the child shall thereafter be
55 known, and declaring and adjudging that from the date
56 of such decree, the rights, duties, privileges and relations,
57 therefore, existing between the child and his or her par-
58 ents, shall be in all respects at an end, excepting the right of
59 inheritance, and that the rights, duties, privileges and rela-
60 tions between the child and his or her parent or parents
61 by adoption shall thenceforth in all respects be the same,
62 including the right of inheritance, as if the child had
63 been born to such adopting parent or parents in law-
64 ful wedlock, except only as otherwise provided in this
65 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
2 that of his child or ward, may apply therefor to the
3 circuit court of the county in which he resides, or judge
4 thereof in vacation, by petition setting forth that he has
5 been a bona fide resident of such county for at least
6 one year prior to the filing of the petition, the cause
7 for which the change of name is sought, and the new
8 name desired; and previous to the filing of such peti-
9 tion such person shall cause to be published a notice of
10 the time and place that such application will be made,
11 which notice shall be published as a Class I legal adver-
12 tisement in compliance with the provisions of article
13 three, chapter fifty-nine of this code, and the publica-
14 tion 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 de-
2 fendant and shall be notified of the proceedings by per-
3 sonal service of summons, which shall require the per-
4 son to appear with the child at the time and place set
5 for the proceedings. If the defendant cannot be found,
6 service may be by publication as a Class II legal adver-
7 tisement 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.

CHAPTER 51. COURTS AND THEIR OFFICERS.**ARTICLE 6. GENERAL RECEIVERS.****Section**

14. Application of unclaimed funds in hands of general receiver of circuit court.

§51-6-14. Application of unclaimed funds in hands of general receiver of circuit court.

1 Whenever it shall appear to any circuit court
2 that any fund in its charge and in the hands of its gen-
3 eral receiver, for a period of at least twenty years, will,
4 in all probability never be claimed by anyone entitled
5 thereto, the court may order such fund applied to any
6 loss of or shrinkage in the investments of such gen-
7 eral receiver due to economic condition, and may re-
8 lease such general receiver from any further liability on
9 account of such fund so in his hands.

10 But before entering any such order, the court shall
11 cause a notice of such intention to be given by the clerk
12 of said court by publication thereof as a Class II legal
13 advertisement in compliance with the provisions of arti-
14 cle three, chapter fifty-nine of this code, and the publi-
15 cation area for such publication shall be said county. If
16 no claimant shall appear and establish a right to said fund
17 within one year from the date of the last publication
18 thereof, the court may take said facts to have been fully
19 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

37 the commissioner and his damage, if any, ascertained,
38 allowed and paid as in this chapter provided for the tak-
39 ing 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,
2 if it appear to the court that such real estate is of the
3 value of five hundred dollars or more, it shall prescribe
4 in the decree that such sale shall be advertised in a
5 newspaper by the commissioner or person appointed to
6 make the sale. It shall always be advertised as a Class
7 III-0 legal advertisement in compliance with the provi-
8 sions of article three, chapter fifty-nine of this code, and
9 the publication area for such publication shall be the
10 county where the real estate to be sold is situate. In the ad-
11 vertisement the commissioner shall state the time, terms
12 and place of sale, together with a description of the
13 property to be sold: *Provided, however,* That nothing
14 herein shall be construed to limit the power of the court
15 to direct sales of lands to be advertised in newspapers
16 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
2 may be served by the publication thereof as a Class II
3 legal advertisement in compliance with the provisions

4 of article three, chapter fifty-nine of this code, and the
 5 publication area for such publication shall be the county
 6 in which the suit or action is pending.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

Section

24. Contents of order of publication; publishing.

28. Requisites of publication in supreme court of appeals.

§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
2 that the time and place of taking the same be pub-
3 lished as a Class II legal advertisement in compliance
4 with the provisions of article three, chapter fifty-nine
5 of this code, and the publication area for such publication
6 shall be the county. The newspaper shall be designated
7 by the party at whose instance such publication is made
8 or his attorney, and if no newspaper be so designated,
9 then the court shall designate the newspaper. Such pub-
10 lication shall be equivalent to personal service on the
11 parties or any of them. In any case where all persons
12 whose interests may be affected by the proceedings be-
13 fore a commissioner are known, it shall be sufficient that,
14 in lieu of such publication of the notice as aforesaid, such
15 persons, or their counsel (or one of their counsel, if there
16 be more than one), be served with such notice in the man-
17 ner provided by section one, article two of this chapter.

**ARTICLE 8. ABATEMENT, REVIVAL, DISCONTINUANCE, REIN-
STATEMENT OF SUITS; SUBSTITUTION OF
PARTIES.****Section**

13. Further proceedings after reinstatement of case.

§56-8-13. Further proceedings after reinstatement of case.

1 All causes in which orders of dismissal have been
2 made, or orders of nonsuit entered, which orders have
3 been set aside and causes reinstated, shall remain upon
4 the docket and be proceeded with in the same manner
5 as if the order had never been made. But no such cause
6 shall be brought to trial, or proceeded in, until the de-
7 fendant therein shall have had at least twenty days'
8 personal notice in writing, or, if he be a nonresident, by
9 publication that such cause has been reinstated on the
10 docket as a Class II legal advertisement in compliance
11 with the provisions of article three, chapter fifty-nine
12 of this code, and the publication area for such publication
13 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.
9. Severability.

§59-3-1. Definitions and general provisions.

- 1 (a) As used in this article, elsewhere in this code
- 2 or in any other provision of law:
- 3 (1) "Legal advertisement" means any notice, adver-
- 4 tisement, statement, information or other matter re-
- 5 quired by law or court to be published.
- 6 (2) "Publication area" means the area or areas for
- 7 which a legal advertisement is required by law or court
- 8 to be made.
- 9 (3) "Once a week for two successive weeks" means
- 10 two publications of a legal advertisement in a qualified
- 11 newspaper occurring within a period of fourteen con-
- 12 secutive days with at least an interval of six full days
- 13 within such period between the date of the first publi-
- 14 cation and the date of the second publication.
- 15 (4) "Once a week for three successive weeks" means
- 16 three publications of a legal advertisement in a qualified
- 17 newspaper occurring within a period of twenty-one con-
- 18 secutive days with at least an interval of six full days
- 19 within such period between the date of the first publi-
- 20 cation and the date of the second publication and with
- 21 at least an interval of six full days within such period
- 22 between the date of the second publication and the date
- 23 of the third publication.
- 24 (5) "Publication date" means the date on which a
- 25 qualified newspaper is first placed in circulation.
- 26 (6) "General circulation" means not only a newspa-
- 27 per meeting the other qualifications specified in subsec-
- 28 tion (b) of this section and circulated among and of in-

29 terest to the general public in the area in which it circu-
30 lates, but also a newspaper meeting said other qualifica-
31 tions, the actual circulation of which throughout the pub-
32 lication area is large enough to give basis for a reason-
33 able belief that publication of a legal advertisement
34 therein will give effective notice to the residents of the
35 publication area.

36 (b) Wherever the term "qualified newspaper" or
37 "qualified newspapers" is used in this article, or the term
38 "newspaper" or "newspapers" is used elsewhere in this
39 code or in any other provision of law in connection with
40 a legal advertisement as herein defined, the terms shall
41 be taken to mean only a newspaper or newspapers, as the
42 case may be, published (unless otherwise expressly pro-
43 vided) in the state of West Virginia, and which meet the
44 following qualifications:

45 (1) Any such newspaper must be of regular issue and
46 must have a bona fide, general circulation in the publi-
47 cation area. A newspaper shall be deemed to be of reg-
48 ular issue if it is published regularly, as frequently as
49 once a week, for at least fifty weeks during the calendar
50 year as prescribed by its mailing permit, and has been
51 so published for at least one year immediately preceding
52 the date on which the legal advertisement is delivered
53 to the newspaper for publication. A newspaper shall be
54 deemed to be of bona fide, general circulation in the pub-
55 lication area if it meets the definition of "general circu-
56 lation" as defined above and is circulated to the general
57 public at a definite price or consideration.

58 (2) Any such newspaper must bear a title or name,
59 consist of not less than four pages without a cover, and
60 be a newspaper to which the general public resorts for
61 passing events of a political, religious, commercial and
62 social nature, and for current happenings, announcements,
63 miscellaneous reading matters, advertisements, and other
64 notices.

65 (c) Notwithstanding any other provision of this code
66 or law to the contrary, a qualified newspaper shall for all
67 purposes be considered to be published where it is first
68 placed in circulation.

§59-3-2. Classification of legal advertisement; designation of newspapers; frequency of publication; posting; manner of publishing.

1 (a) A Class I legal advertisement shall be published
2 one time, a Class II legal advertisement shall be pub-
3 lished once a week for two successive weeks, and a Class
4 III legal advertisement shall be published once a week
5 for three successive weeks, in a qualified newspaper
6 published in the publication area; or if there is no quali-
7 fied newspaper published in the publication area or if
8 no qualified newspaper published in the publication
9 area will publish the legal advertisement at the rates
10 specified in section three of this article, the legal adver-
11 tisement shall be published in a qualified newspaper
12 published outside the publication area; or if no qualified
13 newspaper is published outside the publication area or
14 if no qualified newspaper published outside the publica-
15 tion area will publish the legal advertisement at the
16 rates specified in section three of this article, the legal
17 advertisement shall be posted in at least three public
18 places in the publication area, one of which postings shall
19 be in the county courthouse, at or near the front door
20 thereof, if a county courthouse is located in the pub-
21 lication area and one of which postings shall be in the
22 municipal office building or municipal office or offices,
23 at or near the front door thereof, if the publication area
24 is a municipality.

25 (b) A Class I-0 legal advertisement shall be pub-
26 lished one time, a Class II-0 legal advertisement shall
27 be published once a week for two successive weeks, and
28 a Class III-0 legal advertisement shall be published once
29 a week for three successive weeks, in two qualified news-
30 papers of opposite politics published in the publication
31 area; or if two qualified newspapers of opposite politics
32 are not published in the publication area or if two quali-
33 fied newspapers of opposite politics published in the pub-
34 lication area will not publish the legal advertisement
35 at the rates specified in section three of this article, the
36 legal advertisement shall be published in one qualified
37 newspaper published in the publication area; or if there
38 is no qualified newspaper published in the publication

39 area or if no qualified newspaper published in the pub-
40 lication area will publish the legal advertisement at the
41 rates specified in section three of this article, the legal
42 advertisement shall be published in one qualified news-
43 paper published outside the publication area; or if no
44 qualified newspaper is published outside the publication
45 area or if no qualified newspaper published outside the
46 publication area will publish the legal advertisement
47 at the rates specified in section three of this article, the
48 legal advertisement shall be posted in at least three pub-
49 lic places in the publication area, one of which postings
50 shall be in the county courthouse, at or near the front
51 door thereof, if a county courthouse is located in the
52 publication area and one of which postings shall be in
53 the municipal office building or municipal office or offices,
54 at or near the front door thereof, if the publication area
55 is a municipality.

56 (c) A legal advertisement may be published in a
57 qualified newspaper published on any day of the week
58 except Sunday.

59 (d) All legal advertisements shall be published to-
60 gether in continuous columns on one page of the news-
61 paper publishing same under a general heading styled
62 "Legal Advertisements," unless the number or size of such
63 legal advertisements requires the use of more than one
64 page, in which event such legal advertisements shall be
65 published in continuous columns on as many pages as
66 necessary under the same heading as above required.

**§59-3-3. Rates for legal advertisement; computation; filing af-
fidavits with secretary of state.**

1 (a) The rates which a publisher or proprietor of a
2 qualified newspaper in West Virginia may charge and
3 receive for a single or first publication of any legal ad-
4 vertisement set solid shall depend upon the bona fide
5 circulation of such newspaper, as follows:

6 (1) Four cents per word if the qualified newspaper
7 has a bona fide circulation of ten thousand or less; or

8 (2) Five cents per word if the qualified newspaper
9 has a bona fide circulation of more than ten thousand
10 but less than forty thousand; or

11 (3) Five and three-fourths cents per word if the
12 qualified newspaper has a bona fide circulation of forty
13 thousand or more.

14 (b) In computing the number of words in a legal
15 advertisement, not set solid, the basis shall be upon the
16 size of type in which legal advertising is set by the qual-
17 ified newspaper making the publication, and shall be com-
18 puted at the legal rate as though the matter was solid
19 type, that is to say, on the basis of eighty-four words to
20 the single column inch in six point type, and fifty-four
21 words to the single column inch in eight point type, and
22 any other size type in proportion.

23 (c) In determining the cost of a legal advertisement
24 which is to appear more than once in the same qualified
25 newspaper, the cost for the first publication shall be com-
26 puted as specified in subsections (a) and (b) of this sec-
27 tion, and the cost of the second and each subsequent pub-
28 lication shall be sixty per cent of the cost of the first
29 publication computed as aforesaid.

30 (d) In determining the cost of a legal advertisement
31 which is to appear within the same calendar week in
32 two qualified newspapers published in the same county
33 by the use of the same composition and press facilities
34 in the county, the cost shall be the cost, computed as
35 specified in subsections (a) and (b) of this section, for
36 publication of the legal advertisement in the qualified
37 newspaper with the highest bona fide circulation and
38 forty per cent of the cost, computed as specified in sub-
39 sections (a) and (b) of this section for publication of the
40 legal advertisement in the other qualified newspaper.

41 (e) The rates provided for in this section may be
42 charged on and after the first day of July, one thousand
43 nine hundred sixty-seven. Between the effective date of
44 this act and the said first day of July, one thousand nine
45 hundred sixty-seven, the rates for publishing legal adver-
46 tisements shall be those in effect immediately prior to the
47 effective date of this act. The average bona fide circula-
48 tion stated by each qualified newspaper in the statement
49 filed by such newspaper with the United States post office
50 department in October, one thousand nine hundred sixty-
51 six, shall control the rate circulation classification of such
52 qualified newspaper for the period from the first day of

53 July, one thousand nine hundred sixty-seven, until the
54 first day of July, one thousand nine hundred sixty-eight.
55 On or before the first day of March, one thousand nine
56 hundred sixty-eight, the publisher or proprietor of each
57 newspaper desiring to publish any legal advertisement
58 during the ensuing fiscal year shall file with the secretary
59 of state an affidavit stating the average bona fide circula-
60 tion of such newspaper during the preceding calendar
61 year, and sufficient facts shall be set forth in the affidavit
62 to show whether such newspaper is a qualified news-
63 paper. The average bona fide circulation stated in such
64 affidavit by each qualified newspaper shall control the
65 rate circulation classification of such qualified newspaper
66 for the ensuing fiscal year, beginning on the first day of
67 July, one thousand nine hundred sixty-eight. The pub-
68 lisher or proprietor of each newspaper desiring to pub-
69 lish any legal advertisement during the ensuing fiscal
70 year shall file an affidavit as aforesaid on or before the first
71 day of March of each succeeding year, and such affidavit
72 shall control the rate circulation classification of such
73 newspaper, if it is a qualified newspaper, for the ensuing
74 fiscal year. Any qualified newspaper for which the re-
75 quired affidavit is not filed on or before the first day of
76 March of any calendar year after the year one thousand
77 nine hundred sixty-seven shall be conclusively presumed
78 to have for the ensuing fiscal year a bona fide circulation
79 of less than four thousand. At the time a publisher or
80 proprietor of a qualified newspaper files an affidavit with
81 the secretary of state as aforesaid, such publisher or pro-
82 prietor shall notify the clerk of the county court and the
83 board of education of the county in which such qualified
84 newspaper is published of the circulation classification of
85 such qualified newspaper and of the applicable rate for
86 publishing legal advertisements in such qualified news-
87 paper during the ensuing fiscal year. If the qualified
88 newspaper is published in a municipality, the publisher
89 or proprietor shall at the same time also furnish the same
90 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 ad-
- 2 vertisement incident to any type of judicial proceed-

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 publi-
7 cation 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-

2 tisements for candidates for political office shall the
3 rate charged by any publisher or proprietor of any
4 newspaper be more than the average rate received by
5 him from private patrons for similar advertising com-
6 posed of reading matter or photographs and requiring
7 the same amount of space.

§59-3-7. Criminal and civil penalties.

1 (a) Any person who publishes a legal advertisement
2 and who knowingly refused to file with the secretary
3 of state the affidavit for the fiscal year in which the
4 legal advertisement was published, as required by the
5 provisions of section three of this article, or to make
6 and furnish the affidavit required by the provisions of
7 section four of this article shall be guilty of a mis-
8 demeanor, and, upon conviction thereof, shall be pun-
9 ished by a fine of not less than one hundred dollars nor
10 more than one thousand dollars.

11 (b) Any person who shall knowingly file a false affi-
12 davit required by the provisions of this article shall be
13 guilty of false swearing, and, upon conviction thereof,
14 shall be punished as provided for that offense.

15 (c) Any qualified newspaper which shall knowingly
16 charge any rates in excess of those specified in sec-
17 tion three of this article, and any newspaper which shall
18 knowingly charge any rates in excess of those specified
19 in section six of this article, as the case may be, shall
20 be liable to the person damaged thereby for treble dam-
21 ages.

§59-3-8. Construction of article; repeal; subsequent legislation.

1 This article is intended to standardize and make uni-
2 form certain areas of the law relating to newspapers,
3 qualified newspapers, legal advertisements and publi-
4 cation of a newspaper or qualified newspaper, and to
5 this end all other provisions in this code or elsewhere
6 in law pertaining to such subjects shall be construed
7 so as to conform to and be consistent with the perti-
8 nent provisions of this article. As to those provisions
9 in this code or elsewhere in law which are so incon-
10 sistent with the provisions of this article as to preclude

11 such construction, such other provisions, whether gen-
 12 eral or specific in character, are hereby repealed to the
 13 extent of such inconsistency. No subsequent legisla-
 14 tion shall be held to supersede or modify the provisions
 15 of this article except to the extent that such legisla-
 16 tion shall do so specifically and expressly. The provisions
 17 of this act shall not affect the publication and/or posting
 18 of any legal advertisements commenced, in process or
 19 completed prior to the effective date of this act.

§59-3-9. Severability.

1 If any provision of this act or the application thereof
 2 to any person or circumstance is held unconstitutional or
 3 invalid, such unconstitutionality or invalidity shall not
 4 affect other provisions or applications of the act, and to
 5 this end, the provisions of this act are declared to be
 6 severable.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

4. Licenses.
5. Local Option Elections.
6. Miscellaneous Provisions.

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-
 2 ized by the provisions of this chapter shall, not more than
 3 thirty nor less than ten days before the filing of formal
 4 application, give notice of his intention. He shall give
 5 notice by posting a statement of his intention in such
 6 form as the commission may require at the front door
 7 or principal entrance of the place where the business is
 8 to be conducted. He shall also publish notice, in such
 9 form as the commission may require, as a Class I legal
 10 advertisement in compliance with the provisions of ar-
 11 ticle three, chapter fifty-nine of this code, and the pub-
 12 lication area for such publication shall be the county in
 13 which he intends to do business: *Provided, however, That*

14 retail druggists desiring to sell alcoholic liquors on pre-
15 scriptions shall not be subject to the provisions of this
16 section: *Provided further*, That such retail druggists shall
17 file formal application in writing with the commission and
18 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 municipal-
2 ity 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

12 possession of such article, conveyance or vehicle and de-
13 liver the same and the alcoholic liquors so seized to the
14 sheriff of the county in which such seizure was made,
15 taking his receipt therefor in duplicate.

16 (2) The officer making such seizure shall forthwith
17 report in writing of such seizure to the prosecuting at-
18 torney of the county in which such seizure was made and
19 to the commission.

20 (3) Within not less than ten days nor more than sixty
21 days after receiving notice of any such seizure, the pros-
22 ecuting attorney for the county shall file, in the name of
23 the state, a petition against the seized property, in the
24 clerk's office of the circuit court of the county, return-
25 able to the circuit court or inferior court having crim-
26 inal jurisdiction, which petition shall be filed by the clerk
27 without fee and may be heard by said court or judge
28 thereof in vacation.

29 (4) Such petition shall allege the seizure, and set
30 forth in general terms, the grounds of forfeiture of the
31 seized property, and shall pray that the same be forfeited
32 to the state and the proceeds disposed of according to
33 law, and that all persons concerned or interested may
34 appear and show cause why said property should not be
35 forfeited to the state.

36 (5) The owner of and all persons in any manner then
37 indebted or liable for the purchase price of said property,
38 and any person having a lien thereon, if they be known
39 to the prosecuting attorney, shall be made parties de-
40 fendant thereto, and shall be served with the notice is-
41 sued by the clerk of such court, hereinafter provided for
42 in the manner provided by law for serving a notice, at
43 least ten days before the day therein specified for the
44 hearing on said petition, if they be residents of this state,
45 and, if they be unknown or nonresidents, or cannot with
46 reasonable diligence be found in this state, they shall be
47 deemed sufficiently served by publication of said notice
48 as a Class II legal advertisement in compliance with the
49 provisions of article three, chapter fifty-nine of this code,
50 and the publication area for such publication shall be
51 said county.

52 (6) Any person claiming to be the owner of such
53 seized property, or to hold a lien thereon or have an in-
54 terest therein, may appear at any time before final judg-
55 ment of the trial court, and be made a party defendant
56 to the petition so filed, which appearance shall be by an-
57 swer, under oath, in which shall be clearly set forth the
58 nature of such defendant's claim or interest.

59 (7) If the court or judge thereof in vacation shall
60 find that illegally acquired alcoholic liquors or alcoholic
61 liquors being illegally transported in amounts in excess
62 of one gallon, were not found in such conveyance or ve-
63 hicle at the time of the seizure thereof, the judgment of
64 the court shall be to entirely relieve said property from
65 forfeiture, and no costs shall be taxed against such claim-
66 ant.

67 (8) If the court or judge thereof in vacation trying
68 the issue shall find or if it be admitted that said convey-
69 ance or vehicle at the time of the seizure contained ille-
70 gally acquired liquor or that alcoholic liquors were being
71 illegally transported therein, nevertheless:

72 (a) If it shall appear to the satisfaction of the court
73 that such claimant is the bona fide owner and was such
74 owner at the time of such seizure and that he was igno-
75 rant of such illegal use thereof and the illegal use was
76 without his connivance or consent, expressed or implied,
77 the court shall relieve said conveyance or vehicle from
78 forfeiture and restore it to such claimant and no cost
79 shall be taxed against such claimant,

80 (b) If it shall appear to the satisfaction of the court
81 that such claimant is the holder of a bona fide lien against
82 the property and was the holder of such lien at the time
83 of such seizure and that he was ignorant of such illegal
84 use thereof, or the use so made of such conveyance or
85 vehicle was without his connivance or consent, expressed
86 or implied, and that the claimant has perfected his lien,
87 the court shall,

88 (1) If the lien so established is equal to or more than
89 the value of the conveyance or vehicle, such conveyance
90 or vehicle shall be delivered to the lienor upon the pay-
91 ment of storage and cost,

92 (2) If the lien is less than the value of the convey-
 93 ance or vehicle, the lienor may have said conveyance or
 94 vehicle delivered to him upon payment of the difference
 95 in amount as determined in such proceedings; but should
 96 the lienor not demand delivery as aforesaid, an order
 97 shall be made for the sale of said property by the sheriff
 98 of the county, in the manner prescribed by law for sale
 99 of personal property under execution, out of the proceeds
 100 of which sale shall be paid, first, the storage, if any, sec-
 101 ond, the cost, third, the lien, and the residue, if any, shall
 102 be paid to the commission.

103 (9) If, however, no valid lien or claim is established
 104 against the seized property upon the trial of the petition,
 105 or, if it shall be determined that the owner thereof was
 106 himself using the same at the time of the seizure or that
 107 such illegal use was with his knowledge or consent, ex-
 108 pressed or implied, the said property shall be completely
 109 forfeited to the state and turned over to the commission
 110 in accordance with the provisions of this chapter.

111 (10) In every case, the alcoholic liquors so seized
 112 shall be deemed contraband and forfeited to the state
 113 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.

1 Any person desiring to obtain a state license to carry
 2 any such weapon as is mentioned in the first section
 3 of this article, within one or more counties in this
 4 state, shall first publish a notice setting forth his name,
 5 residence and occupation, and that on a certain day he
 6 will apply to the circuit court of his county for such
 7 state license. Such notice shall be published as a Class I
 8 legal advertisement in compliance with the provisions
 9 of article three, chapter fifty-nine of this code, and the

10 publication area for such publication shall be the county
11 in which such person resides. Such notice shall be pub-
12 lished at least ten days before such application is made.
13 After the publication of such notice and at the time stated
14 in such notice, upon application to such court, it may
15 grant such license to such person, in the following man-
16 ner, to wit:

17 The applicant shall file with such court his application
18 in writing, duly verified, which application shall show:

19 (a) That such applicant is a citizen of the United
20 States of America;

21 (b) That the applicant has been a bona fide resident
22 of this state for at least one year next prior to the date of
23 such application, and of the county sixty days next prior
24 thereto;

25 (c) That the applicant is over twenty-one years of
26 age; that he is a person of good moral character, of tem-
27 perate habits, not addicted to intoxication, and has not
28 been convicted of a felony or of any offense involving the
29 use on his part of such weapon in an unlawful manner,
30 and shall prove to the satisfaction of the court that he is
31 gainfully employed in a lawful occupation and has been
32 so engaged for a period of five years next preceding the
33 date of his application;

34 (d) The purpose or purposes for which the applicant
35 desires to carry such weapon, the necessity therefor, and
36 the county or counties in which such license is desired to
37 be effective.

38 Upon the hearing of such application the court shall
39 hear evidence upon all matters stated in such application
40 and upon any other matter deemed pertinent by the court,
41 and if such court be satisfied from the proof that there is
42 good reason and cause for such person to carry such
43 weapon, and all of the other conditions of this article be
44 complied with, the court, or the judge thereof in vacation,
45 may grant such license for such purposes, and no other,
46 as such court, or the judge in vacation, may set out in the
47 license (and the word "court" as used in this article shall
48 include the circuit judge thereof, acting either in term
49 or vacation); but, before such license shall be effective

50 such person shall pay to the sheriff, and the court shall so
51 certify in its order granting the license, the sum of twenty
52 dollars, and shall also file a bond with the clerk of such
53 court, in the penalty of three thousand five hundred
54 dollars, with good security, signed by a responsible
55 person or persons, or by some surety company, author-
56 ized to do business in this state, conditioned that such
57 applicant will not carry such weapon except in accord-
58 ance with his application and as authorized by the court,
59 and that he will pay all costs and damages accruing to
60 any person by the accidental discharge or improper, negli-
61 gent or illegal use of such weapon or weapons. Any such
62 license granted shall be good for one year, unless sooner
63 revoked, as hereinafter provided, and be coextensive with
64 the county in which granted, and such other county or
65 counties as the court shall designate in the order granting
66 such license; except that upon a proper showing the court
67 granting such license to any person regularly employed
68 as a security guard may, in its discretion, in the order
69 granting such license extend the period of the validity
70 of such license for a period not to exceed four years,
71 under such terms and conditions as the court deems
72 proper; except that regularly appointed deputy sheriffs
73 having license shall be permitted to carry such revolver or
74 other weapons at any place, within the state, while in
75 the performance of their duties as such deputy sheriffs;
76 and except that any such license granted to regularly
77 appointed railway police shall be coextensive with the
78 state. All license fees collected hereunder shall be paid
79 by the sheriff and accounted for to the auditor as other
80 license taxes are collected and paid, and the state tax
81 commissioner shall prepare all suitable forms for licenses,
82 bonds and certificates showing that such license has been
83 granted and shall do anything else in the premises to
84 protect the state and see to the enforcement of this sec-
85 tion.

86 The clerk of the circuit court shall, immediately after
87 license is granted as aforesaid, furnish the superintendent
88 of the department of public safety a certified copy of the
89 order of the court granting such license, for which service
90 the clerk shall be paid a fee of two dollars which shall

91 be taxed as cost in the proceeding. It shall be the duty
92 of the clerk of each circuit court to furnish to the super-
93 intendent of the department of public safety, at any time
94 so required, a certified list of all such licenses issued in
95 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.

1 The county court of any county is hereby authorized
2 to call a local option election for the purpose of deter-
3 mining the will of the voters as to whether the provi-
4 sions of section twenty-five of this article shall continue
5 in effect in said county.

6 A petition for such local option election shall be in the
7 form hereinafter specified and shall be signed by quali-
8 fied voters residing within said county equal to at least
9 ten per cent of the persons qualified to vote within said
10 county at the last general election. Said petition may
11 be in any number of counterparts and shall be sufficient
12 if substantially in the following form:

13 PETITION ON LOCAL OPTION ELECTION
14 RESPECTING WORK, LABOR OR BUSI-
15 NESS ON SUNDAY IN
16 COUNTY, WEST VIRGINIA

17 Each of the undersigned certifies that he or she is a
18 person residing in County, West Virginia,
19 and is duly qualified to vote in said county under the
20 laws of the state, and that his or her name, address and
21 the date of signing this petition are correctly set forth
22 below.

23 The undersigned petition said county court to call and
24 hold a local option election upon the following question:
25 Shall the provisions of section 25, article 10, chapter 61
26 of the code of West Virginia, one thousand nine hundred
27 thirty-one, as amended, continue in effect in
28 County, West Virginia?

29	Name	Address	Date
30	-----		
31	-----		

32 (Each person signing must specify either his post-office
33 address or his street number.)

34 Upon the filing of a petition for a local option election
35 in accordance with the provisions of this section, the
36 county court shall enter an order calling a local option
37 election and providing that the same shall be held at the
38 same time and as a part of the next primary or general
39 election to be held in said county. Said county court
40 shall give notice of such local option election by publi-
41 cation thereof as a Class II-0 legal advertisement in com-
42 pliance with the provisions of article three, chapter fifty-
43 nine of this code, and the publication area for such pub-
44 lication shall be the county. Such notice shall be so pub-
45 lished within fourteen consecutive days next preceding
46 said election.

47 Each person qualified to vote in said county at said
48 primary or general election shall likewise be qualified
49 to vote at the local option election. The election officers
50 appointed and qualified to serve as such at said primary
51 or general election shall conduct said local option elec-
52 tion in connection with and as a part of said primary or
53 general election. The ballots in said local option election
54 shall be counted and returns made by the election officers
55 and the results certified by the commissioners of election
56 to said county court which shall canvass the ballots, all in
57 accordance with the laws of the state of West Virginia re-
58 lating to primary and general elections insofar as the
59 same are applicable. The county court shall, without
60 delay, canvass the ballots cast at said local option election
61 and certify the result thereof.

62 The ballot to be used in said local option election shall
63 have printed thereon substantially the following:

64 "Shall the Sunday Closing Law continue in effect in
65 _____ County of West Virginia?

66 Yes No

67 (Place a cross mark in the square opposite your choice.)"

68 If a majority of the voters voting at any such local

69 option election vote no on the foregoing question, the
 70 provisions of section twenty-five, article ten, chapter
 71 sixty-one of the code of West Virginia, one thousand nine
 72 hundred thirty-one, as amended, shall no longer continue
 73 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

19. Distribution of acts of the Legislature.

§4-1-19. Distribution of acts of the Legislature.

1 Free distribution of the acts and resolutions of each
 2 session of the Legislature, and other matter directed by

3 law to be published therewith, shall be made as follows
4 by the clerk of the house of delegates: One copy to the
5 judge of each court in this state; one copy each to the
6 judge, clerk and district attorney of every United States
7 district court of this state; one copy to every prosecuting
8 attorney, sheriff, assessor, county superintendent of free
9 schools, president of the county court, circuit clerk,
10 county clerk and justices of the peace; five copies to the
11 governor; six copies to the attorney general; two copies
12 each to the secretary of state, auditor, state superintend-
13 ent of free schools, treasurer and commissioner of agri-
14 culture; four copies to the public service commission;
15 one copy to each executive department head, requesting
16 the same; ten copies to the clerk of the senate, one for
17 his own use, and the others to be kept in his office for
18 the use of the senate; ten copies to each member of the
19 Legislature, one for his own use and others for distribu-
20 tion; ten copies to the college of law of West Virginia
21 University; one copy to each public institution of the
22 state; three copies to the librarian of Congress, one for
23 the library and one for each house of Congress; one copy
24 to each senator and representative in Congress from this
25 state; one copy to each county law library; and one copy
26 to each college and university in the state. The clerk
27 shall retain ten copies in his own office, one for his own
28 use and the others to be kept in his office for the use of
29 the house.

30 All of the copies named in this section shall be sent by
31 mail, express or otherwise as the clerk may deem best.
32 The acts to which officers of a county may be entitled
33 shall be forwarded to the clerk of the county court
34 thereof and shall be delivered by him to the officers en-
35 titled to receive the same. Upon receipt of such acts by
36 him, the clerk of the county court shall forward his
37 receipt therefor to the clerk of the house of delegates
38 specifying the number received, and he shall require
39 each person receiving a copy of such acts from him to sign
40 a receipt therefor in a book to be kept by him for that
41 purpose. The remaining copies of the acts shall be in the
42 custody of the division of purchases, department of
43 finance and administration, and be sold and disposed of

44 as provided in section thirty-one, article three, chapter
45 five-a of this code.

46 The clerk may cause a copy of such acts to be furnished
47 to any officer, board, commission, institution or tribunal
48 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.

1 The librarian shall arrange as far as possible with each
2 of the other states for the exchange of two copies of the
3 acts of the West Virginia Legislature for acts of the
4 legislature of each state, one of which copies received
5 from each state shall be deposited in the state law library
6 at Charleston, one copy in the library of the college of
7 law of West Virginia University, and the other copies
8 if any, so received from any other state, to be disposed
9 of as the supreme court of appeals shall direct.

10 The division of purchases, department of finance and
11 administration, upon requisition of the librarian, shall,
12 without cost, furnish such librarian with sufficient copies
13 of the acts to make the exchanges provided for by this
14 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
 2 the provisions of section seven thousand four hundred
 3 twenty-five of the Internal Revenue Code of one thousand
 4 nine hundred fifty-four, enacted by the Congress of the
 5 United States (section one hundred nine of The Federal
 6 Tax Lien Act of 1966) may be recorded in the office
 7 of the clerk of the county court of the county in which
 8 the real estate being redeemed is situate. Such certificate
 9 shall be recorded in the deed books and indexed in the
 10 name of the person from whom the real estate is re-
 11 deemed, as the grantor, and in the name of the United
 12 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.

1 There shall be a division of community services in
2 the department of mental health. This division shall
3 administer all funds made available to the state of West
4 Virginia and any political subdivision thereof under the
5 national mental health act, and all other funds made avail-
6 able for use by this division. The director shall establish
7 standards and criteria for reimbursing sponsoring groups
8 for a portion of the cost of local mental health services
9 which they may provide.

10 The supervisor of this division shall also have the fol-
11 lowing powers and duties:

12 1. To establish standards for and supervise the opera-
13 tion of community mental health clinics for adults and
14 children and to develop new community facilities and
15 community service programs for the overall improvement
16 of the regional mental health facilities.

17 2. To develop a comprehensive and practical program
18 of mental health education of the public, especially at
19 the local level.

20 3. To work with county mental hygiene commissions
21 and circuit courts.

22 4. To determine and approve schedules of reasonable
23 cost for reimbursement by the patient or responsible
24 relative for mental health services rendered.

25 5. To perform any other duties assigned to the divi-
26 sion 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
2 the provisions of article four or article five of this chap-
3 ter, the clerk of the county court of the county of which
4 such individual is a resident shall, upon the written
5 request under oath of a person having a proper interest
6 in the individual's hospitalization, permit such person to
7 arrange for the individual's transportation to the hospital
8 by such means as may be suitable for his mental condi-
9 tion. Should no such transportation be available, the
10 clerk may arrange for such, and if the mentally ill per-
11 son is without financial means to pay for such transpor-
12 tation, the cost thereof, not to exceed the amount pre-
13 scribed by the county court of the county of which such
14 individual is a resident, may be paid out of the county
15 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
2 the state hospitals shall be paid out of funds appropriated
3 for the respective state hospitals, but the state hospitals,
4 through the director of mental health, shall have a right
5 of reimbursement for all or any part of such maintenance
6 from each patient or from the committee or guardian of
7 the estate of the patient, or the estate of the patient
8 if deceased, or if that be insufficient, then from the
9 patient's husband or wife, or if the patient be an une-
10 mancipated child, the father and mother, or any of them.
11 If such a relative so liable does not reside in this state
12 and has no estate or debts due him within the state by
13 means of which the liability can be enforced against
14 him, the other relatives shall be liable as provided by this
15 section. In exercising this right of reimbursement, the
16 director of mental health may, whenever it is deemed
17 just and expedient to do so, exonerate any person charge-
18 able with such maintenance from the payment thereof
19 in whole or in part, if the director finds that such person
20 is unable to pay or that payment would work an undue
21 hardship on him or on those dependent upon him.

22 There shall be no discrimination on the part of the state
23 hospital as to food, care, protection, treatment or rehabili-
24 tation, between patients who pay for their maintenance
25 and those who are unable to do so.

26 It shall be the responsibility of the director of mental
27 health to determine the ability of the patient or of his
28 relatives to pay for his maintenance: *Provided*, That any
29 such determination shall be in writing and shall be con-
30 sidered an "order" under the provisions of chapter twenty-
31 nine-a of the code of West Virginia, as amended: *Pro-*
32 *vided further*, That any such determination shall be
33 subject to review upon application of any such patient,
34 relative or personal representative in the manner pro-

35 vided in chapter twenty-nine-a of the code of West Vir-
36 ginia, as amended.

CHAPTER 110

(Com. Sub. for Senate Bill No. 281—Mr. Carson, Mr. President, and
Mr. Jackson)

[Passed March 7, 1967; in effect from passage. Approved by the Governor.]

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.
6. Certification of 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.
21. Mine rescue teams.

§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

8 mine rescue work and who has had practical experience
9 with dangerous gases found in coal mines, and who has
10 a practical knowledge of mines, mining methods, mine
11 ventilation, sound safety practices and applicable mining
12 laws.

13 In order to qualify for appointment as a mine safety
14 instructor an eligible applicant shall submit to a written
15 and oral examination given by the mine inspectors'
16 examining board. The examination shall relate to the
17 duties to be performed by a safety instructor and may,
18 subject to the approval of the mine inspectors' examining
19 board, be prepared by the director of West Virginia de-
20 partment of mines.

21 If the board finds after investigation and examination
22 that the applicant (1) is eligible for appointment and (2)
23 has passed all oral and written examinations with a grade
24 of at least eighty per cent, the board shall add such ap-
25 plicant's name and grade to a register of qualified eligible
26 candidates and certify its action to the director of the
27 department of mines. The director may then appoint one
28 of the candidates from the three having the highest
29 grade.

30 The salary for a mine safety instructor shall be not
31 less than sixty-five hundred dollars nor more than
32 seventy-two hundred dollars per year and shall be fixed
33 by the director of the department of mines, who shall
34 take into consideration ability, performance of duty, and
35 experience. No reimbursement for traveling expenses
36 shall be made except on an itemized accounting for such
37 expenses submitted by the instructor, who shall verify
38 upon oath that such expenses were actually incurred in
39 the discharge of his official duties.

40 Mine safety instructors serving as such on the effective
41 date of this section may continue to serve for a probation-
42 ary period not exceeding one year and, if eligible, may
43 qualify for permanent appointment during such proba-
44 tionary period in accordance with the provisions of this
45 section. Mine safety instructors, before entering upon the
46 discharge of their duties, shall take and subscribe to the
47 oath and shall execute a bond in the same penal sum, with
48 surety approved by the director of the department of

49 mines, 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.

§22-1-21. Mine rescue teams.

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

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§22-2-1. Definitions.

For the purpose of this article:

- 2 (1) The term "abandoned workings" shall mean ex-
3 cavations, either caved or sealed, that are deserted and
4 in which further mining is not intended, and open work-
5 ings which are ventilated and not inspected regularly.
- 6 (2) The term "approved" shall mean in strict com-
7 pliance with mining law or, in the absence of law, ac-
8 cepted by a recognized standardizing body or organiza-
9 tion whose approval is generally recognized as authori-
10 tative on the subject.
- 11 (3) The term "armored cable" shall mean a cable pro-
12 vided with a wrapping of metal, usually steel wires or
13 tapes, primarily for the purpose of mechanical protection.
- 14 (4) The term "assistant mine foreman" shall mean a
15 person designated to assist the mine foreman in the
16 supervision of a portion or the whole of a mine or of
17 the persons employed therein.
- 18 (5) The term "borehole cable" shall mean a cable
19 designed for vertical suspension in a borehole or shaft
20 and used for power circuits in the mines.
- 21 (6) The term "branch circuit" shall mean any circuit,
22 alternating current or direct current, connected to and
23 leading from the main power line.
- 24 (7) The term "cable" shall mean a stranded conductor
25 (single conductor cable) or a combination of conductors
26 insulated from one another (multiple-conductor cable).
- 27 (8) The term "circuit breaker" shall mean a device
28 for interrupting a circuit between separable contacts
29 under normal or abnormal conditions.
- 30 (9) The term "delta connected" shall mean a power
31 system in which the windings of transformers or a.c.
32 generators are connected to form a triangular phase re-

33 lationship, and with the phase conductors connected to
34 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
39 any or all parts of a mine excavated or being excavated,
40 including shafts, slopes, drifts, tunnels, entries, rooms and
41 working places, whether abandoned or in use.

42 (12) The term "effectively grounded" is an expression
43 which means grounded through a grounding connection
44 of sufficiently low impedance (inherent or intentionally
45 added or both) so that fault grounds which may occur
46 cannot build up voltages in excess of limits established
47 for apparatus, circuits, or systems so grounded.

48 (13) The term "face equipment" shall mean mobile
49 or portable mining machinery having electric motors or
50 accessory equipment normally installed or operated in by
51 the last open crosscut in an entry or room.

52 (14) The term "fire boss" shall mean any person desig-
53 nated to examine a mine for gas and other dangers. Such
54 person shall have the qualifications required by this
55 article.

56 (15) The term "flame-resistant cable, portable" shall
57 mean a portable flame-resistant cable that has passed
58 the flame tests of the federal bureau of mines.

59 (16) The term "gassy mine" shall mean any mine in
60 which methane has been ignited, or has been detected
61 with a permissible flame safety lamp, or by laboratory
62 analysis of an air sample collected in active workings,
63 in a perceptible air current, taken not less than twelve
64 inches from the roof, face and rib, in an amount of
65 twenty-five hundredths per cent or more.

66 (17) The term "grounded (earthed)" shall mean that
67 the system, circuit, or apparatus referred to is provided
68 with a ground.

69 (18) The term "ground or grounding conductor (min-
70 ing)" (also referred to as a safety ground conductor,
71 safety ground, and frame ground) shall mean a metallic
72 conductor used to connect the metal frame or enclosure

73 of an equipment, device or wiring system, with a mine
74 track or other effective grounding medium.

75 (19) The term "high voltage" shall mean voltage hav-
76 ing a nominal value greater than six hundred fifty volts
77 between any two ungrounded conductors of the power
78 system.

79 (20) The term "interested persons" shall include the
80 operator, members of any mine safety committee at the
81 mine affected and other duly authorized representatives
82 of the mine workers, and state mine inspectors.

83 (21) The term "lightning arrester" shall mean a pro-
84 tective device for limiting surge voltages on equipment
85 by discharging or bypassing surge current; it prevents
86 continued flow of follow current to ground and is capable
87 of repeating these functions as specified.

88 (22) The term "mechanical working section" shall
89 mean an area of a mine (1) in which coal is loaded
90 mechanically, (2) which is comprised of a number of
91 working places that are generally contiguous and (3)
92 which is of such size to permit necessary supervision
93 during the shift operation, including pre-shift and on-shift
94 examinations and tests required by law.

95 (23) The term "mine" shall include the shafts, slopes,
96 drifts or inclines connected with excavations penetrating
97 coal seams or strata, which excavations are ventilated by
98 one general air current or divisions thereof, and connected
99 by one general system of mine haulage over which coal
100 may be delivered to one or more points outside the mine
101 and the surface structures or equipment connected there-
102 with which contribute directly or indirectly to the min-
103 ing, preparation or handling of coal.

104 (24) The term "mine foreman" shall mean the person
105 charged with the responsibility of the general super-
106 vision of the underground workings of a mine and the
107 persons employed therein. He shall hold a certificate of
108 competency for such position issued to him by the de-
109 partment of mines after taking an examination held by
110 the department of mines.

111 (25) The term "mine power center or distribution
112 center" shall mean a combined transformer and distri-

113 bution unit complete within a metal enclosure from which
114 one or more low-voltage power circuits are taken.

115 (26) The term "neutral point" shall mean the connec-
116 tion point of transformer or generator windings from
117 which the voltage to ground is nominally zero, and is the
118 point generally used for system groundings in a wye-
119 connected a.c. power system.

120 (27) The term "neutral (derived)" shall mean a neu-
121 tral point or connection established by the addition of a
122 "zig-zag" or grounding transformer to a normally un-
123 grounded delta power system.

124 (28) The term "nongassy mine" shall mean any coal
125 mine which is not classified as gassy.

126 (29) The term "operator" shall mean any firm, cor-
127 poration, partnership, or individual operating any coal
128 mine or part thereof.

129 (30) The term "permissible" shall mean any equip-
130 ment, device, or explosive, that has been approved as
131 permissible by the United States bureau of mines, and
132 meets all requirements, restrictions, exceptions, limita-
133 tions and conditions attached to such classification by said
134 bureau.

135 (31) The term "portable (trailing) cable" shall mean
136 a flexible cable or cord used for connecting mobile, porta-
137 ble or stationary equipment in mines to a trolley system
138 or other external source of electric energy where per-
139 manent mine wiring is prohibited or is impracticable.

140 (32) The term "shaft" shall mean a vertical opening
141 through the strata that is or may be used for purposes of
142 ventilation, drainage and the hoisting and transportation of
143 men and material, in connection with the mining of coal.

144 (33) The term "shot firer" shall mean any competent
145 person having had at least three years' practical experi-
146 ence in coal mines; who has a knowledge of ventilation,
147 mine roof and timbering; and who has demonstrated
148 knowledge of mine gases and the use of a flame safety
149 lamp, by examination given him by the mine foreman.

150 (34) The term "slope" shall mean a plane or incline
151 roadway, usually driven to a coal seam from the surface
152 and used for the same purposes as a shaft.

153 (35) The term "superintendent" shall mean the person
154 who shall have, on behalf of the operator, immediate
155 supervision of one or more mines.

156 (36) The term "supervisor" shall mean a superintend-
157 ent, mine foreman, assistant mine foreman, or any per-
158 son specifically designated by the superintendent or mine
159 foreman to supervise work or employees and who is
160 acting pursuant to such specific designation and instruc-
161 tions.

162 (37) The term "wye-connected" shall mean a power
163 system connection in which one end of each phase wind-
164 ing of transformers or a.c. generators are connected to-
165 gether to form a neutral point, and the other ends of the
166 windings are connected to the phase conductors. A neu-
167 tral conductor may or may not be connected to the neu-
168 tral point, and the neutral may or may not be grounded.

169 (38) The term "zig-zag transformer (grounding
170 transformer)" shall mean a transformer intended pri-
171 marily to provide a neutral point for grounding purposes.

§22-2-4. Fans.

The ventilation of mines, the systems for which extend
2 for more than two hundred feet underground, and which
3 are opened after the effective date of this article, shall be
4 produced by a mechanically operated fan or mechanically
5 operated fans. Ventilation by means of a furnace is pro-
6 hibited in any mine. The fan or fans shall be kept in con-
7 tinuous operation, unless written permission to do other-
8 wise be granted by the director of the department of
9 mines. In case of accident to a ventilating fan or its ma-
10 chinery whereby the ventilation of the mine is seriously
11 interrupted, immediate action shall be taken by the mine
12 operator or his management personnel, in a gassy mine,
13 to cut off the power and withdraw the men from the face
14 regions or other areas of the mine affected. If the ventila-
15 tion is restored in a reasonable time, the face regions and
16 other places in the affected areas where gas (methane)
17 is likely to accumulate, shall be reexamined by a certified
18 or competent person and if found free of explosive gas,
19 power may be restored and work resumed. If ventilation
20 is not restored in a reasonable time, all underground em-

21 ployees shall be removed from the mine or the affected
22 areas. In mines classified as nongassy, when the ventila-
23 tion is seriously interrupted by fan stoppage or failure,
24 immediate action shall be taken by the mine management
25 to cut off the power and withdraw the men from the face
26 regions or other areas of the mine affected. If the ventila-
27 tion is restored within a reasonable time, the face regions
28 and other places in the affected areas shall be reexamined
29 by a certified or other competent person, and if found in
30 safe condition, work may be resumed. If ventilation is not
31 restored within a reasonable time, all underground em-
32 ployees shall be removed from the mine or affected areas.
33 If the ventilation is not restored within thirty minutes in
34 any mine the men shall be removed from the mine or
35 affected areas: *Provided*, That in mines liberating gas in
36 large quantities the men shall be removed from the af-
37 fected area unless the ventilation has been restored in
38 fifteen minutes.

39 All main fans installed after the effective date of this
40 article, shall be located on the surface in fireproof hous-
41 ings offset not less than fifteen feet from the nearest side
42 of the mine opening, equipped with fireproof air ducts,
43 provided with explosion doors or a weak wall, and oper-
44 ated from an independent power circuit. In lieu of the
45 requirements for the location of fans and pressure-relief
46 facilities, a fan may be directly in front of, or over, a mine
47 opening: *Provided*, That such opening is not in direct line
48 with possible forces coming out of the mine if an explosion
49 occurs: *Provided, however*, That there is another opening
50 having a weak-wall stopping or explosion doors that
51 would be in direct line with forces coming out of the mine.
52 All main fans shall be provided with pressure-recording
53 gauges, or water gauges. A daily inspection shall be made
54 of all main fans and machinery connected therewith by
55 a competent person and a record kept of the same in a
56 book prescribed for this purpose, or by adequate facilities
57 provided to permanently record the performance of the
58 main fan and to give warning of an interruption to a fan.

59 Auxiliary blower or exhaust fans may be used to venti-
60 late shaft-and-slope-sinking operations and their under-
61 ground connections, rock tunnels being driven between

62 coal beds or through faults and wants, or in the driving
63 of single entries or rooms by mining equipment in use at
64 the time of the acquisition of the mine by the operator or
65 prior to the effective date of this article, or equipment
66 which may hereafter be developed through technological
67 progress: *Provided*, That they are powered by permissible
68 driving units when installed underground, operated con-
69 tinuously while any work is being performed in the area
70 being ventilated, and so placed that recirculation of the
71 air is not possible. The inby end of the tubing, line curtain
72 or other device shall be kept sufficiently close to the face
73 to dilute, render harmless and carry away all dangerous
74 gases.

75 In the event of a fire or explosion in any coal mine the
76 ventilating fan or fans shall not intentionally be started,
77 stopped, speed increased or decreased or the direction of
78 the air current changed without the approval of the gen-
79 eral mine foreman and, if he is not immediately available,
80 a representative of the state department of mines. A duly
81 authorized representative of the employees should be con-
82 sulted if practical under the circumstances.

§22-2-5. Ventilation of mines in general.

The operator or mine foreman of every coal mine,
2 whether worked by shaft, slope or drift, shall provide and
3 hereafter maintain for every such mine adequate
4 ventilation. In all mines the quantity of air passing
5 through the last open crosscut between the intake and
6 return in any set of entries shall be not less than six thou-
7 sand cubic feet of air per minute and as much more as is
8 necessary to dilute and render harmless and carry away
9 flammable and harmful gases: *Provided*, That the quan-
10 tity of air reaching the last crosscut in pillar sections may
11 be less than six thousand cubic feet per minute if at least
12 six thousand cubic feet of air per minute is being deliver-
13 ed to the intake of the pillar line. The air current shall
14 under any conditions have a sufficient volume and velocity
15 to reduce and carry away smoke from blasting and any
16 flammable or harmful gases. All active underground work-
17 ing places in a mine shall be ventilated by a current of
18 air containing not less than nineteen and five-tenths per

19 cent of oxygen, not more than one per cent of carbon
20 dioxide, and no harmful quantities of other noxious or
21 poisonous gases.

22 Each mechanical working section newly developed in
23 virgin coal hereafter shall be ventilated by a separate
24 split of air: *Provided*, That areas already under develop-
25 ment and in areas where physical conditions prevent
26 compliance with this provision the director of the depart-
27 ment of mines may grant temporary relief from compli-
28 ance until such time as physical conditions make compli-
29 ance possible. The quantity of air reaching the last
30 crosscut shall not be less than six thousand cubic feet of
31 air per minute and shall under any conditions have a
32 sufficient volume and velocity to reduce and carry away
33 smoke and flammable or harmful gases from each work-
34 ing face in the section.

35 As working places advance, crosscuts for air shall be
36 made not more than eighty feet apart. Where necessary
37 to render harmless and carry away noxious or flammable
38 gases, line brattice or other approved methods of ventila-
39 tion shall be used so as to properly ventilate the face. All
40 crosscuts between the main intake and return airways not
41 required for passage of air and equipment shall be closed
42 with stoppings substantially built with incombustible or
43 fire-resistive material so as to keep working places well
44 vented: *Provided*, That in mines where it becomes neces-
45 sary to provide larger pillars for adequate roof support,
46 working places shall not be driven more than two hun-
47 dred feet without providing a connection that will allow
48 the free flow of air currents. In such cases a minimum of
49 twelve thousand cubic feet of air a minute shall be de-
50 livered to the last open crosscut and as much more as is
51 necessary to dilute and render harmless and carry away
52 flammable and noxious gases.

53 In special instances for the construction of sidetracks,
54 haulageways, airways, or openings in shaft bottom or
55 slope bottom layout where the size and strength of pillars
56 is important, the director of the department of mines may
57 issue a permit approving greater distances. The permit
58 shall specify the conditions under which such places may
59 be driven.

60 In gassy mines a system of bleeder openings or air
61 courses designed to provide positive movement of air
62 through and /or around abandoned or caved areas, suf-
63 ficient to prevent dangerous accumulation of gas in such
64 areas and to minimize the effect of variations in atmos-
65 pheric pressure shall be made a part of pillar recovery
66 plans projected after the effective date of this article.

67 If a bleeder return is closed as a result of roof falls or
68 water during pillar recovery operations, pillar opera-
69 tions may continue without reopening the bleeder return
70 so long as a minimum of twelve thousand cubic feet
71 of air per minute is delivered to the intake of the pillar
72 line.

73 Not more than sixty persons shall be permitted to work
74 in the same air current: *Provided*, That a larger number,
75 not exceeding eighty persons, may be allowed by the
76 director of the department of mines where it is imprac-
77 ticable to comply with the foregoing requirements.

78 No operator or mine foreman shall permit any person to
79 work where he is unable to maintain the quantity and
80 quality of the air current as heretofore required: *Pro-*
81 *vided*, That such provisions shall not prohibit the employ-
82 ment of men to make places of employment safe.

83 The ventilation of any mine shall be so arranged by
84 means of airlocks, overcasts, or undercasts, that the use of
85 doors on passageways where men or equipment travel may
86 be kept to a minimum. Where doors are used in a gassy
87 mine they shall be erected in pairs so as to provide a venti-
88 lated airlock, unless the doors are operated mechanically:
89 *Provided*, That such provisions shall not apply to doors
90 in or between panel or room entries. In mines not classi-
91 fied as gassy, single doors may be used, provided such
92 doors are closed promptly after men or equipment have
93 passed through them.

94 Overcasts or undercasts shall be constructed of incom-
95 bustible material and maintained in good condition.

96 Where practicable, a crosscut shall be provided at or
97 near the face of each entry or room before such places
98 are abandoned.

99 Rooms, entries, airways, or other working places shall

100 not be driven in advance of air currents. Such provisions
101 shall not prohibit, as the room, entry or aircourse ad-
102 vances, the "necking" of any place for a distance not ex-
103 ceeding that actually required for the installation of
104 mining equipment in use at this location: *Provided*, That
105 such room necks or entries are kept free of accumula-
106 tions of methane by use of line brattice or other adequate
107 means.

§22-2-7a. Movement of mining equipment.

Mining equipment being transported or trammed un-
2 derground, other than ordinary sectional movements,
3 shall be transported or trammed by qualified personnel
4 under the supervision of a certified foreman. To avoid
5 accidental contact where clearance vertically and hori-
6 zontally is less than ten inches from any power line or
7 other obstruction, face equipment being transported or
8 trammed shall be reduced by the removal of such parts
9 and assemblies as may be necessary to maintain neces-
10 sary 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
2 mine foreman, of every coal mine in this state, to see that
3 every person employed to work in such mine shall, be-
4 fore beginning work therein, be instructed in the partic-
5 ular danger incident to his work in such mine, and be
6 furnished a copy of the mining laws and rules of such
7 mine. Every inexperienced person so employed shall
8 work under the direction of the mine foreman, his as-
9 sistant, or such other experienced worker as may be desig-
10 nated by the mine foreman or assistant, until he is famil-
11 iar with the danger incident to his work.

12 Persons whose duties require them to use a flame safety
13 lamp and other approved methane detectors shall be ex-
14 amined at least annually as to their competence by a
15 certified man and a record that such examination was
16 given, together with pertinent data relating thereto, shall
17 be kept on file by the operator and a copy shall be fur-
18 nished 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

40 in width, and as high as the traveling space. Room necks
41 and crosscuts may be used as shelter holes even though
42 their width exceeds four feet.

43 Shelter holes shall be kept clear of refuse and other
44 obstructions.

45 Shelter holes shall be provided at switch throws, and
46 manually operated permanent doors, except where more
47 than six feet of clearance is maintained, and at room
48 switches.

49 No steam locomotive shall be used in mines where men
50 are actually employed in the extraction of coal, but this
51 shall not prevent operation of a steam locomotive through
52 any tunnel haulway or part of a mine that is not in actual
53 operation and producing coal.

54 Underground equipment powered by internal combus-
55 tion engines using petroleum products, alcohol, or any
56 other compound shall not be used in a coal mine unless
57 such equipment has been approved by the United States
58 bureau of mines for underground use in coal mines and
59 only then when this equipment is maintained in com-
60 pliance with the requirements of the approved schedule.

61 Locomotives, mine cars, supply cars, shuttle cars and all
62 other haulage equipment shall be maintained in a safe
63 operating condition. Each locomotive shall be equipped
64 with a suitable lifting jack and handle. An audible warn-
65 ing device and headlights shall be provided on each loco-
66 motive and each shuttle car. All other mobile equipment,
67 using the face areas of the mine, purchased after the effec-
68 tive date of this article, shall be provided with a conspicu-
69 ous light or other effective method, so as to reduce the
70 possibility of collision.

71 No persons other than those necessary to operate a trip
72 or car shall ride on any loaded car or on the outside of
73 any car.

74 The pushing of trips, except for switching purposes, is
75 prohibited on main haulage roads: *Provided*, That this
76 does not prohibit the use of a pusher locomotive to assist
77 the locomotive pulling a trip. Motormen and trip riders
78 shall use care in handling locomotives and cars. It shall
79 be their duty to see that there is a conspicuous light on

80 the front and rear of each trip or train of cars when in
81 motion: *Provided*, That trip lights need not be used on
82 cars being shifted to and from loading machines, on cars
83 being handled at loading heads during gathering oper-
84 ations at working faces or on trips being pulled by ani-
85 mals. No persons shall ride on locomotives or loaded cars
86 unless granted permission by the mine foreman.

87 No motorman, trip rider or brakeman shall get on or off
88 cars, trips, or locomotives while they are in motion, ex-
89 cept that a trip rider or brakeman may get on or off the
90 rear end of a slowly moving trip or the stirrup of a slowly
91 moving locomotive to throw a switch, align a derail or
92 open or close a door.

93 Flying or running switches and riding on the front
94 bumper of a car or locomotive are prohibited. Back poling
95 shall be prohibited except with precaution to the nearest
96 turning point (not over eighty feet), or when going up
97 extremely steep grades and then only at slow speed. The
98 operator of a shuttle car shall face in the direction of
99 travel except during the loading operation when he shall
100 face the loading machine.

101 A system of signals, methods or devices shall be used to
102 provide protection for trips, locomotives and other equip-
103 ment coming out onto tracks used by other equipment.
104 Where a dispatcher is employed to control trips, traffic
105 under his jurisdiction shall move only at his direction.

106 Motormen shall inspect locomotives and report any me-
107 chanical defects found to the proper supervisor before a
108 locomotive is put in operation.

109 A locomotive following another trip shall maintain a
110 distance of at least three hundred feet from the rear end
111 of the trip ahead unless such locomotive is coupled to the
112 trip ahead.

§22-2-38. Transportation of men.

Man trips shall be pulled (unless self-propelled) at safe
2 speeds consistent with the condition of roads and type of
3 equipment used, but not to exceed twelve miles an hour,
4 except where special substantially covered man-trip cars
5 are used. Each man trip shall be under the charge of a
6 certified person or other competent person designated by

7 a mine foreman or assistant mine foreman. It shall be
8 operated independently of any loaded trip of coal or other
9 heavy material, but may transport tools, small machine
10 parts and supplies. When mine cars are used for man trips
11 on steep grades, a locomotive shall be used on each end of
12 the trip.

13 Cars on the man trip shall not be overloaded, and suffi-
14 cient cars in good mechanical condition shall be provided.

15 Where "drop-bottom" cars are used, special safety pre-
16 cautions shall be taken.

17 No person shall ride under the trolley wire unless suit-
18 ably covered man cars are used.

19 Men shall not load or unload before the cars in which
20 they are to ride, or are riding, come to a full stop. Men
21 shall proceed in an orderly manner to and from man trips.

22 When belts are used for transporting men, a minimum
23 clearance of eighteen inches shall be maintained between
24 the belt and the roof or crossbars, projecting equipment,
25 cap pieces, overhead cables, wiring and other objects.
26 Where the height of the coal seam permits, the clearance
27 shall not be less than twenty-four inches.

28 Unless a greater speed is allowed by special permission
29 from the director of the department of mines, in which
30 event the conditions, limitations and rules imposed in con-
31 nection with the grant of such permission shall be ob-
32 served, the belt speed shall not exceed two hundred fifty
33 feet per minute where the minimum overhead clearance
34 is eighteen inches, or three hundred feet per minute where
35 the minimum overhead clearance is twenty-four inches,
36 while men are loading, unloading, or being transported.
37 A signaling system or method shall be provided for stop-
38 ping the belt and men shall ride not less than six feet
39 apart.

40 An assistant mine foreman or some other person desig-
41 nated by the mine foreman shall supervise the loading
42 and unloading of belts and man trips. Where men are re-
43 quired to regularly cross over belts, adequate and safe
44 facilities shall be provided.

45 Adequate clearance and proper illumination shall be
46 provided where men board or leave conveyor belts.

§22-2-39. Electricity; general provisions.

Operators of coal mines in which electricity is used as
2 a means of power shall comply with the following pro-
3 visions:

4 All surface transformers, unless of a construction which
5 will eliminate shock hazards, or unless installed at least
6 eight feet above ground, shall be enclosed in a house or
7 surrounded by a fence at least six feet high. If the en-
8 closure is of metal, it shall be grounded effectively. The
9 gate or door to the enclosure shall be kept locked at all
10 times, unless authorized persons are present.

11 Underground transformers purchased after the effective
12 date of this article, shall be air cooled or cooled with non-
13 inflammable liquid or inert gas.

14 Underground stations containing transformers or cir-
15 cuit breakers filled with inflammable oil shall be provided
16 with door sills or their equivalent, which will confine the
17 oil if leakage or explosion occurs, and shall be of fireproof
18 construction.

19 Transformers shall be provided with adequate overload
20 protection.

21 Portable or semiportable battery charging units shall be
22 operated on a separate split of air: *Provided*, That such
23 units may be operated on intake air if a minimum of fif-
24 teen thousand cubic feet per minute is circulating for one
25 tray of batteries and five thousand cubic feet per minute
26 additional for each tray added. The rate of charging by
27 such units shall not be less than four hours to fully charge
28 a tray of batteries.

29 Battery charging stations, motor generator sets, rotary
30 converters and oil filled transformers and switches, used
31 underground shall be housed in fireproof buildings venti-
32 lated by a separate split of air direct to the main return
33 (rectifiers excepted).

34 All power wires and cables entering a mine shall be
35 provided with lightning arrestors at points of entry.

36 "Danger—high voltage" signs shall be posted conspicu-
37 ously on all transformer enclosures, high-potential switch-
38 boards and other high-potential installations.

39 Circuit breakers or other overload devices shall be pro-
40 vided to protect power circuits.

41 Insulating platforms of wood, rubber, or other suitable
42 nonconductive material shall be kept in place at each
43 switchboard and at stationary machinery where shock
44 hazards exist.

45 All power wires and cables in hoisting shafts, slopes
46 and power boreholes shall be properly insulated, provided
47 with lightning arrestors, substantially installed and well
48 maintained.

49 All power wires, except training cables, especially de-
50 signed cable used as electrical conductors to underground-
51 rectifier or transformer stations, portable power cables or
52 bare or insulated ground and return wires, shall be sup-
53 ported on well-installed insulators and shall not contact
54 combustible material, roof or ribs.

55 Trolley and feeder wires shall be installed as follows:
56 Where installed on permanent haulage, after the effective
57 date of this article, they shall be: (1) At least six inches
58 outside the track gauge line; (2) provided with cutout
59 switches at intervals of not more than two thousand feet
60 and near the beginning of all branch lines; and (3) kept
61 taut and not permitted to touch the roof, rib, or crossbars.
62 Particular care shall be taken where they pass through
63 door openings to preclude bare wires from coming in con-
64 tact with combustible material.

65 Trolley or bare feeder cables shall be guarded ade-
66 quately where it is necessary for men to pass or work
67 under them regularly unless the wires are more than six
68 and one-half feet above the top of the rail. They shall also
69 be guarded adequately on both sides of doors, at all sta-
70 tions designated for the loading and unloading of man
71 trips, and at sandboxes.

72 After the effective date of this article, in new under-
73 ground installations of electric face equipment in new
74 mines the difference in potential between any two points
75 in the electrical circuits, or between any point in the elec-
76 trical circuits and the ground, shall not exceed six hun-
77 dred and fifty volts. No provision of this section shall pro-
78 hibit the use of higher voltages of alternating current on

79 service lines to rectifiers, converters, transformers or
80 switches connected thereto located in areas out by the
81 immediate face regions: *Provided*, That electrically face-
82 operated equipment used in underground mines may be
83 operated at higher voltages if the conductor in the trailing
84 cable is surrounded by a flexible grounded metallic sheath,
85 ground current is limited by acceptable methods, and the
86 ground circuit is continuously monitored in a method ap-
87 proved by the director of the department of mines.

88 In a gassy mine, trolley, feeder wires, mine power cen-
89 ters, rectifiers and distribution centers shall not extend
90 beyond the last open crosscut and shall be kept at least
91 one hundred and fifty feet from open pillar workings.
92 Trolley wires and feeder wires shall be anchored securely,
93 insulated, and properly identified at their ends. Metallic
94 frames, casings, and other enclosures of stationary electric
95 equipment that can become "alive" through failure of in-
96 sulation or by contact with energized parts shall be
97 grounded effectively.

98 Metal frames, supporting structures and enclosures of
99 substations or switching station apparatus shall be
100 grounded effectively.

101 Lightning arrestors suitable for the voltage of the sys-
102 tem shall be installed on each ungrounded conductor for
103 each exposed feeder circuit entering the mine.

104 Capacitors used for power factor correction shall be
105 nonflammable liquid filled. Suitable drain off resistors or
106 other means to protect workmen against electric shock
107 following removal of power shall be provided.

108 Where a.c. to d.c. conversion equipment is used to sup-
109 ply direct current for shuttle cars or other face equipment,
110 adequate electrical protection shall be provided on either
111 the alternating current side and/or the direct current side
112 of the conversion equipment.

113 Where both a.c. and d.c. equipment is operating in the
114 same mine the grounding systems shall not be intercon-
115 nected.

116 The use of "jumpers," as a supplement for feeder or
117 trolley lines, are permitted if they are installed in the

118 same manner as the feeder or trolley line and are of ade-
119 quate capacity.

120 All cables shall be of the approved type and trailing
121 cables shall be flame resistant.

122 Power circuits servicing alternating current face equip-
123 ment shall include a neutral grounding circuit, either di-
124 rect or derived, the inby end of which shall be connected
125 only to the equipment machine frame.

126 Each individual alternating current power circuit (trail-
127 ing cable) furnishing power to mining equipment shall be
128 protected from short circuits by means of a circuit breaker
129 which will open all three phases of the circuit simul-
130 taneously.

131 Where electric motors are operating inside of any coal
132 mine they shall be provided with correct overload pro-
133 tection.

134 All unattended underground permanent belt conveyor
135 drives shall be provided with an automatic spray system
136 or its equivalent.

137 All unattended underground loading points where elec-
138 tric driven hydraulic systems are used shall utilize a fire-
139 proof oil or emulsion, unless the electrical wiring and hy-
140 draulic systems are separated.

141 When direct current power cables enter a mine by way
142 of a borehole, the bottom or area around the borehole
143 shall be adequately fireproofed.

144 Before major electrical changes are made to permissible
145 equipment for use in a gassy mine, they shall be approved
146 by the director of the department of mines.

147 Where installed after the effective date of this section,
148 high-voltage lines or cables entering a mine shall have
149 circuit breakers or a similar approved protective device.

150 Diodes or similar devices may be used as an equivalent
151 frame grounding device.

152 When two or more trailing cables junction to the same
153 power car or transformer, means shall be provided to
154 eliminate the possibility of cross-connecting or connecting
155 to the wrong size breaker.

156 All power transformers shall be provided with adequate
157 over-load protection. A visual and suitable means of dis-
158 connecting the primary line of the transformers shall be
159 provided.

160 In new installations made after the effective date of this
161 section, lightning arrestors shall be connected to a low
162 resistance grounding medium on the surface which shall
163 be separated from system and equipment grounds by a
164 distance of not less than fifty feet.

165 At locations where cables cross regular haulage or
166 travelways, or where equipment must pass, unless pro-
167 tected by sufficient height, the cables shall be installed in
168 a trench in the roof, protected by some mechanical means,
169 or buried at least twelve inches below combustible ma-
170 terial and adequately protected from crushing by the
171 weight of equipment passing over it.

172 Underground high-voltage main feeder cables shall ex-
173 tend to high-voltage distribution centers with breakers or
174 disconnect switches supplying the branch circuits. Discon-
175 necting devices shall be incorporated to provide visual
176 evidence that the circuit is deenergized when the
177 switches are opened.

178 Permanent high-voltage cables shall be installed only in
179 well maintained and accessible passageways of the mine
180 and when installed in haulageways shall be supported on
181 hangers and/or messenger wire supported from the roof
182 and/or buried. Extra lengths may be stored in a workman-
183 like manner, vertically on suitable supports, or horizon-
184 tally in a protected location.

185 Circuit breakers and disconnecting switches on high-
186 voltage circuits underground shall be adequately marked
187 for identification and location. Where work is to be done
188 on these circuits or equipment, a positive method shall be
189 provided for removing the power in a manner to prevent
190 it from returning while the men are working.

191 Reverse current protection shall be provided at storage
192 battery charging stations to prevent the storage batteries
193 from energizing the power circuits in the event of power
194 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
2 and controls shall be of dust-tight construction, or en-
3 closed with reasonably dust-tight housings or enclosures.
4 Open type motors, switches or controls in use at the effec-
5 tive date of this article in tipples and cleaning plants in
6 unusually dusty locations may be continued in use until
7 such dust-tight equipment can be procured, or until they
8 can be provided with reasonably dust-tight housings or
9 enclosures.

10 Means and methods shall be provided to assure that
11 structures and the immediate area surrounding the same
12 shall be reasonably free of coal dust accumulations.

13 Where coal is dumped at or near air intake openings,
14 reasonable provisions shall be made to prevent dust from
15 entering the mine.

16 Where repairs are being made to the plant, proper scaf-
17 folding and proper overhead protection shall be provided
18 for workmen wherever necessary.

19 Welding shall not be done in dusty atmospheres and
20 dusty locations shall be well cleaned, and fire-fighting ap-
21 paratus shall be readily available during welding.

22 Stairways, elevated platforms and runways shall be
23 equipped with handrails. Railroad car trimmer platforms
24 are excepted from such requirement.

25 Elevated platforms and stairways shall be provided with
26 toeboards where necessary, and they shall be kept clear
27 of refuse and ice and maintained in good repair.

28 Personnel who are required frequently and regularly to
29 travel on belts or chain conveyors extended to heights of
30 more than ten feet shall be provided with adequate space
31 and protection in order that they may work safely.
32 Permanent ladders extending more than ten feet shall be
33 provided with back guards. Walkways around thickeners
34 that are less than four feet above the walkway shall be
35 adequately guarded. Employees required to work over
36 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 emergencies; hoisting equipment at shaft outlets; 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

36 making communications between outlets, necessary re-
37 pairs, or removing obstructions, so long as not more than
38 twenty persons are employed at any one time in the
39 mine; neither shall it apply to any mine, or part of a
40 mine, in which a second outlet has been rendered un-
41 available by reason of the final robbing of pillars, pre-
42 paratory to abandonment, so long as not more than
43 twenty persons are employed therein at any one time;
44 but before a limited number of men are so permitted
45 to work, approval of the necessity therefor shall be
46 obtained from the department of mines.

§22-2-61a. Coal storage bins; recovery tunnels; coal storage piles.

Coal storage bins hereafter constructed with vertical
2 sides fifty feet or over in height shall be provided with
3 ventilators and/or louvers to provide adequate venti-
4 lation. Where roofs are constructed over coal storage
5 bins, adequate ventilation shall be provided by stacks,
6 ventilators, louvers or mechanical means.

7 Where cutting or welding is performed at any location
8 where coal is stored, means of prompt extinguishment
9 of any fire accidentally started shall be provided, and
10 the area where cutting or welding is performed shall be
11 adequately watered down and rock-dusted.

12 A competent person shall test for methane with a
13 methane detector, prior to and during cutting and weld-
14 ing operations inside or underneath a coal storage bin.

15 Electric motors, switches and controls for coal storage
16 bins hereafter acquired shall be of dust-tight construction.

17 Repairs to electric equipment shall not be made when
18 the surrounding atmosphere contains dangerous amounts
19 of gas or dust.

20 Where electric lights are used in recovery tunnels of
21 over one hundred feet in length, the wiring shall be in
22 rigid conduit and shall be enclosed in waterproof recep-
23 tacles.

24 An escapeway shall be provided from any recovery
25 tunnel hereafter constructed to a safe place on the sur-
26 face; such escapeway shall be at least thirty inches in

27 diameter and, where inclined, a ladder shall be provided
28 to extend the full length of the escapeway to facilitate
29 emergency exit.

30 Extreme caution shall be exercised by all employees
31 required to work at or near coal storage piles during
32 coal recovery operations to avoid injury by coal slides
33 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,
2 maintained and operated in compliance with the follow-
3 ing provisions:

4 Good housekeeping shall be practiced in and around
5 thermal dryer plants.

6 Adequate fire-fighting facilities shall be provided on all
7 floors.

8 When welding and cutting operations are to be per-
9 formed in a dryer structure, the area shall be wetted
10 down thoroughly and adequate fire-fighting apparatus
11 shall be readily available during the operation.

12 Only qualified persons shall be permitted to operate
13 dryers; however, this provision shall not prohibit qualified
14 persons from training other persons to become qualified
15 operators.

16 Dryer control panels shall be provided with audible and
17 visible alarm devices; such devices should be adjusted to
18 function at somewhat less than maximum dryer tempera-
19 ture.

20 A bypass or relief stack equipped with an automati-
21 cally operated damper shall be provided for bypassing
22 gases from the heating units to the outside atmosphere
23 during emergency or normal shutdown operations.

24 Thermal coal dryers hereafter installed shall not be
25 enclosed, except that roofs may be used. Whenever it is
26 deemed necessary to inclose thermal dryers, such equip-
27 ment shall be in a fireproof structure.

28 Dryer installations and discharge stacks shall be pro-
29 tected with adequate explosion release vents that open to
30 the outside atmosphere.

31 Thermal coal dryers shall be located at a safe distance
32 from tipples, cleaning plants, mine openings and surface
33 buildings, such as oil storage areas, explosive magazines,
34 and other buildings where coal dust, sparks and flames
35 are likely to enter and become ignited or otherwise cause
36 danger of fires.

37 Dryers shall be equipped with quick-response heat con-
38 trol devices which, in the event of superelevated tempera-
39 tures, will automatically divert the hot inlet gases into a
40 bypass stack thereby bypassing the drying chamber and,
41 at the same time, will stop the fuel being supplied to the
42 air heater.

43 All dryers, conveyors and other fine coal transporting
44 machines shall be constructed as dust tight as practicable.
45 Where necessary, such equipment shall be provided with
46 removable covers for inspection and cleaning and shall be
47 provided with vent pipes to the outside atmosphere to
48 permit the escape of distilled gases.

49 Dryers shall be examined thoroughly after normal and
50 emergency shutdown for fires and coal dust accumula-
51 tions.

52 Dryer controls, valves, and mechanical equipment shall
53 be frequently inspected and no dryer shall be operated
54 with defective mechanical equipment.

55 The gauges of temperature control instruments shall
56 be of the recording type.

57 Operating rules suitable for the characteristics of each
58 dryer system and the materials processed shall be devel-
59 oped and shall be available at the control panel.

60 Electrical equipment, electrical wiring and lighting fix-
61 tures shall be of dust-tight construction.

62 Adequate illumination shall be provided.

63 Dryers shall not be operated beyond their rated evapo-
64 ration capacity.

65 Fluid bed dryers shall be provided with water sprays of
66 sufficient capacity for use in event of fire.

67 After shutdowns, thermal dryers shall be cleared of
68 hot coals so as to minimize ignitions on succeeding start-
69 ups.

70 Thermal coal dryers previously installed in a tippel
71 or cleaning plant shall be separated where practicable
72 from other working areas by substantial partitions capa-
73 ble of providing greater resistance to explosion pres-
74 sures than an exterior wall or walls.

75 When it is necessary to use extension cables for emer-
76 gency illumination, such lighting devices shall be dust-
77 tight and adequately guarded. When it becomes neces-
78 sary to perform work in dryer system bins or any other
79 dusty areas, permissible cap lamps shall be used for
80 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
2 language and shall be of a practical nature, so as to de-
3 termine the competency and qualifications of the appli-
4 cant to engage in the mining of bituminous coal with
5 reasonable safety to himself and his fellow employees.
6 No applicant shall be certified as qualified or competent
7 who (1) has had less than six months' practical experience
8 as a miner or as a miner apprentice, or (2) lacks a sound
9 knowledge of first aid. Evidence of satisfactory comple-
10 tion of a course of instruction in first aid offered by the
11 West Virginia department of mines, the federal bureau
12 of mines or by such other sponsor as the director may
13 approve, may be received as proof of competence in first
14 aid without further examination.

15 During this six-months' period the applicant shall
16 complete a course in the fundamentals of first aid and in
17 general mining practices offered by the West Virginia de-
18 partment of mines or by such other sponsor as the director
19 may approve.

20 Applicants shall be examined under oath and inspectors
21 shall have power to administer oaths to all applicants and
22 witnesses.

23 If the inspector examining the applicant finds the ap-
24 plicant qualified and competent to be a coal miner, he
25 shall issue to the applicant a certificate of qualification
26 and competency in such form as shall be prescribed by
27 the director, which shall entitle the holder thereof to be
28 employed and work as a coal miner in any mine in this
29 state.

30 Certificates shall not be transferable and an attempt to
31 transfer a certificate shall be deemed a violation of this
32 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 applica-
 2 tion for public assistance it shall fix the amount of the
 3 monthly grant in accordance with its established stand-
 4 ard of need and the funds available for the purpose.
 5 Public assistance shall be paid monthly and out of funds
 6 appropriated for the purpose of this article upon requis-
 7 tion of the commissioner by means of a warrant signed
 8 by the auditor and treasurer.

9 (b) After the first day of July, one thousand nine hun-
 10 dred sixty-seven, it shall be the duty of the commissioner
 11 of welfare to certify in writing to the commissioner of
 12 motor vehicles the name and address of each blind person
 13 over the age of sixteen years for whom an application
 14 for public assistance is approved by the state department
 15 of welfare, within ten days after such approval. On or
 16 before the first day of August, one thousand nine hundred
 17 sixty-seven, it shall be the duty of the commissioner of
 18 welfare to certify in writing to the commissioner of motor
 19 vehicles the names and addresses of all blind persons
 20 over the age of sixteen years receiving public assistance
 21 on said first day of July, one thousand nine hundred
 22 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
 2 operator or chauffeur upon receipt of certification by the

3 commissioner of welfare that he is a blind person re-
4 ceiving public assistance or that his application for public
5 assistance because of blindness has been approved by the
6 state department of welfare.

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
2 trailer when driven or moved upon a highway shall be
3 subject to the registration and certificate of title provi-
4 sions of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway
6 in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lien-
8 holders, or nonresidents or under a temporary registration
9 permit issued by the department as hereinafter author-
10 ized;

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
 15 electric power obtained from overhead trolley wires
 16 though not operated upon rails;

17 (4) Any vehicle of a type subject to registration
 18 owned by the government of the United States;

19 (5) Any wrecked or disabled vehicle which is being
 20 towed by a licensed wrecker or dealer on the public
 21 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-1-1. Definitions.

1 The following words and phrases when used in this
2 chapter shall for the purpose of this chapter have the
3 meanings respectively ascribed to them in this article:

4 (a) *Vehicle*.—Every device in, upon, or by which
5 any person or property is or may be transported or drawn
6 upon a highway, excepting devices moved by human
7 power or used exclusively upon stationary rails or
8 tracks.

9 (b) *Motor vehicle*.—Every vehicle which is self-
10 propelled and every vehicle which is propelled by elec-
11 tric power obtained from overhead trolley wires, but not
12 operated upon rails.

13 (c) *Motorcycle*.—Every motor vehicle having a saddle
14 for the use of the rider and designed to travel on not more
15 than three wheels in contact with the ground but ex-
16 cluding a tractor.

17 (d) *School bus*.—Every motor vehicle owned by a
18 public governmental agency and operated for the trans-
19 portation of children to or from school or privately
20 owned and operated for compensation for the transpor-
21 tation of children to or from school.

22 (e) *Bus*.—Every motor vehicle designed for carrying
23 more than seven passengers and used for the transporta-
24 tion of persons; and every motor vehicle, other than a
25 taxicab, designed and used for the transportation of
26 persons for compensation.

27 (f) *Truck tractor*.—Every motor vehicle designed and
28 used primarily for drawing other vehicles and not so
29 constructed as to carry a load other than a part of the
30 weight of the vehicle and load so drawn.

31 (g) *Farm tractor*.—Every motor vehicle designed and
32 used primarily as a farm implement for drawing plows,
33 mowing machines, and other implements of husbandry.

34 (h) *Road tractor*.—Every motor vehicle designed and
35 used for drawing other vehicles and not so constructed
36 as to carry any load thereon either independently or
37 any part of the weight of a vehicle or load so drawn.

38 (i) *Truck*.—Every motor vehicle designed, used, or
39 maintained primarily for the transportation of prop-
40 erty.

41 (j) *Trailer*.—Every vehicle with or without motive
42 power designed for carrying persons or property and
43 for being drawn by a motor vehicle and so constructed
44 that no part of its weight rests upon the towing vehicle.

45 (k) *Semitrailer*.—Every vehicle with or without mo-
46 tive power designed for carrying persons or property
47 and for being drawn by a motor vehicle and so con-
48 structed that some part of its weight and that of its
49 load rests upon or is carried by another vehicle.

50 (l) *Pole trailer*.—Every vehicle without motive power
51 designed to be drawn by another vehicle and attached
52 to the towing vehicle by means of a reach, or pole, or
53 by being boomed or otherwise secured to the towing
54 vehicle, and ordinarily used for transporting long or
55 irregularly shaped loads such as poles, pipes, or struc-
56 tural members capable, generally, of sustaining them-
57 selves as beams between the supporting connections.

58 (m) *Specially constructed vehicles*.—Every vehicle
59 of a type required to be registered hereunder not origi-
60 nally constructed under a distinctive name, make, model,
61 or type by a generally recognized manufacturer of ve-
62 hicles and not materially altered from its original con-
63 struction.

64 (n) *Reconstructed vehicle*.—Every vehicle of a type
65 required to be registered hereunder materially altered
66 from its original construction by the removal, addition,
67 or substitution of essential parts, new or used.

68 (o) *Essential parts*.—All integral and body parts of
69 a vehicle of a type required to be registered hereunder,
70 the removal, alteration or substitution of which would
71 tend to conceal the identity of the vehicle or substan-
72 tially alter its appearance, model, type, or mode of oper-
73 ation.

74 (p) *Foreign vehicle*.—Every vehicle of a type re-
75 quired to be registered hereunder brought into this state
76 from another state, territory, or country other than in the
77 ordinary course of business by or through a manufacturer
78 or dealer and not registered in this state.

79 (q) *Implement of husbandry*.—Every vehicle which
80 is designed for or adapted to agricultural purposes and
81 used by the owner thereof primarily in the conduct of his

82 agricultural operations, including but not limited to
83 trucks used for spraying trees and plants: *Provided, That*
84 said vehicle shall not be let for hire at any time.

85 (r) *Special mobile equipment.*—Every vehicle not de-
86 signed or used for the transportation of persons or prop-
87 erty and incidentally operated or moved over the high-
88 ways, including road construction or maintenance ma-
89 chinery, ditch-digging apparatus, well-boring apparatus,
90 concrete mixers, and farm tractors, when farm tractors
91 cannot be classified as an implement of husbandry as
92 defined in subdivision (q) of this section. The fore-
93 going enumeration shall be deemed partial and shall not
94 operate to exclude other such vehicles which are within
95 the general terms of this subdivision.

96 (s) *Pneumatic tire.*—Every tire in which compressed
97 air is designed to support the load.

98 (t) *Solid tire.*—Every tire of rubber or other resilient
99 material which does not depend upon compressed air
100 for the support of the load.

101 (u) *Metal tire.*—Every tire the surface of which in
102 contact with the highway is wholly or partly of metal
103 or other hard, nonresilient material.

104 (v) *Commissioner.*—The commissioner of motor vehi-
105 cles of this state.

106 (w) *Department.*—The department of motor vehicles
107 of this state acting directly or through its duly authorized
108 officers and agents.

109 (x) *Person.*—Every natural person, firm, copartner-
110 ship, association, or corporation.

111 (y) *Owner.*—A person who holds the legal title of
112 a vehicle or in the event a vehicle is the subject of an
113 agreement for the conditional sale or lease thereof with
114 the right of purchase upon performance of the conditions
115 stated in the agreement and with an immediate right of
116 possession vested in the conditional vendee or lessee, or
117 in the event a mortgagor of a vehicle is entitled to posses-
118 sion, then such conditional vendee or lessee or mortgagor
119 shall be deemed the owner for the purpose of this chapter.

120 (z) *Nonresident.*—Every person who is not a resident
121 of this state.

122 (aa) *Dealer*.—Every person primarily engaged in the
123 business of buying, selling, or exchanging vehicles of a
124 type required to be registered hereunder and who has
125 an established place of business for such purpose in this
126 state which meets the requirements set out in sections
127 one and two, article seven of this chapter, except an
128 insurance company, a finance company or other type of
129 lending or financing agency, including banking institu-
130 tions, or any other person coming into possession of a
131 vehicle as an incident to such person's regular business
132 who shall sell such vehicle, or who shall sell such ve-
133 hicle under any contractual rights such persons may
134 have with respect thereto, shall not be a dealer here-
135 under: *Provided*, That a person who engages exclusively
136 in the wrecking or dismantling of vehicles for junk or
137 for resale of the parts of such vehicles and who comes
138 into possession of a vehicle for the purpose of wrecking
139 or dismantling same as hereinabove stated shall not be
140 a dealer hereunder.

141 (bb) *Transporter*.—Every person engaged in the busi-
142 ness of delivering vehicles of a type required to be regis-
143 tered hereunder from a manufacturing, assembling, or
144 distributing plant to dealers or sales agents of a manu-
145 facturer.

146 (cc) *Manufacturer*.—Every person engaged in the
147 business of constructing or assembling vehicles of a type
148 required to be registered hereunder at an established
149 place of business in this state.

150 (dd) *Established place of business*.—The place actu-
151 ally occupied either continuously or at regular periods
152 by a dealer or manufacturer where his books and records
153 are kept and a large share of his business is transacted.

154 (ee) *Street or highway*.—The entire width between
155 boundary lines of every way publicly maintained when
156 any part thereof is open to the use of the public for pur-
157 poses 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
2 trailer when driven or moved upon a highway shall be
3 subject to the registration and certificate of title provi-
4 sions of this chapter except:

5 (1) Any such vehicle driven or moved upon a high-
6 way in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lien-
8 holders, or nonresidents or under a temporary registra-
9 tion permit issued by the department as hereinafter
10 authorized;

11 (2) Any implement of husbandry upon which is se-
12 curely attached a machine for spraying fruit trees and
13 plants of the owner or lessee or for any other imple-
14 ment of husbandry which is used exclusively for agricul-
15 tural or horticultural purposes on lands owned or leased
16 by the owner thereof and which is not operated on or
17 over any public highway of this state for any other
18 purpose other than for the purpose of operating it across
19 a highway or along a highway other than an expressway
20 as designated by the state road commissioner from one
21 point of the owner's land to another part thereof, irre-
22 spective of whether or not the tracts adjoin: *Provided*,
23 That the distance between the points shall not exceed
24 fifteen miles, or for the purpose of taking it or other fix-
25 tures thereto attached, to and from a repair shop for
26 repairs. The foregoing exemption from registration and
27 license requirements shall also apply to any vehicle
28 hereinbefore described or to any farm trailer owned by
29 the owner or lessee of the farm on which such trailer is
30 used, when such trailer is used by the owner thereof
31 for the purpose of moving farm produce and livestock
32 from such farm along a public highway for a distance
33 not to exceed ten miles to a storage house or packing
34 plant, when such use is a seasonal operation.

35 The exemptions contained in this section shall also
36 apply to farm machinery and tractors: *Provided further*,
37 That such machinery and tractors may use the highways
38 in going from one tract of land to another tract of land

39 regardless of whether such land be owned by the same
40 or different persons.

41 Any vehicle exempted hereunder from the require-
42 ments of annual registration certificate and license plates
43 and fees therefor shall not be permitted to use the high-
44 ways as above provided between sunset and sunrise.

45 Any vehicle used as an implement of husbandry exempt
46 hereunder must have the words "farm use" affixed to
47 both sides of the implement in ten inch letters;

48 (3) Any vehicle which is propelled exclusively by
49 electric power obtained from overhead trolley wires
50 though not operated upon rails;

51 (4) No certificate of title need be obtained for any
52 vehicle of a type subject to registration owned by the
53 government of the United States.

Editor's note. See note to Chapter 112.

3

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.
3. Original and Renewal of Registration; Issuance of Certificates of Title.
4. Transfers of Title or Interest.
6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers; Etc.
7. Special Stickers.
9. Offenses Against Registration Laws and Suspension or Revocation of Registration.
12. 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:

- 5 (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.

9 (b) *Motor vehicle*.—Every vehicle which is self-pro-
10 pelled and every vehicle which is propelled by electric
11 power obtained from overhead trolley wires, but not oper-
12 ated upon rails.

13 (c) *Motorcycle*.—Every motor vehicle having a saddle
14 for the use of the rider and designed to travel on not more
15 than three wheels in contact with the ground but exclud-
16 ing a tractor.

17 (d) *School bus*.—Every motor vehicle owned by a pub-
18 lic governmental agency and operated for the transporta-
19 tion of children to or from school or privately owned and
20 operated for compensation for the transportation of chil-
21 dren to or from school.

22 (e) *Bus*.—Every motor vehicle designed for carrying
23 more than seven passengers and used for the transporta-
24 tion of persons; and every motor vehicle, other than a
25 taxicab, designed and used for the transportation of per-
26 sons for compensation.

27 (f) *Truck tractor*.—Every motor vehicle designed and
28 used primarily for drawing other vehicles and not so con-
29 structed as to carry a load other than a part of the weight
30 of the vehicle and load so drawn.

31 (g) *Farm tractor*.—Every motor vehicle designed and
32 used primarily as a farm implement for drawing plows,
33 mowing machines, and other implements of husbandry.

34 (h) *Road tractor*.—Every motor vehicle designed and
35 used for drawing other vehicles and not so constructed as
36 to carry any load thereon either independently or any
37 part of the weight of a vehicle or load so drawn.

38 (i) *Truck*.—Every motor vehicle designed, used, or
39 maintained primarily for the transportation of property.

40 (j) *Trailer*.—Every vehicle with or without motive
41 power designed for carrying persons or property and for
42 being drawn by a motor vehicle and so constructed that
43 no part of its weight rests upon the towing vehicle.

44 (k) *Semitrailer*.—Every vehicle with or without motive
45 power designed for carrying persons or property and for
46 being drawn by a motor vehicle and so constructed that
47 some part of its weight and that of its load rests upon or
48 is carried by another vehicle.

49 (l) *Pole trailer*.—Every vehicle without motive power
50 designed to be drawn by another vehicle and attached to
51 the towing vehicle by means of a reach, or pole, or by
52 being boomed or otherwise secured to the towing vehicle,
53 and ordinarily used for transporting long or irregularly
54 shaped loads such as poles, pipes, or structural members
55 capable, generally, of sustaining themselves as beams be-
56 tween the supporting connections.

57 (m) *Specially constructed vehicles*.—Every vehicle of
58 a type required to be registered hereunder not originally
59 constructed under a distinctive name, make, model, or
60 type by a generally recognized manufacturer of vehicles
61 and not materially altered from its original construction.

62 (n) *Reconstructed vehicle*.—Every vehicle of a type
63 required to be registered hereunder materially altered
64 from its original construction by the removal, addition, or
65 substitution of essential parts, new or used.

66 (o) *Essential parts*.—All integral and body parts of a
67 vehicle of a type required to be registered hereunder, the
68 removal, alteration, or substitution of which would tend
69 to conceal the identity of the vehicle or substantially alter
70 its appearance, model, type, or mode of operation.

71 (p) *Foreign vehicle*.—Every vehicle of a type required
72 to be registered hereunder brought into this state from
73 another state, territory, or country other than in the ordi-
74 nary course of business by or through a manufacturer or
75 dealer and not registered in this state.

76 (q) *Implement of husbandry*.—Every vehicle which is
77 designed for or adapted to agricultural purposes and used
78 by the owner thereof primarily in the conduct of his agri-
79 cultural operations, including, but not limited to, trucks
80 used for spraying trees and plants: *Provided*, That said
81 vehicle shall not be let for hire at any time.

82 (r) *Special mobile equipment*.—Every vehicle not de-
83 signed or used for the transportation of persons or proper-
84 ty and incidentally operated or moved over the highways,
85 including road construction or maintenance machinery,
86 ditch-digging apparatus, well-boring apparatus, concrete
87 mixers, and farm tractors, when farm tractors cannot be
88 classified as an implement of husbandry as defined in sub-
89 division (q) of this section. The foregoing enumeration

90 shall be deemed partial and shall not operate to exclude
91 other such vehicles which are within the general terms of
92 this subdivision.

93 (s) *Pneumatic tire*.—Every tire in which compressed
94 air is designed to support the load.

95 (t) *Solid tire*.—Every tire of rubber or other resilient
96 material which does not depend upon compressed air for
97 the support of the load.

98 (u) *Metal tire*.—Every tire the surface of which in con-
99 tact with the highway is wholly or partly of metal or
100 other hard, nonresilient material.

101 (v) *Commissioner*.—The commissioner of motor vehi-
102 cles of this state.

103 (w) *Department*.—The department of motor vehicles
104 of this state acting directly or through its duly authorized
105 officers and agents.

106 (x) *Person*.—Every natural person, firm, copartnership,
107 association, or corporation.

108 (y) *Owner*.—A person who holds the legal title to a
109 vehicle or in the event a vehicle is the subject of an agree-
110 ment for the conditional sale or lease thereof with the
111 right of purchase upon performance of the conditions
112 stated in the agreement and with an immediate right of
113 possession vested in the conditional vendee or lessee, or in
114 the event a mortgagor of a vehicle is entitled to posses-
115 sion, then such conditional vendee or lessee or mortgagor
116 shall be deemed the owner for the purpose of this chapter.

117 (z) *Nonresident*.—Every person who is not a resident
118 of this state.

119 (aa) *Dealer or dealers*.—A general term meaning, de-
120 pending upon the context in which used, either a new mo-
121 tor vehicle dealer, used motor vehicle dealer, house trailer
122 dealer, trailer dealer, or motorcycle dealer, as defined in
123 section one, article six of this chapter, or all of such deal-
124 ers or a combination thereof, and in some instances a new
125 motor vehicle dealer or dealers in another state.

126 (bb) *Registered dealer or registered dealers*.—A general
127 term meaning, depending upon the context in which used,
128 either a new motor vehicle dealer, used motor vehicle

129 dealer, house trailer dealer, trailer dealer, or motorcycle
130 dealer, or all of such dealers or a combination thereof,
131 licensed under the provisions of article six of this chapter.

132 (cc) *Licensed dealer or licensed dealers.*—A general
133 term meaning, depending upon the context in which used,
134 either a new motor vehicle dealer, used motor vehicle
135 dealer, house trailer dealer, trailer dealer, or motorcycle
136 dealer, or all of such dealers or a combination thereof,
137 licensed under the provisions of article six of this chapter.

138 (dd) *Transporter.*—Every person engaged in the busi-
139 ness of delivering vehicles of a type required to be regis-
140 tered hereunder from a manufacturing, assembling, or
141 distributing plant to dealers or sales agents of a manufac-
142 turer.

143 (ee) *Manufacturer.*—Every person engaged in the busi-
144 ness of constructing or assembling vehicles of a type re-
145 quired to be registered hereunder at a place of business in
146 this state which is actually occupied either continuously
147 or at regular periods by such manufacturer where his
148 books and records are kept and a large share of his busi-
149 ness is transacted.

150 (ff) *Street or highway.*—The entire width between
151 boundary lines of every way publicly maintained when
152 any part thereof is open to the use of the public for pur-
153 poses of vehicular travel.

154 (gg) *Code.*—The code of West Virginia, one thousand
155 nine hundred thirty-one, as amended.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; IS- SUANCE OF CERTIFICATES OF TITLE.

Section

5. Application for specially constructed, reconstructed or foreign vehicles or new vehicles purchased outside this state.

§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
2 constructed, reconstructed, or a foreign vehicle, such fact
3 shall be stated in the application and with reference to
4 every foreign vehicle which has been registered hereto-
5 fore outside of this state the owner shall surrender to
6 the department all registration plates, registration cards,

7 and certificates of title or other evidence of such foreign
8 registration as may be in his possession or under his
9 control except as provided in subsection (b) hereof.

10 (b) Where in the course of interstate operation of a
11 vehicle registered in another state it is desirable to retain
12 registration of said vehicle in such other state, such
13 applicant need not surrender but shall submit for inspec-
14 tion said evidences of such foreign registration and the
15 department upon a proper showing shall register said
16 vehicle in this state but shall not issue a certificate of title
17 for such vehicle.

18 (c) In the event application for registration and cer-
19 tificate of title is made for a new vehicle purchased from
20 a dealer outside this state, a certificate of title shall not
21 be issued for such vehicle nor shall such vehicle be regis-
22 tered by the department unless and until such application
23 shall be accompanied by a certificate of title or a manu-
24 facturer's certificate of origin, or if the state of purchase
25 does not require a certificate of title such application shall
26 be accompanied by a manufacturer's certificate of origin,
27 accompanied by evidence that such seller is a bona fide
28 dealer of the state in which such vehicle was purchased.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

Section

3. New owner must secure registration and certificate of title.

§17A-4-3. New owner must secure registration and certificate of title.

The transferee before operating or permitting the oper-
2 ation of such vehicle upon a highway shall apply for and
3 obtain the registration thereof, as upon an original regis-
4 tration, except as otherwise permitted in sections thirteen
5 and fifteen, article six, or by any other provisions of this
6 chapter: *Provided*, That such transferee may operate
7 such vehicle under the registration of its previous owner
8 for a period of not more than ten days as provided in
9 section one, article three of this chapter.

10 A transferee shall at the same time present the certifi-
11 cate of title endorsed and assigned as hereinbefore pro-
12 vided to the department and make application for and
13 obtain a new certificate of title for such vehicle, **except**

14 as otherwise permitted in sections four and five of this
15 article.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DIS-
MANTLERS; SPECIAL PLATES; TEMPORARY PLATES
OR MARKERS; ETC.**

Part I. Definitions; Legislative Findings and Public Policy.

Section

1. Definitions.
2. Legislative findings and declaration of public policy.

§17A-6-1. Definitions.

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

3 (1) "*New motor vehicle dealer*" means every person
4 (other than his agents and employees, if any, while acting
5 within the scope of their authority or employment), en-
6 gaged in, or who holds himself out to the public to be
7 engaged in, the business in this state of selling new motor
8 vehicles, or new and used motor vehicles, of a type re-
9 quired to be registered under the provisions of this chap-
10 ter, except, for the purposes of this article only, motor-
11 cycles.

12 (2) "*Used motor vehicle dealer*" means every person
13 (other than his agents and employees, if any, while acting
14 within the scope of their authority or employment), en-
15 gaged in, or who holds himself out to the public to be
16 engaged in, the business in this state of selling used motor
17 vehicles of a type required to be registered under the
18 provisions of this chapter, except, for the purposes of this
19 article only, motorcycles.

20 (3) "*House trailer dealer*" means every person (other
21 than his agents and employees, if any, while acting within
22 the scope of their authority or employment), engaged in,
23 or who holds himself out to the public to be engaged in,
24 the business in this state of selling new and/or used house
25 trailers, or new and/or used house trailers and trailers.

26 (4) "*Trailer dealer*" means every person (other than
27 his agents and employees, if any, while acting within the
28 scope of their authority or employment), engaged in, or
29 who holds himself out to the public to be engaged in, the
30 business in this state of selling new and/or used trailers.

31 (5) "*Motorcycle dealer*" means every person (other
32 than his agents and employees, if any, while acting within
33 the scope of their authority or employment), engaged in,
34 or who holds himself out to the public to be engaged in,
35 the business in this state of selling new and/or used
36 motorcycles.

37 (6) "*Used parts dealer*" means every person (other
38 than his agents and employees, if any, while acting within
39 the scope of their authority or employment), engaged in,
40 or who holds himself out to the public to be engaged in,
41 the business in this state of selling any used appliance, ac-
42 cessory, member, portion or other part of any vehicle.

43 (7) "*Wrecker or dismantler*" means every person
44 (other than his agents and employees, if any, while acting
45 within the scope of their authority or employment), en-
46 gaged in, or who holds himself out to the public to be
47 engaged in, the business in this state of dealing in wrecked
48 or damaged motor vehicles or motor vehicle parts for the
49 purpose of selling the parts thereof or scrap therefrom.

50 (8) "*New motor vehicles*" means all motor vehicles, ex-
51 cept motorcycles and used motor vehicles, of a type re-
52 quired to be registered under the provisions of this chapter.

53 (9) "*Used motor vehicles*" means all motor vehicles,
54 except motorcycles, of a type required to be registered
55 under the provisions of this chapter which have been
56 sold and operated, or which have been registered or titled,
57 in this or any other state or jurisdiction.

58 (10) "*House trailers*" means all trailers designed or in-
59 tended for human occupancy and commonly referred to
60 as mobile homes or house trailers, but shall not include
61 camping, vacation and travel trailers.

62 (11) "*Trailers*" means all types of trailers other than
63 house trailers, and shall include, but not be limited to,
64 pole trailers, and semitrailers.

65 (12) "*Sales instrument*" means any document resulting
66 from the sale of a vehicle, which shall include, but not
67 be limited to, a bill of sale, invoice, conditional sales
68 contract, chattel mortgage, chattel trust deed, security
69 agreement or similar document.

70 (13) "*Sell,*" "*sale*" or "*selling*" shall, in addition to the

71 ordinary definitions of such terms, include offering for
72 sale, soliciting sales of, negotiating for the sale of, dis-
73 playing for sale, or advertising for sale, any vehicle,
74 whether at retail, wholesale or at auction. "Selling" shall,
75 in addition to the ordinary definition of that term, also
76 include buying and exchanging.

77 (14) "*Applicant*" means any person making application
78 for an original or renewal license certificate under the
79 provisions of this article.

80 (15) "*Licensee*" means any person holding any license
81 certificate issued under the provisions of this article.

82 (16) "*Predecessor*" means the former owner or owners
83 or operator or operators of any new motor vehicle dealer
84 business or used motor vehicle dealer business.

85 (17) "*Established place of business*" shall, in the case
86 of a new motor vehicle dealer, mean a permanent loca-
87 tion, not a temporary stand or other temporary quarters,
88 owned or leased by the licensee or applicant and actually
89 occupied or to be occupied by him, as the case may be,
90 which is or is to be used exclusively for the purpose of
91 selling new motor vehicles or new and used motor ve-
92 hicles, which shall have space under roof for the dis-
93 play of at least one new motor vehicle and facilities and
94 space therewith for the servicing and repair of at least
95 one motor vehicle, which servicing and repair facilities
96 and space shall be adequate and suitable to carry out
97 servicing and to make repairs necessary to keep and carry
98 out all representations, warranties and agreements made
99 or to be made by such dealer with respect to motor vehi-
100 cles sold by him, which shall be easily accessible to the
101 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
104 thereon at least one permanent sign, clearly visible from
105 the principal public street or highway nearest said loca-
106 tion and clearly stating the business which is or shall be
107 conducted thereat, and which shall have adequate facili-
108 ties to keep, maintain and preserve records, papers and
109 documents necessary to carry on such business and to
110 make the same available to inspection by the commissioner

111 at all reasonable times: *Provided, however,* That the re-
112 quirement of exclusive use shall be met even though (i)
113 some new and any used motor vehicles sold or to be sold by
114 such dealer are sold or are to be sold at a different location
115 or locations not meeting the definition of an established
116 place of business of a new motor vehicle dealer, if each
117 such location is or is to be served by other facilities and
118 space of such dealer for the servicing and repair of at least
119 one motor vehicle, adequate and suitable as aforesaid, and
120 each such location used for the sale of some new and any
121 used motor vehicles otherwise meets the definition of an
122 established place of business of a used motor vehicle
123 dealer; (ii) house trailers, trailers and/or motorcycles are
124 sold or are to be sold thereat, if, subject to the provisions
125 of section five of this article, a separate license certificate
126 is obtained for each such type of vehicle business, which
127 license certificate remains unexpired, unsuspended and
128 unrevoked; (iii) farm machinery is sold thereat; and (iv)
129 accessory, gasoline and oil, or storage departments are
130 maintained thereat, if such departments are operated for
131 the purpose of furthering and assisting in the licensed
132 business or businesses.

133 (18) "*Farm machinery*" means all machines and tools
134 used in the production, harvesting or care of farm
135 products.

136 (19) "*Established place of business*" shall, in the case
137 of a used motor vehicle dealer, mean a permanent loca-
138 tion, not a temporary stand or other temporary quarters,
139 owned or leased by the licensee or applicant and actually
140 occupied or to be occupied by him, as the case may be,
141 which is or is to be used exclusively for the purpose of
142 selling used motor vehicles, which shall have facilities
143 and space therewith for the servicing and repair of at
144 least one motor vehicle, which servicing and repair fa-
145 cilities and space shall be adequate and suitable to carry
146 out servicing and to make repairs necessary to keep and
147 carry out all representations, warranties and agreements
148 made or to be made by such dealer with respect to used
149 motor vehicles sold by him, which shall be easily accessi-
150 ble to the public, shall conform to all applicable laws of
151 the state of West Virginia, and the ordinances of the

152 municipality in which it is located, if any, which shall
153 display thereon at least one permanent sign, clearly visi-
154 ble from the principal public street or highway nearest
155 said location and clearly stating the business which is or
156 shall be conducted thereat, and which shall have adequate
157 facilities to keep, maintain and preserve records, papers
158 and documents necessary to carry on such business and
159 to make the same available to inspection by the commis-
160 sioner at all reasonable times: *Provided*, That if a used
161 motor vehicle dealer has entered into a written agree-
162 ment or agreements with a person or persons owning or
163 operating a servicing and repair facility or facilities ade-
164 quate and suitable as aforesaid, the effect of which agree-
165 ment or agreements is to provide such servicing and repair
166 services and space in like manner as if said servicing and
167 repair facilities and space were located in or on said
168 dealer's place of business, then, so long as such an agree-
169 ment or agreements are in effect, it shall not be neces-
170 sary for such dealer to maintain such servicing and re-
171 pair facilities and space at his place of business in order
172 for such place of business to be an established place of
173 business as herein defined: *Provided, however*, That
174 the requirement of exclusive use shall be met even
175 though (i) house trailers, trailers and/or motorcycles
176 are sold or are to be sold thereat, if, subject to the pro-
177 visions of section five of this article, a separate license
178 certificate is obtained for each such type of vehicle busi-
179 ness, which license certificate remains unexpired, unsus-
180 pended and unrevoked; (ii) farm machinery is sold
181 thereat; and (iii) accessory, gasoline and oil, or storage
182 departments are maintained thereat, if such departments
183 are operated for the purpose of furthering and assisting
184 in the licensed business or businesses.

185 (20) "*Established place of business*" shall, in the case
186 of a house trailer dealer, trailer dealer, motorcycle dealer,
187 used parts dealer and wrecker or dismantler, mean a per-
188 manent location, not a temporary stand or other tempo-
189 rary quarters, owned or leased by the licensee or appli-
190 cant and actually occupied or to be occupied by him, as
191 the case may be, which shall be easily accessible to the
192 public, which shall conform to all applicable laws of the

193 state of West Virginia and the ordinances of the municipi-
194 pality in which it is located, if any, which shall display
195 thereon at least one permanent sign, clearly visible from
196 the principal public street or highway nearest said loca-
197 tion and clearly stating the business which is or shall be
198 conducted thereat, and which shall have adequate facili-
199 ties to keep, maintain and preserve records, papers and
200 documents necessary to carry on such business and to
201 make the same available to inspection by the commis-
202 sioner at all reasonable times.

203 (b) Under no circumstances whatever shall the terms
204 "new motor vehicle dealer," "used motor vehicle dealer,"
205 "house trailer dealer," "trailer dealer," "motorcycle
206 dealer," "used parts dealer" or "wrecker or dismantler"
207 be construed or applied under this article in such a way
208 as to include a banking institution, insurance company,
209 finance company, or other lending or financial institution,
210 or other person, the state or any agency or political sub-
211 division thereof, or any municipality, who or which owns
212 or shall come in possession or ownership of, or acquire
213 contract rights, or security interests in or to, any vehicle
214 or vehicles or any part thereof and shall sell such vehicle
215 or vehicles or any part thereof for purposes other than
216 engaging in and holding himself or itself out to the public
217 to be engaged in the business of selling vehicles or any
218 part thereof.

219 (c) It is recognized that throughout this code the term
220 "trailer" or "trailers" is used to include, among other
221 types of trailers, house trailers. It is also recognized that
222 throughout this code the term "trailer" or "trailers" is
223 seldom used to include semitrailers or pole trailers.
224 However, for the purposes of this article only, the term
225 "trailers" shall have the meaning ascribed to it in sub-
226 section (a) of this section.

§17A-6-2. Legislative findings and declaration of public policy.

The Legislature hereby determines and finds that in the
2 past some few persons engaged in the business of selling
3 new or used motor vehicles, house trailers, trailers, motor-
4 cycles, or used motor vehicle parts, and in the business of
5 wrecking or dismantling motor vehicles, have not had

6 the necessary qualifications, staff, equipment or facilities
7 to adequately serve the public; that some few persons
8 engaged in said businesses have made false and deceptive
9 claims and advertisements to the public and have engaged
10 in fraud and other illegal conduct; that certain citizens of
11 this state have sustained financial losses as a result
12 thereof; and that in some of said cases there has been no
13 adequate means to prevent said conduct or protect the
14 interests of the citizens of West Virginia. It is, therefore,
15 declared to be the public policy of this state that the busi-
16 ness of new motor vehicle dealer, used motor vehicle
17 dealer, house trailer dealer, trailer dealer, motorcycle
18 dealer, used parts dealer, or wrecker or dismantler,
19 affects the general welfare of this state and its citi-
20 zens; that persons without the necessary qualifications,
21 staff, equipment or facilities to adequately serve the pub-
22 lic, and persons not of good character or who have or are
23 likely to attempt to misrepresent their product or engage
24 in fraudulent or other illegal conduct should not engage
25 in such businesses; and that such evils may best be pre-
26 vented and the interests of the public best served by re-
27 quiring persons in such businesses to meet the qualifica-
28 tions set forth in this article and to be licensed by the
29 commissioner of motor vehicles as provided in this
30 article.

Part II. License Certificate Provisions.

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
2 that he is engaged or intends to engage in the business of
3 new motor vehicle dealer, used motor vehicle dealer,
4 house trailer dealer, trailer dealer, motorcycle dealer,
5 used parts dealer, or wrecker or dismantler, in
6 this state, unless and until he shall first obtain a license
7 certificate therefor as provided in this article, which li-
8 cense certificate remains unexpired, unsuspended and
9 unrevoked. Any person desiring to engage in more than
10 one such business must, subject to the provisions of sec-
11 tion five of this article, apply for and obtain a separate
12 license certificate for each such business.

(b) Except for the qualification contained in subdivi-
13 sion (17), subsection (a), section one of this article with
14 respect to a new motor vehicle dealer, each place of busi-
15 ness of a new motor vehicle dealer, used motor vehicle
16 dealer, house trailer dealer, trailer dealer, motorcycle
17 dealer, used parts dealer and wrecker or dismantler, must
18 be an established place of business as defined for such
19 business in said section one.
20

(c) Any license certificate and special plates issued by
21 the commissioner under the former provisions of article
22 six or article seven or section six, article ten of this chap-
23 ter, and which have not been cancelled, suspended or
24 revoked prior to the effective date of this article shall be
25 governed by the provisions of this article and shall remain
26 valid until their expiration, unless such license certificate
27 is sooner suspended or revoked in accordance with the
28 provisions of this article.
29

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by
2 section three of this article shall be made on such form as
3 may be prescribed by the commissioner. There shall be
4 attached to the application a certificate of insurance
5 certifying that the applicant has in force an insurance
6 policy issued by an insurance company authorized to do

7 business in this state insuring the applicant and any other
8 person, as insured, using any vehicle or vehicles owned
9 by the applicant with the express or implied permission
10 of such named insured, against loss from the liability im-
11 posed by law for damages arising out of the ownership,
12 operation, maintenance, or use of such vehicle or vehicles,
13 subject to minimum limits, exclusive of interest and costs,
14 with respect to each such vehicle, as follows: Ten thou-
15 sand dollars because of bodily injury to or death of one
16 person in any one accident and, subject to said limit for
17 one person, twenty thousand dollars because of bodily
18 injury to or death of two or more persons in any one
19 accident, and five thousand dollars because of injury to or
20 destruction of property of others in any one accident.

21 (b) In the case of an application for a license certificate
22 to engage in the business of new motor vehicle dealer, used
23 motor vehicle dealer or house trailer dealer, such applica-
24 tion shall disclose, but not be limited to, the following:

25 (1) The type of business for which a license certificate
26 is sought;

27 (2) If the applicant be an individual, the full name and
28 address of the applicant and any trade-name under which
29 he will engage in said business;

30 (3) If the applicant be a copartnership, the full name
31 and address of each partner therein, the name of the co-
32 partnership, its post-office address and any trade name
33 under which it will engage in said business;

34 (4) If the applicant be a corporation, its name, the state
35 of its incorporation, its post-office address and the full
36 name and address of each officer and director thereof;

37 (5) The location of each place in this state at which the
38 applicant will engage in said business and whether the
39 same is owned or leased by the applicant;

40 (6) Whether the applicant, any partner, officer or di-
41 rector thereof has previously engaged in said business or
42 any other business required to be licensed under the pro-
43 visions of this article and if so, with or for whom, at what
44 location and for what periods of time;

45 (7) Whether the applicant, any partner, officer, direc-
46 tor or employer thereof has previously applied for a

47 license certificate under the provisions of this article or a
48 similar license certificate in this or any other state, and if
49 so, whether such license certificate was issued or refused,
50 and, if issued, whether it was ever suspended or revoked;

51 (8) A statement of previous general business experi-
52 ence and past history of the applicant; and

53 (9) Such other information as the commissioner may
54 reasonably require which may include information re-
55 lating to any contracts, agreements or understandings
56 between the applicant and other persons respecting the
57 transaction of said business, and any criminal record of
58 the applicant if an individual, or of each partner if a
59 copartnership, or of each officer and director, if a corpora-
60 tion.

61 (c) In the case of an application for a license certificate
62 to engage in the business of new motor vehicle dealer,
63 such application shall, in addition to the matters outlined
64 in subsection (b) of this section disclose:

65 (1) The make or makes of new motor vehicles which
66 the applicant will offer for sale in this state during the
67 ensuing fiscal year; and

68 (2) The exact number of new motor vehicles, if any,
69 sold at retail in this state by such applicant or his prede-
70 cessor, if any, during the preceding fiscal year, and if no
71 new motor vehicles were sold at retail in this state by
72 such applicant or his predecessor, if any, during the pre-
73 ceding fiscal year, the number of new motor vehicles the
74 applicant reasonably expects to sell at retail in this state
75 during the ensuing fiscal year.

76 (d) In the case of an application for a license certificate
77 to engage in the business of used motor vehicle dealer,
78 such application shall in addition to the matters outlined
79 in subsection (b) of this section, disclose the exact num-
80 ber of used motor vehicles, if any, sold at retail in this
81 state by such applicant or his predecessor, if any, during
82 the preceding fiscal year, and if no used motor vehicles
83 were sold at retail in this state by such applicant or his
84 predecessor, if any, during the preceding fiscal year, the
85 number of used motor vehicles the applicant reasonably

86 expects to sell at retail in this state during the ensuing
87 fiscal year.

88 (e) In the case of an application for a license certificate
89 to engage in the business of trailer dealer, motorcycle
90 dealer, used parts dealer, or wrecker or dismantler, such
91 application shall disclose such information as the commis-
92 sioner may reasonably require.

93 (f) Such application shall be verified by the oath or
94 affirmation of the applicant, if an individual, or if the ap-
95 plicant is a copartnership or corporation, by a partner or
96 officer thereof, as the case may be, and in the case of an
97 application for a license certificate to engage in the busi-
98 ness of a new motor vehicle dealer, used motor vehicle
99 dealer, or house trailer dealer, such application must be
100 accompanied by a bond of the applicant in the penal sum
101 of two thousand dollars, in such form as may be prescribed
102 by the commissioner, conditioned that the applicant will
103 not in the conduct of his business practice any fraud
104 which, or make any fraudulent representation which, shall
105 cause a financial loss to any purchaser, seller, or financial
106 institution or agency, or the state of West Virginia, with a
107 corporate surety thereon authorized to do business in this
108 state, which bond shall be effective as of the date on which
109 the license certificate sought is issued.

110 (g) Upon receipt of any such fully completed applica-
111 tion, together with any bond required as aforesaid, the
112 certificate of insurance as aforesaid and the appropriate
113 fee as hereinafter provided in section ten of this article,
114 the commissioner may conduct such investigation as he
115 deems necessary to determine the accuracy of any state-
116 ments contained in such application and the existence
117 of any other facts which he deems relevant in consider-
118 ing such application. To facilitate such investigation,
119 the commissioner may withhold issuance or refusal of the
120 license certificate for a period not to exceed twenty days.

121 (h) Any application for a license certificate under the
122 provisions of this article and any information submitted
123 therewith shall be confidential for the use of the depart-
124 ment and the license certificate appeal board created in
125 section twenty of this article. No person shall divulge
126 any information contained in any such application or any

127 information submitted therewith except in response to a
128 valid subpoena or subpoena duces tecum issued pursuant
129 to law.

§17A-6-5. License certificate exemption.

Any new motor vehicle dealer, used motor vehicle
2 dealer, house trailer dealer, trailer dealer or motorcycle
3 dealer receiving a vehicle in trade of a type other than
4 that he is licensed to sell hereunder may sell such vehicle
5 without obtaining a license certificate to engage in the
6 business of selling vehicles of such type and without being
7 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
2 information before him, the commissioner shall make
3 and enter an order denying the application for a license
4 certificate and refusing the license certificate sought,
5 which denial and refusal shall be final and conclusive
6 unless an appeal is taken in accordance with the pro-
7 visions of section twenty-one of this article, if the commis-
8 sioner finds that the applicant (individually, if an indi-
9 vidual, or the partners, if a copartnership, or the officers
10 and directors, if a corporation):

- 11 (1) Has failed to furnish the required bond;
- 12 (2) Has failed to furnish the required certificate of
13 insurance;
- 14 (3) Has knowingly made false statement of a material
15 fact in his application;
- 16 (4) Has habitually defaulted on financial obligations;
- 17 (5) Has been convicted of a felony within five years
18 immediately preceding receipt of the application by the
19 commissioner;
- 20 (6) So far as can be ascertained, has not complied with
21 and will not comply with the registration and title laws
22 of this state;
- 23 (7) Does not or will not have and/or maintain at each
24 place of business [subject to the qualification contained
25 in subdivision (17), subsection (a), section one of this

26 article with respect to a new motor vehicle dealer] an
27 established place of business as defined for the business
28 in question in said section one;

29 (8) Has been guilty of any fraudulent act in connection
30 with the business of new motor vehicle dealer, used motor
31 vehicle dealer, house trailer dealer, trailer dealer, motor-
32 cycle dealer, used parts dealer, or wrecker or dismantler;
33 or

34 (9) Has done any act or has failed or refused to per-
35 form any duty for which the license certificate sought
36 could be suspended or revoked were it then issued and
37 outstanding.

38 Otherwise, the commissioner shall issue to the applicant
39 the appropriate license certificate which shall entitle the
40 licensee to engage in the business of new motor vehicle
41 dealer, used motor vehicle dealer, house trailer dealer,
42 trailer dealer, motorcycle dealer, used parts dealer, or
43 wrecker or dismantler, as the case may be, during the
44 period, unless sooner suspended or revoked, for which the
45 license certificate is issued.

46 (b) A license certificate issued in accordance with the
47 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
2 of article seven of this chapter shall make application for
3 a license certificate under the provisions of this article at
4 least thirty days before expiration of his license granted in
5 accordance with said article seven.

6 (b) Every license granted under the former provisions
7 of article seven of this chapter shall, unless sooner sus-
8 pended or revoked, expire on June thirtieth, one thousand
9 nine hundred sixty-eight, and every license certificate
10 issued in accordance with the provisions of this article
11 shall, unless sooner suspended or revoked, expire on June
12 thirtieth next following the issuance thereof.

13 (c) A license certificate may be renewed each year in
14 the same manner, for the same fee as prescribed in section
15 ten of this article and upon the same basis as an original

16 license certificate is issued under section six of this article.
17 All applications for the renewal of any license certificate
18 shall be filed with the commissioner at least thirty days
19 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
2 license certificate for each type of business required
3 to be licensed under the provisions of this article,
4 and each such license certificate shall have printed
5 thereon the seal of the department and such other
6 information as the commissioner may prescribe, and
7 shall show as to any licensee the location of each place of
8 business of such licensee. The license certificates for each
9 type of business shall show the year for which issued and
10 shall be serially numbered. The license certificate shall
11 be delivered or mailed to the licensee.

(b) When a licensee conducts his licensed business at
13 more than one location, he shall, upon application therefor,
14 obtain from the commissioner for each such place of busi-
15 ness one certified copy of his license certificate. A fee of
16 one dollar shall be paid for each such certified copy. Each
17 licensee shall keep his license certificate or certified copy
18 thereof conspicuously posted at each place of business.

(c) A licensee shall keep the bond and liability in-
20 surance required by section four of this article in full
21 force and effect at all times. The aggregate liability of
22 the surety in no event shall exceed the principal sum of
23 the bond. The surety on such bond shall have the right
24 to cancel such bond upon giving thirty days' notice to
25 the commissioner and thereafter shall be relieved of lia-
26 bility for any breach of condition occurring after the
27 effective date of said cancellation.

(d) In the event of the loss or destruction of a license
29 certificate or a certified copy thereof, the licensee shall
30 immediately make application for a certified copy of the
31 license certificate. A fee of one dollar shall be required
32 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
2 dealer and house trailer dealer shall notify the commis-
3 sioner within sixty days from and after the date on which
4 any of the following changes in the business occur:

5 (1) A change of the location of any place of business;

6 (2) A change of the name or trade name under which
7 the licensee engages or will engage in the business;

8 (3) The death of the licensee or any partner or part-
9 ners thereof;

10 (4) A change in any partners, officers or directors;

11 (5) A change in ownership of the business;

12 (6) A change in the type of legal entity by and through
13 which the licensee engages or will engage in the business;
14 or

15 (7) The appointment of any trustee in bankruptcy,
16 trustee under an assignment for the benefit of creditors,
17 master or receiver.

18 When any change specified in subdivisions (1), (2),
19 (3), (4), (5) and/or (6) occurs, an application for a new
20 license certificate shall immediately be filed with the com-
21 missioner: *Provided*, That when a subdivision (3), (4)
22 and/or (5) change is involved, an application for a new
23 license certificate need not be filed during the balance of
24 the license year if the change results from death and a
25 member of the family of such deceased person succeeds
26 to his interest in the business. Thereupon, a new license
27 certificate shall be issued incorporating the changes speci-
28 fied in said subdivisions (1), (2), (3), (4), (5) and/or
29 (6) and reflecting any new licensee occasioned thereby,
30 if there is then no reason for refusing said license certifi-
31 cate as specified in section six of this article. No new li-
32 cense certificate shall be required for any trustee in bank-
33 ruptcy, trustee under an assignment for the benefit of
34 creditors, receiver or master, appointed pursuant to law,
35 who shall take charge of or operate such business for the
36 purpose of winding up the affairs of such business or pro-
37 tecting the interests of the creditors of such business. No

38 additional fee for the balance of the license year shall be
39 required for the issuance of any new license certificate
40 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.
12. Operation of vehicles under special plates.
13. Use of special plates; records to be maintained by dealer.
14. Operation of motor vehicles by certain dealers under special permits.
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
2 engage in the business of new motor vehicle dealer shall
3 be one hundred dollars. This fee shall also entitle such
4 licensee to one dealer's special plate which shall be known
5 as a Class D special plate. Up to nine additional Class D
6 special plates shall be issued to any such licensee upon
7 application therefor on a form prescribed by the com-
8 missioner for such purpose and the payment of a fee of
9 five dollars for each additional Class D special plate. Any
10 such licensee who obtains a total of ten Class D special
11 plates as aforesaid shall be entitled to receive additional
12 Class D special plates on a formula basis, that is, one
13 additional Class D special plate per twenty new motor
14 vehicles sold at retail in this state by such licensee or his
15 predecessor during the preceding fiscal year, upon appli-
16 cation therefor on a form prescribed by the commissioner
17 for such purpose and the payment of a fee of five dollars
18 for each such additional Class D special plate: *Provided*,
19 That in the case of a licensee who did not own or operate
20 such business during such preceding fiscal year and who
21 has no predecessor who owned or operated such business
22 during the preceding fiscal year, additional Class D special
23 plates shall be issued, for the ensuing fiscal year only, on
24 a formula basis of one additional Class D special plate per
25 twenty new motor vehicles which such licensee estimates

26 on his application for his license certificate he will sell at
27 retail in this state during said ensuing fiscal year. Any
28 such licensee may obtain Class D special plates in addition
29 to the ten plates authorized above and any authorized on
30 a formula basis, but the cost of each such Class D special
31 plate shall be thirty dollars.

32 (b) The annual fee required for a license certificate to
33 engage in the business of used motor vehicle dealer shall
34 be one hundred dollars. This fee shall also entitle such
35 licensee to one dealer's special plate which shall be known
36 as a Class D-U/C special plate. Up to four additional
37 Class D-U/C special plates shall be issued to any such
38 licensee upon application therefor on a form prescribed
39 by the commissioner for such purpose and the payment
40 of a fee of five dollars for each additional Class D-U/C
41 special plate. Any such licensee who obtains a total of
42 five Class D-U/C special plates as aforesaid shall be en-
43 titled to receive additional Class D-U/C special plates on
44 a formula basis, that is, one additional Class D-U/C special
45 plate per thirty used motor vehicles sold at retail in this
46 state by such licensee or his predecessor during the pre-
47 ceding fiscal year, upon application therefor on a form
48 prescribed by the commissioner for such purpose and the
49 payment of a fee of five dollars for each such additional
50 Class D-U/C special plate: *Provided, however,* That in
51 the case of a licensee who did not own or operate such
52 business during such preceding fiscal year and who has no
53 predecessor who owned or operated such business during
54 the preceding fiscal year, additional Class D-U/C special
55 plates shall be issued, for the ensuing fiscal year only, on
56 a formula basis of one additional Class D-U/C special
57 plate per thirty used motor vehicles which such licensee
58 estimates on his application for his license certificate he
59 will sell at retail in this state during said ensuing fiscal
60 year. Any such licensee may obtain Class D-U/C special
61 plates in addition to the five plates authorized above and
62 any authorized on a formula basis, but the cost of each
63 such Class D-U/C special plate shall be thirty dollars.

64 (c) The annual fee required for a license certificate to
65 engage in the business of house trailer dealer or trailer
66 dealer, as the case may be, shall be twenty-five dollars.

67 This fee shall also entitle such licensee to four dealer's
68 special plates which shall be known as Class D-T/R spe-
69 cial plates. Additional Class D-T/R special plates shall be
70 issued to any such licensee upon application therefor on
71 a form prescribed by the commissioner for such purpose
72 and the payment of a fee of five dollars for each such addi-
73 tional Class D-T/R special plate.

74 (d) The annual fee required for a license certificate to
75 engage in the business of motorcycle dealer shall be ten
76 dollars. This fee shall also entitle such licensee to two
77 dealer's special plates which shall be known as Class F
78 special plates. Additional Class F special plates shall be
79 issued to any such dealer upon application therefor on a
80 form prescribed by the commissioner for such purpose
81 and the payment of a fee of five dollars for each such
82 additional Class F special plate.

83 (e) The annual fee required for a license certificate to
84 engage in the business of used parts dealer, or wrecker or
85 dismantler, as the case may be, shall be fifteen dollars.

86 (f) All of the special plates provided for in this section
87 shall be of such form and design and contain such other
88 distinguishing marks or characteristics as the commis-
89 sioner may prescribe.

§17A-6-11. Expiration of special plates.

Every special plate or plates issued hereunder shall
2 expire at midnight on June thirtieth next following the
3 issuance thereof. A new plate or plates for the ensuing
4 fiscal year may be obtained as specified in section ten of
5 this article.

§17A-6-12. Operation of vehicles under special plates.

A dealer holding an unexpired, unsuspended and un-
2 revoked license certificate and owning a vehicle or ve-
3 hicles of the type he is licensed to sell hereunder and
4 which are otherwise required to be registered under this
5 chapter may operate or move the same upon the streets
6 and highways without registering each such vehicle upon
7 condition that any such vehicle display thereon a special
8 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
2 discretion, special permits to a new motor vehicle dealer
3 for use on new motor vehicles driven under their own
4 power from the factory or distributing place of a manu-
5 facturer, or other dealer, to a place of business of such
6 dealer, or from such place of business to a place of busi-
7 ness of another such dealer. Each special permit shall be
8 good only for one trip, and such permit shall not be used
9 by any such dealer in lieu of any registration card or
10 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 pur-
2 chaser by a dealer to be operated on the streets and high-
3 ways pending receipt of the annual registration plate
4 from the department for such vehicle, the commissioner
5 may, subject to the limitations and conditions hereinafter
6 set forth, deliver temporary vehicle registration plates
7 or markers to dealers who in turn may, subject to the
8 limitations and conditions hereinafter set forth, issue the
9 same to purchasers of vehicles, but such purchasers must
10 comply with the pertinent provisions of this section.

(b) Application by a dealer to the commissioner for
12 such temporary registration plates or markers shall be
13 made on the form prescribed and furnished by the com-
14 missioner for such purpose and shall be accompanied by
15 a fee of one dollar for each such temporary registration
16 plate or marker. No refund or credit of fees paid by
17 dealers to the commissioner for temporary registration
18 plates or markers shall be allowed, except that in the
19 event the commissioner discontinues the issuance of such
20 temporary plates or markers, dealers returning temporary
21 registration plates or markers to the commissioner may
22 petition for and be entitled to a refund or a credit thereof.
23 No temporary registration plates or markers shall be de-
24 livered by the commissioner to any dealer in house trailers
25 only, and no such temporary plates or markers shall be
26 issued for or used on any house trailer for any purpose.

27 (c) Every dealer who has made application for and received
28 temporary registration plates or markers shall maintain in
29 permanent form a record of all temporary registration
30 plates or markers delivered to him, a record of all tempo-
31 rary registration plates or markers issued by him, and a
32 record of any other information pertaining to the receipt or
33 the issuance of temporary registration plates or markers
34 which the commissioner may require. Each such record
35 shall be kept for a period of at least three years from the
36 date of the making thereof. Every dealer who issues a
37 temporary registration plate or marker shall, within three
38 days after he issues such plate or marker, send to the de-
39 partment a copy of the temporary registration plate or
40 marker certificate properly executed by such dealer and
41 the purchaser. No temporary registration plates or mark-
42 ers may be delivered to any dealer until such dealer has
43 fully accounted to the commissioner for the temporary
44 registration plates or markers last delivered to such dealer,
45 by showing the number issued to purchasers by such
46 dealer and any on hand.

47 (d) A dealer shall not issue, assign, transfer or deliver
48 a temporary registration plate or marker to anyone other
49 than the bona fide purchaser of the vehicle to be regis-
50 tered; nor shall a dealer issue a temporary registration
51 plate or marker to anyone possessed of an annual regis-
52 tration plate for a vehicle which has been sold or ex-
53 changed, except a dealer may issue a temporary regis-
54 tration plate or marker to the bona fide purchaser of a
55 vehicle to be registered who possesses an annual regis-
56 tration plate of a different class and makes application
57 to the department to exchange such annual registration
58 plate of a different class in accordance with the provi-
59 sions of section one, article four of this chapter; nor
60 shall a dealer lend to anyone, or use on any vehicle which
61 he may own, a temporary registration plate or marker.
62 It shall be unlawful for any dealer to issue any temporary
63 registration plate or marker knowingly containing any
64 misstatement of fact, or knowingly to insert any false
65 information upon the face thereof.

66 (e) Every dealer who issues temporary registration
67 plates or markers shall affix or insert clearly and indelibly

68 on the face of each temporary registration plate or marker
69 the date of issuance and expiration thereof, and the make
70 and motor or serial number of the vehicle for which
71 issued.

72 (f) If the commissioner finds that the provisions of
73 this section or his directions are not being complied with
74 by a dealer, he may suspend the right of such dealer to
75 issue temporary registration plates or markers.

76 (g) Every person who is issued a temporary regis-
77 tration plate or marker shall execute and send an
78 application for an annual registration plate to the
79 department, previous to or not later than fifteen days
80 from the day on which the temporary registration plate
81 or marker is issued to such purchaser.

82 (h) Every person to whom a temporary registration
83 plate or marker has been issued shall permanently destroy
84 such temporary registration plate or marker immediately
85 upon receiving the annual registration plate for such
86 vehicle from the department: *Provided*, That if the an-
87 nual registration plate is not received within twenty
88 days of the issuance of the temporary registration plate
89 or marker, the owner shall, notwithstanding the fact
90 that the annual registration plate has not been received,
91 immediately and permanently destroy the temporary
92 registration plate or marker: *Provided, however*, That
93 not more than one temporary registration plate or marker
94 shall be issued to the same bona fide purchaser for the
95 same vehicle.

96 (i) A temporary registration plate or marker shall
97 expire and become void upon the receipt of the annual
98 registration plate from the department or upon the re-
99 scission of the contract to purchase the vehicle in question,
100 or upon the expiration of twenty days from the date of
101 issuance, depending upon whichever event shall first
102 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;

- 12 (4) Cash sale price;
- 13 (5) Cash paid down by the buyer;
- 14 (6) Amount credited to buyer for any trade-in;
- 15 (7) Provisions as to whether the seller or buyer is to
- 16 pay off the indebtedness, if any, on the trade-in;
- 17 (8) Description of the trade-in;
- 18 (9) Amount of the time differential charge (if not a
- 19 cash sale so far as the dealer is concerned);
- 20 (10) Amount charged by seller for insurance and the
- 21 type of coverage afforded; if any insurance does not in-
- 22 clude coverage for bodily injury and/or property damage
- 23 caused to others, the sales instrument shall expressly so
- 24 state; and
- 25 (11) Net balance due from buyer and the terms of
- 26 payment (if not a cash sale so far as the dealer is con-
- 27 cerned). A copy of such sales instrument shall be kept
- 28 and maintained among the records of the seller as pro-
- 29 vided in section sixteen of this article.

**Part V. Suspension or Revocation of License Certificates;
Surrender of Plates, Etc.**

Section

18. Investigation; matters confidential; grounds for suspending or revoking license certificate; suspension and revocation generally.
19. Notice of refusal, or suspension or revocation, of license certificate or of suspension of right to issue temporary 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.

§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

9 suspend or revoke a license certificate or suspend a special
10 dealer plate or plates if the commissioner finds that the
11 licensee:

12 (1) Has failed or refused to comply with the laws of
13 this state relating to the registration and titling of vehicles
14 and the giving of notices of transfers, the provisions and
15 requirements of this article, or any reasonable rules and
16 regulations authorized in section nine, article two of this
17 chapter and promulgated, to implement the provisions of
18 this article, by the commissioner in accordance with the
19 provisions of article three, chapter twenty-nine-a of this
20 code;

21 (2) Has given any check in the payment of any fee
22 required under the provisions of this chapter which is
23 dishonored;

24 (3) In the case of a dealer, has knowingly made or per-
25 mitted any unlawful use of any dealer special plate or
26 plates issued to him; or

27 (4) In the case of a dealer, has a dealer special plate
28 or plates to which he is not lawfully entitled.

29 The commissioner shall suspend or revoke a license cer-
30 tificate if the commissioner finds that the licensee:

31 (1) Has knowingly made false statement of a material
32 fact in his application for the license certificate then issued
33 and outstanding;

34 (2) Has habitually defaulted on financial obligations;

35 (3) Does not have and/or maintain at each place of
36 business [subject to the qualification contained in sub-
37 division (17), subsection (a), section one of this article
38 with respect to a new motor vehicle dealer] an established
39 place of business as defined for the business in question in
40 said section one;

41 (4) Has been guilty of any fraudulent act in connec-
42 tion with the business of new motor vehicle dealer, used
43 motor vehicle dealer, house trailer dealer, trailer dealer,
44 motorcycle dealer, used parts dealer or wrecker or dis-
45 mantler;

46 (5) Has defrauded or is attempting to defraud any
47 buyer or any other person, to the damage of the buyer or

48 such other person, in the conduct of the licensee's busi-
49 ness;

50 (6) Has defrauded or is attempting to defraud the
51 state or any political subdivision of the state of any taxes
52 or fees in connection with the sale or transfer of any
53 vehicle;

54 (7) Has committed fraud in the registration of a
55 vehicle;

56 (8) Has knowingly purchased, sold or otherwise dealt
57 in a stolen vehicle or vehicles;

58 (9) Has advertised by any means, with intent to de-
59 fraud, any material representation or statement of fact
60 which is untrue, misleading or deceptive in any particular
61 relating to the conduct of the licensed business;

62 (10) Has wilfully failed or refused to perform any
63 legally binding written agreement with any buyer;

64 (11) Has made a fraudulent sale or purchase;

65 (12) Has failed or refused to assign, reassign or trans-
66 fer a proper certificate of title; or

67 (13) Has a license certificate to which he is not law-
68 fully entitled.

69 The commissioner shall also suspend or revoke the li-
70 cense certificate of a licensee if he finds the existence of
71 any ground upon which the license certificate could have
72 been refused, or any ground which would be cause for
73 refusing a license certificate to such licensee were he then
74 applying for the same.

75 (b) Whenever a licensee fails or refuses to keep the
76 bond or liability insurance required by section four of this
77 article in full force and effect, the license certificate of
78 such licensee shall automatically be suspended unless
79 and until a bond or certificate of insurance as re-
80 quired by said section four is furnished to the commis-
81 sioner, in which event the suspension shall be vacated.

82 (c) Suspensions hereunder shall continue until the
83 cause therefor has been eliminated or corrected. Revoca-
84 tion of a license certificate shall not preclude application
85 for a new license certificate, which application shall be
86 processed in the same manner and the license certificate

9 suspend or revoke a license certificate or suspend a special
10 dealer plate or plates if the commissioner finds that the
11 licensee:

12 (1) Has failed or refused to comply with the laws of
13 this state relating to the registration and titling of vehicles
14 and the giving of notices of transfers, the provisions and
15 requirements of this article, or any reasonable rules and
16 regulations authorized in section nine, article two of this
17 chapter and promulgated, to implement the provisions of
18 this article, by the commissioner in accordance with the
19 provisions of article three, chapter twenty-nine-a of this
20 code;

21 (2) Has given any check in the payment of any fee
22 required under the provisions of this chapter which is
23 dishonored;

24 (3) In the case of a dealer, has knowingly made or per-
25 mitted any unlawful use of any dealer special plate or
26 plates issued to him; or

27 (4) In the case of a dealer, has a dealer special plate
28 or plates to which he is not lawfully entitled.

29 The commissioner shall suspend or revoke a license cer-
30 tificate if the commissioner finds that the licensee:

31 (1) Has knowingly made false statement of a material
32 fact in his application for the license certificate then issued
33 and outstanding;

34 (2) Has habitually defaulted on financial obligations;

35 (3) Does not have and/or maintain at each place of
36 business [subject to the qualification contained in sub-
37 division (17), subsection (a), section one of this article
38 with respect to a new motor vehicle dealer] an established
39 place of business as defined for the business in question in
40 said section one;

41 (4) Has been guilty of any fraudulent act in connec-
42 tion with the business of new motor vehicle dealer, used
43 motor vehicle dealer, house trailer dealer, trailer dealer,
44 motorcycle dealer, used parts dealer or wrecker or dis-
45 mantler;

46 (5) Has defrauded or is attempting to defraud any
47 buyer or any other person, to the damage of the buyer or

48 such other person, in the conduct of the licensee's busi-
49 ness;

50 (6) Has defrauded or is attempting to defraud the
51 state or any political subdivision of the state of any taxes
52 or fees in connection with the sale or transfer of any
53 vehicle;

54 (7) Has committed fraud in the registration of a
55 vehicle;

56 (8) Has knowingly purchased, sold or otherwise dealt
57 in a stolen vehicle or vehicles;

58 (9) Has advertised by any means, with intent to de-
59 fraud, any material representation or statement of fact
60 which is untrue, misleading or deceptive in any particular
61 relating to the conduct of the licensed business;

62 (10) Has wilfully failed or refused to perform any
63 legally binding written agreement with any buyer;

64 (11) Has made a fraudulent sale or purchase;

65 (12) Has failed or refused to assign, reassign or trans-
66 fer a proper certificate of title; or

67 (13) Has a license certificate to which he is not law-
68 fully entitled.

69 The commissioner shall also suspend or revoke the li-
70 cense certificate of a licensee if he finds the existence of
71 any ground upon which the license certificate could have
72 been refused, or any ground which would be cause for
73 refusing a license certificate to such licensee were he then
74 applying for the same.

75 (b) Whenever a licensee fails or refuses to keep the
76 bond or liability insurance required by section four of this
77 article in full force and effect, the license certificate of
78 such licensee shall automatically be suspended unless
79 and until a bond or certificate of insurance as re-
80 quired by said section four is furnished to the commis-
81 sioner, in which event the suspension shall be vacated.

82 (c) Suspensions hereunder shall continue until the
83 cause therefor has been eliminated or corrected. Revoca-
84 tion of a license certificate shall not preclude application
85 for a new license certificate, which application shall be
86 processed in the same manner and the license certificate

87 issued or refused on the same grounds as any other ap-
88 plication for a license certificate is processed, considered
89 and passed upon, except that any previous suspension and
90 the revocation may be given such weight in deciding
91 whether to issue or refuse such license certificate as is
92 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 temporary 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
2 license certificate, or shall suspend or revoke a license
3 certificate, or shall suspend the right of a dealer to issue
4 temporary plates or markers under the provisions of
5 section fifteen of this article, or shall suspend a dealer
6 special plate or plates, he shall make and enter an
7 order to that effect and shall cause a copy of such order
8 to be served in person or by certified mail, return receipt
9 requested, on the applicant or licensee, as the case may be.

10 (b) Whenever a license certificate is suspended or re-
11 voked, the commissioner shall in the order of suspension
12 or revocation direct the licensee to return to the depart-
13 ment his license certificate and any special dealer plates
14 and temporary registration plates or markers issued in
15 conjunction with the issuance of such license certificate
16 or such business, which temporary registration plates or
17 markers are still in the licensee's possession. Whenever
18 the right of a dealer to issue temporary registration plates
19 or markers is suspended or a dealer special plate or plates
20 are suspended as aforesaid, the commissioner shall in the
21 order of suspension direct the licensee to return to the
22 department all temporary registration plates or markers
23 issued in conjunction with such business and still in the
24 licensee's possession or such dealer special plate or plates.
25 It shall be the duty of the licensee to comply with any
26 such order following expiration of the period provided in
27 section twenty-one of this article for an appeal to the
28 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
2 board (hereinafter in this article referred to as the board)
3 which shall be composed of five members who shall be
4 appointed by the governor by and with the advice and
5 consent of the senate. At least three of said members
6 shall have been engaged in this state in the motor ve-
7 hicle business for a period of at least five years imme-
8 diately preceding the date of their appointment. No
9 more than three members shall be members of the same
10 political party.

(b) The members of the board shall be appointed for
12 overlapping terms of five years, except that the original
13 appointments of said members shall be for five, four,
14 three, two and one years, respectively. Any member
15 whose term expires may be reappointed by the governor.
16 Members of the board shall, before performing any duty,
17 take and subscribe to the oath required by section five,
18 article four of the constitution of this state. Members
19 shall serve at the will and pleasure of the governor. Any
20 vacancy shall be filled by appointment of the governor
21 for the unexpired term of the member whose office shall
22 be vacant. Any vacancy occurring in the office of a mem-
23 ber of the board shall be filled by appointment within
24 sixty days after such vacancy occurs.

25 (c) The board shall elect a chairman who shall serve
26 at the will and pleasure of the board. A majority of the
27 members of said board shall constitute a quorum. Meet-
28 ings shall be held at the call of the chairman or upon the
29 written request of three members at such time and place
30 as is designated in such call or request. Until otherwise
31 provided by law, members shall serve without compen-
32 sation or reimbursed expenses whatever. The board shall
33 make and keep accurate records of all of its proceedings
34 and make certificates thereof or therefrom as may be
35 required by law. The commissioner shall furnish the
36 board with reasonable assistance, office space, secretarial
37 help and supplies when needed, within the limits of avail-
38 able funds. The board is hereby authorized to promulgate
39 rules and regulations, in accordance with the provisions
40 of article three, chapter twenty-nine-a of this code, to
41 implement and make effective the powers, duties and re-
42 sponsibilities vested in such board by the provisions of
43 this article.

§17A-6-21. Appeals to board.

(a) Any applicant or licensee, as the case may be,
2 adversely affected by an order made and entered by the
3 commissioner in accordance with the provisions of sec-
4 tion nineteen of this article may appeal to the board for
5 an order vacating or modifying such order or for such
6 order as the commissioner should have entered. The
7 person so appealing shall be known as the appellant and
8 the commissioner shall be known as the appellee.

(b) An appeal shall be perfected by filing a notice of
9 appeal with the board and with the commissioner within
10 thirty days after the date upon which the appellant
11 received the copy of such order. Said notice of appeal
12 shall be in such form and contain such information as may
13 be prescribed by the board, but in all cases shall contain
14 a description of any order appealed from and the grounds
15 for said appeal. The filing of the notice of appeal shall
16 operate to automatically stay or suspend execution of
17 any order which is the subject matter of said appeal,
18 except for an order suspending a license certificate
19 in accordance with the provisions of subsection (b),
20

21 section eighteen of this article. The appellant shall give
22 security for the costs of said appeal in such form and
23 amount as the commissioner may reasonably prescribe.
24 If the appellant does not substantially prevail on such
25 appeal, such costs shall be assessed against him by the
26 board and may be collected by an action at law or other
27 proper remedy.

28 (c) Within ten days after receipt of his copy of said
29 notice of appeal, the commissioner shall prepare and
30 certify to the board the complete record of the proceed-
31 ings out of which the appeal arises, including, but not
32 limited to, all documents and correspondence in the com-
33 missioner's file relating to the matter in question. The
34 board shall hear the appeal de novo and evidence may be
35 offered on behalf of the appellant and appellee.

36 (d) All of the pertinent provisions of article five,
37 chapter twenty-nine-a of this code shall apply to and
38 govern the hearing on appeal and the administrative pro-
39 cedures in connection with and following such hearing,
40 with like effect as if the provisions of said article five were
41 set forth in extenso in this subsection.

42 (e) Any such appeal hearing shall be conducted by a
43 quorum of the board. For the purpose of conducting any
44 such appeal hearing, any member of the board shall have
45 the power and authority to issue subpoenas and subpoenas
46 duces tecum in the name of the board, in accordance with
47 the provisions of section one, article five, chapter twenty-
48 nine-a of this code. All subpoenas and subpoenas duces
49 tecum shall be issued and served within the time and for
50 the fees and shall be enforced, as specified in section one,
51 article five of said chapter twenty-nine-a, and all of the
52 said section one provisions dealing with subpoenas and
53 subpoenas duces tecum shall apply to subpoenas and
54 subpoenas duces tecum issued for the purpose of an appeal
55 hearing hereunder.

56 (f) Upon receipt of said record from the commissioner,
57 the board shall set a hearing date which shall be not less
58 than ten nor more than twenty days thereafter unless
59 there is a postponement or continuance. The board may
60 postpone or continue any hearing on its own motion, or
61 for good cause shown upon the application of the appellant

62 or appellee. The appellant and the appellee shall be given
63 notice of said hearing in person or by certified mail, return
64 receipt requested. Any such hearing shall be held in
65 Charleston, Kanawha county, West Virginia, unless an-
66 other place is specified by the board. At any such hearing
67 the appellant may represent himself or be represented by
68 any attorney at law admitted to practice before any circuit
69 court of this state and the appellee shall be represented by
70 the attorney general, or his assistants, in accordance with
71 the provisions of section twenty, article two of this
72 chapter. The board may direct the appellant and the
73 appellee to produce evidence on any point considered by
74 the board to be relevant and material.

75 (g) After such hearing and consideration of all of the
76 testimony, evidence and record in the case, the board
77 shall make and enter an order affirming, modifying or
78 vacating the order of the commissioner, or shall make and
79 enter such order as the commissioner should have entered.
80 Such order shall be accompanied by findings of fact and
81 conclusions of law as specified in section three, article
82 five, chapter twenty-nine-a of this code, and a copy of
83 such order and accompanying findings and conclusions
84 shall be served upon the appellant, and his attorney of
85 record, if any, and upon the appellee, in person or by
86 certified mail, return receipt requested.

87 (h) The order of the board shall be final unless vacated
88 or modified upon judicial review thereof in accordance
89 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 com-
2 plaint in writing alleging a violation of any of the pro-
3 visions of this chapter by a licensee, and the commissioner
4 does not within thirty days thereafter make and enter an
5 order with respect thereto, the complainant may file a
6 sworn complaint with the board. Upon receipt of any
7 such sworn complaint, the board may investigate the
8 matter, and hold a hearing with respect thereto and decide
9 the matter with like effect as if the commissioner had
10 made and entered an order and the licensee had appealed
11 such order to the board. Any complaint and any investi-

12 gation shall be kept in strictest confidence by the board,
13 the commissioner, the department, the licensee, the com-
14 plainant and all other persons, unless and until the com-
15 missioner or board suspends or revokes the license certifi-
16 cate 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
2 by a final order made and entered by the board is entitled
3 to judicial review thereof. All of the pertinent provisions
4 of section four, article five, chapter twenty-nine-a of this
5 code shall apply to and govern such review with like
6 effect as if the provisions of said section four were set
7 forth in extenso in this section.

(b) The judgment of the circuit court shall be final
8 unless reversed, vacated or modified on appeal to the su-
9 preme court of appeals in accordance with the provisions
10 of section one, article six, chapter twenty-nine-a of this
11 code.
12

(c) Legal counsel and services for the commissioner in
13 all appeal proceedings in any circuit court and the su-
14 preme court of appeals shall be provided by the attorney
15 general or his assistants, and in appeal proceedings in any
16 circuit court by the prosecuting attorney of the county as
17 well, all without additional compensation and in accord-
18 ance with the provisions of section twenty, article two of
19 this chapter. The board or commissioner, with the written
20 approval of the attorney general, may employ special
21 counsel to represent the board or commissioner in a par-
22 ticular proceeding.
23

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
2 person has been or is violating or is about to violate any

3 provision of this article or any final order of the commis-
4 sioner or board, the commissioner may apply in the name
5 of the state, to the circuit court of the county in which the
6 violation or violations or any part thereof has occurred,
7 is occurring or is about to occur, or the judge thereof in
8 vacation, for an injunction against such person and any
9 other persons who have been, are or are about to be, in-
10 volved in, or in any way participating in, any practices,
11 acts or omissions, so in violation, enjoining such person
12 or persons from any such violation or violations. Such
13 application may be made and prosecuted to conclusion
14 whether or not any such violation or violations have re-
15 sulted or shall result in prosecution or conviction under
16 the provisions of article eleven of this chapter.

17 (b) Upon application by the commissioner, the circuit
18 courts of this state may by mandatory or prohibitory in-
19 junction compel compliance with the provisions of this
20 article and all final orders of the commissioner or board.
21 The court may issue a temporary injunction in any case
22 pending a decision on the merits of any application filed.

23 (c) The judgment of the circuit court upon any appli-
24 cation permitted by the provisions of this section shall
25 be final unless reversed, vacated or modified on appeal to
26 the supreme court of appeals. Any such appeal shall be
27 sought in the manner and within the time provided by
28 law for appeals from circuit courts in other civil cases.

29 (d) The commissioner shall be represented in all such
30 proceedings by the attorney general or his assistants and
31 in such proceedings in the circuit courts by the prose-
32 cuting attorneys of the several counties as well, all with-
33 out additional compensation and in accordance with the
34 provisions of said section twenty, article two of this
35 chapter. With the written approval of the attorney gen-
36 eral, the commissioner may employ special counsel to
37 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-

2 cers of the state, acting at the commissioner's request,
3 are hereby authorized to inspect the place of business,
4 vehicles and pertinent records, documents and papers
5 of any person required to be licensed under the provisions
6 of this article to the extent deemed reasonably necessary
7 to determine compliance with and violations of this ar-
8 ticle. For the purpose of making any such inspection,
9 the commissioner and such law-enforcement officers are
10 authorized, at reasonable times, to enter in and upon any
11 such place of business and any other public garage or
12 enclosure where vehicles are sold, stored, hired or re-
13 paired.

14 (b) Any person who shall violate any provision of this
15 article or any final order of the commissioner or board
16 hereunder shall be guilty of a misdemeanor, and the pro-
17 visions of article eleven of this chapter governing viola-
18 tions of this chapter generally shall be fully applicable
19 thereto.

Part X. Construction.

Section

26. Construction.

§17A-6-26. Construction.

(a) The provisions of this article shall be liberally
2 construed so as to effectuate its purposes.

3 (b) All of the provisions of this chapter expressly
4 stated to be applicable throughout such chapter shall be
5 as fully applicable to this act as if they were set forth
6 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
2 a form prescribed by him issue to a banking institution,

3 insurance company, finance company, or other type of
4 lending or financial institution, or a person engaged
5 exclusively in wrecking or dismantling vehicles, a paper
6 sticker or decal to be affixed to the left side of the rear
7 window of a motor vehicle or at a place on any other type
8 vehicle as designated by the commissioner. Such sticker
9 or decal shall be of a size to be designated by the commis-
10 sioner and shall be serially numbered and shall have
11 provision thereon to indicate the date of issuance thereof.
12 A fee of one dollar per sticker shall be charged by the
13 department to the applicant therefor. Such sticker or
14 decal shall be valid for the operation of a vehicle, whether
15 under its own power or while being towed, one time only
16 over the streets or highways of this state, and upon being
17 once affixed to a vehicle shall become invalid for subse-
18 quent use on that or any other vehicle.

§17A-7-2. Operation of motor vehicles by dealer or other persons under special stickers; application and fees; expiration.

A member of the department of public safety may at
2 any detachment office, upon application therefor on a form
3 prescribed by the commissioner, issue to a licensed dealer
4 or any other person other than those specified in section
5 one of this article, a paper sticker or decal to be affixed to
6 the left side of the rear window of a motor vehicle. Such
7 sticker or decal shall be of a size to be designated by the
8 commissioner and shall be serially numbered and shall
9 have provision thereon to indicate the date of issuance
10 thereof. A fee of one dollar per sticker shall be charged
11 and shall be deposited in the state road fund. Such sticker
12 or decal shall be valid for forty-eight hours after its is-
13 suance for the operation of a motor vehicle, whether under
14 its own power or while being towed, one time only over
15 the streets or highways of this state, and upon being once
16 affixed to a motor vehicle shall become invalid for subse-
17 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

2 the commissioner may issue to the owner of a house
3 trailer a special one-movement sticker of such design and
4 content, as may be prescribed by him: *Provided*, That
5 such special sticker shall not be issued to any house trailer
6 or trailer dealer. Such sticker shall be valid for the move-
7 ment of a house trailer one time only over the streets and
8 highways of this state, and no more than one such sticker
9 may be issued for the same house trailer while owned
10 by the same person. A fee of two dollars shall be re-
11 ceived 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
2 made to this section, such reference shall henceforth
3 be read, construed and understood to mean section eight-
4 een, 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
2 title, a registration card, registration plate or plates, a
3 temporary registration plate or marker, the right to issue
4 temporary registration plates or markers, any nonresident
5 or other permit, or any license certificate or dealer special
6 plates issued under the provisions of article six of this
7 chapter, is cancelled, suspended or revoked as authorized
8 in this chapter, the owner, holder or other person in pos-
9 session of such evidences shall, except as otherwise pro-
10 vided in said article six, immediately return the evidences
11 of the registration, title, permit or license so cancelled,
12 suspended, or revoked, together with any dealer special
13 plates relating to any such license certificate, or any

14 dealer special plate or plates if such alone be suspended,
15 to the department. If any person shall wilfully fail or
16 refuse to return to the department the evidences of the
17 registration, title, permit or license so cancelled, sus-
18 pended, or revoked, or any dealer special plates, when
19 obligated so to do as aforesaid, the commissioner shall
20 forthwith notify the superintendent of the department of
21 public safety who shall, as soon as possible, secure pos-
22 session thereof and return same to the department. Said
23 superintendent of the department of public safety shall
24 make a report in writing to the commissioner, within two
25 weeks after being so notified by the commissioner, as to
26 the result of his efforts to secure the possession and return
27 of such evidences of registration, title, permit or license,
28 or any dealer special plates. For each registration, cer-
29 tificate of title, registration card, registration plate or
30 plates, temporary registration plate or marker, permit,
31 license certificate, or dealer special plate, which the owner,
32 holder or other person in possession thereof shall have
33 wilfully failed or refused, as aforesaid, to return to the
34 department within ten days from the time that such can-
35 cellation, suspension or revocation becomes effective, and
36 which shall have been certified to the superintendent of
37 the department of public safety as aforesaid, the owner
38 or holder shall, before the same may be reinstated, if
39 reinstatement is permitted, in addition to all other fees
40 and charges, pay a fee of ten dollars, which fee shall be
41 collected by the department of motor vehicles, paid into
42 the state treasury and credited to the general fund to be
43 appropriated to the department of public safety for appli-
44 cation in the enforcement of the road laws. Only one fee
45 shall be collected on each such reinstatement for each
46 vehicle to which any such cancellation, suspension or
47 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
2 be unconstitutional or invalid such unconstitutionality or

3 invalidity shall not affect the constitutionality or validity
4 of the remaining part or parts of this chapter. The Leg-
5 islatre hereby declares that it would have passed the
6 remaining part or parts of this chapter if it had known
7 that such part or parts thereof would be declared un-
8 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.

2 The Legislature hereby determines and finds that the
3 racing of motor vehicles on the public streets and high-
4 ways of this state, whether within or in excess of the
5 lawful speed limit (much of which racing is commonly
6 referred to as "drag racing"), is extremely dangerous
7 to life, limb and property, and that such racing is an
8 ever increasing problem. It is, therefore, hereby declared
9 to be the public policy of this state to prohibit all forms
10 of such racing on the public streets and highways, and
11 to provide criminal penalties for, and require the revo-
12 cation of the operator's or chauffeur's license or nonresi-
13 dent's privilege to drive, of those persons who are con-
14 victed of engaging in or aiding or abetting such racing.

14 (a) It shall be unlawful for any person to engage in,
15 or aid or abet by serving as lookout or timer or in any
16 other capacity whatever, any speed race, as defined herein,
17 on any public street or highway in this state. For the
18 purposes of this subdivision, "speed race" means:

19 (1) The operation of a motor vehicle in speed ac-
20 celeration competition with another motor vehicle or
21 motor vehicles; or

22 (2) The operation of a motor vehicle in speed accel-
23 eration competition against time; or

24 (3) The operation of a motor vehicle in speed com-
25 petition with another motor vehicle or motor vehicles
26 where the speed exceeds the lawful speed limit.

27 (b) Any person who violates the provisions of subdivi-
28 sion (a) of this section shall be guilty of a misdemeanor,
29 and, upon conviction thereof, shall be punished for a
30 first offense by a fine of not less than fifty dollars nor
31 more than one hundred dollars, and for a second offense
32 by a fine of not less than fifty dollars nor more than five
33 hundred dollars, or by imprisonment for not less than
34 six days nor more than sixty days, or by both such fine
35 and imprisonment, and for a third and each subsequent
36 offense by a fine of not less than one hundred dollars
37 nor more than one thousand dollars, or by imprisonment
38 for not less than sixty days nor more than four months,
39 or by both such fine and imprisonment. For the purposes
40 of this section, a forfeiture of bail or collateral deposited

41 to secure such person's appearance in court, which for-
42 feiture has not been vacated, shall be equivalent to a final
43 conviction. If at the time of any violation of the provi-
44 sions of subdivision (a) of this section by any person as an
45 operator of a motor vehicle, such person was not entitled
46 to operate a motor vehicle in this state because his oper-
47 ator's or chauffeur's license, or privilege to drive in this
48 state if such person be a nonresident, had earlier been
49 suspended or revoked, then in addition to the offense,
50 penalties and mandatory revocation provided for in this
51 section, the provisions of section three, article four, chap-
52 ter seventeen-b of this code shall be applicable.

53 (c) Whenever a person is convicted for a violation of
54 the provisions of subdivision (a) of this section, which
55 conviction has become final, the commissioner of motor ve-
56 hicles shall in addition to the penalties hereinbefore pro-
57 vided, forthwith:

58 (1) For a first offense, revoke the operator's or chauf-
59 feur's license of such person, or such person's privilege
60 to drive in this state if he be a nonresident, for a period
61 of six months;

62 (2) For a second offense occurring within a two-year
63 period, revoke the operator's or chauffeur's license of
64 such person, or such person's privilege to drive in this
65 state if he be a nonresident, for a period of two years;
66 or

67 (3) For a third or any subsequent offense occurring
68 within a five-year period, revoke the operator's or chauf-
69 feur's license of such person, or such person's privilege
70 to drive in this state if he be a nonresident, for a period
71 of five years.

72 Whenever a person is convicted as aforesaid for a second,
73 third or subsequent offense which occurred while such
74 person's operator's or chauffeur's license, or privilege
75 to drive in this state if he be a nonresident, was revoked
76 pursuant to the provisions of this subdivision, the period
77 or periods of mandatory revocation for such second, third
78 or subsequent offense shall be cumulative and shall run
79 consecutively. If a person's junior or probationary oper-
80 ator'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.

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
2 upon meeting or overtaking from either direction any
3 school bus which has stopped on the highway for the pur-
4 pose of receiving or discharging any school children shall
5 stop the vehicle before reaching such school bus when
6 there is in operation on said school bus flashing warning
7 signal lights, as referred to in section eight of this article,
8 and said driver shall not proceed until such school bus
9 resumes motion, or is signaled by the school bus driver to
10 proceed or the visual signals are no longer actuated.

(b) Every bus used for the transportation of school
12 children shall bear upon the front and rear thereof a
13 plainly visible sign containing the words "school bus" in
14 letters not less than eight inches in height. When a con-
15 tract school bus is being operated upon a highway for
16 purposes other than the actual transportation of children
17 either to or from school all markings thereon indicating
18 "school bus" shall be covered or concealed. Any school bus
19 sold or transferred to another owner by a county board
20 of education, agency, or individual, shall have all flashing
21 warning lights removed; all lettering removed or per-
22 manently obscured; and such bus shall be painted a color
23 other than chrome yellow before sale or transfer is made
24 except when sold or transferred for the transportation of
25 school children.

(c) The driver of a vehicle upon a highway with
27 separate roadways need not stop upon meeting or passing
28 a school bus which is on a different roadway or when upon
29 a controlled-access highway and the school bus is stopped
30 in a loading zone which is a part of or adjacent to such
31 highway and where pedestrians are not permitted to cross
32 the roadway.

CHAPTER 117

(House Bill No. 770—By Mr. Auvil)

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

AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to 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
2 a height of twelve feet six inches, except as provided
3 in section eleven-b of this article, and except that ve-
4 hicles used as automobile transports including any load
5 thereon shall not exceed a height of thirteen feet six
6 inches, but the owners of such automobile transports
7 shall be responsible to the state road commissioner for
8 any damage to bridges or other road structures and to
9 municipalities and utility companies for any damage to
10 wires, traffic devices or other structures, and to any per-
11 son suffering property damage when any such damage is
12 proximately caused by the height of such vehicle or vehi-
13 cles and load being in excess of twelve feet six inches.

14 (b) No motor vehicle including any load thereon shall
15 exceed a length of thirty-five feet extreme overall di-
16 mension, inclusive of front and rear bumpers, except
17 that any bus, truck or trackless trolley coach equipped
18 with three axles or any school bus with two axles shall

19 not exceed an overall length, inclusive of front and rear
20 bumpers, of forty feet.

21 (c) No combination of vehicles coupled together shall
22 consist of more than two units and no such combination
23 of vehicles including any load thereon shall have **an**
24 overall length, inclusive of front and rear bumpers, in
25 excess of fifty feet, except as provided in section eleven-b
26 of this article, and except as otherwise provided in re-
27 spect to the use of a pole trailer as authorized in section
28 five of this article: *Provided, however,* That the limita-
29 tion that no combination of vehicles coupled together
30 shall consist of more than two units shall not apply to
31 a combination of vehicles coupled together by a saddle
32 mount device used to transport motor vehicles in a drive-
33 away service when no more than two saddle mounts are
34 used: *And provided further,* That equipment used in
35 said combination meets the requirements of the safety
36 regulations of the interstate commerce commission.

c

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 thousand nine hundred thirty-one, as amended, relating to the amount of allowable gross weights for vehicles, combination 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

9. Gross weight of vehicles and loads.

§17C-17-9. Gross weight of vehicles and loads.

(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:

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				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
4	32,000				
5	32,000				
6	32,000				
7	32,000				
8	32,610				
9	33,580	40,750			
10	34,550	41,500			
11	35,510	42,250			
12	36,000	43,000	48,000		
13		43,750	48,667		
14		44,500	49,333		
15		48,000	50,000		
16		48,500	50,667	56,000	
17		49,000	51,333	56,625	
18		49,500	52,000	57,250	
19		50,000	52,667	57,875	
20		50,500	60,000	62,000	64,000
21		51,000	60,400	62,430	64,600
22		51,500	60,800	62,860	65,200
23		52,000	61,200	63,290	65,800

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				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
24		52,500	61,600	63,720	66,400
25		53,000	62,000	64,150	67,000
26		53,500	62,400	64,580	67,600
27		54,000	62,800	65,010	68,200
28			63,200	65,440	68,800
29			63,600	65,870	69,400
30			64,000	66,300	70,000
31			64,400	66,730	
32			64,800	67,160	
33			65,200	67,590	
34			65,600	68,020	
35			66,000	68,450	
36			66,400	68,880	
37			66,800	69,310	
38			67,200	69,750	
39			67,600	70,000	
40			68,000		
41			68,400		
42			68,800		
43			69,200		
44			69,600		
45			70,000		

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

14. Penalties for violation of weight laws; impounding vehicles.

§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

28	8,001 to 9,000	-----	\$	90.00
29	9,001 to 10,000	-----	\$	100.00
30	10,001 to 11,000	-----	\$	165.00
31	11,001 to 12,000	-----	\$	180.00
32	12,001 to 13,000	-----	\$	195.00
33	13,001 to 14,000	-----	\$	210.00
34	14,001 to 15,000	-----	\$	225.00
35	15,001 to 16,000	-----	\$	320.00
36	16,001 to 17,000	-----	\$	340.00
37	17,001 to 18,000	-----	\$	360.00
38	18,001 to 19,000	-----	\$	380.00
39	19,001 to 20,000	-----	\$	400.00
40	20,001 to 21,000	-----	\$	525.00
41	21,001 to 22,000	-----	\$	550.00
42	22,001 to 23,000	-----	\$	575.00
43	23,001 to 24,000	-----	\$	600.00
44	24,001 to 25,000	-----	\$	625.00
45	25,001 to 26,000	-----	\$	780.00
46	26,001 to 27,000	-----	\$	810.00
47	27,001 to 28,000	-----	\$	840.00
48	28,001 to 29,000	-----	\$	870.00
49	29,001 to 30,000	-----	\$	900.00
50	30,001 to 40,000	-----	\$	1,200.00
51	40,001 to 50,000	-----	\$	1,400.00
52	50,001 and over	-----	\$	1,600.00

53 In the event any owner, lessee or borrower of a vehicle
54 is charged with violating this section, the vehicle which is
55 charged to be overloaded shall be impounded by the
56 arresting officer and shall not be released to such owner,
57 lessee or borrower unless and until such owner, lessee or
58 borrower either shall have been found guilty and paid
59 any fine assessed against such owner, lessee or borrower,
60 or shall have furnished cash or surety bond in at least
61 double the amount of the fine which may be assessed
62 against such owner, lessee or borrower for such violation
63 of this section and conditioned upon the payment of any
64 such fine and costs assessed for such violation, or shall
65 have been acquitted of such charge. Such owner, lessee or
66 borrower shall be liable for any reasonable storage costs
67 incurred in storing such vehicles: *Provided*, That if
68 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, chapter 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 POWERS 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-

40 ditional territory is proposed to be included therein, the
41 corporate limits of such city, town or village shall there-
42 after be as proposed by such petition. But, if additional
43 territory is proposed to be included in such corporate
44 limits, such change shall not take effect unless a ma-
45 jority of all the votes cast by persons eligible to vote
46 in such additional territory shall also be cast in favor of
47 such change. Any firm or corporation may vote by its
48 manager, president, or executive officer duly designated in
49 writing by such firm or corporation.

50 The governing body of a municipality may by ordi-
51 nance provide for the annexation of additional territory
52 without ordering a vote on the question if (1) sixty per
53 cent of the qualified voters residing in such additional
54 territory file with the governing body their petition to
55 be annexed, and (2) sixty per cent of all persons (who
56 are sui juris), firms and corporations owning any freehold
57 interest in any real property situate within such terri-
58 tory, whether they reside or have a place of business
59 therein or not, file with the governing body their peti-
60 tion to be annexed: *Provided*, That the additional ter-
61 ritory shall conform to the requirements of section
62 one of this article, and the determination that the
63 additional territory does so conform or that the requi-
64 site number of petitioners have filed the required peti-
65 tions shall be reviewable by the circuit court on certiorari
66 to the council. A qualified voter also owning a freehold
67 interest in any real property situate within such terri-
68 tory may join in either the voters' petition of the
69 territory or the freeholders' petition of such territory,
70 but he shall not sign more than one petition. It shall be
71 the responsibility of the governing body to enumerate
72 and verify the total number of eligible petitioners from
73 the territory. In determining the total number of eli-
74 gible petitioners, a qualified voter of the territory who
75 also owns a freehold interest in any real property situate
76 within the territory shall be counted as one person only.

77 When an election is held in any city, town or village
78 respecting a change in the boundary thereof, another
79 such election relating to the same territory or any part
80 thereof shall not be held for a period of one year.

81 The provisions of this and the following section shall
82 provide the exclusive procedure for effecting a change
83 in the boundary of every city, town or village except
84 municipalities which have adopted a home rule charter
85 under the provisions of chapter eight-a of the code:
86 *Provided, however,* That any city, town or village, other-
87 wise authorized by said chapter eight-a or by special
88 charter may utilize the procedures respecting minor
89 boundary adjustments set forth in section twenty-five,
90 article six of said chapter eight-a.

CHAPTER 121

(House Bill No. 909—By Mr. Boiarsky 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 corpora-
2 tion, whether operating under a general, special or home

3 rule charter, may levy and collect a tax upon all purchases
4 of intoxicating liquors from the alcohol beverage control
5 commissioner within a municipality: *Provided*, That such
6 municipality shall have no authority to levy or collect
7 any such tax, on the intoxicating liquors sold by or pur-
8 chased from holders of a license issued under the pro-
9 visions of article seven, chapter sixty of this code. The
10 tax shall be levied upon the purchaser and shall be added
11 to and collected with the price of purchase. The
12 tax shall not exceed three per cent of the purchase
13 price.

14 Any ordinance imposing the tax authorized by this
15 section shall be certified by the mayor or other chief
16 officer of the municipality to the West Virginia alcohol
17 beverage control commissioner. The commissioner by
18 appropriate rules and regulations shall provide for the
19 collection of such tax and for distribution thereof to the
20 respective municipalities for which the same shall be
21 collected. Such rules and regulations shall provide that
22 all such taxes shall be deposited with the state treasurer
23 and distributed quarterly by the treasurer upon warrants
24 of the auditor payable to the municipality.

3

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,
2 whether operating under a legislative charter, home rule
3 charter, or general law only, and notwithstanding any
4 statutory or charter provisions to the contrary, is, subject
5 to the provisions and limitations set forth in subsections
6 (b) and (c) of this section, hereby authorized and em-
7 powered to make application for, receive and accept
8 grants from the federal government, or any agency there-
9 of, for, on behalf of and for use by a nonstock, nonprofit
10 corporation organized under the provisions of chapter
11 thirty-one of this code for charitable, patriotic or phil-
12 anthropic or other public purposes and operating within
13 the corporate limits of said municipality. The Legisla-
14 ture hereby finds that the support of such nonstock,
15 nonprofit corporations is for the general welfare of the
16 public and is a public purpose. This section is enacted
17 in view of this finding and shall be liberally construed
18 in the light thereof.

19 (b) No federal funds received by a municipality under
20 the authority of this section shall be disbursed by any
21 such nonstock, nonprofit corporation unless and until
22 the expenditure thereof has been approved by the gov-
23 erning body of such municipality, and such corporation
24 shall upon demand at any time make a full and complete
25 accounting of all such funds to such governing body.

26 (c) Under no circumstances whatever shall any action
27 taken by any municipality under the authority of this
28 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 section twenty-eight, authorizing and empowering two or more municipalities to consolidate functions with respect to the financing, acquisition, construction, reconstruction, establishment, equipment, extension, enlargement, improvement, 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 Virginia, 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

8 will result in substantial economies in the operation of
9 municipal government and will thus further promote the
10 public health, safety and welfare. This section is enacted
11 in view of these findings and shall be liberally construed
12 in the light thereof.

13 (b) Any two or more municipalities in this state, how-
14 ever created, whether operating under a legislative
15 charter, home rule charter or general law only, whether
16 located in the same county or different counties, and not-
17 withstanding any statutory or charter provisions to the
18 contrary, are hereby authorized and empowered to pro-
19 vide, by ordinance or proper resolution of each munici-
20 pality, for the joint financing, acquisition, construction,
21 reconstruction, establishment, equipment, extension, en-
22 largement, improvement, betterment, renovation, custody,
23 operation and maintenance of any municipal public works.
24 A certified copy of each such ordinance or proper resolu-
25 tion shall be filed in the office of the clerk of the county
26 court of the county or counties in which the municipalities
27 are located and in the office of the state tax commissioner.
28 Such financing, acquisition, construction, reconstruction,
29 establishment, equipment, extension, enlargement, im-
30 provement, betterment, renovation, custody, operation
31 and maintenance shall be under the supervision and con-
32 trol of a board composed of an equal number of members
33 appointed by the governing body of each participating
34 municipality, and such board shall have and may exercise
35 all of the authority and power vested by the provisions of
36 this article in the "board" of a single municipality, as the
37 term "board" is defined in section three of this article:
38 *Provided*, That any contract or agreement relating to the
39 financing, acquisition, construction, reconstruction, estab-
40 lishment, equipment, extension, enlargement, improve-
41 ment, betterment or renovation of any such works, and
42 any trust indenture with respect thereto shall be approved
43 by the governing body of each participating municipality.

44 (c) The other provisions of this article were enacted
45 without regard to the possible consolidation of municipal
46 functions and consequently such other provisions speak
47 in terms of a single municipality. In applying such other

48 provisions to two or more municipalities desiring to oper-
49 ate or operating under the provisions of this section, the
50 following principles and requirements shall be applicable
51 and controlling:

52 (1) The authority and power vested by the other
53 provisions of this article in a single municipality or the
54 municipal authorities of a single municipality shall be
55 exercised only by the participating municipalities or the
56 participating municipal authorities acting in concert;

57 (2) In acquiring all necessary lands, right of ways
58 and property by gift, grant, purchase, condemnation or
59 otherwise, the participating municipalities shall act
60 jointly;

61 (3) Title to all property shall be taken jointly in
62 the names of the participating municipalities;

63 (4) All revenue bonds shall be issued by each par-
64 ticipating municipality in such amounts as shall be pre-
65 scribed by each participating municipality, with the con-
66 currence of the other participating municipality or mu-
67 nicipalities as to the amounts of such bonds, and such
68 amounts may be the same with respect to each munici-
69 pality, or they may be different, taking into account the
70 population of each participating municipality served by
71 such public works or any other relevant factor or factors;

72 (5) The just and equitable rates or charges re-
73 quired by the provisions of section seventeen of this arti-
74 cle shall be established by each participating municipality,
75 with the concurrence of the other participating munici-
76 pality or municipalities as to the amount of such rates or
77 charges, and such rates or charges may be the same with
78 respect to each municipality, or they may be different,
79 taking into account the population of each participating
80 municipality served by such public works or any other
81 relevant factor or factors; and

82 (6) Any requirements, limitations and restrictions
83 applicable to a single municipality under the other pro-
84 visions of this article shall govern each participating
85 municipality.

86 (d) If any provision of this section is held to be invalid,
87 such invalidity shall not affect other provisions of the

88 section, and to this end the provisions of this section are
89 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
2 terms of this article shall be removed, discharged, sus-
3 pended or reduced in rank or pay except for just cause,
4 which shall not be religious or political, except as herein-
5 after provided in section twenty; further, no such em-
6 ployee shall be removed, discharged, suspended or re-
7 duced except as provided in this article, and in no event
8 until he shall have been furnished with a written state-
9 ment of the reasons for such action. For the purpose
10 of the remainder of this subsection and subsections (b)
11 and (c) of this section, the term "suspension" shall mean

12 only (1) a suspension in excess of ten days or (2) a sus-
13 pension in any calendar year which when added to any
14 previous suspension or suspensions within the same cal-
15 endar year results in a total period of suspension in ex-
16 cess of ten days within such same calendar year, and
17 for the purpose of the remainder of this subsection and
18 said subsections (b) and (c), a person shall not be con-
19 sidered to be suspended or sought to be suspended un-
20 less his suspension meets the foregoing definition of said
21 term. In every case of such removal, discharge, suspen-
22 sion or reduction, a copy of the statement of reasons there-
23 for and of the written answer thereto, if the person sought
24 to be removed, discharged, suspended or reduced desires
25 to file such written answer, shall be furnished to the civil
26 service commission and entered upon its records. If the
27 person sought to be removed, discharged, suspended or
28 reduced shall demand it, the civil service commission
29 shall grant him a public hearing, which hearing shall be
30 held within a period of ten days from the filing of the
31 charges in writing and the written answer thereto. At
32 such hearing the burden shall be upon the removing,
33 discharging, suspending or reducing officer, hereinafter
34 in this section referred to as "removing officer," to justify
35 his action and in the event the removing officer fails to
36 justify his action before the civil service commission,
37 then the person removed, discharged, suspended or re-
38 duced shall be reinstated with full pay, forthwith and
39 without any additional order, for the entire period dur-
40 ing which he may have been prevented from performing
41 his usual employment, and no charges shall be officially
42 recorded against his record. A written record of all testi-
43 mony taken at such hearing shall be kept and preserved
44 by the civil service commission, which record shall be
45 sealed and not be open to public inspection, if no appeal
46 be taken from the action of the commission.

47 (b) In event that the civil service commission shall sus-
48 tain the action of the removing officer the person removed,
49 discharged, suspended or reduced shall have an imme-
50 diate right of appeal to the circuit court of the county
51 wherein the city or municipality is situated. Said appeal
52 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
 2 department who is entitled to benefits of said fund, and
 3 who has been in the service of such department for
 4 twenty years, may upon written application to the board
 5 of trustees, be retired from all service from such depart-
 6 ment without medical examination or disability; and on
 7 such retirement the board of trustees shall authorize the
 8 payment of an annual pension commencing upon his
 9 retirement or upon his reaching the age of fifty years,
 10 whichever is later, payable in twelve monthly install-
 11 ments for each year of the remainder of his life, in an
 12 amount equal to fifty per cent of such member's aver-
 13 age annual salary or compensation received during the
 14 five fiscal years, not necessarily consecutive, in which
 15 such member received his highest compensation while
 16 a member of the department, or an amount of one hun-
 17 dred fifty dollars per month, whichever shall be greater;
 18 and any member of such department who is entitled to
 19 benefits of said fund and who has been in the service
 20 of such department for more than twenty years at the
 21 time of his retirement, as herein provided, shall in addi-
 22 tion to the aforesaid pension authorized to be paid upon

23 retirement after twenty years of service and reaching
24 the age of fifty years, receive an additional sum per
25 month during the remainder of his life, equal to one
26 per cent of such average monthly salary for each year of
27 the first five additional years served with the department
28 in excess of the said twenty years, but any member of
29 such department whose service has been interrupted
30 by duty with the armed forces of the United States as
31 hereinafter provided, shall be eligible for retirement
32 benefits immediately upon retirement, regardless of his
33 age, if he shall otherwise be eligible for such benefits.

34 Any member of a municipal fire or police department,
35 upon reaching the age of sixty-five years shall be retired
36 in the manner herein provided: Each member of the fire
37 and police department shall, at the request of the board
38 of trustees, furnish said board of trustees with a birth
39 certificate or other satisfactory proof of his date of birth,
40 at the time of his appointment to the fire or police de-
41 partment. When a member of the fire or police depart-
42 ment shall have reached the age of sixty-five years,
43 the said board of trustees shall notify the mayor or other
44 chief executive officer of the municipal corporation,
45 within thirty days of such member's sixty-fifth birthday;
46 and the mayor or other chief executive officer shall cause
47 such sixty-five-year-old member of the fire or police de-
48 partment to be retired within a period of not more than
49 thirty additional days. It shall be the duty of each member
50 of the fire or police department who is a member at the
51 time this article becomes effective to furnish the said
52 necessary proof of his date of birth to the said board of
53 trustees within a reasonable length of time, said length
54 of time to be determined by the said board of trustees;
55 and then the board of trustees and the mayor or other
56 chief executive officer of the municipal corporation shall
57 proceed to act in the manner herein provided, and shall
58 cause all members of the fire or police department who
59 are over the age of sixty-five years to be retired in not
60 less than sixty days from the date this article becomes
61 effective. The amount of pension such members shall re-
62 ceive shall depend upon their length of service as herein
63 provided. Such member need not have served twenty

64 years to be eligible to receive the pension hereinabove
65 described.

66 The sum to be paid to each permanently disabled mem-
67 ber shall be equal to fifty per cent of the salary being
68 received by such member, at the time he is so disabled,
69 or the sum of one hundred fifty dollars per month, which-
70 ever shall be greater: *Provided, however,* That any mem-
71 ber who is permanently disabled, after having served
72 twenty years in such department, and, who has attained
73 the age of fifty years, shall be entitled to such sum as
74 shall equal fifty per cent of such member's average
75 salary during the five fiscal years, not necessarily consec-
76 tive, in which he received his highest compensation while
77 a member of the department, and also the additional sum
78 per month equal to one per cent of such average monthly
79 salary for each year of the first five years served in ex-
80 cess of said twenty years, or a total amount of one
81 hundred fifty dollars per month, whichever shall be
82 greater.

83 Absence from the service because of sickness or injury
84 shall not be construed as time out of service.

85 Any member of any fire or police department covered
86 by this article who has been required to or shall at any
87 future time be required to enter the armed forces of the
88 United States by a conscription, by reason of being a
89 member of some reserve unit of the armed forces, or a
90 member of the West Virginia national guard, or who
91 enlists in one of the armed services of the United States
92 during hostilities, and upon his receipt of an honorable
93 discharge from such armed forces presents himself for
94 resumption of duty to his appointing municipal official
95 within six months from date of discharge, and is accepted
96 by the pension board doctors as being mentally and
97 physically capable of performing his required duties as a
98 member of such fire or police department, shall be given
99 credit for continuous service in said fire or police de-
100 partment, and his pension rights shall be governed as
101 herein provided.

102 No member of the fire or police department shall be re-
103 quired to pay the monthly assessment as now required

104 by law, during his period of service in the armed forces
105 of the United States.

106 Any member or former member of a fire or police
107 department, who at the time this section takes effect is
108 receiving any pension, payment or benefit from the fire-
109 men's or policemen's pension or relief funds, shall con-
110 tinue to receive a pension, payment or benefit, in the
111 amount of one hundred fifty dollars per month.

CHAPTER 126

(House Bill No. 622—By Miss Tsapis and Mr. Lohr)

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

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
2 terms of this article shall be removed, discharged, sus-
3 pended or reduced in rank or pay except for just cause,

4 which shall not be religious or political, except as here-
5 inafter provided in section seventeen; further, no such
6 employee shall be removed, discharged, suspended or
7 reduced except as provided in this article, and in no event
8 until he shall have been furnished with a written state-
9 ment of the reasons for such action. For the purpose
10 of the remainder of this subsection and subsections (b)
11 and (c) of this section, the term "suspension" shall mean
12 only (1) a suspension in excess of fifteen days or (2) a
13 suspension in any calendar year which when added to
14 any previous suspension or suspensions within the same
15 calendar year results in a total period of suspension in
16 excess of fifteen days within such same calendar year,
17 and for the purpose of the remainder of this subsection
18 and said subsections (b) and (c), a person shall not be
19 considered to be suspended or sought to be suspended
20 unless his suspension meets the foregoing definition of
21 said term. In every case of such removal, discharge,
22 suspension or reduction, a copy of the statement of rea-
23 sons therefor and of the written answer thereto, if the
24 person sought to be removed, discharged, suspended or
25 reduced desires to file such written answer, shall be fur-
26 nished to the civil service commission and entered upon
27 its records. If the person sought to be removed, dis-
28 charged, suspended or reduced shall demand it, the civil
29 service commission shall grant him a public hearing,
30 which hearing shall be held within a period of ten days
31 from the filing of the charges in writing and the written
32 answer thereto. At such hearing the burden shall be
33 upon the removing, discharging, suspending or reducing
34 officer, hereinafter in this section referred to as "remov-
35 ing officer," to justify his action, and in the event the re-
36 moving officer fails to justify his action before the civil
37 service commission, then the person removed, discharged,
38 suspended or reduced shall be reinstated with full pay,
39 forthwith and without any additional order, for the entire
40 period during which he may have been prevented from
41 performing his usual employment, and no charges shall be
42 officially recorded against his record. A written record of
43 all testimony taken at such hearing shall be kept and pre-
44 served by the civil service commission, which record shall

45 be sealed and not be open to public inspection, if no appeal
46 be taken from the action of the commission.

47 (b) In event that the civil service commission shall
48 sustain the action of the removing officer the person re-
49 moved, discharged, suspended or reduced, shall have an
50 immediate right of appeal to the circuit court of the
51 county wherein the city or municipality is situated.
52 Said appeal shall be taken within ninety days from the
53 entry by the civil service commission of its final order;
54 upon such an appeal being taken and docketed with the
55 clerk of the circuit court of said county, the circuit court
56 shall proceed to hear the appeal upon the original record
57 taken therein and no additional proof shall be permitted
58 to be introduced. The circuit court's decision shall be
59 final, saving to the employee, however, the right to pe-
60 tition the supreme court of appeals for a review of the
61 circuit court's decision.

62 (c) The removing officer and the person sought to
63 be removed, discharged, suspended or reduced shall at
64 all times, both before the civil service commission and
65 upon appeal, be given the right to employ counsel to
66 represent them: *Provided, however,* That if for reasons
67 of economy or other reasons it shall be deemed neces-
68 sary by any city or municipality to reduce the number
69 of paid members of any fire department then said mu-
70 nicipality shall follow the procedure set forth in sub-
71 section (d) of this section.

72 (d) The reduction in members of the said fire depart-
73 ment of said city or municipality shall be effected by
74 suspending the last man or men, including probationers,
75 that have been appointed to said fire department. Such
76 removal shall be accomplished by suspending the num-
77 ber desired in the inverse order of their appointment:
78 *Provided, however,* That in event the said fire department
79 shall again be increased in numbers to the strength ex-
80 isting prior to such reduction of members the said fire-
81 men suspended under the terms of this article shall be
82 reinstated in the inverse order of their suspension before
83 any new appointment to said fire department shall be
84 made.

CHAPTER 127

(House Bill No. 963—By Mr. Boiarsky and Mr. Carey)

[Passed March 10, 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 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
2 nonstock, nonprofit corporations dedicated to making
3 available to the general public museums or facilities for
4 the appreciation or enjoyment of art, music, dance, drama,
5 nature or science is for the general welfare of the public
6 and is a public purpose. This section is enacted in view
7 of this finding and shall be liberally construed in the light
8 thereof.

9 (b) When a nonstock, nonprofit corporation, chartered
10 under the laws of this state, (1) is organized for the con-
11 struction, maintenance or operation of museums or facil-
12 ities for the appreciation or enjoyment of art, music,
13 dance, drama, nature or science, and provides in its char-
14 ter that its buildings or facilities, or a designated portion

15 thereof, shall be devoted to the use by the public for all
16 purposes set forth in such charter without regard to race,
17 religion, national origin or economic circumstance,
18 and free from charge except such as is necessary to pro-
19 vide the means to keep the buildings, facilities and
20 grounds in proper condition and repair, and to pay the
21 cost of insurance, care, management, operations, teach-
22 ing, and attendants, so that the general public may have
23 the benefit of such establishment for the uses set forth
24 in such corporation's charter at as little expense as pos-
25 sible, (2) provides in its charter that no member, trustee,
26 or member of the board of directors (by whatever
27 name the same may be called), of the corporation shall
28 receive any compensation, gain or profit from such cor-
29 poration, and (3) is operated in compliance with such
30 charter provisions as aforesaid, then the county court of
31 the county in which such nonstock, nonprofit corporation
32 is operating and the municipality (however created,
33 whether operating under a legislative charter, home rule
34 charter, or general law only, and notwithstanding any
35 statutory or municipal charter provisions to the contrary)
36 in which such corporation is operating, if any, may ap-
37 propriate funds subject to the provisions and limitations
38 set forth in subsections (c) and (d) of this section, to
39 such nonstock, nonprofit corporation, for such public pur-
40 poses: *Provided*, That such funds may be expended and
41 otherwise utilized only within the county, or municipal-
42 ity, as the case may be, making the appropriation thereof.
43 In every such case, the county court or governing body
44 of any such municipality and such corporation may agree
45 for the appointment of additional members to the board
46 of directors of such corporation by such county court or
47 governing body, either as regular members or in an
48 ex officio capacity.

49 (c) No funds appropriated by a county court or mu-
50 nicipality under the authority of this section shall be
51 disbursed by any such nonstock, nonprofit corporation
52 unless and until the expenditure thereof has been ap-
53 proved by the county court or the governing body of
54 such municipality, as the case may be, which made such
55 appropriation, and such corporation shall upon demand

56 at any time make a full and complete accounting of all
57 such funds to such county court or governing body, as
58 the case may be, and shall in every event without de-
59 mand make to such county court or governing body an
60 annual accounting thereof.

61 (d) Under no circumstances whatever shall any ac-
62 tion taken by any county court or municipality under
63 the authority of this section give rise to or create any
64 indebtedness on the part of the county, such county court
65 or municipality, the governing body of such municipality,
66 any member of the county court or such governing body
67 or any county or municipal official or employee.

68 (e) If any provision of this section or the application
69 thereof to any person or circumstance is held uncon-
70 stitutional or invalid, such unconstitutionality or inva-
71 lidity shall not affect other provisions or applications of
72 this section, and to this end the provisions of this section
73 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
2 provide for the annexation of additional territory with-
3 out ordering a vote on the question if (1) sixty per cent
4 of the qualified voters residing in such additional terri-
5 tory file with the governing body their petition to be
6 annexed, and (2) sixty per cent of all persons (who are
7 sui juris), firms and corporations owning any freehold
8 interest in any real property situate within such terri-
9 tory, whether they reside or have a place of business
10 therein or not, file with the governing body their peti-
11 tion to be annexed: *Provided*, That the additional terri-
12 tory shall conform to the requirements of section one,
13 article two, chapter eight of this code, and the determina-
14 tion that the additional territory does so conform or that
15 the requisite number of petitioners have filed the required
16 petitions shall be reviewable by the circuit court on
17 certiorari to the council. A qualified voter also owning
18 a freehold interest in any real property situate within such
19 territory may join in either the voters' petition of the
20 territory or the freeholders' petition of such territory,
21 but he shall not sign more than one petition. It shall be
22 the responsibility of the governing body to enumerate and
23 verify the total number of eligible petitioners from the
24 territory. In determining the total number of eligible
25 petitioners, a qualified voter of the territory who also
26 owns a freehold interest in any real property situate
27 within the territory shall be counted as one person only.

CHAPTER 129

(House Bill No. 786—By Mr. Ours and Mr. Hawse)

[Passed March 6, 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 unlaw-
2 ful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless
4 it is plainly visible to him;

5 (2) Dig out, cut out, or smoke out, or in any manner
6 take or attempt to take any live wild animal or wild
7 bird out of its den or place of refuge, except as may be
8 authorized by regulations promulgated by the director
9 or by law;

10 (3) Make use of, or take advantage of, any artificial
11 light in hunting for, or taking any wild animals or wild
12 birds, except that artificial lights such as are ordinarily
13 carried in the hand or on the person may be used for
14 the purpose of taking raccoon, opossum or skunk; or to
15 throw or cast the rays of a spotlight, headlight, or other
16 artificial light, from any vehicle, on any animal or
17 game bird, or attempt to do so, while having in his or
18 their possession or under their control, or in any vehicle
19 or conveyance in which they may be traveling, a cased
20 or uncased firearm or other implement whereby any wild
21 animal or wild bird could be killed, even though such
22 animal be not shot at, injured or killed. The provisions
23 of this subdivision shall not apply if it shall be proven
24 that the headlights of a motor vehicle while traveling on
25 a highway in the usual way, cast a light upon such animal,
26 on or adjacent to such highway, and there was no at-
27 tempt or intent to locate such animal;

28 (4) Hunt for, take, kill, wound or shoot at wild animals
29 or wild birds from an airplane, or other airborne convey-

30 ance, an automobile, or other land conveyance, or from
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,
43 carry an uncased or loaded gun in any of the woods of
44 this state except during the open firearms hunting sea-
45 son for game animals and nonmigratory game birds
46 within any county of the state, unless he has in his pos-
47 session a permit in writing issued to him by the director:
48 *Provided, however,* That this section shall not prohibit
49 hunting or taking of unprotected species of wild animals
50 and wild birds and migratory game birds, during the
51 open season, in the open fields, open water and open
52 marshes of the state;

53 (9) Except as provided in section six of this article,
54 carry an uncased or loaded gun after the hour of five
55 o'clock, antemeridian on Sunday in any woods or on any
56 highway, railroad right of way, public road, field or
57 stream of this state, except at a regularly used rifle, pistol,
58 skeet, target or trap shooting ground or range and noth-
59 ing contained in section eighteen, article eight, chapter
60 sixty-one of the code shall prohibit the use of a gun by
61 a licensed hunter before the hour of five o'clock ante-
62 meridian on Sunday;

63 (10) To have in his possession a loaded firearm or a
64 firearm from the magazine of which all shells and car-
65 tridges have not been removed, in or on any vehicle or
66 conveyance, or its attachments, within the state, except
67 as may otherwise be provided by law or regulation.
68 Except as hereinafter provided, between five o'clock post-
69 meridian of one day and seven o'clock antemeridian,

70 eastern standard time of the day following, any unloaded
71 firearm, being lawfully carried in accordance with the
72 foregoing provisions, shall be so carried only when in a
73 case or taken apart and securely wrapped. During the
74 period from July first to September thirtieth, inclusive,
75 of each year, the foregoing requirements relative to
76 carrying certain unloaded firearms shall be permissible
77 only from eight-thirty o'clock postmeridian to five o'clock
78 antemeridian, eastern standard time;

79 (11) Hunt, catch, take, kill, trap, injure or pursue with
80 firearms or other implement by which wildlife may be
81 taken after the hour of five o'clock antemeridian on
82 Sunday any wild animals or wild birds: *Provided, how-*
83 *ever,* That traps previously and legally set may be tended
84 after the hour of five o'clock antemeridian on Sunday, if
85 the person so doing shall not have firearms or long bow
86 of any description in his possession;

87 (12) Hunt with firearms or long bow while under the
88 influence of intoxicating liquor;

89 (13) Possess a ferret;

90 (14) Buy raw furs, pelts or skins of fur-bearing
91 animals unless licensed to do so;

92 (15) Have in his possession or about his premises,
93 without the written permission of the director, any hunt-
94 ing or fishing paraphernalia which cannot be used law-
95 fully in this state for hunting or fishing, and any con-
96 servation officer shall remove and destroy such hunting
97 and fishing paraphernalia, whenever found in this state,
98 and the person or persons claiming ownership shall have
99 no recourse at law against such confiscation and de-
100 struction;

101 (16) Catch, take, kill, or attempt to catch, take or kill
102 any fish at any time by any means other than by rod,
103 line, and hooks with natural or artificial lures unless
104 otherwise authorized by law or regulation issued by the
105 director: *Provided, however,* That snaring of any species
106 of suckers, carp, fallfish and creek chubs shall at all
107 times be lawful;

108 (17) Employ or hire, or induce or persuade, by the
109 use of money or other things of value, or by any means,

110 any person to hunt, take, catch or kill, any wild animal
111 or wild bird except those species on which there is no
112 closed season, or to fish for, catch, take or kill any fish,
113 amphibian or aquatic life which is protected by the
114 provisions of this chapter or regulations of the director,
115 or the sale of which is prohibited;

116 (18) Hunt, catch, take, kill, capture, pursue, trans-
117 port, possess or use any migratory game or nongame
118 birds included in the terms of conventions between the
119 United States and Great Britain and between the United
120 States and United Mexican States for the protection of
121 migratory birds and game mammals concluded, respec-
122 tively, August sixteen, one thousand nine hundred six-
123 teen, and February seven, one thousand nine hundred
124 thirty-six, except during the time and in the manner and
125 numbers prescribed by the Federal Migratory Bird
126 Treaty Act and regulations made thereunder;

127 (19) Kill, take, catch, or have in his possession living
128 or dead, any wild bird, other than a game bird; or ex-
129 pose for sale, or transport within or without the state
130 any such bird, except as aforesaid. No part of the plum-
131 age, skin or body of any protected bird shall be sold or
132 had in possession for sale, except mounted or stuffed
133 plumage, skin, bodies or heads of such birds legally
134 taken and stuffed or mounted, irrespective of whether
135 such bird was captured within or without this state, ex-
136 cept the English or European sparrow (*Passer domes-*
137 *ticus*), starling (*sturnus vulgaris*), sharp-shinned hawk
138 (*Accipiter striatus*), Cooper's Hawk (*Accipiter cooperii*),
139 goshawk (*Accipiter gentilis*), crow (*Corvus brachyrhyn-*
140 *chos*) and cowbird (*Molothrus ater*), which shall not be
141 protected and the killing thereof at any time is lawful;

142 (20) Use dynamite or any like explosives or poisonous
143 mixture placed in any waters of the state for the purpose
144 of killing or taking fish. Any person violating the provi-
145 sions of this subdivision shall be guilty of a felony, and,
146 upon conviction thereof, shall be imprisoned for not less
147 than six months nor more than three years, and, in the
148 discretion of the court, may be fined not more than five
149 hundred dollars;

150 (21) Have both a bow and a gun in the fields or
151 woods at the same time;

152 (22) Have a crossbow in the woods or fields or use a
153 crossbow to hunt for, take or attempt to take any wildlife;

154 (23) Take or attempt to take turkey, bear, elk or
155 deer with any arrow unless the same is equipped with a
156 point having at least two sharp cutting edges measuring
157 in excess of three fourths of an inch wide;

158 (24) Take or attempt to take any wildlife with an
159 arrow having an explosive head or shaft, a poisoned
160 arrow, or an arrow which would affect wildlife by any
161 chemical action;

162 (25) Shoot an arrow across any public highway or
163 from aircraft, motor-driven watercraft, motor vehicle or
164 other land conveyance;

165 (26) Permit any dog owned by him or under his
166 control to chase, pursue or follow upon the track of
167 any game animal or game bird, either day or night,
168 between the first day of May and the fifteenth day of
169 August next following: *Provided, however,* That dogs
170 may be trained on game animals and game birds, except
171 deer and wild turkeys, and field trials may be held or
172 conducted on the grounds or lands of the owner or by
173 his bona fide tenant or tenants or upon the grounds or
174 lands of another person with his written permission or
175 on public lands, at any time: *Provided further,* That the
176 person training said dogs does not have firearms or other
177 implements in his possession during the closed season
178 on such game animals and game birds, whereby game
179 animals or game birds could be taken or killed; and

180 (27) Conduct or participate in a field trial, water race
181 or wild hunt hereafter referred to as trial: *Provided,*
182 *however,* That any person, group of persons, club or
183 organization may hold such trial at any time of the year
184 upon obtaining such permit as is provided for in section
185 fifty-six of this article. The person responsible for ob-
186 taining said permit shall prepare and keep an accurate
187 record of the names and addresses of all persons partici-
188 pating in said trial, and make same readily available for
189 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.

§20-2-20. Trapping beaver.

No person shall at any time:

2 (1) Set or maintain more than the number of beaver
3 traps, or groups of beaver traps, established as the season
4 limit in any one year by the director;

5 (2) Set any traps for beaver within fifteen feet of the
6 water line on the structure of any beaver house;

7 (3) Have in his possession an untagged beaver hide,
8 or part thereof, within the period beginning thirty days
9 after the end of the open season and ending with the first
10 day of the next succeeding open season for beavers; and

11 (4) Destroy, disturb, or in any manner interfere with
12 dams, houses or burrows of beavers while trapping for or
13 attempting to trap for beavers.

14 If any person shall unintentionally trap and kill more
15 beavers than fixed by regulations as the season bag limit,
16 he shall, within twenty-four hours thereafter, deliver
17 said beaver or beavers to a conservation officer.

CHAPTER 131

(Senate Bill No. 132—By Mr. Gainer)

[Passed February 13, 1967; in effect January 1, 1968. Approved by the Governor.]

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

21. Reporting beaver pelts taken; tags.

§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
2 other persons as are designated by the director shall be
3 the license issuing authorities hereunder. Each issuing
4 authority shall issue a license to a license applicant if,
5 in the opinion of such authority, the license applicant
6 is legally entitled to obtain the license applied for and
7 pays the proper fee therefor.

8 All materials and supplies necessary for the issuance
9 of licenses shall be furnished by the director to every
10 person authorized to issue the licenses.

11 Each license shall bear a serial number and shall be
12 signed by the issuing authority. The issuing authority
13 shall keep an accurate record, in the form and manner
14 prescribed by the director, of all licenses issued and of
15 all money collected as license fees.

16 Any license issuing authority may issue a duplicate
17 license, to replace any lost, destroyed or damaged license,
18 upon receipt of a verified application therefor duly exe-
19 cuted by the original license holder and the payment by
20 such applicant to the issuing authority of a duplicate li-
21 cense fee of one dollar, which shall be paid to the director
22 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 re-
2 quired to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident
4 children, or bona fide resident tenants of such land, may
5 hunt, trap or fish on their own land during open seasons
6 in accordance with the laws and regulations applying to
7 such hunting, trapping and fishing without obtaining a
8 license to do so unless such lands have been designated
9 as a wildlife refuge or preserve.

10 (b) Any bona fide resident of this state who is to-
11 tally blind may fish in this state without obtaining a
12 fishing license to do so. A written statement or certifi-
13 cate from a duly licensed physician of this state showing
14 the said resident to be totally blind shall serve in lieu
15 of a fishing license and shall be carried on the person of
16 said resident at all times while he is fishing in this state.

17 (c) All residents of West Virginia on active duty in
18 the armed forces of the United States of America, while
19 on leave or furlough, shall have the right and privilege
20 to hunt, trap or fish in season in West Virginia without
21 obtaining a license to do so. Leave or furlough papers
22 shall serve in lieu of any such license and shall be car-
23 ried on the person at all times while trapping, hunting
24 or fishing.

25 (d) In accordance with the provisions of section
26 twenty-seven of this article, any resident sixty-five years

27 of age or older shall not be required to have a license
28 to hunt, trap or fish during the legal seasons in West
29 Virginia, but in lieu of such license any such person shall
30 at all times while hunting, trapping or fishing, carry on
31 his person a card issued by the director stating his name,
32 address and date of birth.

33 (e) Residents of the state of Maryland who carry
34 hunting or fishing licenses valid in that state may hunt
35 or fish from the West Virginia banks of the Potomac
36 river without obtaining licenses to do so, but such hunt-
37 ing or fishing shall be confined to the fish and waterfowl
38 of the river proper and not on its tributaries: *Provided*,
39 That the state of Maryland shall first enter into a recip-
40 rocal agreement with the director extending a like priv-
41 ilege of hunting and fishing on the Potomac river from
42 the Maryland banks of said river to licensed residents
43 of West Virginia, without requiring said residents to ob-
44 tain Maryland hunting and fishing licenses.

45 (f) Residents of the state of Ohio who carry hunting
46 or fishing licenses valid in that state may hunt or fish on
47 the Ohio river or from the West Virginia banks of said
48 river without obtaining licenses to do so, but such hunt-
49 ing or fishing shall be confined to fish and waterfowl of
50 the river proper and not on its tributaries: *Provided*,
51 That the state of Ohio shall first enter into a reciprocal
52 agreement with the director extending a like privilege
53 of hunting and fishing from the Ohio banks of said river
54 to licensed residents of West Virginia without requiring
55 said residents to obtain Ohio hunting and fishing licenses.
56 In the event the state of Ohio accords this privilege to
57 residents of West Virginia, such Ohio residents will not
58 be required to obtain the license provided for by sec-
59 tion 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
 2 hunt, take, pursue, trap for, kill, catch or chase for sport
 3 any wild animal or wild bird; or fish for, take, kill or
 4 catch any fish or amphibians of any kind whatsoever in
 5 this state unless he shall have on his person a valid license
 6 issued to him.

7 It shall be unlawful for any person to use at any time
 8 any license other than those legally issued to him, or
 9 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.

§20-2-39. 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 section forty-a, relating to the authorization of class AB combination 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-wide hunting, trapping and fishing license and shall
2 entitle the licensee to hunt and trap for all legal species
3 of game and fish for all legal species of fish in all counties
4 of the state, except as prohibited by rules or regulations
5 of the director. It shall be issued only to citizens of the
6 United States who are residents of this state. The fee
7 therefor shall be five dollars.
8

CHAPTER 138

(Senate Bill No. 137—By Mr. Gainer)

[Passed February 13, 1967; in effect from passage. Approved by the Governor.]

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 non-residents 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 of West Virginia.

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
2 code of West Virginia, one thousand nine hundred thirty-
3 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
2 to the state or its proper officers pursuant to direction
3 of an act of Congress relating to disposition of funds re-
4 ceived on account of the leasing of lands for flood con-
5 trol, navigation and allied purposes, shall be allocated
6 by the state auditor to each county in accordance with
7 the method of allocation specified by the federal govern-
8 ment. The state auditor shall transfer to the road com-
9 mission fifty per cent of the funds so allocated to each
10 county for the purpose of maintenance of feeder and
11 state local service roads in the area or areas of the county
12 in which such flooded lands are located. Fifty per cent
13 of the funds so allocated to any county in which such
14 lands are located shall be paid by the state auditor to the
15 board of education of that county to be expended by the
16 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-

5 ous have ratified it and Congress has given consent
6 thereto.

Article III.

1 In each state, the state forester or officer holding the
2 equivalent position who is responsible for forest fire con-
3 trol shall act as compact administrator for that state and
4 shall consult with like officials of the other member states
5 and shall implement cooperation between such states in
6 forest fire prevention and control.

7 The compact administrators of the member states shall
8 organize to coordinate the services of the member states
9 and provide administrative integration in carrying out
10 the purposes of this compact.

11 The compact administrators shall formulate and, in
12 accordance with need, from time to time, revise a regional
13 forest fire plan for the member states.

14 It shall be the duty of each member state to formulate
15 and put in effect a forest fire plan for that state and take
16 such measures as may be necessary to integrate such
17 forest fire plan with the regional forest fire plan for-
18 mulated by the compact administrators.

Article IV.

1 Whenever the state forest fire control agency of a mem-
2 ber state requests aid from the state forest fire control
3 agency of any other member state in combating, con-
4 trolling or preventing forest fires, it shall be the duty
5 of the state forest fire control agency of that state to
6 render all possible aid to the requesting agency which
7 is consonant with the maintenance of protection at home.

Article V.

1 Whenever the forces of any member state are render-
2 ing outside aid pursuant to the request of another mem-
3 ber state under this compact, the employees of such
4 state shall, under the direction of the officers of the state
5 to which they are rendering aid, have the same powers
6 (except the power of arrest), duties, rights, privileges
7 and immunities as comparable employees of the state
8 to which they are rendering aid.

9 No member state or its officers or employees rendering
10 outside aid pursuant to this compact shall be liable on
11 account of any act or omission on the part of such forces
12 while so engaged, or on account of the maintenance or
13 use of any equipment or supplies in connection there-
14 with.

15 All liability, except as otherwise provided hereinafter,
16 that may arise either under the laws of the requesting
17 state or under the laws of the aiding state or under the
18 laws of a third state on account of or in connection with
19 a request for aid, shall be assumed and borne by the
20 requesting state.

21 Any member state rendering outside aid pursuant to
22 this compact shall be reimbursed by the member state
23 receiving such aid for any loss or damage to, or expense
24 incurred in the operation of any equipment answering
25 a request for aid, and for the cost of all materials, trans-
26 portation, wages, salaries, and maintenance of employees
27 and equipment incurred in connection with such request:
28 *Provided*, That nothing herein contained shall prevent
29 any assisting member state from assuming such loss, dam-
30 age, expense or other costs or from loaning such equip-
31 ment or from donating such services to the receiving
32 member state without charge or cost.

33 Each member state shall provide for the payment of
34 compensation and death benefits to injured employees
35 and the representatives of deceased employees in case
36 employees sustain injuries or are killed while rendering
37 outside aid pursuant to this compact, in the same manner
38 and on the same terms as if the injury or death were
39 sustained within such state: *Provided*, That nothing
40 herein shall be construed as relieving any person from
41 liability for his own negligent act or omission, or as im-
42 posing liability for such negligent act or omission upon
43 any state.

44 For the purposes of this compact the term "employee"
45 shall include any volunteer or auxiliary legally included
46 within the forest fire fighting forces of the aiding state
47 under the laws thereof.

48 The compact administrators shall formulate procedures

49 for claims and reimbursement under the provisions of
50 this article, in accordance with the laws of the member
51 states.

Article VI.

1 Nothing in this compact shall be construed to authorize
2 or permit any member state to curtail or diminish its
3 forest fire fighting forces, equipment, services or facili-
4 ties, and it shall be the duty and responsibility of each
5 member state to maintain adequate forest fire fighting
6 forces and equipment to meet demands for forest fire
7 protection within its borders in the same manner and
8 to the same extent as if this compact were not operative.

9 Nothing in this compact shall be construed to limit or
10 restrict the powers of any state ratifying the same to
11 provide for the prevention, control and extinguishment of
12 forest fires, or to prohibit the enactment or enforcement
13 of state laws, rules or regulations intended to aid in
14 such prevention, control and extinguishment in such
15 state.

16 Nothing in this compact shall be construed to affect
17 any existing or future cooperative relationship or ar-
18 rangement between the United States forest service and
19 a member state or states.

Article VII.

1 The compact administrators may request the United
2 States forest service to act as the primary research and
3 coordinating agency of the middle Atlantic interstate
4 forest fire protection compact in cooperation with the
5 appropriate agencies in each state, and the United States
6 forest service may accept the initial responsibility in
7 preparing and presenting to the compact administrators
8 its recommendations with respect to the regional fire
9 plan. Representatives of the United States forest serv-
10 ice may attend meetings of the compact administrators.

Article VIII.

1 The provisions of articles four and five of this com-
2 pact which relate to mutual aid in combating, control-
3 ing 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

5 of West Virginia are hereby authorized and directed
6 to do all things falling within their respective prov-
7 inces and jurisdiction necessary to the carrying out
8 of said compact. All officers, bureaus, departments and
9 persons of and in the state government or administra-
10 tion of the state of West Virginia are hereby authorized
11 and directed at convenient times and upon request
12 of the duly appointed members of the compact com-
13 mittee, to furnish information and data relating to the
14 purpose of said compact possessed by them or any
15 of them to said members of the compact committee.
16 They are further authorized to aid said compact com-
17 mittee members by loan of personnel, equipment, or
18 other means in carrying out the purposes of said com-
19 pact.

§20-3-29. Other powers supplementary.

1 Any powers herein granted to the state forester shall be
2 regarded as in aid of and supplemental to, and in no case
3 a limitation upon, any of the powers vested in said di-
4 rector by other laws of the state of West Virginia or
5 by the laws of the state of Delaware, Maryland, New
6 Jersey, Pennsylvania and Virginia, or by the Congress
7 or the terms of said compact.

— 3 —

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.
16. Judicial review.
17. Actions to abate nuisances; injunctive relief.
19. Violations; criminal penalties.

§20-5A-1. Declaration of policy.

1 It is declared to be the public policy of the state of
2 West Virginia to maintain reasonable standards of purity
3 and quality of the water of the state consistent with (1)
4 public health and public enjoyment thereof; (2) the
5 propagation and protection of animal, bird, fish, aquatic
6 and plant life; and (3) the attraction, development,
7 maintenance and expansion of agriculture, mining, manu-
8 facturing and other business and industry.

§20-5A-2. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (a) "Director" shall mean the director of the depart-
4 ment of natural resources;
 - 5 (b) "Board" shall mean the state water resources
6 board;
 - 7 (c) "Chief" shall mean the chief of the division of
8 water resources of the department of natural resour-
9 ces;
 - 10 (d) "Person," "persons" or "applicant" shall mean
11 any public or private corporation, institution, association,
12 firm or company organized or existing under the laws of
13 this or any other state or country; state of West Vir-
14 ginia; governmental agency; political subdivision; county
15 court; municipal corporation; industry; sanitary district;
16 public service district; drainage district; soil conserva-
17 tion district; watershed improvement district; partner-
18 ship; trust; estate; person or individual; group of per-
19 sons or individuals acting individually or as a group;
20 or any other legal entity whatever;

21 (e) "Water resources," "water" or "waters" shall
22 mean any and all water on or beneath the surface of
23 the ground, whether percolating, standing, diffused or
24 flowing, wholly or partially within this state, or border-
25 ing this state and within its jurisdiction, and shall in-
26 clude, without limiting the generality of the foregoing,
27 natural or artificial lakes, rivers, streams, creeks,
28 branches, brooks, ponds (except farm ponds, industrial
29 settling basins and ponds and water treatment facil-
30 ities), impounding reservoirs, springs, wells and water-
31 courses;

32 (f) "Pollution" shall mean the discharge or deposit,
33 directly or indirectly, of sewage, industrial wastes, or
34 other wastes, of whatever kind or character, in or near
35 any waters of the state, in such condition, manner or
36 quantity, as does, will, or is likely to (1) contaminate or
37 substantially contribute to the contamination of any
38 of such waters, or (2) alter or substantially contribute
39 to the alteration of the physical, chemical or biological
40 properties of any of such waters, if such contamination
41 or alteration, or the resulting contamination or alter-
42 ation where a person only contributes thereto, is to such
43 an extent as to make any of such waters (i) directly
44 or indirectly harmful, detrimental or injurious to the
45 public health, safety and welfare, or (ii) directly or
46 indirectly detrimental to existing animal, bird, fish,
47 aquatic or plant life, or (iii) unsuitable for present or
48 future domestic, commercial, industrial, agricultural,
49 recreational or other legitimate uses;

50 (g) "Sewage" shall mean water-carried human or
51 animal wastes from residences, buildings, industrial es-
52 tablishments or other places, together with such ground
53 water infiltration and surface water as may be pres-
54 ent;

55 (h) "Industrial wastes" shall mean any liquid, gas-
56 eous, solid or other waste substance, or a combination
57 thereof, resulting from any process of industry, manu-
58 facturing, trade or business, or from the development,
59 processing or recovery of any natural resources; and
60 the admixture with such industrial wastes of sewage,
61 or other wastes, as hereinafter defined, shall also be

62 considered "industrial wastes" within the meaning of
63 this article;

64 (i) "Other wastes" shall mean garbage, refuse, de-
65 cayed wood, sawdust, shavings, bark, and other wood
66 debris and residues, sand, lime, cinders, ashes, offal,
67 night soil, silt, oil, tar, dyestuffs, acids, chemicals, and
68 all other materials and substances not sewage or in-
69 dustrial wastes which may cause or might reasonably
70 be expected to cause or to contribute to the pollution
71 of any of the waters of the state;

72 (j) "Establishment" shall mean an industrial estab-
73 lishment, mill, factory, tannery, paper or pulp mill,
74 mine, colliery, breaker or mineral processing operation,
75 quarry, refinery, and each and every industry or plant
76 or works in the operation of which industrial wastes, or
77 other wastes are produced;

78 (k) "Sewer system" shall mean pipelines or con-
79 duits, pumping stations, and force mains, and all other
80 constructions, facilities, devices and appliances appur-
81 tenant thereto, used for collecting or conducting sewage,
82 industrial wastes, or other wastes to a point of disposal
83 or treatment;

84 (l) "Treatment works" shall mean any plant, fa-
85 cility, means, system, disposal field, lagoon, pumping
86 station, constructed drainage ditch or surface water
87 intercepting ditch, diversion ditch above or below the
88 surface of the ground, settling tank or pond, inciner-
89 ator, area devoted to sanitary landfills, or other works
90 not specifically mentioned herein, installed for the pur-
91 pose of treating, neutralizing, stabilizing, holding or dis-
92 posing of sewage, industrial wastes, or other wastes
93 and/or for the purpose of regulating or controlling the
94 quality and rate of flow thereof;

95 (m) "Disposal system" shall mean a system for dis-
96 posing of sewage, industrial wastes, or other wastes, and
97 shall be construed to include sewer systems and treat-
98 ment works;

99 (n) "Outlet" shall mean the terminus of a sewer sys-
100 tem or the point of emergence of any water-carried
101 sewage, industrial wastes, or other wastes, or the effluent
102 therefrom, into any of the waters of this state;

103 (o) "Activity" or "activities" shall mean any activity
104 or activities for which a permit is required by the pro-
105 visions of section five of this article; and

106 (p) "Code" shall mean the code of West Virginia,
107 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.

1 (a) In addition to all other powers and duties of
2 the chief of the department's division of water resources,
3 as prescribed in this article or elsewhere by law, the
4 chief, under the supervision of the director, shall have
5 and may exercise the following powers and authority
6 and shall perform the following duties:

7 (1) To encourage voluntary cooperation by all per-
8 sons in controlling and reducing the pollution of the
9 waters of this state, and to advise, consult and cooperate
10 with all persons, all agencies of this state, the federal
11 government or other states, and with interstate agencies
12 in the furtherance of the purposes of this article, and
13 to this end and for the purpose of studies, scientific
14 or other investigations, research, experiments and dem-
15 onstrations pertaining thereto, the department may re-
16 ceive moneys from such agencies, officers and persons
17 on behalf of the state: *Provided*, That the department
18 shall pay all moneys so received into a special fund
19 hereby created in the state treasury, which fund shall
20 be expended under the direction of the chief solely for
21 the purpose or purposes for which the grant, gift or con-
22 tribution shall have been made;

23 (2) To encourage the formulation and execution of
24 plans by cooperative groups or associations of municipal
25 corporations, industries, and other users of waters of
26 the state, who, jointly or severally, are or may be the
27 source of pollution of the same waters, for the control
28 and reduction of pollution;

29 (3) To encourage, participate in, or conduct or cause
30 to be conducted studies, scientific or other investiga-
31 tions, research, experiments and demonstrations re-
32 lating to water pollution, and the causes, control and
33 reduction thereof, and to collect data with respect thereto,

34 all as may be deemed advisable and necessary to carry
35 out the purposes of this article;

36 (4) To study and investigate all problems concern-
37 ing water flow, water pollution and the control and
38 reduction of such pollution, and to make reports and
39 recommendations with respect thereto;

40 (5) To collect and disseminate information relating
41 to water pollution and the control and reduction there-
42 of;

43 (6) To develop a public education and promotion
44 program to aid and assist in publicizing the need and
45 securing support for pollution control and abatement;

46 (7) To sample ground and surface water with suffi-
47 cient frequency to ascertain the standards of purity
48 or quality from time to time of the waters of the
49 state;

50 (8) To develop programs for the control and re-
51 duction of the pollution of the waters of the state;

52 (9) To exercise general supervision over the admin-
53 istration and enforcement of the provisions of this article,
54 and all orders issued pursuant to the provisions of this
55 article; and

56 (10) In cooperation with the college of engineering
57 at West Virginia University, to conduct studies, scien-
58 tific or other investigations, research, experiments and
59 demonstrations in an effort to discover economical and
60 practical methods for the elimination, disposal, control
61 and treatment of sewage, industrial wastes, and other
62 wastes, and the control and reduction of water pollution,
63 and to this end, the chief may cooperate with any public
64 or private agency and receive therefrom, on behalf of
65 the state, and for deposit in the state treasury, any
66 moneys which such agency may contribute as its part
67 of the expenses thereof, and all gifts, donations or con-
68 tributions received as aforesaid shall be expended by
69 the chief according to the requirements or directions of
70 the donor or contributor without the necessity of an
71 appropriation therefor, except that an accounting thereof
72 shall be made in the fiscal reports of the department.

73 (b) In addition to all other powers and duties of the

74 water resources board, as prescribed in this article or
75 elsewhere by law, the board shall have and may exer-
76 cise the following powers and authority and shall perform
77 the following duties:

78 (1) To cooperate with any interstate agencies for
79 the purpose of formulating, for submission to the Legis-
80 lature, interstate compacts and agreements relating to
81 the control and reduction of water pollution; and

82 (2) To promulgate rules and regulations, in accord-
83 ance with the provisions of chapter twenty-nine-a of
84 this code, to implement and make effective the powers,
85 duties and responsibilities vested in the board and the
86 chief by the provisions of this article and otherwise by
87 law.

88 (c) The board is hereby authorized to hire one or
89 more individuals to serve as hearing examiners on a
90 full or part-time basis. Such individuals may be attorneys
91 at law admitted to practice before any circuit court of
92 this state. All such hearing examiners shall be indi-
93 viduals authorized to take depositions under the laws of
94 this state.

95 (d) The board, any member thereof and the chief,
96 and their duly authorized representatives, shall have the
97 power and authority to make investigations, inspections
98 and inquiries concerning compliance with the provi-
99 sions of this article, any order made and entered in
100 accordance with the provisions of this article, any rule
101 or regulation promulgated by the board, and with the
102 terms and conditions of any permit issued in accordance
103 with the provisions of section seven of this article. In
104 order to make such investigations, inspections and in-
105 quires, the board, any member thereof and the chief,
106 and their duly authorized representatives, shall have
107 the power and authority to enter at all reasonable times
108 upon any private or public property, subject to respon-
109 sibility for their own safety and for any damage to the
110 property entered. All persons shall cooperate fully with
111 the person entering such property for such purposes.
112 Upon refusal of the person owning or controlling such
113 property to permit such entrance or the making of such
114 inspections, investigations and inquiries, the board or

115 the chief may apply to the circuit court of the county in
116 which such property is located, or to the judge thereof
117 in vacation, for an order permitting such entrance and
118 the making of such inspections, investigations and in-
119 quiries; and jurisdiction is hereby conferred upon such
120 court to enter such order upon a showing that the relief
121 asked is necessary for the proper enforcement of this
122 article: *Provided, however,* That a dwelling occupied
123 for residential purposes shall not be entered without a
124 search warrant.

125 (e) The board is hereby authorized and empowered
126 to investigate and ascertain the need and factual bases for
127 the establishment of public service districts as a means
128 of controlling and reducing pollution from unincorporated
129 communities and areas of the state, and to present re-
130 ports and recommendations thereon to the county court
131 or courts of the areas concerned, together with a re-
132 quest that such county court or courts create a public
133 service district, or districts, as therein shown to be needed
134 and required and as provided in article thirteen-a, chap-
135 ter sixteen of this code.

§20-5A-5. When permits required.

- 1 (a) It shall be unlawful for any person, until the
2 department's permit therefor has been granted, to:
 - 3 (1) Allow sewage, industrial wastes, or other wastes,
4 or the effluent therefrom, produced by or emanating
5 from an establishment to flow into the waters of this
6 state;
 - 7 (2) Make, cause or permit to be made any outlet,
8 or substantially enlarge or add to the load of any exist-
9 ing outlet, for the discharge of sewage, industrial wastes,
10 or other wastes, or the effluent therefrom, into the waters
11 of this state;
 - 12 (3) Acquire, construct, install or operate a disposal
13 system for the direct or indirect discharge or deposit
14 of sewage, industrial wastes, or other wastes or the efflu-
15 ent therefrom, into the waters of this state; or
 - 16 (4) Substantially extend, modify or add to a new
17 or existing disposal system for the direct or indirect

18 discharge or deposit of sewage, industrial wastes, or other
19 wastes or the effluent therefrom, into the waters of this
20 state.

21 (b) Where a person has a number of outlets emerg-
22 ing into the waters of this state in close proximity to one
23 another, such outlets may be treated as a unit for the
24 purposes of this section, and only one permit issued for
25 all of such outlets.

26 (c) Unless such permit was obtained and remains
27 in full force and effect, it shall also be unlawful for any
28 person to operate or use any such outlet, or to operate
29 or use such disposal system, or to operate or use such
30 extension or modification of, or addition to, such new
31 or existing disposal system.

**§20-5A-7. Procedure concerning permits required under arti-
cle; transfer of permits.**

1 (a) The director of the division of sanitary engineer-
2 ing shall promptly make his determination concerning
3 the health aspects of any proposed activity relating solely
4 to sewage. If the plans and specifications of the pro-
5 posed activity are in accord with all reasonable require-
6 ments of the department of health, the director of the
7 division of sanitary engineering shall approve the appli-
8 cation and issue the department of health's certificate
9 or permit therefor. If the application is approved, the
10 director of the division of sanitary engineering shall
11 promptly forward his department's certificate or permit,
12 together with the application and the information and
13 data submitted therewith, to the division of water re-
14 sources for the action of the chief thereof. Any denial
15 of the application by the director of the division of sani-
16 tary engineering shall be governed by the provisions
17 of chapter sixteen of this code and not by the provisions
18 of this article.

19 (b) The chief and his duly authorized representa-
20 tives shall conduct such investigation as is deemed
21 necessary and proper in order to determine whether
22 any such application should be granted or denied.

23 (c) The department's permit shall be issued upon

24 such reasonable terms and conditions as the chief may
25 direct if (1) the certificate or permit of the depart-
26 ment of health was issued (in those cases where the
27 director of the division of sanitary engineering was re-
28 quired to act as aforesaid) and/or (2) the application,
29 together with all supporting information and data and
30 other evidence, establishes that any and all discharges
31 or deposits of sewage, industrial wastes, or other wastes
32 or the effluent therefrom resulting from such proposed
33 activity will be treated and the quality and rate of
34 flow thereof regulated or controlled to the fullest extent
35 technically feasible in view of modern technology and
36 scientific methods for the treatment, regulation or con-
37 trol of sewage, industrial wastes, or other wastes, or
38 the effluent therefrom.

39 (d) An application for a permit incident to remedial
40 action in accordance with the provisions of section
41 eleven of this article shall be processed and decided
42 as any other application for a permit to acquire, con-
43 struct, install or operate a disposal system, or to ex-
44 tend, modify or add to a new or existing disposal
45 system.

46 (e) An application for any such permit shall be
47 acted upon by the chief (and by the director of the
48 division of sanitary engineering of the state depart-
49 ment of health in those cases in which such director
50 is by this section required to act) and the department's
51 permit (and the certificate or permit of the department
52 of health where the proposed activity relates solely
53 to sewage) delivered or mailed, or a copy of any order
54 of the chief denying any such application mailed as
55 hereinafter specified, as the case may be, to the appli-
56 cant by the chief within forty-five days after the date
57 upon which such complete application was received from
58 the applicant by the division of sanitary engineering
59 or within thirty days after the date upon which such
60 complete application was received from the applicant
61 by the division of water resources. Every effort shall
62 be made by the division of sanitary engineering and
63 the division of water resources to expedite all applica-
64 tions.

65 (f) When it is established that an application for a
66 permit should be denied, the chief shall make and enter
67 an order to that effect, which order shall specify the
68 reasons for such denial, and shall cause a copy of such
69 order to be served on the applicant by registered or
70 certified mail. The chief shall also cause a notice to
71 be served with the copy of such order, which notice
72 shall advise the applicant of his right to appeal to the
73 board by filing a notice of appeal, on the form pre-
74 scribed by the board for such purpose, with the board,
75 in accordance with the provisions of section fifteen of
76 this article, within thirty days after the date upon which
77 the applicant received the copy of such order. How-
78 ever, an applicant may alter the plans and specifications
79 for the proposed activity and submit a new application
80 for any such permit, in which event the procedure here-
81 inbefore outlined with respect to an original application
82 shall apply.

83 (g) Upon the sale of property which includes an activ-
84 ity for which the department's permit was granted, the
85 permit shall be transferable to the new owner, but the
86 transfer shall not become effective until it is made in the
87 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.**

1 If the chief, on the basis of investigations, inspections
2 and inquiries, determines that any person is causing the
3 pollution of any of the waters of the state, or does on
4 occasions cause pollution by not regulating and con-
5 trolling the quality and rate of flow of sewage, indus-
6 trial wastes, or other wastes or the effluent therefrom,
7 or otherwise, and that the same should be controlled
8 or reduced, considering existing permits, the amount
9 and effect of such pollution, the technical feasibility of
10 controlling or reducing such pollution, the health and
11 welfare of the public and other present and future uses
12 of the waters in question, he shall make and enter an
13 order directing such person in the alternative to either
14 (1) stop or prevent such discharges or deposits of sew-
15 age, industrial wastes, or other wastes or the effluent

16 therefrom determined to be causing such pollution, or
17 (2) take remedial action by acquiring, constructing or
18 installing, and using and operating a new disposal sys-
19 tem, or extending, modifying or adding to an existing
20 disposal system so as to control or reduce such pollu-
21 tion, by treating and/or regulating or controlling the
22 quality and rate of flow of any and all discharges or
23 deposits of sewage, industrial waste, or other wastes or
24 the effluent therefrom to the fullest extent technically
25 feasible in view of modern technology and scientific
26 methods for the treatment, regulation or control of sew-
27 age, industrial wastes, or other wastes or the effluent
28 therefrom and with regard for the rights and interests
29 of all persons concerned: *Provided, That*, if the chief
30 shall find that such person has been convicted of two
31 or more prior violations of the provisions of this ar-
32 ticle, the chief shall make and enter an order directing
33 such person to stop or prevent such discharges or de-
34 posits of sewage, industrial wastes or other wastes or
35 the effluent therefrom determined to be causing such pol-
36 lution. The chief shall fix a reasonable time in such
37 order by which any and all such discharges or deposits
38 must stop or be prevented or any such remedial action
39 must be completed. Such order shall also direct such
40 person to apply forthwith for a permit in accordance
41 with the provisions of sections five, six and seven of
42 this article.

43 The chief shall cause a copy of any such order to be
44 served by registered or certified mail or by a conserva-
45 tion officer or other law-enforcement officer upon such
46 person. The chief shall also cause a notice to be served
47 with the copy of such order, which notice shall advise
48 such person of his right to appeal to the board by filing
49 a notice of appeal, on the form prescribed by the board
50 for such purpose, with the board, in accordance with
51 the provisions of section fifteen of this article.

52 In the sole discretion of the chief, he may postpone
53 issuing any such order if he feels such pollution can
54 best be controlled or reduced by cooperative efforts with
55 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
2 order by taking remedial action, such person shall im-
3 mediately after receipt of such permit, take or begin
4 appropriate steps or proceedings to carry out such re-
5 medial action. In any such case it shall be the duty of
6 each individual offender, each member of a partner-
7 ship, each member of the governing body of a municipi-
8 pal corporation and each member of the board of di-
9 rectors or other governing body of a private corpora-
10 tion, association or other legal entity whatever, upon
11 receipt of such permit by such individual, partnership,
12 municipal corporation, private corporation, association
13 or other legal entity whatever, to see that appropriate
14 steps or proceedings to comply with such order are
15 taken or begun immediately after such receipt. The
16 chief may require progress reports, at such time inter-
17 vals as he deems necessary, setting forth the steps taken,
18 the proceedings started and the progress made toward
19 completion of such remedial action. All such remedial
20 action shall be diligently prosecuted to completion.

21 Failure of the governing body of a municipal corpora-
22 tion, or the board of directors or other governing body
23 of any private corporation, association, or other legal
24 entity whatever, to provide immediately for the financ-
25 ing and carrying out of such remedial action, as may
26 be necessary to comply with said order, by appropriate
27 ordinance or resolution shall constitute failure to take
28 or begin appropriate steps or proceedings to comply
29 with such order. If such person be a municipal cor-
30 poration, the cost of all such remedial action as may be
31 necessary to comply with said order shall be paid out
32 of funds on hand available for such purpose, or out of
33 the general funds of such municipal corporation, not
34 otherwise appropriated, and if there be not sufficient
35 funds on hand or unappropriated, then the necessary
36 funds shall be raised by the issuance of bonds, any direct
37 general obligation bond issue to be subject to the ap-

38 proval of the state sinking fund commission and the
39 attorney general of the state of West Virginia.

40 If the estimated cost of the remedial action to be taken
41 by a municipal corporation to comply with such final
42 order is such that any bond issue necessary to finance
43 such action would not raise the total outstanding bonded
44 indebtedness of such municipal corporation in excess
45 of the constitutional limit imposed upon such indebted-
46 ness by the constitution of this state, then and in that
47 event the necessary bonds may be issued as a direct
48 obligation of such municipal corporation, and retired
49 by a general tax levy to be levied against all property
50 within the limit of such municipal corporation listed
51 and assessed for taxation. If the amount of such bonds
52 necessary to be issued would raise the total outstand-
53 ing bonded indebtedness of such municipal corporation
54 above said constitutional limitation on such indebted-
55 ness, or if such municipal corporation by its governing
56 body shall decide against the issuance of direct obliga-
57 tion bonds, then such municipal corporation shall issue
58 revenue bonds and provide for the retirement thereof
59 in the same manner and subject to the same conditions
60 as provided for the issuance and retirement of bonds
61 in chapter twenty-five, acts of the Legislature, first ex-
62 traordinary session, one thousand nine hundred thirty-
63 three, and any amendments thereof: *Provided*, That the
64 provisions of section six of the abovementioned act, al-
65 lowing objections to be filed with the governing body,
66 and providing that a written protest of thirty per cent
67 or more of the owners of real estate shall require a four-
68 fifths vote of the governing body for the issuance of said
69 revenue bonds, shall not apply to bond issues proposed
70 by any municipal corporation to comply with a final
71 order made and entered under the authority of this
72 article, and such objections and submission of written
73 protest shall not be authorized, nor shall the same, if
74 made or had, operate to justify or excuse failure to com-
75 ply with such final order.

76 The funds made available by the issuance of either
77 direct obligation bonds or revenue bonds, as herein pro-
78 vided, shall constitute a "sanitary fund," and shall be

79 used for no other purpose than for carrying out such
80 final order; no public money so raised shall be ex-
81 pended by any municipal corporation for any purpose
82 enumerated in this article, unless such expenditure and
83 the amount thereof have been approved by the board.
84 The acquisition, construction or installation, use and
85 operation, repair, modification, alteration, extension,
86 equipment, custody and maintenance of any disposal sys-
87 tem by any municipal corporation, as herein provided,
88 and the rights, powers and duties with respect thereto,
89 of such municipal corporation and the respective offi-
90 cers and departments thereof, whether the same shall
91 be financed by the issuance of revenue or direct obli-
92 gation bonds, shall be governed by the provisions of said
93 chapter twenty-five, acts of the Legislature, first extra-
94 ordinary session, one thousand nine hundred thirty-
95 three, and any amendments thereof.

§20-5A-15. Appeal to water resources board.

1 (a) Any person adversely affected by an order made
2 and entered by the chief in accordance with the provi-
3 sions of this article, or aggrieved by failure or refusal
4 of the chief to act within the time required by section
5 seven of this article on an application for a permit or
6 aggrieved by the terms and conditions of a permit
7 granted under the provisions of this article, may appeal
8 to the water resources board for an order vacating or
9 modifying such order, or for such order, action or terms
10 and conditions as the chief should have entered, taken
11 or imposed. The person so appealing shall be known as
12 the appellant and the chief shall be known as the appel-
13 lee.

14 (b) Such appeal shall be perfected by filing a notice
15 of appeal, on the form prescribed by the board for such
16 purpose, with the board within thirty days after the date
17 upon which the appellant received the copy of such
18 order or received such permit, as the case may be. The
19 filing of the notice of appeal shall not stay or suspend
20 the execution of the order appealed from: *Provided*,
21 That if it appears to the director or the board that an
22 unjust hardship to the appellant will result from the

23 execution of the chief's order pending determination of
24 the appeal, the director or the board may grant a sus-
25 pension of such order and fix its terms. The notice of
26 appeal shall set forth the order or terms and conditions
27 complained of and the grounds upon which the appeal is
28 based. A copy of the notice of appeal shall be filed by the
29 board with the chief within three days after the notice of
30 appeal is filed with the board.

31 (c) Within seven days after receipt of his copy of the
32 notice of appeal, the chief shall prepare and certify to
33 the board a complete record of the proceedings out of
34 which the appeal arises including all documents and
35 correspondence in the chief's file relating to the matter
36 in question. With the consent of the board and upon
37 such terms and conditions as the board may prescribe,
38 any persons affected by any such activity or by such
39 alleged pollution may by petition intervene as a party
40 appellant or appellee. The board shall hear the appeal
41 de novo, and evidence may be offered on behalf of the
42 appellant and appellee, and, with the consent of the
43 board, by any intervenors.

44 (d) All of the pertinent provisions of article five,
45 chapter twenty-nine-a of this code shall apply to and
46 govern the hearing on appeal authorized by this section
47 and the administrative procedures in connection with
48 and following such hearing, with like effect as if the pro-
49 visions of said article five were set forth in extenso in
50 this section, with the following modifications or excep-
51 tions:

52 (1) Unless the board directs otherwise, the appeal
53 hearing shall be held in the city of Charleston, Kana-
54 wha county, West Virginia; and

55 (2) In accordance with the provisions of section one,
56 article five of said chapter twenty-nine-a, all of the testi-
57 mony at any such hearing shall be recorded by steno-
58 graphic notes and characters or by mechanical means.
59 Such reported testimony shall in every appeal hearing
60 under this article be transcribed.

61 (e) Any such appeal hearing shall be conducted by
62 a quorum of the board, but the parties may by stipula-

63 tion agree to take evidence before a hearing examiner
64 employed by the board. Upon request of any party to
65 the appeal, the evidence taken before a hearing examiner
66 shall be taken in the county in which the activity is
67 proposed to take place, or in which the activity is situ-
68 ate or would be situate upon completion thereof, or in
69 which the pollution is alleged to have occurred or to be
70 taking place, as the case may be. For the purpose of
71 conducting such appeal hearing, any member of the
72 board and the secretary thereof shall have the power
73 and authority to issue subpoenas and subpoenas duces
74 tecum in the name of the board, in accordance with the
75 provisions of section one, article five, chapter twenty-
76 nine-a of this code. All subpoenas and subpoenas duces
77 tecum shall be issued and served within the time and
78 for the fees and shall be enforced, as specified in sec-
79 tion one, article five of said chapter twenty-nine-a, and
80 all of the said section one provisions dealing with sub-
81 poenas and subpoenas duces tecum shall apply to sub-
82 poenas and subpoenas duces tecum issued for the pur-
83 pose of an appeal hearing hereunder.

84 (f) Any such hearing shall be held within twenty
85 days after the date upon which the board received the
86 timely notice of appeal, unless there is a postponement
87 or continuance. The board may postpone or continue any
88 hearing upon its own motion, or upon application of the
89 appellant, the appellee or any intervenors for good cause
90 shown. The chief shall be represented at any such hear-
91 ing by the attorney general or his assistants. At any
92 such hearing the appellant and any intervenor may
93 represent himself or be represented by an attorney at
94 law admitted to practice before any circuit court of this
95 state.

96 (g) After such hearing and consideration of all of
97 the testimony, evidence and record in the case, the board
98 shall make and enter an order affirming, modifying
99 or vacating the order of the chief, or shall make and
100 enter such order as the chief should have entered, or
101 shall make and enter an order approving or modifying
102 the terms and conditions of any permit issued. In de-
103 termining its course of action, the board shall take into

104 consideration not only the factors which the chief was
105 authorized to consider in making his order and in fixing
106 the terms and conditions of any permit, but also the
107 economic feasibility of treating and/or controlling the
108 sewage, industrial wastes or other wastes involved.

109 (h) Such order shall be accompanied by findings of
110 fact and conclusions of law as specified in section three,
111 article five, chapter twenty-nine-a of this code, and a
112 copy of such order and accompanying findings and con-
113 clusions shall be served upon the appellant, and any
114 intervenors, and their attorneys of record, if any, and
115 upon the appellee in person or by registered or certified
116 mail.

117 (i) The board shall also cause a notice to be served
118 with the copy of such order, which notice shall advise
119 the appellant, the appellee and any intervenors of their
120 right to judicial review, in accordance with the provi-
121 sions of section sixteen of this article. The order of the
122 board shall be final unless vacated or modified upon
123 judicial review thereof in accordance with the provisions
124 of section sixteen of this article.

§20-5A-16. Judicial review.

1 (a) Any person or the chief adversely affected by a
2 final order made and entered by the board after such
3 appeal hearing, held in accordance with the provisions
4 of section fifteen of this article, is entitled to judicial
5 review thereof. All of the pertinent provisions of sec-
6 tion four, article five, chapter twenty-nine-a of this code
7 shall apply to and govern such review with like effect
8 as if the provisions of said section four were set forth
9 in extenso in this section, with the following modifica-
10 tions or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,
14 within the time specified in said section four, in the
15 circuit court of the county in which any activity or
16 activities are proposed to take place;

17 (2) As to cases involving an order revoking or sus-
18 pending a permit and directing any and all work on

19 any such activity to stop or suspending such work, or
20 directing all discharges or deposits of sewage, indus-
21 trial wastes, or other wastes or the effluent therefrom
22 resulting from any such activity to stop or suspending
23 such discharges or deposits, or directing that affirmative
24 action be taken to correct alleged and specified deficien-
25 cies concerning any such activity, the petition shall be
26 filed, within the time specified in said section four, in
27 the circuit court of the county in which any such activity
28 or activities are situate or would be situate upon com-
29 pletion thereof; and

30 (3) As to cases involving an order directing that
31 any and all discharges or deposits of sewage, industrial
32 wastes, or other wastes or the effluent therefrom de-
33 termined to be causing pollution be stopped or prevented
34 or else that remedial action be taken, the petition shall
35 be filed, within the time specified in said section four,
36 in the circuit court of the county in which the pollution
37 is alleged to have occurred or to be taking place.

38 (b) The judgment of the circuit court shall be final
39 unless reversed, vacated or modified on appeal to the
40 supreme court of appeals, in accordance with the pro-
41 visions of section one, article six, chapter twenty-nine-a
42 of this code, except that notwithstanding the provisions
43 of said section one the petition seeking such review must
44 be filed with said supreme court of appeals within
45 ninety days from the date of entry of the judgment of
46 the circuit court.

47 (c) Legal counsel and services for the chief in all
48 appeal proceedings in the circuit courts and in the su-
49 preme court of appeals of this state shall be provided
50 by the attorney general or his assistants and in appeal
51 proceedings in the circuit courts by the prosecuting
52 attorneys of the several counties as well, all without
53 additional compensation, or the board or chief, with the
54 written approval of the attorney general may employ
55 special counsel to represent the board or chief in a par-
56 ticular proceeding.

§20-5A-17. Actions to abate nuisances; injunctive relief.

1 Whether any violation of the provisions of this arti-

2 cle or the rules and regulations of the board, or any
3 final order of the chief or the board shall result in
4 prosecution or conviction or not, any such violation shall
5 be deemed a nuisance which may be abated upon appli-
6 cation by the chief to the circuit court of the county
7 in which such nuisance or any part thereof shall exist,
8 or to the judge thereof in vacation. Upon application
9 by the chief, the circuit courts of this state may by
10 mandatory or prohibitive injunction compel compliance
11 with the provisions of this article, the rules and regula-
12 tions of the board, or all final orders of such chief or
13 board. Any application for an injunction to compel
14 compliance with any final order of the chief or board
15 shall be made to the circuit court of the county in which
16 the activity to which the order relates is proposed to
17 take place, or in which the activity to which the order
18 relates is situate or would be situate upon completion
19 thereof, or in which the pollution to which the order
20 relates is alleged to have occurred or to be taking place,
21 as the case may be, or to the judge thereof in vacation.
22 Upon application by the chief to the circuit court of
23 the county in which a municipal corporation is located,
24 or in which any person resides or does business, or to
25 the judge thereof in vacation, such court may by in-
26 junction require the performance of any duty imposed
27 upon such municipal corporation or persons by the
28 provisions of this article. The court may issue a tem-
29 porary injunction in any case pending a decision on
30 the merits of any application filed.

31 In cases of aggravated pollution where irreparable
32 damage will result from any delay incident to the ad-
33 ministrative procedures set forth in this article, the
34 chief, with the consent of the director, may forthwith
35 apply to the circuit court of the county in which the
36 pollution is taking place for a temporary injunction.
37 Such court may issue a temporary injunction pending
38 final disposition of the case by the chief or the board, in
39 the event an appeal is taken to the board.

40 The judgment of the circuit court upon any applica-
41 tion permitted by the provisions of this section shall be
42 final unless reversed, vacated or modified on appeal to

43 the supreme court of appeals. Any such appeal shall be
44 sought in the manner provided by law for appeals from
45 circuit courts in other civil cases, except that the peti-
46 tion seeking such review must be filed with said supreme
47 court of appeals within ninety days from the date of
48 entry of the judgment of the circuit court.

49 The chief shall be represented in all such proceedings
50 by the attorney general or his assistants and in such
51 proceedings in the circuit courts by the prosecuting at-
52 torneys of the several counties as well, all without ad-
53 ditional compensation.

§20-5A-19. Violations; criminal penalties.

1 Any person who fails or refuses to discharge any duty
2 imposed upon him by this article or by any rules and
3 regulations of the board, or by any final order of the
4 chief or board, or who fails or refuses to apply for and
5 obtain a permit as required by the provisions of this
6 article, shall be guilty of a misdemeanor, and, upon
7 conviction thereof, shall be punished for a first offense
8 by a fine of not less than twenty-five dollars nor more
9 than one hundred dollars, and for a second offense by a
10 fine of not less than two hundred dollars nor more
11 than five hundred dollars, and for a third and each
12 subsequent offense by a fine of not less than five hundred
13 dollars nor more than one thousand dollars or by im-
14 prisonment for a period not to exceed six months, or
15 in the discretion of the court by both such fine and im-
16 prisonment. Each day upon which such failure continues
17 shall constitute a separate offense.

— 3 —

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.

26 Upon a showing that any water sample as herein pro-
27 vided was taken in conformity with standard and rec-
28 ognized procedures, such sample shall be admissible in
29 any court of this state for the purpose of enforcing the
30 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.
9. Preplanning plans.
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.
16. Performance bonds.
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.
21. Monthly report by operator.
22. Leasing of lands owned by the state for the surface mining of coal therefrom.
23. Participation with federal government and other governmental agencies.
24. Rules and regulations.
25. Noncompliance.
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

11 soil erosion, pyritic shales and materials, landslides, nox-
12 ious materials, stream pollution and accumulation of
13 stagnant water, increases the likelihood of floods and
14 slides, destroys the value of some lands for agricultural
15 purposes and some lands for recreational purposes, de-
16 stroys aesthetic values, counteracts efforts for the con-
17 servation of soil, water and other natural resources, and
18 destroys or impairs the health, safety, welfare and prop-
19 erty rights of the citizens of West Virginia, where proper
20 reclamation is not practiced.

21 The Legislature also finds that there are wide varia-
22 tions regarding location and terrain conditions surround-
23 ing and arising out of the surface mining of minerals,
24 primarily in topographical and geological conditions, and
25 by reason thereof, it is necessary to provide the most
26 effective, beneficial and equitable solution to the problems
27 involved.

28 The Legislature further finds that authority should
29 be vested in the director of the department of natural
30 resources to administer and enforce the provisions of this
31 article.

32 The director of the department of natural resources
33 and the director of the department of mines shall co-
34 operate with respect to departmental programs and rec-
35 ords so as to effect an orderly and harmonious adminis-
36 tration of the provisions of this article. The director of
37 natural resources may avail himself of any services which
38 may be provided by other state agencies in this state and
39 other states or by agencies of the federal government,
40 and may reasonably compensate them for such services.
41 He may also receive any federal funds, state funds or any
42 other funds for the reclamation of land affected by sur-
43 face mining. The department of mines and all depart-
44 ments, schools and colleges of West Virginia University
45 shall cooperate fully with the division of reclamation of
46 the department of natural resources in administering and
47 enforcing the provisions of this article.

48 No public officer or employee in the department of nat-
49 ural resources, the department of mines, or the office of
50 attorney general, having any responsibility or duty either
51 directly or of a supervisory nature with respect to the ad-

52 ministration or enforcement of this article shall (1) en-
53 gage in surface mining as a sole proprietor or as a partner
54 or (2) be an officer, director, stockholder, owner or part
55 owner of any corporation or other business entity en-
56 gaged in surface mining or (3) be employed as an at-
57 torney, agent or in any other capacity by any person, part-
58 nership, firm, association, trust or corporation engaged in
59 surface mining. Any violation of this paragraph by any
60 such public officer or employee shall constitute grounds
61 for his removal from office or dismissal from his employ-
62 ment, as the case may be.

§20-6-2. Definitions.

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

3 (a) "Surface mining" shall mean all industrial ac-
4 tivity for the recovery of minerals, except those activ-
5 ities subject to the provisions of articles one, two, four,
6 five and seven, chapter twenty-two of the code of West
7 Virginia, one thousand nine hundred thirty-one, as
8 amended, and subject to such exception, shall include
9 plant and equipment used in processing said minerals;

10 (b) "Surface mine" shall mean all areas surface
11 mined or being surface mined, as well as adjacent areas
12 ancillary to the operation, together with preparation and
13 processing plants, storage areas and haulageways: *Pro-*
14 *vided*, That mines subject to the provisions of articles one,
15 two, four, five and seven, chapter twenty-two of said code,
16 are not "surface mines" within this definition;

17 (c) "Disturbed land" or "land disturbed" shall mean
18 (1) the area from which the overburden has been re-
19 moved in surface-mining operations, (2) the area covered
20 by the spoil, and (3) any areas used in surface-mining
21 operations which by virtue of their use are susceptible to
22 excessive erosion including all lands disturbed by the con-
23 struction or improvement of haulageways;

24 (d) "Minerals" as used in this article shall mean coal,
25 clay, manganese and iron ore;

26 (e) "Director" shall mean the director of natural re-
27 sources or his authorized agents;

28 (f) "Operator" shall mean any individual, partnership,
29 firm, association, trust or corporation who or which is
30 granted a permit to engage in any activity covered by this
31 article; and

32 (g) "Person" shall mean any individual, partnership,
33 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
2 natural resources a division of reclamation, and the direc-
3 tor of natural resources shall appoint and fix the compen-
4 sation of the head of said division who shall be known as
5 the chief of the division of reclamation. Said chief shall
6 have graduated from an accredited four-year college or
7 university with a degree in the field of engineering,
8 agriculture, forestry or related resource field, and shall
9 have four years of full-time paid employment in some
10 phase of natural resources management, two years of
11 which must have been in a supervisory or administrative
12 capacity.

13 Except as otherwise provided in this article, the di-
14 vision shall administer all of the laws of this state relating
15 to surface mining and subject to the approval of the di-
16 rector of natural resources shall exercise all of the powers
17 and perform all of the duties by law vested in and im-
18 posed upon said director in relation to said operations.
19 The division of reclamation shall have within its jurisdic-
20 tion and supervision all lands and areas of the state, mined
21 or susceptible of being mined, for the removal of min-
22 erals and all other lands and areas of the state deforested,
23 burned over, barren or otherwise denuded, unproductive
24 and subject to soil erosion and waste. Included within
25 such lands and areas shall be lands seared and denuded
26 by chemical operations and processes, abandoned coal-
27 mining areas, swamplands, lands and areas subject to
28 flowage easements and backwaters from river locks and
29 dams, and river, stream, lake and pond shore areas sub-
30 ject to soil erosion and waste. The jurisdiction and super-
31 vision exercised by the division shall be consistent with
32 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 inspectors; appointment and qualifications.

The director shall determine the number of surface-
2 mining reclamation supervisors and inspectors needed to
3 carry out the purposes of this article and appoint them as
4 such. All such appointees shall be qualified civil service
5 employees, but no person shall be eligible for such ap-
6 pointment until he has served in a probationary status
7 for a period of one year to the satisfaction of the director
8 of natural resources: *Provided*, That the provisions of this
9 section shall not affect the status of persons employed on
10 the effective date of this article as reclamation inspectors
11 under the former provisions of this article, if such persons
12 are qualified civil service employees.

§20-6-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make
2 all necessary surveys and inspections of surface-mining
3 operations, shall administer and enforce all surface-min-
4 ing laws, rules and regulations, and shall perform such
5 other duties and services as may be prescribed by the
6 director of the department of natural resources. Such
7 inspectors shall give particular attention to the condi-
8 tions of each permit to insure compliance therewith. The
9 director shall cause inspections to be made of each surface-
10 mining operation in this state by a surface-mining recla-
11 mation inspector at least once every thirty days. Said in-
12 spector shall note all violations of law thereat and report
13 the same to the director in writing, furnishing a copy of
14 said report to the operator concerned.

§20-6-6. Reclamation commission; duties, functions and compensation.

There is hereby created and established in the depart-
2 ment of natural resources a reclamation commission
3 which shall be composed of the director of natural re-
4 sources, serving as chairman, the chief of the division of
5 reclamation, and the director of the department of mines.

6 The members of the commission shall receive no com-
7 pensation for their services on the commission, but shall
8 be reimbursed for their expenses incurred in performing
9 their functions. The commission shall meet upon the
10 call of any member. The director, if he deem such action
11 necessary, may request the attorney general to appoint
12 one or more assistant attorneys general who shall perform
13 such duties as may be required by the director. The at-
14 torney general, in pursuance of such request, may select
15 and appoint one or more assistant attorneys general, to
16 serve at the will and pleasure of the attorney general,
17 and such assistant or assistants shall be paid out of any
18 funds made available for that purpose by the Legislature
19 to the department of natural resources.

20 The commission shall have authority to:

21 (a) Promulgate reasonable rules and regulations, in
22 accordance with the provisions of chapter twenty-nine-a
23 of this code, to implement the provisions of this article;

24 (b) Make investigations or inspections necessary to
25 insure compliance with the provisions of this article;

26 (c) Conduct hearings under provisions of this article
27 or rules and regulations adopted by the commission and
28 for the purpose of any investigation or hearing, here-
29 under, the commission or any member thereof may
30 administer oaths or affirmations, subpoena witnesses,
31 compel their attendance, take evidence and require pro-
32 duction of any books, papers, correspondence, memoranda,
33 agreements, or other documents or records relevant or
34 material to the inquiry;

35 (d) Order, through the director, the suspension of
36 any permit for failure to comply with any of the pro-
37 visions of this article or any rules and regulations adopted
38 pursuant thereto;

39 (e) Order, through the director, a cease and desist
40 order of any operation that is started without a permit
41 as required by law;

42 (f) Appoint such advisory committees as may be of
43 assistance to the commission in the development of pro-
44 grams and policies; and

45 (g) Review orders and decisions of the director.

§20-6-7. Prospecting permit; bond.

It shall hereafter be unlawful for any person to use
2 excavating equipment in an area not covered by a surface-
3 mine permit for the purpose of removing the overburden
4 to determine the location, quantity or quality of a natural
5 coal deposit, making feasibility studies or for any other
6 purpose without having first obtained from the depart-
7 ment of natural resources a permit therefor as provided
8 in this section. Application for a prospecting permit shall
9 be made in writing on forms prescribed by the director
10 of natural resources and shall be signed and verified by
11 the applicant. The application shall be accompanied by:
12 (1) A United States geological survey topographic map
13 showing by proper markings the crop line and the name,
14 where known, of the seam or seams to be prospected;
15 (2) a reclamation plan for the proposed disturbed areas
16 as required for holders of surface-mining permits in sec-
17 tion nine of this article; and (3) a bond, or cash or col-
18 lateral securities or certificates of the same type, form
19 and amount and in the same manner as provided in sec-
20 tion sixteen of this article in the amount of one hundred
21 fifty dollars per acre for the total estimated disturbed
22 acreage. If such bond is used it shall be payable to the
23 state of West Virginia and conditioned that the operator
24 shall faithfully perform the requirements of this article
25 as they relate to reclamation of the disturbed acreage.
26 The prospecting permit and the bond accompanying said
27 permit shall be released by the director in the same man-
28 ner as surface-mining permits and bonds are released.
29 In the event the holder of a prospecting permit desires to
30 mine the area covered by the prospecting permit, the di-
31 rector shall permit such holder to convert the prospecting
32 permit to a surface-mining permit, provided the holder of
33 said permit shall comply with the provisions of this arti-
34 cle 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
2 in surface mining without having first obtained from the
3 department of natural resources a permit therefor as pro-

4 vided in this section. Application for a surface-mining
5 permit shall be made in writing on forms prescribed by
6 the director of natural resources, and shall be signed and
7 verified by the applicant. The application, in addition to
8 such other information as may be reasonably required by
9 the director, shall contain the following information:
10 (1) The common name and geologic title, where applic-
11 able, of the mineral or minerals to be extracted; (2)
12 maps and plans as provided in section nine hereof; (3)
13 the owner or owners of the surface of the land to be
14 mined; (4) the owner or owners of the mineral to be
15 mined; (5) the source of the operator's legal right to
16 enter and conduct operations on the land to be covered
17 by the permit; (6) a reasonable estimate of the number
18 of acres of land that will be disturbed by mining on the
19 area to be covered by the permit; (7) the permanent and
20 temporary post-office addresses of the applicant and of
21 the owners of the surface and the mineral; (8) whether
22 any surface-mining permits are now held and the num-
23 bers thereof; (9) the names and post-office addresses of
24 every officer, partner, director (or person performing a
25 similar function), applicant, together with all persons,
26 if any, owning of record or beneficially (alone or with
27 associates), if known, ten per cent or more of any class
28 of stock of the applicant: *Provided*, That if such list be so
29 large as to cause undue inconvenience, the director may
30 waive the requirement that such list be made a part of such
31 application; (10) if known, whether applicant, any sub-
32 sidiary or affiliate or any person controlled by or under
33 common control with applicant, or any person required to
34 be identified by item (9) above, has ever had a surface or
35 strip-mining permit issued under the laws of this state
36 revoked or has ever had a surface-mining bond, or security
37 deposited in lieu of bond, forfeited; and (11) the reputed
38 owner or owners of all surface area within five hundred
39 feet of any part of proposed disturbed land. There shall
40 be attached to the application a certificate of insurance
41 certifying that the applicant has in force a public liability
42 insurance policy issued by an insurance company author-
43 ized to do business in this state covering all surface-
44 mining operations of the applicant in this state and afford-

45 ing personal injury and property damage protection in a
46 total amount of not less than fifty thousand dollars.

47 Upon the filing of an application in proper form, ac-
48 companied by the fees and bond required by this article
49 and said certificate of insurance, the director of natural
50 resources may issue the permit applied for if the applicant
51 has complied with all of the provisions of this article. If
52 the director finds that the applicant is or has been affili-
53 ated with or managed or controlled by, or is or has been
54 under the common control of, other than as an employee,
55 a person who or which has had a surface- or strip-mining
56 permit revoked or bond or other security forfeited for
57 failure to reclaim lands as required by the laws of this
58 state, he shall not issue a permit to the applicant: *Pro-*
59 *vided, however,* That no surface-mining permit shall be
60 refused because of any past revocation of a permit and
61 forfeiture of a bond or other security if, after such revo-
62 cation and forfeiture, the operator whose permit has been
63 revoked and bond forfeited shall have paid into the sur-
64 face-mining reclamation fund the full amount of the bond
65 so forfeited, and any additional sum of money determined
66 by the director of the department of natural resources to
67 be adequate to reclaim the land covered by such forfeited
68 bond.

69 The permit shall be valid for one year from its date
70 of issue. Upon verified application, containing such in-
71 formation as the director may reasonably require, ac-
72 companied by such fees and bond as are required by this
73 article, and a certificate of insurance as aforesaid, the
74 director shall from year to year renew the permit, if the
75 operation is in compliance with the provisions of this
76 article.

77 The registration fee for permits for surface mining,
78 whether by open cut, auger method or by highwall
79 mechanical mining or modification thereof, shall be one
80 hundred dollars. The annual renewal fee for permits for
81 surface mining shall be fifty dollars payable on the anni-
82 versary date of said permit upon renewal.

83 The permit of any operator who fails to pay any fees
84 provided for in this article shall be either suspended or
85 revoked.

86 An operator who has been issued a surface-mining per-
87 mit may use any of the usual methods of mining, includ-
88 ing the auger method or highwall mechanical mining
89 or any combination of mining methods defined as "surface
90 mining" in section two of this article, unless otherwise
91 provided by law. Any modifications of these methods
92 shall also be under the director's jurisdiction.

93 All registration and renewal fees for surface mining
94 shall be collected by the director and shall be deposited
95 with the treasurer of the state of West Virginia to the
96 credit of the surface reclamation fund.

§20-6-9. Preplanning plans.

Under the provisions of this article, and rules and regu-
2 lations adopted by the commission, the operator shall
3 prepare a complete reclamation plan for the area of land
4 to be disturbed. Said reclamation plan shall include, but
5 not necessarily be limited to, a proposed method of opera-
6 tion, grading, backfilling, soil preparation and planting
7 and such other proposals as may be necessary to develop
8 the complete reclamation plan contemplated by this
9 article. In developing this complete reclamation plan all
10 reasonable measures shall be taken to eliminate damages
11 to members of the public, their real and personal prop-
12 erty, public roads, streams and all other public property
13 from soil erosion, rolling stones and overburden, water
14 pollution and hazards dangerous to life and property. The
15 plan shall be submitted to the director and the director
16 shall notify the applicant by certified mail within thirty
17 days after receipt of the plan and complete application
18 if it is or is not acceptable. If the plan is not acceptable,
19 the director shall set forth the reasons why the plan is
20 not acceptable and he may propose modifications, delete
21 areas or reject the entire plan. Should the applicant dis-
22 agree with the decision of the director, he may, by writ-
23 ten notice, request a hearing before the commission. The
24 commission shall hold such hearing within thirty days
25 after receipt of this notice. When a hearing is held by
26 the commission, it shall notify the applicant of its decision
27 by certified mail within twenty days after the hearing.
28 Any person aggrieved by a final order of the commission

29 made after the hearing or without a hearing may appeal
30 to the reclamation board of review.

31 The application for a permit shall be accompanied by
32 two copies of an enlarged United States geological survey
33 topographic map meeting the requirements of the sub-
34 subdivisions below. Aerial photographs of the area shall
35 be acceptable if the plan for reclamation can be so shown
36 to the satisfaction of the director. The maps shall:

37 (a) Be prepared and certified by or under the super-
38 vision of a registered professional civil engineer or regis-
39 tered professional mining engineer, or by a land surveyor
40 approved by the director;

41 (b) Identify the area to correspond with the application;

42 (c) Show probable limits of adjacent deep-mining
43 operations, probable limits of adjacent inactive or mined-
44 out deep-mined areas and the boundaries of surface prop-
45 erties and names of surface and mineral owners of the
46 proposed disturbed area and the reputed owner or owners
47 of the surface area within five hundred feet of any part
48 of the proposed disturbed area;

49 (d) Be of such scale as may be prescribed by the
50 director;

51 (e) Show the names and locations of all streams,
52 creeks, or other bodies of public water, roads, buildings,
53 cemeteries, oil and gas wells, and utility lines on the area
54 of land to be disturbed and within five hundred feet of
55 such area;

56 (f) Show by appropriate markings the boundaries of
57 the area of land to be disturbed, the crop line of the seam
58 or deposit of coal to be mined, and the total number of
59 acres involved in the area of land to be disturbed;

60 (g) Show the date on which the map was prepared, the
61 north point and the quadrangle sketch and exact location
62 of the operation; and

63 (h) Show the drainage plan on and away from the
64 area of land to be disturbed. Such plan shall indicate the
65 directional flow of water, constructed drainways, nat-
66 ural waterways used for drainage, and the stream or
67 tributaries receiving or to receive this discharge.

68 The director may, in the exercise of his sound discre-

69 tion, permit deviation from the map requirements pro-
70 vided for in this section.

71 The certification of the maps shall read as follows: "I,
72 the undersigned, hereby certify that this map is correct,
73 and shows to the best of my knowledge and belief all
74 the information required by the surface-mining laws of
75 this state." The certificate shall be signed and notarized.
76 The director may reject any map as incomplete if its ac-
77 curacy is not so attested.

78 In addition to the information and maps required above,
79 each application for a permit shall be accompanied by
80 a detailed reclamation plan as required by this article.

81 A monument as prescribed by the department of nat-
82 ural resources shall be placed in an approved location
83 near the operation. If operations under a single permit
84 are not geographically continuous, the operator shall
85 locate additional monuments and submit additional maps
86 before mining other areas.

87 Upon an order of the director, the operator shall, within
88 thirty days after service of a copy of said order upon said
89 operator by certified United States mail, furnish to the
90 department of natural resources three copies of a progress
91 map prepared by or under the supervision of a registered
92 professional civil engineer or registered professional min-
93 ing engineer, or by a land surveyor approved by the di-
94 rector, showing the area disturbed by operations to the
95 date of such map. Such progress map shall contain infor-
96 mation identical to that required for both the proposed
97 and final maps, required by this article, and shall show
98 in detail completed reclamation work, as required by the
99 director. Such progress map shall include a geologic sur-
100 vey sketch showing the location of the operation, shall be
101 properly referenced to a permanent landmark, and shall
102 be within such reasonable degree of accuracy as may be
103 prescribed by the director. If no land has been disturbed
104 by operations during the preceding year, the operator
105 shall notify the director of this fact. A final map shall be
106 submitted within sixty days after completion of mining
107 operations. Failure to submit maps or aerial photographs
108 or notices at specified times shall cause the permit in
109 question to be suspended.

§20-6-10. Alternative plans; time.

An operator may propose alternative plans not calling
2 for backfilling where a water impoundment is desired, if
3 such restoration will be consistent with the purpose of
4 this article. Such plans shall be submitted to the director,
5 and if such plans are approved by the director and com-
6 plied with within such time limits as may be determined
7 by him as being reasonable for carrying out such plans,
8 the backfilling requirements of this article may be modi-
9 fied.

10 By regulations of the commission, time limits shall be
11 established requiring backfilling, grading and planting to
12 be kept current. All backfilling and grading shall be com-
13 pleted before equipment necessary for such backfilling
14 and grading is moved from the operation: *Provided*, That
15 the director may allow said equipment to be moved be-
16 fore said backfilling and grading is completed in order to
17 prevent unreasonable hardship on the operator involved.

18 If the operator or other person desires to conduct deep
19 mining upon the premises or use a deep-mine opening for
20 haulageways or other lawful purposes, the operator may
21 designate locations to be used for such purposes at which
22 places it will not be necessary to backfill as herein pro-
23 vided for until such deep mining or other use is com-
24 pleted, during which time the bond on file for that por-
25 tion of the operation shall not be released. Such locations
26 shall be described and designated on the map required
27 by the provisions of section nine of this article.

28 When the backfilling and grading have been completed
29 and approved by the director, the director shall release
30 that portion of the bond which was filed and designated
31 to cover the backfilling and grading requirements of this
32 article, the remaining portion of the bond in an amount
33 equal to one hundred dollars per acre, but not less than a
34 total amount of one thousand dollars being retained by
35 the treasurer until such time as the planting and revege-
36 tation is done according to law and is approved by the
37 director, at which time the director shall release the re-
38 mainder of the bond.

39 After the operation has been backfilled, graded and ap-

40 proved by the director, the operator shall prepare or
41 cause to be prepared a planting plan for the planting of
42 trees, shrubs, vines, grasses or legumes upon the area of
43 the land affected in order to provide a suitable vegetative
44 cover. The seed or plant mixtures, quantities, method of
45 planting, type and amount of lime or fertilizer, and any
46 other measures necessary to provide a suitable vegetative
47 cover shall be defined by the rules and regulations of the
48 commission. Such rules and regulations shall be promul-
49 gated, under the provisions of article three, chapter
50 twenty-nine-a of this code.

51 After the regrading has been approved by the director,
52 the planting called for by the preplan shall be carried out
53 in a manner so as to establish a satisfactory cover of trees,
54 shrubs, grasses, legumes or vines upon the disturbed area
55 covered by the planting plan within a reasonable period
56 of time. Such planting shall be done by the operator or
57 such operator may contract in writing with the soil con-
58 servation district for the district in which the operation
59 covered by such permit is located or with a private con-
60 tractor approved by the director to have such planting
61 done by such district or private contractor. When the
62 planting and revegetation is done by the operator accord-
63 ing to law and is approved by the director, that portion
64 of the bond then in effect shall be released. If any such
65 contract is entered into and such operator deposits with
66 such district or private contractor, as the case may be, a
67 sufficient amount of money for such planting, and re-
68 sponsibility for the planting is assumed by such soil con-
69 servation district or private contractor, that portion of the
70 bond then in effect shall be released.

71 The purpose of this section is to require restoration of
72 land disturbed by surface mining to a desirable purpose
73 and use. The director may, in the exercise of his sound
74 discretion when not in conflict with such purpose, modify
75 such requirements to bring about a more desirable land
76 use, including but not limited to, industrial sites, sanitary
77 landfills, recreational areas, building sites, etc.: *Provided,*
78 That the person or agency making such modifications will
79 execute contracts, post bond or otherwise insure full com-
80 pliance with the provisions of this section in the event

81 such modified program is not carried to completion within
82 a reasonable length of time.

§20-6-11. Limitations.

The Legislature finds that there are certain areas in the
2 state of West Virginia which are impossible to reclaim
3 either by natural growth or by technological activity and
4 that if surface mining is conducted in these certain areas
5 such operations may naturally cause stream pollution,
6 landslides, the accumulation of stagnant water, flooding,
7 the destruction of land for agricultural purposes, the de-
8 struction of aesthetic values, the destruction of recrea-
9 tional areas and the future use of the area and surround-
10 ing areas, thereby destroying or impairing the health and
11 property rights of others, and in general creating hazards
12 dangerous to life and property so as to constitute an im-
13 minent and inordinate peril to the welfare of the state,
14 and that such areas shall not be mined by the surface-
15 mining process.

16 Therefore, authority is hereby vested in the director to
17 delete certain areas from all surface-mining operations.

18 No application for a permit shall be approved by the
19 director if there is found on the basis of the information
20 set forth in the application or from information available
21 to the director and made available to the applicant that
22 the requirements of this article or rules and regulations
23 hereafter adopted will not be observed or that there is
24 not probable cause to believe that the proposed method of
25 operation, backfilling, grading or reclamation of the
26 affected area can be carried out consistent with the pur-
27 pose of this article.

28 If the director finds that the overburden on any part of
29 the area of land described in the application for a permit
30 is such that experience in the state of West Virginia with
31 a similar type of operation upon land with similar over-
32 burden shows that substantial deposition of sediment in
33 stream beds, landslides or acid water pollution cannot
34 feasibly be prevented, the director may delete such part of
35 the land described in the application upon which such
36 overburden exists.

37 If the director finds that the operation will constitute a
38 hazard to a dwelling house, public building, school,
39 church, cemetery, commercial or institutional building,
40 public road, stream, lake or other public property, then
41 he shall delete such areas from the permit application
42 before it can be approved.

43 The director shall not give approval to surface mine
44 any area which is within one hundred feet of any public
45 road, stream, lake or other public property and shall not
46 approve the application for a permit where the surface-
47 mining operation will adversely affect a state, national or
48 interstate park unless adequate screening and other meas-
49 ures approved by the commission are to be utilized and
50 the permit application so provides: *Provided*, That the
51 one-hundred-foot restriction aforesaid shall not include
52 ways used for ingress and egress to and from the minerals
53 as herein defined and the transportation of the removed
54 minerals, nor shall it apply to the dredging and removal
55 of minerals from the streams or watercourses of this state.

56 Whenever the director finds that ongoing surface-min-
57 ing operations are causing or are likely to cause any of the
58 conditions set forth in the first paragraph of this section, he
59 may order immediate cessation of such operations and he
60 shall take such other action or make such changes in the
61 permit as he may deem necessary to avoid said described
62 conditions.

§20-6-12. Time in which reclamation shall be done.

It shall be the duty of an operator to commence the
2 reclamation of the area of land disturbed by his operation
3 after the beginning of surface mining of that area in ac-
4 cordance with plans previously approved by the director
5 and to complete such reclamation within twelve months
6 after the permit has expired, except that such grading,
7 backfilling and water-management practices as are ap-
8 proved in the plans shall be kept current with the opera-
9 tion as defined by rules and regulations of the commis-
10 sion and no permit or supplement to a permit shall be
11 issued or renewed, if in the discretion of the director,
12 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

41 or terraces as will control the water runoff on long unin-
42 terrupted slopes. Additional restoration work may be
43 required by the director, according to rules and regula-
44 tions adopted by the commission.

§20-6-14. Obligations of the operator.

In addition to the method of operation, grading, back-
2 filling and reclamation requirements of this article and
3 rules and regulations adopted pursuant thereto, the oper-
4 ator shall be required to perform the following: (1) Cover
5 the face of the coal and the disturbed area with material
6 suitable to support vegetative cover of such thickness as
7 may be prescribed by the director or with a permanent
8 water impoundment; (2) bury under adequate fill all
9 toxic materials, roof coal, pyritic shale or materials de-
10 termined by the director to be acid-producing, toxic or
11 creating a fire hazard; (3) seal off, as directed by rules
12 and regulations, any breakthrough of acid water caused
13 by the operator; (4) impound, drain or treat all runoff
14 water so as to reduce soil erosion, damage to agricultural
15 lands and pollution of streams and other waters; and (5)
16 remove or bury all metal, lumber, equipment and other
17 refuse resulting from the operation.

18 No operator shall throw, dump or pile or permit the
19 dumping, piling or throwing or otherwise placing of any
20 overburden, stones, rocks, coal, particles of coal, earth,
21 soil, dirt, debris, trees, wood, logs or any other materials
22 or substances of any kind or nature beyond or outside
23 of the area of land which is under permit and for which
24 bond has been posted or place any of the foregoing in
25 such a way that normal erosion or slides brought about
26 by natural physical causes will permit the same to go
27 beyond or outside of the area of land which is under
28 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 oper-
2 ator shall file or cause to be filed a planting report with
3 the director on a form to be prescribed and furnished by
4 the director, giving the following information: (1) Iden-
5 tification of the operation; (2) the type of planting or
6 seeding, including mixtures and amounts; (3) the date

7 of planting or seeding; (4) the area of land planted;
8 and (5) such other relevant information as the director
9 may require. All planting reports shall be certified by
10 the operator, or by the party with which the operator
11 contracted for such planting, as aforesaid.

12 If the director authorizes an operator to defer planting
13 to provide vegetative cover for an area of land, he shall
14 set the time within which such planting shall be carried
15 out. If the operator has carried out on that area of land
16 the method of operation, backfilling, and grading and
17 the reclamation plans approved by the director other
18 than the planting, the director shall release that portion
19 of the bond filed by the operator and designated to cover
20 the backfilling and grading requirements of this article,
21 the remaining portion of the bond in an amount equal
22 to one hundred dollars per acre, to be retained until a
23 satisfactory planting plan has been carried out, or until
24 the remainder of such bond has been forfeited by the
25 operator: *Provided*, That the bond shall not be reduced,
26 because of the completion of the backfilling and grading
27 requirements, below one thousand dollars. If the re-
28 mainder of the bond is forfeited, it shall be expended
29 by the director in a planting program for the area of
30 land for which it was posted. If the operator does not
31 meet the planting requirements but does not want his
32 bond forfeited, he may pay to the director for deposit
33 in the reclamation fund a sufficient sum to cover the
34 remaining reclamation costs for the area covered by the
35 bond filed by him and such bond may then be released
36 by the director.

§20-6-16. Performance bonds.

Each operator who shall make application for a permit
2 under section eight of this article shall, at the time such
3 permit is requested, furnish bond, on a form to be pre-
4 scribed and furnished by the director, payable to the state
5 of West Virginia and conditioned that the operator shall
6 faithfully perform all of the requirements of this article.
7 The amount of the bond shall be not less than one hun-
8 dred dollars for each acre or fraction thereof of the land
9 to be disturbed: *Provided*, That the director shall have

10 the discretion to determine the amount per acre of the
11 bond that shall be required before a permit is issued,
12 such amount to be based upon the estimated reclamation
13 costs per acre, not to exceed a maximum of five hundred
14 dollars per acre or fraction thereof. The minimum
15 amount of bond furnished shall be three thousand
16 dollars. Such bond shall be executed by the operator and
17 a corporate surety licensed to do business in the state of
18 West Virginia: *Provided, however,* That in lieu of cor-
19 porate surety, the operator may elect to deposit with the
20 director cash, or collateral securities or certificates as
21 follows: Bonds of the United States or its possessions, of
22 the federal land banks, or of the home owners' loan cor-
23 poration; full faith and credit general obligation bonds of
24 the state of West Virginia, or other states, and of any
25 county, district or municipality of the state of West Vir-
26 ginia or other states; or certificates of deposit in a bank
27 in this state, which certificates shall be in favor of the
28 commission. The cash deposit or market value of such
29 securities or certificates shall be equal to or greater than
30 the sum of the bond. The director shall, upon receipt of
31 any such deposit of cash, securities or certificates, im-
32 mediately place the same with the treasurer of the state
33 of West Virginia whose duty it shall be to receive and
34 hold the same in the name of the state in trust for the
35 purposes for which such deposit is made. The operator
36 making the deposit shall be entitled from time to time to
37 receive from the state treasurer, upon the written order
38 of the director, the whole or any portion of any cash,
39 securities or certificates so deposited, upon depositing
40 with him in lieu thereof, cash or other securities or
41 certificates of the classes herein specified having value
42 equal to or greater than the sum of the bond.

43 It shall be unlawful for the owner or owners of surface
44 rights or the owner or owners of mineral rights to inter-
45 fere with the operator in the discharge of his obligations
46 to the state for the reclamation of lands disturbed by him.
47 If the owner or owners of the surface rights or the owner
48 or owners of the mineral rights desire another operator
49 or other operators to conduct mining operations on lands
50 disturbed by the operator furnishing bond hereunder, it

51 shall be the duty of said owner or owners to require the
52 other operator or operators to secure the necessary mining
53 permit and furnish suitable bond as herein provided.
54 The director may then release an equivalent amount of
55 the bond of the operator originally furnishing bond on the
56 disturbed area. The director shall determine the amount
57 of bond per acre required for other mining operations
58 within the limitations of this section: *Provided, however,*
59 That the minimum bond for this type of operation shall
60 be five hundred dollars. The director shall take into con-
61 sideration the character and nature of the overburden,
62 the future use of the land and all costs of backfilling,
63 grading and adequate reclamation, including planting,
64 and shall determine the total bond required for other
65 mining operations.

§20-6-17. Special reclamation fee.

In addition to the fees required by the provisions of sec-
2 tion eight of this article, every applicant for a permit to
3 surface mine coal shall, before said permit be issued, pay
4 to the director a special reclamation fee of thirty dollars
5 for each acre of land to be disturbed in the mining opera-
6 tion, with the exception of exempted roadways, storage
7 areas and processing plants. The director shall in due
8 course determine if the special reclamation fee for each
9 acre of land disturbed has been paid by such operator. In
10 the event that all said fees have not been paid, said oper-
11 ator shall pay said fee or fees, as above set forth. In the
12 event that said operator shall have paid a fee or fees for
13 more acres than actually disturbed, the director shall
14 certify said overpayment to the treasurer who shall re-
15 fund out of the special reclamation fund such overpay-
16 ment.

17 The director shall deposit with the treasurer of the state
18 of West Virginia, to the credit of the special reclamation
19 fund, all special reclamation fees collected.

20 The special reclamation fund shall be administered by
21 the director of the department of natural resources. The
22 director shall cause to be prepared plans for the reclama-
23 tion and rehabilitation of lands which are unreclaimed
24 and for which bond is either not posted or is uncollectable

25 and shall prepare specifications for reclamation of said
26 lands, and said director, as funds become available in the
27 special reclamation fund, shall reclaim and rehabilitate
28 said lands in accordance with said plans and specifica-
29 tions, and in so doing the director shall comply with the
30 provisions of article three, chapter five-a of the code of
31 West Virginia, one thousand nine hundred thirty-one, as
32 amended, in obtaining supplies, materials, equipment and
33 contractual services deemed necessary by the director for
34 the purposes of reclamation and rehabilitation of said
35 lands.

36 Some of the special reclamation fees collected may be
37 made available for the purchase of orphaned surface-
38 mined lands, for the reclamation thereof, and for the
39 engineering, administrative and research costs necessary
40 to said reclamation, providing federal funds on a match-
41 ing basis are made available for the purpose of reclaiming
42 said orphaned surface-mined lands.

43 The director shall make an annual report to the gov-
44 ernor and to the Legislature setting forth the number of
45 acres reclaimed and rehabilitated through the use, in
46 whole or in part, of the special reclamation fund provided
47 for herein. Such report shall identify each such reclama-
48 tion project, state the number of acres reclaimed thereby,
49 and show the county wherein located, and shall make a
50 detailed accounting of expenditures from the special
51 reclamation fund.

§20-6-18. Exception as to highway construction projects from reclamation requirements.

Any provision of this article to the contrary notwith-
2 standing, a person or operator shall not be subject to any
3 duty or requirement whatever with respect to reclama-
4 tion requirements when engaged in the removal for bor-
5 row and fill material for grading in federal and state
6 highway construction projects: *Provided*, That the pro-
7 visions of the highway construction contract requires the
8 furnishing of a suitable bond which provides for reclama-
9 tion wherever practicable of the area affected by such
10 recovery activity.

§20-6-19. Existing permits and performance bonds.

Any operator holding a valid surface-mining permit
2 under which tonnage has been produced within one year
3 preceding the effective date of this article or any oper-
4 ator holding a valid surface-mining permit under which
5 mining operations have not been commenced prior to the
6 effective date of this article shall within one hundred
7 twenty days after the effective date hereof convert such
8 permit, and the bond or bonds posted therefor, to comply
9 with the provisions of this article, as to all mining opera-
10 tions conducted and to be conducted after said effective
11 date. The provisions of this section shall not be construed
12 to require the regrading or replanting of any area on
13 which such work was satisfactorily performed prior to
14 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
2 to safeguard life and property shall extend to all surface-
3 mining operations insofar as such laws are applicable
4 thereto. The director of the department of mines shall
5 promulgate reasonable rules and regulations, in accord-
6 ance with the provisions of chapter twenty-nine-a of
7 said code, to protect the safety of those employed in and
8 around surface mines, and the enforcement of all laws,
9 and rules and regulations relating to the safety of those
10 employed in and around surface mines is hereby vested
11 in the department of mines.

§20-6-21. Monthly report by operator.

The operator of every surface mine shall, on or before
2 the end of each calendar month, file with the director
3 of mines a report covering the preceding calendar month
4 on forms furnished by the director. Such reports shall
5 state the number of accidents which have occurred, the
6 number of persons employed, the days worked and the
7 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
2 leased, and no present lease shall be renewed by the state,

3 nor any agency of the state, for the purpose of conduct-
4 ing surface-mining operations thereon, unless said lease
5 or renewal shall have been first authorized by an act of
6 the Legislature.

§20-6-23. Participation with federal government and other governmental agencies.

In the reclamation of land disturbed by surface mining
2 for which the department of natural resources has funds
3 available, the director may avail himself of any services
4 which may be provided by other state agencies or by
5 agencies of the federal government, and may compensate
6 them for such services. The director may also receive
7 any federal funds, state funds or any other funds for the
8 reclamation of land disturbed by surface mining. The
9 director may cause the reclamation work to be
10 done by his own employees or employees of other
11 governmental agencies or soil conservation districts, or
12 through contracts with qualified vendors. Such contracts
13 shall be awarded to the lowest responsible bidder upon
14 competitive bids after reasonable advertisement. The
15 director and any other agency and any contractor under
16 a contract with the department of natural resources shall
17 have the right of access to the land affected to carry out
18 such reclamation.

19 Any funds legally available to the director and any
20 public works program legally available (both funds and
21 services) may be expended and used to reclaim and re-
22 habilitate any lands that have been subjected to surface
23 mining that have not been reclaimed and rehabilitated
24 in accordance with standards set by the director and
25 which are not covered by bond to guarantee such recla-
26 mation.

§20-6-24. Rules and regulations.

The commission shall promulgate rules and regula-
2 tions, in accordance with the provisions of chapter twenty-
3 nine-a of said code, for the effective administration of this
4 article.

§20-6-25. Noncompliance.

If any of the requirements of this article or rules and
2 regulations promulgated pursuant thereto or the orders

3 of the director and the commission have not been com-
4 plied with within the time limits set by the director or
5 the commission or by this article, the director shall cause
6 a notice of noncompliance to be served upon the opera-
7 tor, which notice shall order the operation to cease, or
8 where found necessary, the director shall order the
9 suspension of a permit. A copy of such notice or order
10 shall be handed to the operator in person or served by
11 certified mail addressed to the operator at the permanent
12 address shown on the application for a permit. The notice
13 of noncompliance or order of suspension shall specify in
14 what respects the operator has failed to comply with this
15 article or the rules and regulations of the commission or
16 orders of the director and the commission. If the operator
17 has not reached an agreement with the director or has
18 not complied with the requirements set forth in the notice
19 of noncompliance or order of suspension within the time
20 limits set therein, the permit may be revoked by order of
21 the director and the performance bond shall then be
22 forfeited. If an agreement satisfactory to the director has
23 not been reached within thirty days after suspension of
24 any permit, any and all suspended permits shall then be
25 declared revoked and the performance bonds with respect
26 thereto forfeited.

27 When any bond is forfeited pursuant to the provisions
28 of this article, the director shall give notice to the at-
29 torney general who shall collect the forfeiture without
30 delay.

**§20-6-26. Adjudications, findings, etc., to be by written order;
contents; notice.**

Every adjudication, determination or finding by the
2 commission or director affecting the rights, duties or
3 privileges of any person subject to this article shall be
4 made by written order and shall contain a written find-
5 ing by the commission or director of the facts upon which
6 the adjudication, determination or finding is based.
7 Notice of the making of such order shall be given to the
8 person whose rights, duties or privileges are affected
9 thereby by mailing a true copy thereof to such person by
10 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

40 purposes, twenty-five dollars per day when actually en-
41 gaged in the performance of his work as a member and
42 when engaged in travel necessary in connection with such
43 work. In addition to such compensation each member
44 shall be reimbursed for all traveling, hotel and other ex-
45 penses necessarily incurred in the performance of his
46 work as a member.

47 Annually, one member shall be elected as chairman and
48 another member shall be elected as vice chairman. Such
49 officers shall serve for terms of one year.

50 The governor may remove any member of the board
51 from office for inefficiency, neglect of duty, malfeasance,
52 misfeasance or nonfeasance, after delivering to such
53 member the charges against him in writing, together with
54 at least ten days' written notice of the time and place at
55 which the governor will publicly hear such member,
56 either in person or by counsel, in defense of the charges
57 against him, and affording such member such hearing.
58 If such member is removed from office, the governor shall
59 file in the office of the secretary of state a complete state-
60 ment of the charges made against such member and a
61 complete report of the proceedings thereon. In such case
62 the action of the governor removing such member from
63 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
2 affected by any rule and regulation or order of the recla-
3 mation commission or order of the director or by their
4 or his failure to enter an order may appeal to the recla-
5 mation board of review for an order vacating or modify-
6 ing such rule and regulation or order, or for such order
7 as the commission or director should have entered.

8 The person so appealing to the board shall be known
9 as the appellant and the commission and/or director shall
10 be known as the appellee or appellees. The appellant and
11 appellee or appellees shall be deemed to be parties to
12 the appeal.

13 Such appeal shall be in writing and shall set forth the
14 rule and regulation, order or omission complained of and

15 the grounds upon which the appeal is based. Where the
16 appellant claims to be aggrieved or adversely affected by
17 an order, such appeal shall be filed with the board within
18 thirty days after the date upon which the appellant re-
19 ceived notice by certified mail of the making of the order
20 complained of. Where the appellant claims to be ag-
21 grieved or adversely affected by any rule and regulation
22 or omission, such appeal may be filed with the board at
23 any time. A notice of the filing of such appeal shall be
24 filed with the commission and director within three days
25 after the appeal is filed with the board.

26 Within seven days after receipt of such notice of appeal,
27 the commission or director shall prepare and certify to the
28 board a complete record of the proceedings of the reclama-
29 tion commission or director out of which the appeal arises,
30 including all documents and correspondence relating to
31 the matter. The expense of preparing the record shall be
32 taxed as a part of the costs of the appeal.

33 Upon the filing of such appeal, the board shall fix the
34 time and place at which the hearing on the appeal will be
35 held, which hearing shall be held within twenty days after
36 the notice of appeal is filed, and shall give the appellant
37 and the commission and director at least ten days' writ-
38 ten notice thereof by certified mail. The board may post-
39 pone or continue any hearing upon its own motion or upon
40 application of the appellant or of the commission or direc-
41 tor.

42 The filing of an appeal provided for in this section shall
43 not stay execution of the order appealed from.

44 The board shall hear the appeal de novo, and any party
45 to the appeal may submit evidence.

46 For the purpose of conducting a hearing on an appeal,
47 the board may require the attendance of witnesses and
48 the production of books, records and papers, and it may,
49 and at the request of any party it shall, issue subpoenas
50 for witnesses or subpoenas duces tecum to compel the
51 production of any books, records or papers, directed to
52 the sheriff of the county where such witnesses, books,
53 records or papers are found, which subpoenas and sub-
54 poenas duces tecum shall be served and returned in the
55 same manner as subpoenas and subpoenas duces tecum in

56 civil litigation are served and returned. The fees and
57 allowances for mileage of sheriffs and witnesses shall be
58 the same as those permitted in civil litigation in trial
59 courts. Such fees and mileage expenses incurred at the
60 request of the appellant shall be paid in advance by the
61 appellant, and the remainder of such fees and expenses
62 shall be paid out of funds appropriated for the expenses
63 of the division of reclamation.

64 In case of disobedience or neglect of any subpoena or
65 subpoena duces tecum served on any person, or the re-
66 fusals of any witness to testify to any matter regarding
67 which he may be lawfully interrogated, the circuit court
68 of the county in which such disobedience, neglect or
69 refusal occurs, or any judge thereof in vacation, on appli-
70 cation of the board or any member thereof, shall compel
71 obedience by attachment proceedings for contempt as
72 in the case of disobedience of the requirements of a sub-
73 poena or subpoena duces tecum issued from such court
74 or a refusal to testify therein. Witnesses at such hearings
75 shall testify under oath, and any member of the board
76 may administer oaths or affirmations to persons who so
77 testify.

78 At the request of any party to the appeal, a stenographic
79 record of the testimony and other evidence submitted
80 shall be taken by an official court shorthand reporter at
81 the expense of the party making the request therefor.
82 Such record shall include all of the testimony and other
83 evidence and the rulings on the admissibility of evidence,
84 but any party may at the time object to the admission
85 of any evidence and except to the rulings of the board
86 thereon, and if the board refuses to admit evidence the
87 party offering same may make a proffer thereof, and
88 such proffer shall be made a part of the record of such
89 hearing.

90 If upon completion of the hearing the board finds that
91 the rule and regulation or order appealed from was law-
92 ful and reasonable, it shall make a written order affirming
93 the rule and regulation or order appealed from; if the
94 board finds that such rule and regulation or order was
95 unreasonable or unlawful, it shall make a written order
96 vacating or modifying the rule and regulation or order

97 appealed from; and if the board finds that the commission
98 or director has unreasonably or unlawfully failed to
99 enter an order, it shall enter such order as it finds the
100 commission or director should have made. Every order
101 made by the board shall contain a written finding by the
102 board of the facts upon which the order is based. Notice
103 of the making of such order shall be given forthwith to
104 each party to the appeal by mailing a certified copy there-
105 of to each such party by certified mail.

106 The order of the board shall be final unless vacated
107 upon judicial review thereof.

§20-6-29. Appeal from order of board.

Any party adversely affected by an order of the rec-
2 lamation board of review, other than an order affirming,
3 modifying, or vacating a rule and regulation of the com-
4 mission, may obtain judicial review thereof by appealing
5 therefrom either to the circuit court of Kanawha county
6 or the circuit court of the county in which the surface-
7 mining operation to which the order relates is or was
8 conducted or is or was proposed to be conducted. Any
9 party adversely affected by an order of the reclamation
10 board of review, which order affirms, modifies or vacates
11 a rule and regulation of the commission, may obtain
12 judicial review thereof by appealing therefrom either
13 to the circuit court of Kanawha county or the circuit
14 court of the county in which the surface-mining operation
15 to which the rule and regulation in question relates is or
16 was conducted or is or was proposed to be conducted.
17 Any party desiring to so appeal shall file with the board
18 a notice of appeal designating the order appealed from
19 and stating whether the appeal is taken on questions of
20 law, questions of fact or questions of law and fact. A
21 copy of such notice shall also be filed by the appellant
22 with the court and shall be mailed or otherwise delivered
23 to the appellee or appellees. Such notice and copies there-
24 of shall be filed and mailed or otherwise delivered with-
25 in thirty days after the date upon which the appellant
26 received notice from the board by certified mail of the
27 making of the order appealed from. No appeal bond shall
28 be required to make an appeal on questions of law, ques-
29 tions of fact or questions of law and fact effective.

30 The filing of a notice of appeal shall not automatically
31 operate as a suspension of the order of the board. If it
32 appears to the court that an unjust hardship to the ap-
33 pellant will result from the execution of the board's order
34 pending determination of the appeal, the court may grant
35 a suspension of such order and fix its terms.

36 Within fifteen days after receipt of the notice of appeal,
37 the board shall prepare and file in the court the complete
38 record of the proceedings out of which the appeal arises,
39 including a transcript of the testimony and other evidence
40 which was submitted before the board. The expense of
41 preparing and transcribing such record shall be taxed as a
42 part of the costs of the appeal. The appellant shall provide
43 security for costs satisfactory to the court. Upon demand
44 by a party, the board shall furnish, at the cost of the party
45 requesting the same, a copy of such record. In the event
46 such complete record is not filed in the court within the
47 time provided for in this section, either party may apply
48 to the court to have the case docketed, and the court shall
49 order such record filed.

50 Appeals taken on questions of law, fact or both, shall
51 be heard upon assignment of error filed in the case or set
52 out in the briefs of the appellant. Errors not argued by
53 brief may be disregarded, but the court may consider
54 and decide errors which are not assigned or argued.

55 The hearing before the court shall be upon the record
56 made before the reclamation board of review. The court
57 may set aside any order of the reclamation board of
58 review which is clearly erroneous in view of the reliable,
59 probative and substantial evidence on the whole record,
60 or which is determined by the court to involve a clearly
61 unwarranted exercise of discretion. The judgment of the
62 court shall be final unless reversed, vacated or modified on
63 appeal to the supreme court of appeals of West Virginia,
64 and jurisdiction is hereby conferred upon such court to
65 hear and entertain such appeals upon application made
66 therefor in the manner and within the time provided for
67 civil appeals generally.

§20-6-30. Offenses; penalties; prosecutions; treble damages.

(a) Any person who shall conduct any surface-mining
2 operation, or any part thereof, without a permit or with-

3 out having furnished the required bond, or who shall
4 carry on such operation or be a party thereto on land not
5 covered by a permit, or who shall falsely represent any
6 material fact in an application for a permit or in an
7 application for the renewal of a permit, or who wilfully
8 violates any provision of this article, shall be guilty of
9 a misdemeanor, and, upon conviction thereof, shall be
10 punished by a fine of not less than one hundred nor more
11 than one thousand dollars or by imprisonment not exceed-
12 ing six months, or by both. Any person who delib-
13 erately violates any provision of this article or con-
14 ducts surface-mining operations without a permit shall
15 be guilty of a misdemeanor, and, upon conviction thereof,
16 shall be punished by a fine of not less than one thousand
17 nor more than ten thousand dollars or by imprisonment
18 not exceeding six months, or by both. Each day of viola-
19 tion constitutes a separate offense. It shall be the duty
20 of the director to institute prosecutions for violations
21 of the provisions hereof. Any person convicted un-
22 der the provisions of this section shall, in addition to
23 any fine imposed, pay to the director for deposit in the
24 surface mining reclamation fund an amount sufficient
25 to reclaim the area with respect to which such conviction
26 relates. The director shall institute any suit or other legal
27 action necessary for the effective administration of the
28 provisions of this article.

29 (b) In addition to and notwithstanding any penalties
30 provided by law, any operator who directly causes dam-
31 age to the property of others as a result of surface mining
32 shall be liable to them, in an amount not in excess of three
33 times the provable amount of such damage, if and only
34 if such damage occurs before or within one year after such
35 operator has completed all reclamation work with respect
36 to the land on which such surface mining was carried out
37 and all bonds of such operator with respect to such
38 reclamation work are released. Such damages shall be
39 recoverable in an action at law in any court of competent
40 jurisdiction. The director shall require, in addition to any
41 other bonds and insurance required by other provisions of
42 this article, that any person engaged in the business of
43 surface mining shall file with the director a certificate of

44 insurance, or other security, in an amount of not less than
45 ten thousand dollars, to cover possible damage to property
46 for which a recovery may be sought under the provisions
47 of this subsection.

§20-6-31. Effective date of article.

This article shall become effective on July first, one
2 thousand nine hundred sixty-seven. Irrespective of the
3 date of issuance of a permit, all operators shall immedi-
4 ately conform to any statutes enacted or rules and regula-
5 tions adopted on the effective date of such statute or rule
6 and regulation. The provisions of this section shall not
7 be construed to require the regrading or replanting of any
8 area on which such work was satisfactorily performed
9 prior to the effective date of the statute or rule and regu-
10 lation.

§20-6-32. Severability of provisions.

If any of the provisions of this article shall be held to
2 be invalid or unconstitutional, such invalidity or uncon-
3 stitutionality shall not affect other provisions of the
4 article, and to this end, the provisions of this article are
5 declared to be severable.

—c—

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
2 chapter, or rules and regulations promulgated under
3 the provisions of this chapter, the punishment for which
4 is not prescribed, shall be guilty of a misdemeanor, and,
5 upon conviction thereof, shall for each offense be fined
6 not less than twenty nor more than three hundred dollars,
7 or confined in jail not less than ten nor more than one
8 hundred days, or be both fined and imprisoned within
9 the limitations aforesaid; and, in the case of a violation
10 by a corporation, every officer or agent thereof directing
11 or engaging in such violation shall be guilty of a mis-
12 demeanor, and, upon conviction thereof, shall be subject
13 to the same penalties and punishment as herein provided:
14 *Provided, however,* That any person violating subdivision
15 three, section five, article two of this chapter, shall
16 be guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not less than one hundred dollars nor more
18 than five hundred dollars and shall be imprisoned for
19 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-

een, nineteen, twenty, twenty-one, twenty-two and twenty-three, all relating to motorboating.

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.

Section

11. Motorboats and other terms defined.
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.
13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.
14. Motorboats exempt from numbering.
15. Dealers' and manufacturers' certificate of number; applications and fees.
16. Boat liveries.
17. Motorboat muffling.
18. Care in handling watercraft; prohibited operation; duty to render aid in collision, accident or casualty; reports.
19. Water skiing and surfboarding.
20. Regattas, races and exhibitions; applications and permits.
21. Responsibility of owner, etc., for incapable operators of motorboats.
22. General rules and regulations for motorboating; special rules.
23. Local rules and regulations.

§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

11 customs of the United States government or any federal
12 agency successor thereto, nor to a vessel powered by a
13 motor of five horsepower or less; and

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, re-
18 served or created by agreement and securing payment or
19 performance of an obligation, but the term excludes a
20 lessee under a lease not intended as security.

**§20-7-12. Motorboat identification numbers required; applica-
tion for numbers; fee; displaying; reciprocity; change
of ownership; conformity with United States regula-
tions; issuing agents; records; renewal of certificate;
transfer of interest, abandonment, etc.; change of ad-
dress; unauthorized numbers; information to be fur-
nished assessors.**

Every motorboat, as herein defined, operating upon
2 public waters within the territorial limits of this state,
3 shall be numbered as herein provided:

4 (a) The owner of each motorboat requiring number-
5 ing by this state shall file an application for a number
6 with the director on forms approved by him. The appli-
7 cation shall be signed by the owner of the motorboat and
8 shall be accompanied by a fee of five dollars. All such
9 fees shall be deposited in the state treasury to the credit
10 of the state general fund. Upon receipt of the application
11 in approved form, the director shall enter the same upon
12 the records of his office and issue to the applicant a
13 number awarded to the motorboat and the name and
14 address of the owner. The owner shall paint on or attach
15 to each side of the bow of the motorboat the identification
16 number in such manner as may be prescribed by rules
17 and regulations of the director in order that it may be
18 clearly visible. The number shall be maintained in
19 legible condition. The certificate of number shall be
20 pocket size and shall be available at all times for inspec-
21 tion on the motorboat for which issued, whenever such
22 motorboat is in operation.

23 (b) The owner of any motorboat already covered by
24 a number in full force and effect which has been awarded
25 to it pursuant to then operative federal law or a federally
26 approved numbering system of another state shall record
27 the number prior to operating the motorboat on the
28 waters of this state in excess of the ninety-day reciprocity
29 period provided for in section fourteen of this article.
30 Such recordation shall be in the manner and pursuant to
31 procedure required for the award of a number under
32 subdivision (a) of this section, except that no additional
33 or substitute number shall be issued.

34 (c) Should the ownership of a motorboat change, a
35 new application form with fee shall be filed with the
36 director and a new certificate of number shall be awarded
37 in the same manner as provided for in an original award
38 of number.

39 (d) In the event that an agency of the United States
40 government shall have in force an overall system of
41 identification numbering for motorboats within the United
42 States, the numbering system employed pursuant to this
43 article by the commission shall be in conformity there-
44 with.

45 (e) The director may designate as issuing agent the
46 clerk of any county court and such other persons in each
47 county as he deems advantageous to provide for the
48 issuance of certificates of number in accordance with the
49 provisions of this article. For services rendered in issuing
50 such certificates, and collecting and paying over such
51 numbering fees, each issuing agent, other than a state
52 or county official, shall charge and retain an additional
53 fee of twenty-five cents from the person obtaining the
54 certificate of number. Every such issuing agent, unless
55 already under bond with the director as an agent for the
56 collection of its moneys, shall file a bond with the director,
57 payable to the state of West Virginia, in an amount to be
58 fixed by the director at not more than one thousand dol-
59 lars, before the supply of certificates of number is deliv-
60 ered to him, conditioned upon the faithful performance
61 of his obligation to issue certificates only in conformance
62 with the provisions of this article and the regulations

63 of the director. Each issuing agent, on the first day of
64 each month, shall remit to the director all moneys col-
65 lected for the director during the preceding month, and
66 shall accompany his remittance with a report showing
67 the name of the county, the names and addresses of the
68 persons paying the same, and the date of receipt thereof.

69 (f) All records of the director made or kept pursuant
70 to this section shall be public records.

71 (g) Such license shall be valid only until the last day
72 of the fiscal year in which the same is issued. If at the
73 end of such year ownership has remained unchanged, such
74 owner shall, upon application and payment of a fee of two
75 dollars, be granted a renewal of such certificate of num-
76 ber for an additional one-year period.

77 (h) The owner shall furnish the director notice of
78 the transfer of all or any part of his interest, other than
79 the creation of a security interest, in a motorboat num-
80 bered in this state pursuant to subdivisions (a) and (b)
81 of this section, or of the destruction or abandonment of
82 such motorboat, within fifteen days thereof. Such trans-
83 fer, destruction or abandonment shall terminate the cer-
84 tificate of number for such motorboat, except that in the
85 case of a transfer of a part interest which does not affect
86 the owner's right to operate such motorboat, such transfer
87 shall not terminate the certificate of number.

88 (i) Any holder of a certificate of number shall notify
89 the director within fifteen days if his address no longer
90 conforms to the address appearing on the certificate and
91 shall, as a part of such notification, furnish the director
92 with his new address. The director may provide in his
93 rules and regulations for the surrender of the certificate
94 bearing the former address and its replacement with a
95 certificate bearing the new address or for the alteration
96 of an outstanding certificate to show the new address of
97 the holder.

98 (j) No number other than the number awarded to a
99 motorboat or granted reciprocity pursuant to this article
100 shall be painted, attached or otherwise displayed on
101 either side of the bow of such motorboat.

102 (k) It shall be the duty of the director on or before

103 August thirty-first of each year, commencing with the
104 year one thousand nine hundred sixty-seven, to forward
105 to the assessor of each county a list of the names and
106 addresses of all persons, firms and corporations owning
107 vessels and operating the same or other boats registered
108 with the director under the provisions of this article. In
109 furnishing this information to each county assessor, the
110 director shall include in his report such information as
111 is made available to him in the reports and registra-
112 tions he receives as to make, model, value and cost price
113 of such vessels and other equipment required to be reg-
114 istered for use by said owner or operator thereof under
115 the provisions of this article: *Provided*, That the director
116 need not furnish such information to the assessor if the
117 cost price of such vessel does not exceed two hundred
118 dollars or the cost of the motor does not exceed one
119 hundred seventy-five dollars. In order to deal equitably
120 with overlapping license periods, the director may issue
121 a six months' license from the period January, one thou-
122 sand nine hundred sixty-eight through June, one thou-
123 sand nine hundred sixty-eight. This six months' license
124 is to be issued to avoid the necessity of motorboat owners
125 who have purchased their licenses from January thirtieth,
126 one thousand nine hundred sixty-eight, losing a six
127 months' period of license entitlement.

128 (1) No person shall operate an unlicensed motorboat
129 upon any waters of this state without first acquiring such
130 certificate of number or license as required by law.

**§20-7-13. Motorboat classification; required lights and equip-
ment; rules and regulations; pilot rules.**

(a) Motorboats subject to the provisions of this article
2 shall be divided into four classes as follows:

3 Class A. Less than sixteen feet in length;

4 Class 1. Sixteen feet or over and less than twenty-six
5 feet in length;

6 Class 2. Twenty-six feet or over and less than forty feet
7 in length;

8 Class 3. Forty feet or over.

9 (b) Classes 1, 2 and 3 motorboats in all weathers from

10 sunset to sunrise shall carry and exhibit the following
11 lights when under way, and during such time no other
12 lights which may be mistaken for those prescribed shall
13 be exhibited.

14 (1) Every motorboat of Class 1 shall carry the follow-
15 ing lights:

16 First. A bright white light aft to show all around the
17 horizon;

18 Second. A combined lantern in the fore part of the
19 vessel and lower than the white light aft, showing green
20 to starboard and red to port, so fixed as to throw the
21 light from right ahead to two points abaft the beam on
22 their respective sides.

23 (2) Every motorboat of Classes 2 and 3 shall carry
24 the following lights:

25 First. A bright white light in the fore part of the
26 vessel as near the stem as practicable, so constructed as to
27 show an unbroken light over an arc of the horizon of
28 twenty points of the compass, so fixed as to throw the
29 light ten points on each side of the vessel; namely, from
30 right ahead to two points abaft the beam on either side;

31 Second. A bright white light aft to show all around the
32 horizon and higher than the white light forward;

33 Third. On the starboard side a green light so con-
34 structed as to show an unbroken light over an arc of the
35 horizon of ten points of the compass, so fixed as to throw
36 the light from right ahead to two points abaft the beam
37 on the starboard side. On the port side a red light so
38 constructed as to show an unbroken light over an arc of
39 the horizon of ten points of the compass, so fixed as to
40 throw the light from right ahead to two points abaft the
41 beam on the port side. The said side lights shall be fitted
42 with inboard screens of sufficient height so set as to pre-
43 vent these lights from being seen across the bow.

44 (3) Motorboats of Class 1 when propelled by sail alone
45 shall carry the combined lantern, but not the white light
46 aft, prescribed by this section. Motorboats of Classes 2
47 and 3 when so propelled, shall carry the colored side
48 lights, suitably screened, but not the white lights, pre-
49 scribed by this section. Motorboats of all classes, when

50 so propelled, shall carry, ready at hand, a lantern or
51 flashlight showing a white light which shall be exhibited
52 in sufficient time to avert collision.

53 (4) Every white light prescribed by this section shall
54 be of such character as to be visible at a distance of at
55 least two miles. Every colored light prescribed by this
56 section shall be of such character as to be visible at a
57 distance of at least one mile. The word "visible" in this
58 subdivision, when applied to lights, shall mean visible on
59 a dark night with clear atmosphere.

60 (5) When propelled by sail and machinery any motor-
61 boat shall carry the lights required by this section for a
62 motorboat propelled by machinery only.

63 (c) Any vessel may carry and exhibit the lights re-
64 quired by the federal regulations for preventing collisions
65 at sea, one thousand nine hundred forty-eight, federal act
66 of October eleven, one thousand nine hundred fifty-one,
67 as amended, in lieu of the lights required by subsection
68 (b) of this section.

69 (d) Every motorboat of Class 1, 2 or 3 shall be pro-
70 vided with an efficient whistle or other sound-producing
71 mechanical appliance.

72 (e) Every motorboat of Class 2 or 3 shall be provided
73 with an efficient bell.

74 (f) Every motorboat shall carry at least one life pre-
75 server, or life belt, or ring buoy, or other device of the
76 sort prescribed by regulations of the commission for each
77 person on board, so placed as to be readily accessible:
78 *Provided*, That every motorboat carrying passengers for
79 hire shall carry so placed to be readily accessible at least
80 one life preserver of the sort prescribed by the regula-
81 tions of the director for each person on board.

82 (g) Every motorboat shall be provided with such
83 number, size and type of fire extinguishers, capable of
84 promptly and effectually extinguishing burning gasoline,
85 as may be prescribed by the regulations of the director,
86 which fire extinguishers shall be at all times kept in con-
87 dition for immediate and effective use and shall be so
88 placed as to be readily accessible.

89 (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

- 7 within this state for a period in excess of ninety con-
8 secutive days;
- 9 (2) A motorboat from a country other than the United
10 States temporarily using the waters of this state;
- 11 (3) Motorboats used exclusively for racing while par-
12 ticipating in races, and the preparation therefor, which
13 have been authorized pursuant to the provisions of sec-
14 tion twenty of this article.

**§20-7-15. Dealers' and manufacturers' certificate of number;
applications and fees.**

Dealers' and manufacturers' certificate of number, con-
2 taining the word "manufacturer" or "dealer," as appro-
3 priate, may be used in connection with the operation of
4 any motorboat in the possession of such dealer or manu-
5 facturer, when the boat is being used for demonstrative
6 purposes. Application for a dealer's or manufacturer's
7 certificate of number shall be made upon a form pro-
8 vided by the director and shall contain such informa-
9 tion as may be required by the director. Upon receipt of
10 the application and upon payment of a fee of five dollars
11 for the initial certificate of number, and five dollars for
12 each additional certificate of number, the director shall
13 issue to the applicant a manufacturer's or dealer's cer-
14 tificate of number which shall contain the word "manu-
15 facturer" or "dealer" in lieu of a description of the boat.
16 The manufacturer or dealer may have the number
17 awarded to him printed upon or attached to a removable
18 sign or signs to be temporarily but firmly mounted upon
19 or attached to the boat being demonstrated, so long as the
20 display meets the requirements of the provisions of this
21 article and regulations issued hereunder.

§20-7-16. Boat liveries.

(a) The owner of a boat livery shall cause to be kept
2 a record of the name and address of the person or per-
3 sons hiring any vessel which is designed or permitted by
4 him to be operated as a motorboat, identification number
5 thereof, and the departure date and time, and the ex-
6 pected time of return. The record shall be preserved for
7 at least six months.

8 (b) Neither the owner of a boat livery, nor his agent
9 or employee, shall permit any motorboat or any vessel
10 designed or permitted by him to be operated as a motor-
11 boat to depart from his premises unless it shall have
12 been provided, either by owner or renter, with the equip-
13 ment required pursuant to section thirteen of this article
14 and any rules and regulations made pursuant thereto.

§20-7-17. Motorboat muffling.

The exhaust of every internal combustion engine used
2 on any motorboat shall be effectively muffled by equip-
3 ment so constructed and used as to muffle the noise of
4 the exhaust in a reasonable manner. The use of cutouts
5 is prohibited, except for motorboats competing in a
6 regatta or boat race approved as provided in section
7 twenty of this article, and for such motorboats while on
8 trial runs during a period not to exceed seventy-two
9 hours immediately preceding such regatta or race, and for
10 such motorboats while competing in official trials for
11 speed records during a period not to exceed seventy-two
12 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,
2 or manipulate any water skis, surfboard or similar de-
3 vice in a reckless or negligent manner so as to endanger
4 the life, limb or property of any person.

(b) No person shall operate any motorboat or vessel,
6 or manipulate any water skis, surfboard or similar de-
7 vice while intoxicated or under the influence of any nar-
8 cotic drug, barbiturate or marijuana.

(c) It shall be the duty of the operator of a vessel
10 involved in a collision, accident or other casualty, so far
11 as he can do so without serious danger to his own vessel,
12 crew and passengers (if any), to render to other persons
13 affected by the collision, accident or other casualty such
14 assistance as may be practicable and as may be necessary
15 in order to save them from or minimize any danger caused
16 by the collision, accident or other casualty, and also to

17 give his name, address and identification of his vessel in
18 writing to any person injured and to the owner of any
19 property damaged in the collision, accident or other
20 casualty.

21 (d) In the case of collision, accident or other casualty
22 involving a vessel, the operator thereof, if the collision,
23 accident or other casualty results in death or injury to
24 a person or damage to property in excess of one hundred
25 dollars, shall file with the director a full description of
26 the collision, accident or other casualty, including such
27 information as the director may, by regulation, require.
28 In accordance with any request duly made by an author-
29 ized official or agency of the United States, any informa-
30 tion compiled or otherwise available to the director pur-
31 suant to this subsection shall be transmitted to such
32 official or agency of the United States.

§20-7-19. Water skiing and surfboarding.

(a) No person shall operate a vessel on any waters
2 of this state towing a person or persons on water skis,
3 surfboard or similar device, nor shall any person engage
4 in water skiing, surfboarding or similar activity at any
5 time between the hours from one hour after sunset to
6 one hour before sunrise.

7 (b) The provisions of subsection (a) of this section
8 do not apply to a performer engaged in a professional
9 exhibition or a person or persons engaged in an activity
10 authorized under section twenty of this article.

11 (c) No person shall operate or manipulate any vessel,
12 tow rope or other device by which the direction or loca-
13 tion of water skis, surfboard or similar device may be
14 affected or controlled in such a way as to cause water
15 skis, surfboard or similar device, or any person thereon
16 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
2 regattas, motorboat or other boat races, marine parades,
3 tournaments or exhibitions on any waters of this state.
4 It shall adopt and may from time to time amend regu-

5 lations concerning the safety of motorboats and other
6 vessels and persons thereon, either observers or partici-
7 pants. Whenever a regatta, motorboat or other boat race,
8 marine parade, tournament or exhibition is proposed to
9 be held, the person in charge thereof, shall, at least fifteen
10 days prior thereto, file an application with the director
11 for permission to hold such regatta, motorboat or other
12 boat race, marine parade, tournament or exhibition. The
13 application shall set forth the date, time and location
14 where it is proposed to hold such regatta, motorboat or
15 other boat race, marine parade, tournament or exhibition,
16 and it shall not be conducted without authorization of
17 the director in writing.

18 (b) The provisions of this section shall not exempt
19 any person from compliance with the applicable federal
20 law or regulation, but nothing contained herein shall be
21 construed to require the securing of a state permit pur-
22 suant to this section if a permit therefor has been obtained
23 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
2 such in his charge or control, shall act or permit the same
3 to be operated by any person who, by reason of any
4 physical or mental disability, is incapable of operating
5 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
2 prescribe and to enforce:

3 (a) General rules and regulations to be observed in
4 the operation or navigation of motorboats upon, over or
5 through the waters of this state which he shall deem
6 necessary for the public health or safety of persons or
7 property on or in such waters, or for the preservation
8 of all forms of useful aquatic life, particularly as to
9 speed, running, lights, signals, courses, channels, right
10 of ways, and the disposal of oil, gas, gasoline or other
11 wastes from such boats;

12 (b) Special rules and regulations for such particular,
13 artificial or natural areas of water, for further limiting,
14 restricting or prohibiting the operation or navigation of
15 motorboats thereon to protect the public health or to
16 protect and preserve useful aquatic life.

§20-7-23. Local rules and regulations.

(a) The provisions of this article, and of other appli-
2 cable laws of this state, shall govern the operation, equip-
3 ment, numbering and all other matters relating thereto
4 whenever any vessel shall be operated on the waters of
5 this state, or when any activity regulated by this article
6 shall take place thereon, but nothing in this article shall
7 be construed to prevent the adoption of any ordinance
8 or local law relating to operation and equipment of vessels
9 the provisions of which are identical to the provisions of
10 this article, amendments thereto or regulations issued
11 thereunder: *Provided*, That such ordinances or local laws
12 shall be operative only so long as and to the extent that
13 they continue to be identical to provisions of this article,
14 amendments thereto or regulations issued thereunder.

15 (b) Any subdivision of this state may, at any time,
16 but only after public notice, make formal application to
17 the director for special rules and regulations with ref-
18 erence to the operation of vessels on any waters within
19 its territorial limits and shall set forth therein the reasons
20 which make such special rules or regulations necessary
21 or appropriate.

22 (c) The director is hereby authorized to make special
23 rules and regulations with reference to the operation of
24 vessels on any waters within the territorial limits of any
25 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.

1 The director of the department of natural resources
2 is hereby authorized and empowered to transfer to the
3 town of Ansted a plot of land, owned by the department,
4 measuring thirty feet by thirty feet, and located on the
5 property of Hawk's Nest state park for the installation of
6 a sewage lift station which is a part of a sewage disposal
7 system. The director is further authorized and empowered
8 to transfer to the town of Ansted any necessary ease-
9 ments incident to the operation of the station. The exact
10 location of the plot and easements upon the Hawk's Nest
11 state park ground is to be determined according to the
12 plans and specifications of the sewer system and is sub-
13 ject to the approval of the director.

§2. Right of reversion to the department.

- 1 Be it further provided that should the land so con-
2 veyed ever cease to be used for a sewage lift station, it
3 shall revert to the department of natural resources.

— c —

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.

3

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
- 10 county court or the county courts in his judicial circuit of

11 the expenses to be incurred and the salary or salaries to be
12 paid the court or county probation officer and clerical as-
13 sistants, which approval shall be discretionary with said
14 county court or courts and shall be required before any
15 appointment made hereunder becomes effective.

16 The appointment of a court or county probation officer,
17 assistant court or county probation officer and clerical
18 assistant shall be in writing and entered on the order book
19 of the court by the judge making such appointment and
20 a copy of said order of appointment shall be delivered to
21 the county court of the county in which said court or
22 county probation officer, assistant court or county pro-
23 bation officer and clerical assistant shall serve. The said
24 order of appointment shall state the monthly salary
25 fixed by said judge, to be paid the court or county proba-
26 tion officer, assistant court or county probation officer or
27 clerical assistant so appointed. A court or county proba-
28 tion officer shall receive for his services a monthly
29 salary of not less than three hundred nor more than six
30 hundred dollars per month; an assistant court or county
31 probation officer shall receive for his services a monthly
32 salary of not less than three hundred and not more than
33 five hundred dollars per month. A clerical assistant shall
34 receive for his services a salary not to exceed three hun-
35 dred dollars per month. The county court shall make pro-
36 visions for payment and pay monthly the salary of the
37 court or county probation officer, assistant court or county
38 probation officer and clerical assistant as designated in
39 the order of appointment.

40 The county court shall provide adequate office space,
41 equipment and supplies for the court or county probation
42 officer, assistant court or county probation officer and
43 clerical assistant, to be approved by the appointing judge.
44 The county court shall reimburse a court or county pro-
45 bation officer and an assistant court or county probation
46 officer for all expenses actually and necessarily incurred
47 in line of duty in the field.

48 No judge shall appoint any court or county probation
49 officer, assistant court or county probation officer or cleri-
50 cal assistant who is related to him either by consanguinity
51 or affinity.

52 A judge of a circuit court whose circuit comprises more
53 than one county, having authority to appoint a court or
54 county probation officer, may appoint a court or county
55 probation officer and a clerical assistant in each county of
56 such circuit, or may appoint the same person as a court
57 or county probation officer and also the same person as
58 a clerical assistant in two or more of such counties.

59 When a judge has appointed a court or county proba-
60 tion officer and a clerical assistant to serve in a judicial
61 circuit including more than one county, the salary and
62 expenses of such appointees shall be contributed by each
63 county sharing in the services of such appointees in the
64 proportion agreed upon by such counties, if they agree,
65 otherwise in the proportion of the populations in the coun-
66 ties derived from the last United States census.

67 In lieu of, or in addition to, the court or county proba-
68 tion officers, assistant court or county probation officers and
69 clerical assistants provided for in this section, the judge
70 may avail himself of the services of state probation and
71 parole officers; and any such services which may be pro-
72 vided to the court or judge by said state probation and
73 parole officers, shall be rendered at no additional cost to
74 any court or judge so using them. The board of probation
75 and parole may assist any court or county probation of-
76 ficer, upon request, with information relative to proce-
77 dure, printed forms, and technique applicable to probation
78 methods.

79 Nothing contained in this section shall in any manner
80 alter, modify, affect or supersede the appointment, tenure
81 or salary of any probation officer appointed by any
82 court under any special act of the Legislature heretofore
83 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 ex-
2 amine all qualified applicants for license to practice den-
3 tistry or dental hygiene, and it shall license all such
4 applicants who are qualified under applicable statutes
5 and who pass the examinations that may be required
6 by statute or by any legally adopted rule or regula-
7 tion. The board shall examine all applications filed
8 in accordance with the provisions of section four-b of this
9 article and shall issue certificates of authorization to all
10 applicants legally entitled to receive the same, such cer-
11 tificates to be signed by the chairman and secretary of
12 the board.

13 The said board shall have the power to make such
14 examination of all applicants appearing before it for any
15 type of license as may be necessary to determine that

16 the applicant is qualified. The board shall also have au-
17 thority to license dental corporations authorized under
18 the provisions of and subject to the limitations of
19 this article, to practice dentistry through duly licensed
20 dentists. The said board shall also have the power to
21 revoke or suspend any license issued by it, for cause,
22 after having given the person whose license is sought
23 to be revoked or suspended, an opportunity to be heard
24 in the manner provided by section eight, article one,
25 chapter thirty of this code. It shall have the power to
26 reinstate any license revoked or suspended by it.

27 The said board is authorized and empowered to hold
28 and conduct hearings and investigations on the issuance,
29 suspension, revocation, or reinstatement of licenses and
30 on charges of unauthorized practice of dentistry or dental
31 hygiene.

32 The board, acting by and through its members, em-
33 ployees, and agents, is further authorized and empowered,
34 at any time during customary office hours, to enter into
35 the office or place of business of any dental laboratory,
36 licensed dentist, dental corporation or other dental prac-
37 titioner of this state, and to obtain access to, make in-
38 spection of, and request information regarding any work
39 authorization which such dental laboratory, licensed den-
40 tist, dental corporation or other dental practitioner is
41 required under the provisions of section two-a of this
42 article, to retain therein, and is further authorized and
43 empowered to inspect any items of dental technological
44 work then in the course of performance by such dental
45 laboratory or person employed by it, and to inspect any
46 dental prosthesis then in the place of business of, or upon
47 the premises occupied by, such dental laboratory for
48 making, production, reproduction, construction, repair,
49 alteration, or restoration, and to request any informa-
50 tion which it, its members, employees, or agents deem
51 to be pertinent relating to any such dental technological
52 work and any such dental prosthesis. For the purpose of
53 this paragraph the definition of terms contained in sub-
54 section A of section two-a of this article is made ex-
55 pressly 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-
tions; dentist-patient relationship not affected; bien-
nial registration; penalty; severability.**

1 (1) A dental corporation may practice dentistry only
2 through an individual dentist or dentists duly licensed

3 to practice dentistry in the state of West Virginia, but
4 such dentist or dentists may be employees rather than
5 shareholders of such corporation, and nothing herein con-
6 tained shall be construed to require a license or other
7 legal authorization of any individual employed by such
8 corporation to perform services for which no license or
9 other legal authorization is otherwise required. Noth-
10 ing contained in this article is meant or intended to
11 change in any way the rights, duties, privileges, respon-
12 sibilities and liabilities incident to the dentist-patient
13 relationship nor is it meant or intended to change in any
14 way the personal character of the dentist-patient rela-
15 tionship. A corporation holding such certificate of au-
16 thorization shall register biennially, on or before the
17 thirtieth day of June, on a form prescribed by the board of
18 dental examiners and shall pay an annual registration fee
19 of fifty dollars.

20 (2) A dental corporation holding a certificate of au-
21 thorization shall cease to engage in the practice of den-
22 tistry upon being notified by the board of dental examiners
23 that any of its shareholders is no longer a duly licensed
24 dentist, or when any shares of such corporation have
25 been sold or disposed of to a person who is not a duly
26 licensed dentist: *Provided*, That the personal represent-
27 ative of a deceased shareholder shall have a period, not
28 to exceed twelve months from the date of such share-
29 holder's death, to dispose of such shares; but nothing
30 contained herein shall be construed as affecting the ex-
31 istence of such corporation or its right to continue to
32 operate for all lawful purposes other than the practice
33 of dentistry.

34 (3) No corporation shall practice dentistry, or any of its
35 branches, or hold itself out as being capable of doing so,
36 without a certificate from the board of dental examiners,
37 nor shall any corporation practice dentistry, or any of
38 its branches, or hold itself out as being capable of doing
39 so, after its certificate has been revoked, or if suspended,
40 during the term of such suspension. A certificate signed
41 by the secretary of the board of dental examiners to which
42 is affixed the official seal of the board to the effect that it
43 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.

— c —

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 Virginia, 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.

- 1 (a) The term "practical nursing" means the perform-
2 ance for compensation of selected nursing acts in the
3 care of the ill, injured or infirm under the direction of
4 a registered professional nurse or a licensed physician
5 or a licensed dentist, and not requiring the substantial
6 specialized skill, judgment and knowledge required in
7 professional nursing.
- 8 (b) The term "practical nurse" means a person who
9 has met all the requirements for licensure as a practical
10 nurse and who engages in practical nursing as herein-
11 above defined.
- 12 (c) The term "board" as used in this article, shall
13 mean the board of examiners for licensed practical nurses
14 as set forth in section five of this article.

§30-7A-2. Use of title "Licensed Practical Nurse"; who may practice.

- 1 Any person who is qualified to serve as a practical
2 nurse under the provisions of this article shall be known
3 as a licensed practical nurse or otherwise known as a
4 L.P.N. After the thirtieth day of June, one thousand
5 nine hundred sixty-eight, no other person shall engage
6 in practical nursing nor assume such title nor use such
7 abbreviation or any other words, letters, figures, signs,
8 or devices to indicate that the person using the same is
9 a licensed practical nurse or a practical nurse: *Provided,*
10 *however,* That any person holding a valid license to
11 practice practical nursing in this state as of the effective

12 date of this article shall be deemed to be a licensed
13 practical nurse under the provisions of this article.

§30-7A-3. Qualifications of applicants for license.

1 Except as otherwise provided in section six of this ar-
2 ticle, any person desiring to obtain a license to practice
3 practical nursing shall submit to the board satisfactory
4 evidence that he or she: (a) Is of good moral charac-
5 ter; (b) has acquired at least a tenth grade education
6 or its equivalent; (c) has completed a course of study in
7 an accredited school for practical nurses as defined by the
8 board and holds a diploma therefrom; and (d) has com-
9 pleted such other general educational requirements as
10 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
2 thirty of the code shall apply to this article, except that
3 an applicant for license as a practical nurse shall pay
4 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
2 and consent of the senate, seven citizens of the state
3 of West Virginia who shall constitute the "West Virginia
4 State Board of Examiners for Licensed Practical Nurses"
5 and they shall be charged with the duty of administering
6 the provisions of this article. Of the seven members so
7 appointed two shall be licensed practical nurses, one of
8 whom shall be a graduate of an approved school of prac-
9 tical nursing, and both of whom shall have had not less
10 than five years' experience as licensed practical nurses,
11 two shall be registered professional nurses, at least one of
12 whom shall be experienced in practical nurse education;
13 one shall be a doctor of medicine; one shall be a hospital
14 administrator actively engaged as such in this state and
15 one shall be a vocational educator. Such appointments
16 shall be for terms of five years each, except that in the
17 initial appointments, one licensed practical nurse and one
18 registered professional nurse shall be appointed for a
19 term of five years, one licensed practical nurse and one

20 registered professional nurse shall be appointed for a
21 term of four years, the doctor of medicine shall be ap-
22 pointed for a term of three years, the hospital admin-
23 istrator shall be appointed for a term of two years and
24 the vocational educator shall be appointed for a term
25 of one year. The practical nurses so to be appointed,
26 initially and subsequently, shall be selected by the gov-
27 ernor from a list to be submitted to him by the Licensed
28 Practical Nurses' Association of West Virginia, Inc., which
29 list shall contain the names of at least two licensed prac-
30 tical nurses for each board member so to be appointed,
31 who shall have been licensed by examination and who
32 shall have not less than five years' experience as a licensed
33 practical nurse. The doctor of medicine so appointed
34 shall be selected by the governor from two nominations
35 submitted to him by the West Virginia State Medical
36 Association; each registered professional nurse so ap-
37 pointed shall be selected by the governor from two nomi-
38 nations submitted to him by the West Virginia Nurses
39 Association, Inc.; the hospital administrator shall be ap-
40 pointed by the governor from two nominations sub-
41 mitted to him by the West Virginia Hospital Association;
42 and the vocational educator shall be appointed by the
43 governor from two nominations submitted to him by the
44 state board of education. Any member of the board may
45 be eligible for reappointment, but no member shall serve
46 more than two successive terms. The board is hereby
47 authorized to appoint and employ a qualified person to
48 perform the duties of executive secretary and to act as
49 educational advisor to the board. Such secretary shall
50 act under the direction of the board. The board shall
51 furnish the secretary a headquarters and shall provide
52 such office equipment and clerical assistance as the duties
53 of the office may require. The board shall have power
54 to appoint such nurses, deputies, clerks, assistants, in-
55 spectors and employees as shall be necessary for the
56 proper exercise of the powers and duties of the board.
57 The compensation and expenses of the members of the
58 board and its appointees and employees shall be paid out
59 of such funds as are allocated to the board in its annual
60 budget. The secretary shall keep the records of proceed-

61 ings of the board, and shall keep a registry of the names
62 and addresses of all practical nurses registered under this
63 article, which registry shall be a public record. Said
64 board shall hold not less than two regular meetings each
65 year and such additional meetings at such times and
66 places as the board may determine. The board is
67 authorized to adopt and, from time to time, to revise
68 such rules and regulations not inconsistent with this
69 article, as may be necessary to enable it to carry into
70 effect the provisions hereof. The board shall prescribe
71 curricula and standards for schools and courses prepar-
72 ing persons for licensure under this article. It shall
73 survey such schools and courses at such times as it may
74 deem necessary. It shall survey and accredit such
75 schools, clinical practice areas and courses as meet the
76 requirements of this article and of the board. It shall
77 examine, license and renew the license of duly qualified
78 applicants.

**§30-7A-6. Examination and licensure of practical nurses;
present practitioners.**

1 The applicant, except as hereinafter provided, shall be
2 required to pass a written examination in such subjects
3 as the board shall determine. Each written examination
4 may be supplemented by such oral or practical examina-
5 tion as the board may deem necessary. The board shall
6 determine the times and places for the examination.
7 Notices of examination shall be sent by mail to each
8 person known by the secretary to be an applicant for
9 an examination or registration at least thirty days pre-
10 vious to any such scheduled examination. Upon the ap-
11 plicant's successful completion of an appropriate exam-
12 ination as prescribed by the board and satisfaction of the
13 other requirements of this article, the board shall issue
14 to the applicant a license to practice practical nursing.
15 The board shall issue such license by endorsement to
16 any applicant who has been duly licensed or registered
17 as such, or to a person entitled to perform similar serv-
18 ices under a different title, in another state, territory or
19 foreign country if, in the opinion of the board, the ap-
20 plicant meets the other requirements for licensed prac-

21 tical nurses in this state. On or before the thirtieth day
22 of June, one thousand nine hundred sixty-eight, any prac-
23 tical nurse who exhibits proof, satisfactory to the board,
24 that he or she has been engaged in practical nursing in
25 this state for a period of three years and who satisfac-
26 torily completes an appropriate examination as prescribed
27 by the board shall be issued a license by waiver by said
28 board, which shall be so designated on its face.

29 Any person obtaining a license by waiver who has com-
30 pleted extension courses equal in theory to those for the
31 graduate practical nurses, as determined by the board,
32 may at any time thereafter take the examination pre-
33 scribed by the board for graduate practical nurses and
34 obtain a license without the designation of "waiver"
35 thereon.

§30-7A-7. Renewal or reinstatement of license.

1 The license of every person licensed under the pro-
2 visions of this article shall expire on the thirtieth day of
3 June, next following the date of license. In order for
4 such license to be renewed, the licensee shall comply
5 with such rules and regulations of the board as are ap-
6 plicable to renewals. The renewal fee for all licenses
7 shall be five dollars, subject to change by the board.
8 Upon receipt of the renewal fee the board shall issue to
9 the licensee a certificate of renewal for the current year,
10 beginning July first and expiring June thirtieth of the
11 following year. Such certificate shall render the holder
12 thereof a legal practitioner for the period stated on the
13 certificate of renewal. Any licensee who allows his or
14 her license to lapse by failing to renew the license as
15 provided above may be reinstated by the board on sat-
16 isfactory explanation for such failure to renew his or
17 her license and on payment of a reinstatement fee of five
18 dollars, subject to change by the board, in addition to
19 the renewal fee hereinbefore set out. Any person prac-
20 ticing practical nursing during the time his or her license
21 has lapsed shall be considered an illegal practitioner and
22 shall be subject to the penalties provided for violation
23 of this article. A person licensed under the provisions

24 of this article desiring to retire from practice temporarily
25 shall give written notice of such desire to the board.
26 Upon receipt of such notice the board shall place the
27 name of such person upon the nonpracticing list. While
28 remaining on this list the person shall not be subject to
29 the payment of any renewal fees and shall not practice
30 as a licensed practical nurse in the state. When such
31 person desires to resume practice, application for renewal
32 of license and payment of the renewal fee for the current
33 year shall be made to the board.

§30-7A-8. Schools of practical nursing.

1 The board shall prescribe curricula and standards for
2 schools, clinical practice areas and courses preparing
3 persons for licensure under this article; it shall provide
4 for surveys of such schools, clinical practice areas and
5 courses at such times as it may deem necessary. It shall
6 accredit such schools, clinical practice areas and courses
7 as meet the requirements of this article and of the board.
8 An institution desiring to conduct a school of practical
9 nursing to be accredited by the board as such shall file
10 an application therefor with the board, together with
11 the information required and such fee as may be pre-
12 scribed by the board. It shall submit satisfactory evi-
13 dence that: (1) It is prepared to give the course of
14 instruction and practical experience in practical nurs-
15 ing as prescribed in the curricula adopted by the board;
16 and (2) it is prepared to meet other standards estab-
17 lished by this law and by the board.

18 A survey of the institution or institutions, with which
19 the school is to be, or is, affiliated, shall be made by
20 the executive secretary of the board. The executive sec-
21 retary shall submit a written report of the survey to
22 the board. If, in the opinion of the board, the require-
23 ments for an accredited school of practical nursing are
24 met, it shall approve the school as an accredited school
25 of practical nursing. From time to time as deemed neces-
26 sary by the board, it shall be the duty of the board,
27 through its executive secretary, to survey all schools
28 of practical nursing in the state. Written reports of such
29 surveys shall be submitted to the board. If the board

30 determines that any accredited school of practical nurs-
31 ing is not maintaining the standards required by the
32 statutes and by the board, notice thereof in writing
33 specifying the defect or defects shall be immediately
34 given to the school. A school which fails to correct these
35 conditions to the satisfaction of the board within a rea-
36 sonable time shall be removed from the list of accredited
37 schools of practical nursing and shall be in violation of
38 this article. Nothing contained in this article shall in-
39 fringe upon the rights or power of the state board of ed-
40 ucation, or county boards of education to establish and
41 conduct a program of practical nurse education or other
42 health occupation so long as the prescribed curricula
43 meets the requirements of the board.

§30-7A-9. Construction of article; acts not prohibited.

1 The provisions of this article shall not be construed
2 as prohibiting:

3 (1) The care of a sick, disabled, injured, crippled
4 or infirm person by a member or members of such per-
5 son's family, or by close relatives, or by domestic servants,
6 housekeepers or household aides thereof, whether em-
7 ployed regularly or because of emergency circumstances
8 due to illness or other disabilities.

9 (2) The work and services of auxiliary hospital per-
10 sonnel, such as nursing aides, maids, orderlies, techni-
11 cians, volunteer workers and other like hospital em-
12 ployees.

13 (3) Practical nursing by students enrolled in ac-
14 credited schools for practical nursing incidental to their
15 course of study.

16 (4) Practice of nursing in this state by any legally
17 qualified practical nurse of another state or country for
18 a period not to exceed six months or whose engagement
19 requires such practical nurse to accompany and care
20 for a patient temporarily residing in this state during
21 the period of such engagement.

22 (5) Nursing services rendered by a graduate of an
23 approved school of practical nursing working under qual-
24 ified supervision during the period between completion
25 of his or her course of nursing education and notification

26 of the results of the first licensing examination following
27 graduation. In cases of hardship and upon petition to
28 the board, the board may grant an extension of such
29 period to such graduate.

§30-7A-10. Disciplinary proceedings; grounds for discipline.

1 The board shall have the right to refuse to admit an
2 applicant for the licensure examination for the herein-
3 after stated reasons, and also the board shall have the
4 power to revoke or suspend any license to practice practical
5 nursing issued by the board in accordance with the
6 provisions of this article, or to otherwise discipline a
7 licensee upon satisfactory proof that the person: (1)
8 Is guilty of fraud or deceit in procuring or attempting
9 to procure a license to practice practical nursing; or (2)
10 is convicted of a felony; or (3) is habitually intemperate
11 or is addicted to the use of habit-forming drugs; or (4)
12 is mentally incompetent; or (5) who practices or at-
13 tempts to practice without a license or who wilfully or
14 repeatedly violates any of the provisions of this article.

§30-7A-11. Prohibited acts; penalties.

1 It shall be a misdemeanor for any person, firm, cor-
2 poration or association of persons to: (1) Sell or fraud-
3 ulently obtain or furnish any nursing diploma, license
4 or record or aid or abet therein; or (2) practice practical
5 nursing unless duly licensed to do so under the provi-
6 sions of this article; or (3) use in connection with his
7 or her name any designation tending to imply that he
8 or she is a licensed practical nurse unless duly licensed
9 so to practice under the provisions of this article; or (4)
10 practice practical nursing during the time his or her li-
11 cense issued under the provisions of this article shall
12 be suspended or revoked; or (5) conduct a school of
13 practical nursing or a course for training of practical
14 nurses unless the school or course has been accredited by
15 the board; or (6) otherwise violate any provision of this
16 article.

17 Any person convicted of any such misdemeanor shall
18 be punishable by a fine of not less than twenty-five nor
19 more than one hundred dollars.

§30-7A-12. Severability.

- 1 If any provision of this article or the application thereof
- 2 to any person or circumstance shall be held invalid, such
- 3 invalidity shall not affect the provisions or applications
- 4 of this article which can be given effect without the in-
- 5 valid provision or application, and to this end the pro-
- 6 visions 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,
2 known as the "West Virginia Board of Optometry," which

3 shall consist of five optometrists, who shall be appointed
4 by the governor, by and with the advice and consent of
5 the senate. Each member of the board, at the time of his
6 appointment, shall have been a resident and a registered
7 practicing optometrist of this state for a period of three
8 years or more immediately preceding his appointment.

9 The members of the board in office on the date this
10 section takes effect shall, unless sooner removed, continue
11 to serve until their successors have been appointed and
12 have qualified. On or before the first day of July fol-
13 lowing the date on which this section takes effect, and
14 annually thereafter, as their respective terms expire, the
15 governor shall appoint their successors so that one year
16 he shall appoint one member and in each of the two suc-
17 ceeding years he shall appoint two members, each for
18 a term of three years commencing on the first day of
19 July. Any member shall be eligible for reappointment.

20 The board shall make necessary rules and regulations,
21 subject to the provisions of chapter twenty-nine-a of this
22 code, which are not inconsistent with any other provision
23 or section of this article:

- 24 (a) For the proper performance of its duties;
25 (b) To govern the ethical practice of optometry for
26 the safety, protection and welfare of the public; and
27 (c) To govern the time, place and manner of con-
28 ducting examinations in optometry, and the manner and
29 form in which applicants for such examination shall be
30 filed.

§30-8-7. Annual renewal of registration.

Every registered optometrist who desires to continue
2 in active practice or service shall, annually, on or before
3 the first day of August, of each year, renew his certificate
4 of registration and pay an annual renewal fee of twenty
5 dollars. Every certificate of registration which has not
6 been renewed during the month of August in any one year
7 shall expire on the first day of September of that year.
8 A registered optometrist whose certificate of registration
9 has expired may have the same restored only upon pay-
10 ment of the required renewal fee. Any registered op-

11 tometrist who retires from the practice of optometry for
12 more than five years may renew his certificate of registra-
13 tion upon payment of all lapsed renewal fees.

§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
2 to renew, or may suspend or revoke any certificate of
3 registration for any one, or any combination, of the fol-
4 lowing causes: Violation of a rule or regulation gov-
5 erning the ethical practice of optometry promulgated by
6 the board under the authority granted by this article;
7 conviction of a felony, as shown by a certified copy of
8 the record of the court wherein such conviction was
9 had; the obtaining of, or the attempt to obtain, a certifi-
10 cate of registration, or practice in the profession of op-
11 tometry, or money, or any other thing of value, by fraudu-
12 lent misrepresentation; gross malpractice; continued prac-
13 tice by a person knowingly having an infectious disease;
14 habitual drunkenness, or addiction to the use of morphine,
15 cocaine, or other habit-forming drugs; advertising, prac-
16 ticing, or attempting to practice under a name other than
17 one's own; advertising by means of knowingly false or
18 deceptive statements. All advertising, whether by means
19 of newspapers, or in any manner, whatsoever, of the
20 following statements, or statements of similar import,
21 that are "false and deceptive" within the meaning
22 of this law, shall be prohibited. False and deceptive adver-
23 tising shall include but not be limited to the following: (a)
24 Advertising of complete glasses, that is to say, lenses and
25 frames or mountings, at a stated price, either alone or in
26 conjunction with professional services; (b) advertising
27 "free examination of eyes," or "free consultation," or
28 "free advice," or words of similar import and meaning;
29 (c) advertising frames or mountings for glasses, by adver-
30 tisement which does not accurately describe the same in
31 all its component parts (all such advertisements shall
32 state clearly, in type equal in size to the price figures
33 given, that such price does not include cost of lenses, or
34 professional services in examining of eyes), and, (d)
35 advertising a particular sum or sums of money required

36 as a "down" or cash payment, or any definite amount or
37 amounts of future payments, or when the same shall
38 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.
9. Temporary permits.
10. License renewal.
11. Complaints.
12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.
13. Judicial review.
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,

39 servant, employee, director, officer, or any other repre-
40 sentative of any such person.

41 (g) "Board" means the West Virginia board of veter-
42 inary medicine.

§30-10-2. License or permit required; exceptions.

No person may, for a fee or other compensation, practice
2 veterinary medicine in this state without a license or a
3 temporary permit issued by the board in accordance with
4 the provisions of this article, which license or permit
5 remains unexpired, unsuspended and unrevoked. This
6 article shall, however, not be construed to prohibit:

7 (a) Any employee of the federal, state or local govern-
8 ment from performing his official duties, as defined by his
9 employing agency;

10 (b) Any person who is a regular student in a veter-
11 inary school from performing research assigned by his
12 instructors, or from working under the direct supervision
13 of a licensed veterinarian during a school vacation period;

14 (c) Any person from advising with respect to or per-
15 forming acts which the board has prescribed as accepted
16 livestock management practices;

17 (d) Any veterinarian regularly licensed in another
18 state from consulting with a licensed veterinarian in this
19 state;

20 (e) The owner of an animal, the owner's employees, or
21 persons assisting the owner without any fee or compen-
22 sation, from caring for and treating such animal, except
23 where the ownership of such animal was transferred for
24 the purpose of circumventing the provisions of this
25 article;

26 (f) Any member of the faculty of a veterinary school
27 from performing his regular functions, or any person from
28 lecturing, or giving instructions or demonstrations, at a
29 veterinary school or in connection with a continuing
30 education course or seminar;

31 (g) Any person from selling or applying any pesticide,
32 insecticide, or herbicide;

33 (h) Any person from engaging in bona fide scientific

34 research which reasonably requires experimentation in-
35 volving animals;

36 (i) Any person from engaging in bona fide scientific
37 research in consultation with a licensed veterinarian in
38 this state;

39 (j) The treatment or relief of any living animal in the
40 case of an emergency or the disposal of the carcass of a
41 dead animal; or

42 (k) Any person, with reference to domestic animals,
43 from performing the simple operation of castrating, spay-
44 ing, dehorning, or from the use of blackleg vaccine and
45 hog cholera serum, or, in case the services of a licensed
46 veterinarian cannot be had within a reasonable time or
47 at a reasonable cost, from performing any of the services
48 described in section one of this article as "Veterinary
49 Medicine" or "Practice of Veterinary Medicine": *Pro-*
50 *vided, however,* That such person has been regularly per-
51 forming such services for a period of not less than ten
52 years.

§30-10-3. **West Virginia board of veterinary medicine; com-
position; qualifications, appointment and terms of mem-
bers; vacancies; removal of members; compensation;
organization and meetings; quorums; secretary-treas-
urer; records, etc., open to public; annual report; funds.**

The "West Virginia Veterinary Board," heretofore
2 created, shall continue in existence but on and after the
3 effective date of this article shall be known and designated
4 as "The West Virginia Board of Veterinary Medicine,"
5 and shall consist of five members, not more than three
6 of whom shall belong to the same political party to be
7 appointed by the governor with the advice and consent
8 of the senate. The three members of the board in office
9 on the effective date of this article shall, unless sooner
10 removed, continue to serve until their terms expire and
11 until their successors have been appointed and have
12 qualified. On or before July one, one thousand nine
13 hundred sixty-seven, the governor shall appoint one mem-
14 ber to serve until June thirty, one thousand nine hun-
15 dred sixty-eight, and one member to serve until June
16 thirty, one thousand nine hundred seventy, or until their

17 successors have been appointed and have qualified. As
18 the terms of the three members of the board in office
19 on the effective date of this article expire and as the terms
20 of the two members to be appointed by the governor on
21 or before July one, one thousand nine hundred sixty-
22 seven, expire, members shall be appointed for overlapping
23 terms of five years, so that one term expires each year,
24 or until their successors have been appointed and have
25 qualified. Any vacancy in the office of a member of the
26 board shall be filled by appointment by the governor for
27 the unexpired term of the member whose office shall be
28 vacant. No person shall be appointed to two consecutive
29 full terms, but a person appointed for a term of less
30 than five years may be appointed to succeed himself. The
31 governor may remove any member of the board for
32 neglect of duty or other sufficient cause.

33 No person shall be appointed to the board unless he be
34 a graduate of a veterinary school and a resident of this
35 state, and unless he shall have been licensed to practice
36 veterinary medicine in this state for at least three years
37 immediately preceding his appointment.

38 As compensation for his services on the board, each
39 member shall receive, out of the moneys collected here-
40 under, the sum of twenty-five dollars for each day or sub-
41 stantial portion thereof that he is engaged in the work of
42 the board. Each member shall also be entitled to be reim-
43 bursed, out of the moneys collected hereunder, for any
44 reasonable and necessary expenses actually incurred in
45 the discharge of his duties as a member of the board.

46 The board shall meet at least once each year, the time
47 and place of such meeting to be fixed by the board, and
48 at such annual meeting shall elect from its membership
49 a president, a secretary-treasurer and such other officers
50 as may be desired. Other meetings of the board may be
51 called by the president on such notice to the other mem-
52 bers as may be prescribed by the board. A majority of
53 the board shall constitute a quorum for the transaction
54 of the business of the board. All meetings of the board
55 shall be open and public, except that the board may meet
56 in closed session to prepare, approve, administer, or grade
57 examinations, to deliberate decisions to be reached on

58 disciplinary proceedings, or to review the qualifications
59 of an applicant for a license.

60 It shall be the duty of the secretary-treasurer to carry
61 on the correspondence of the board, keep permanent ac-
62 counts and records of all receipts and disbursements by
63 the board and of all board proceedings, including the dis-
64 position of all applications for license, and keep a register
65 of all persons currently licensed by the board. All board
66 records, except as otherwise provided by law, shall be
67 open to public inspection during regular office hours. The
68 secretary-treasurer shall furnish to the board a fidelity
69 surety bond in such sum and conditioned as the board
70 may require, the cost of such bond to be paid by the board
71 out of the moneys collected hereunder.

72 As soon as possible after the close of each fiscal year,
73 the president and secretary-treasurer shall submit to the
74 governor a report on the transactions of the board,
75 including an accounting of all moneys received and dis-
76 bursed.

77 All moneys received by the board shall be accepted by
78 the secretary-treasurer and deposited by him with the
79 treasurer of the state and credited by the treasurer to an
80 account to be known as the "Board of Veterinary
81 Medicine Fund." All expenses of the board shall be paid
82 from such fund by voucher signed by the secretary-
83 treasurer of the board, and no part of the state's general
84 revenue fund shall be expended for this purpose.

§30-10-4. Powers of the board.

The board shall have the power to:

2 (a) Examine and determine the qualifications and fit-
3 ness of any applicant for a license to practice veterinary
4 medicine in this state;

5 (b) Issue, renew, deny, suspend or revoke licenses and
6 temporary permits to practice veterinary medicine in
7 this state or otherwise discipline licensed veterinarians
8 consistent with the provisions of this article and reason-
9 able rules and regulations promulgated by the board as
10 specified in subdivision (i) of this section;

11 (c) Establish and publish annually a schedule of rea-

12 sonable fees for the licensing and registration of veteri-
13 narians, such fee schedule to be based on the board's
14 anticipated financial requirements for the year;

15 (d) Conduct investigations for the purpose of discov-
16 ering violations of this article or grounds for disciplining
17 licensed veterinarians;

18 (e) Hold hearings as specified in section twelve of this
19 article;

20 (f) Employ such full-time or part-time professional,
21 clerical or special personnel as may be necessary to ef-
22 fectuate the provisions of this article, and purchase or
23 rent necessary office space, equipment and supplies;

24 (g) Appoint from its own membership one or more
25 members to act as an official representative or represen-
26 tatives of the board at any meeting within or without this
27 state where such representation is deemed desirable;

28 (h) Institute appropriate court proceedings for the
29 enforcement of the provisions of this article or any rea-
30 sonable rules and regulations of the board promulgated
31 as specified in subdivision (i) of this section; and

32 (i) Promulgate, amend or repeal reasonable rules and
33 regulations, in accordance with the provisions of chapter
34 twenty-nine-a of this code, to implement the provisions
35 of this article, including rules and regulations establishing
36 standards of professional conduct for the practice of
37 veterinary medicine.

38 The powers enumerated above are granted for the pur-
39 pose of enabling the board to effectively supervise the
40 practice of veterinary medicine, and are to be construed
41 liberally to accomplish this objective.

§30-10-5. Status of persons previously licensed.

Any person holding a valid license to practice veteri-
2 nary medicine in this state on the date this article be-
3 comes effective shall be recognized as a licensed veteri-
4 narian and shall be entitled to retain this status so long
5 as he complies with the provisions of this article, includ-
6 ing annual renewal of his license to practice veterinary
7 medicine, and his license is not suspended or revoked
8 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
2 veterinary medicine in this state shall make written ap-
3 plication therefor to the board. The application shall
4 show that the applicant is (1) either a graduate of a
5 school of veterinary medicine accredited by the American
6 veterinary medical association or a graduate of a foreign
7 veterinary school who holds a certificate of competence
8 issued by the educational commission for foreign veteri-
9 nary graduates, (2) twenty-one years of age or over, (3)
10 a citizen of the United States or an applicant for citizen-
11 ship, and (4) a person of good moral character, and shall
12 contain such other information and proof as the board
13 may require by reasonable rules and regulations promul-
14 gated as aforesaid. The application shall be accompanied
15 by the appropriate fee specified in the fee schedule estab-
16 lished and published by the board.

17 If the board determines that an applicant possesses the
18 proper qualifications, it shall admit the applicant to the
19 next examination, or if the applicant is eligible for a
20 license without examination under the provisions of
21 section eight of this article, the board may forthwith
22 grant him a license. If an applicant is found not quali-
23 fied to take the examination or for a license without
24 examination, the secretary-treasurer shall immediately
25 notify the applicant in writing of such finding and the
26 grounds therefor. An applicant found not qualified may
27 demand a hearing on the question of his qualifications
28 in accordance with the provisions of section twelve of
29 this article. The application fee of any applicant found
30 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
2 each year and may hold such additional examinations as
3 are necessary. The secretary-treasurer shall give public
4 notice of the time and place of each examination at least
5 one hundred twenty days in advance of the date set for
6 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 exami-
12 nee's knowledge of and proficiency in the subjects and
13 techniques commonly taught in veterinary schools. To
14 pass the examination, the examinee must demonstrate
15 scientific and practical knowledge sufficient to prove him-
16 self a competent person to practice veterinary medicine
17 in the judgment of the board. All examinees shall be
18 tested by a written examination, supplemented by such
19 oral interviews and practical demonstrations as the board
20 may deem necessary. The board may adopt and use the
21 examination prepared by the national board of veterinary
22 examiners.

23 The secretary-treasurer shall notify each examinee of
24 the result of his examination within forty-five days there-
25 after, and the board shall issue a license to each person
26 who passes the examination. The application for a license
27 by any person failing an examination shall be denied, but
28 such person shall be admitted to any subsequent exami-
29 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.

16 (b) In its discretion, the board may orally or prac-
17 tically examine any person qualifying for licensing under
18 this section, and may enter into agreements for reciprocal
19 licensing with other jurisdictions having substantially
20 similar requirements for licensure.

§30-10-9. Temporary permits.

The board may issue without examination a temporary
2 permit to practice veterinary medicine in this state:

3 (a) To a qualified applicant for license pending exami-
4 nation: *Provided*, That such temporary permit shall ex-
5 pire the day after the giving of notice of the results of
6 the first examination held after the permit is issued; or

7 (b) To a nonresident veterinarian validly licensed in
8 another state, territory, or district of the United States
9 or a foreign country who pays the registration fee speci-
10 fied in the fee schedule established and published by the
11 board. A temporary permit shall not be issued to a non-
12 resident veterinarian for a period of more than sixty
13 days, but may be renewed in the discretion of the board.

14 A temporary permit may be summarily revoked by
15 majority vote of the board without a hearing.

§30-10-10. License renewal.

All licenses shall expire annually on December thirty-
2 one of each year, but may be renewed upon payment of
3 the renewal fee specified in the fee schedule established
4 and published by the board. On December one of each
5 year, the secretary-treasurer shall mail a notice to each
6 licensed veterinarian advising such veterinarian that his
7 license will expire on December thirty-one and shall
8 provide him with a form for renewal thereof. The sec-
9 retary-treasurer shall issue a certificate of renewal to
10 all persons renewing their licenses under the provisions
11 of this section.

12 Any person may renew an expired license within five
13 years of the date of its expiration by making written
14 application for renewal and paying the current renewal
15 fee plus all delinquent renewal fees. After five years have
16 elapsed from and after the date of expiration, a license
17 may not be renewed, but the former licensee must make

18 application for a new license and take and pass the li-
19 cense examination.

20 The board may by rules and regulations provide for the
21 waiving of the renewal fee of a licensed veterinarian dur-
22 ing the period when he is on active duty with any branch
23 of the armed services or the public health service of the
24 United States, not to exceed the longer of three years
25 or the duration of a national emergency.

§30-10-11. Complaints.

Upon the filing with the board by any person of a
2 verified written complaint against a licensed veterinarian,
3 the board shall notify such veterinarian in writing of the
4 filing of such complaint and shall proceed to hold a hear-
5 ing 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
2 applicant therefor may file with the board, within thirty
3 days after notification of such denial, a written demand
4 for a hearing before the board, in which case a hearing
5 shall be held not less than ten days nor more than twenty
6 days after receipt by the board of such demand. When-
7 ever a licensed veterinarian is notified by the board, in
8 accordance with the provisions of section eleven of this
9 article, that a complaint has been filed against him, a hear-
10 ing with respect thereto shall be held by the board not
11 less than twenty days nor more than thirty days after
12 such notification to such licensee.

13 All of the pertinent provisions of article five, chapter
14 twenty-nine-a of this code shall apply to and govern any
15 such hearing and the administrative procedures in con-
16 nection with and following such hearing, with like effect
17 as if the provisions of said article five were set forth in
18 extenso in this section.

19 Any such hearing shall be conducted by a quorum of
20 the board. For the purpose of conducting any such hear-
21 ing, any member of the board shall have the power and
22 authority to issue subpoenas and subpoenas duces tecum

23 in the name of the board, in accordance with the provi-
24 sions of section one, article five, chapter twenty-nine-a
25 of this code. All subpoenas and subpoenas duces tecum
26 shall be issued and served within the time and for the
27 fees and shall be enforced, as specified in section one,
28 article five of said chapter twenty-nine-a, and all of the
29 said section one provisions dealing with subpoenas and
30 subpoenas duces tecum shall apply to subpoenas and sub-
31 poenas duces tecum issued for the purpose of a hearing
32 hereunder.

33 The board may postpone or continue any hearing on its
34 own motion, or for good cause shown upon the application
35 of the applicant or licensee, as the case may be. At any
36 such hearing the applicant or licensee, as the case may be,
37 shall have the right to be heard in person and by any at-
38 torney at law admitted to practice before any circuit court
39 of this state.

40 After any such hearing and consideration of all of the
41 testimony, evidence and record in the case, the board
42 shall render its decision in writing. By a concurrence of
43 four members, the board may suspend for a certain time
44 or revoke the license of, or otherwise discipline, any
45 licensed veterinarian for any of the following reasons:

46 (a) The employment of fraud, misrepresentation or
47 deception in obtaining his license;

48 (b) An adjudication of insanity;

49 (c) Chronic inebriety or the habitual use of drugs;

50 (d) The use of advertising or solicitation which is false,
51 misleading, or is otherwise deemed unprofessional under
52 reasonable rules and regulations promulgated by the
53 board as aforesaid;

54 (e) Conviction of a felony or other crime involving
55 moral turpitude;

56 (f) Incompetence, gross negligence or other malprac-
57 tice in the practice of veterinary medicine;

58 (g) Having professional association with or employing
59 any person practicing veterinary medicine unlawfully;

60 (h) Fraud or dishonesty in the application or reporting
61 of any test for disease in any animal or animals;

62 (i) Failure to keep veterinary premises and equipment
63 in a clean and sanitary condition;

64 (j) Failure to report, as required by law, or making
65 false report of, any contagious or infectious disease;

66 (k) Dishonesty or gross negligence in the inspection of
67 foodstuffs or the issuance of health or inspection cer-
68 tificates;

69 (l) Cruelty to animals;

70 (m) Revocation of a license to practice veterinary
71 medicine by another state, territory or district of the
72 United States on grounds other than nonpayment of any
73 registration or license fee or fees; or

74 (n) Unprofessional conduct as defined in reasonable
75 rules and regulations promulgated by the board as afore-
76 said.

77 The written decision of the board shall be accompanied
78 by findings of fact and conclusions of law as specified in
79 section three, article five, chapter twenty-nine-a of this
80 code, and a copy of such decision and accompanying find-
81 ings and conclusions shall be served upon the applicant or
82 licensee, as the case may be, and his attorney of record,
83 if any.

84 The decision of the board shall be final unless vacated
85 or modified upon judicial review thereof in accordance
86 with the provisions of section thirteen of this article.

§30-10-13. Judicial review.

Any applicant or licensee, as the case may be, adversely
2 affected by a decision of the board rendered after a hear-
3 ing held in accordance with the provisions of section
4 twelve of this article is entitled to judicial review thereof.
5 All of the pertinent provisions of section four, article five,
6 chapter twenty-nine-a of this code shall apply to and
7 govern such review with like effect as if the provisions
8 of said section four were set forth in extenso in this
9 section.

10 The judgment of the circuit court shall be final unless
11 reversed, vacated or modified on appeal to the supreme
12 court of appeals in accordance with the provisions of

13 section one, article six, chapter twenty-nine-a of this
14 code.

15 Legal counsel and services for the board in all appeal
16 proceedings in any circuit court and the supreme court
17 of appeals shall be provided by the attorney general or
18 his assistants, and in appeal proceedings in any circuit
19 court by the prosecuting attorney of the county as well,
20 all without additional compensation.

§30-10-14. Reinstatement or relicensing.

Any person whose license is suspended or revoked
2 may in the discretion of the board be reinstated or re-
3 licensed at any time without examination by majority
4 vote of the board on written application made to the
5 board showing cause justifying such reinstatement or
6 relicensing.

§30-10-15. Actions to enjoin violations.

Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision
3 of this article or any final decision of the board, the board
4 may apply in the name of the state, to the circuit court
5 of the county in which the violation or violations or any
6 part thereof has occurred, is occurring or is about to
7 occur, or the judge thereof in vacation, for an injunction
8 against such person and any other persons who have been,
9 are or are about to be, involved in any practices, acts
10 or omissions, so in violation, enjoining such person or
11 persons from any such violation or violations. Such
12 application may be made and prosecuted to conclusion
13 whether or not any such violation or violations have
14 resulted or shall result in prosecution or conviction under
15 the provisions of section sixteen of this article.

16 Upon application by the board, the circuit courts of
17 this state may by mandatory or prohibitory injunction
18 compel compliance with the provisions of this article and
19 all final decisions of the board. The court may issue a
20 temporary injunction in any case pending a decision on
21 the merits of any application filed.

22 The judgment of the circuit court upon any application
23 permitted by the provisions of this section shall be final

24 unless reversed, vacated or modified on appeal to the
25 supreme court of appeals. Any such appeal shall be
26 sought in the manner and within the time provided by
27 law for appeals from circuit courts in other civil cases.

28 The board shall be represented in all such proceedings
29 by the attorney general or his assistants and in such
30 proceedings in the circuit courts by the prosecuting at-
31 torneys of the several counties as well, all without addi-
32 tional compensation.

§30-10-16. Penalties.

Any person who shall in this state practice veterinary
2 medicine without a currently valid license or temporary
3 permit shall be guilty of a misdemeanor, and, upon con-
4 viction thereof, shall be punished by a fine of not less than
5 fifty dollars nor more than five hundred dollars, or by
6 imprisonment for not more than ninety days, or both by
7 such fine and imprisonment. Each act of such unlawful
8 practice shall constitute a distinct and separate offense.

§30-10-17. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the article, and
5 to this end the provisions of this article are declared to be
6 severable.

CHAPTER 155

(Com. Sub. for Senate Bill No. 337—By Mr. McCourt)

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

AN ACT to amend and reenact sections three and five, article
five, chapter nine of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to aged
persons, dependent children and relatives of dependent
children who shall be eligible for public assistance.

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.

5. Dependent children, relatives of dependent children, and foster home care of dependent children.

§9-5-3. Aged persons.

An aged person shall be eligible for public assistance

2 who:

3 (1) Has attained the age of sixty-five years.

4 (2) Has resided in the state for at least one year im-
5 mediately preceding application for public assistance.

6 (3) Has not made an assignment or transfer of prop-
7 erty for the purpose of qualifying for assistance.

8 (4) Is actually in need and has not sufficient income
9 or other resources to provide a subsistence compatible
10 with decency and health.

§9-5-5. Dependent children, relatives of dependent children, and foster home care of dependent children.

(a) A dependent child shall be eligible for public as-
2 sistance who:

3 (1) Is under the age of eighteen years; or is under
4 the age of twenty-one years and is a student regularly at-
5 tending a school, college or university or regularly at-
6 tending a course of vocational or technical training de-
7 signed to equip such person for gainful employment.

8 (2) Is deprived of parental support or care by
9 reason of the death, continued absence from home, unem-
10 ployment, physical or mental incapacity of a parent, or
11 by reason of any other cause as the laws of the federal
12 government governing federal aid to dependent children
13 may from time to time include: *Provided, however,* That
14 such unemployed parent shall not have refused without
15 good cause to accept employment, in which he is able to
16 engage, which (1) is offered through public employment
17 offices, or (2) is otherwise offered by an employer if the

18 offer is determined by the department of employment
19 security after notification by such employer to be a bona
20 fide offer of such employment: *Provided further*, That
21 such determination is not in conflict with "Department of
22 Health, Education, and Welfare of the United States"
23 regulations.

24 It is further provided that any aid under this plan to
25 which any child or relative might otherwise be entitled,
26 shall be denied for any month in which the parent of
27 such child receives unemployment compensation under
28 an unemployment compensation law of any state, includ-
29 ing West Virginia, or of the United States for any week
30 any part of which is included in such month.

31 (3) Is living with his father, mother, grandfather,
32 grandmother, brother, sister, stepfather, stepmother, step-
33 brother, stepsister, uncle, aunt, first cousin, nephew, niece
34 or any other relative as the laws of the federal govern-
35 ment governing federal aid to dependent children may
36 from time to time include, in a place of residence main-
37 tained by one or more of such relatives as his or their
38 own home, or is living in a foster family home in accord-
39 ance with the provisions of the laws of the federal gov-
40 ernment governing federal aid to dependent children.

41 (4) Has resided in the state for one year immedi-
42 ately preceding application for public assistance; or, was
43 born within one year immediately preceding the applica-
44 tion of a mother who resided within the state for one year
45 immediately preceding such birth; or, was born within
46 one year immediately preceding the application, if the
47 parent or other relative with whom the child is living
48 has resided in the state for one year immediately pre-
49 ceding such birth.

50 (5) Is actually in need and has not sufficient in-
51 come or other resources to provide a subsistence com-
52 patible with decency and health.

53 (b) The relative of a dependent child shall be eligible
54 for public assistance for any month in which public as-
55 sistance is paid with respect to such child, who:

56 (1) Is the father, mother, grandfather, grand-
57 mother, brother, sister, stepfather, stepmother, step-

58 brother, stepsister, uncle, aunt, first cousin, nephew, niece
59 or any other relative of the dependent child as the laws
60 of the federal government governing federal aid to de-
61 pendent children may from time to time include.

62 (2) Maintains himself, or together with any one
63 or more of the other specified relatives, a place of resi-
64 dence as his or their own home, and is the person with
65 whom a dependent child is living in such place of resi-
66 dence.

67 (3) Is actually in need and has not sufficient in-
68 come or other resources to provide a subsistence com-
69 patible 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 thou-
sand nine hundred thirty-one, as amended, relating to the
definition of "industrial plant" within the industrial de-
velopment 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.

§13-2C-3. Definitions.

1 The following terms, whenever used in this article, shall
2 have the following meaning:

3 (a) The term "municipality" shall mean any in-
4 corporated town or city.

5 (b) The term "county court" shall mean the govern-
6 mental body created by section twenty-two, article eight
7 of the West Virginia constitution.

8 (c) The term "governmental body" shall mean the
9 county court, the council of a town or city, or any other
10 governing body in lieu thereof.

11 (d) The term "industrial plant" shall mean any site,
12 structure, building, fixtures, machinery, equipment, and
13 related facilities, including both real and personal prop-
14 erty or any combination thereof which shall be suitable
15 as a factory, mill, shop, processing, assembly, manufac-
16 turing, fabricating plant, or research and develop-
17 ment facility; but not to include facilities designed
18 for sale or distribution to the public of electricity, gas,
19 water, telephone or other services commonly classified
20 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.
6. Security for bonds.
7. Redemption of bonds.
8. Refunding bonds.
9. Use of proceeds from sale of bonds.
10. No contribution by county.
11. Bonds made legal investments.
12. Exemption from taxation.
13. County court may lease appurtenances and facilities.
14. Construction of article.
15. No notice, consent or publication required.
16. Severability.
17. Public officials exempt from personal liability.
18. Prohibition of financial interest of public officials.

§13-2D-1. Short title.

This article may be known as and may be cited as the
2 "Airport Development Bond Act."

§13-2D-2. Legislative finding.

It is hereby determined and declared as a matter of
2 legislative finding (a) that the development of air-
3 ports is essential to the further social and economic
4 growth of this state; (b) that the present and prospective
5 health, happiness, safety, right of gainful employment and
6 general welfare of the citizens of each of the counties of
7 this state will be promoted by the establishment of air-
8 ports as herein provided; and (c) that the means and
9 measures herein authorized for the promotion of airports
10 are as a matter of public policy, for the public purposes of
11 the several counties and the state of West Virginia.

§13-2D-3. Definitions.

The following terms, whenever used in this article,
2 shall have the following meaning:

3 (a) The term "county court" shall mean a governing
4 body created pursuant to section twenty-two of article
5 eight of the constitution of this state and any other gov-
6 erning body established in lieu thereof pursuant to section
7 twenty-nine, article eight of the constitution of this state.

8 (b) The term "airport" shall mean all real and per-
9 sonal property necessary for the acquisition, construction,
10 equipment, improvement, maintenance or operation of a
11 public facility for the taking off and landing of airplanes,
12 and all appurtenances and facilities usual and convenient
13 in connection with such facility for the convenience and
14 accommodation of the inhabitants of the county and the
15 public generally, and shall include airports for the use
16 of aircraft as described elsewhere in this code.

§13-2D-4. Powers conferred on counties.

In addition to the powers which counties have with re-
2 spect to airports pursuant to the other provisions of this
3 code, each county, by and through its county court, shall
4 have the following powers: (1) To issue revenue bonds
5 for the purpose of defraying the cost or any part thereof,

6 of acquiring, by construction and purchase, or by either,
7 an airport, or an addition, extension or improvement
8 thereto, and to secure the payment of such bonds, all as
9 hereinafter provided; and (2) to issue and deliver revenue
10 bonds in exchange for an airport or a private facility for
11 the taking off and landing of airplanes with appurtenant
12 facilities and conveniences.

§13-2D-5. Bonds issued to finance airport.

All bonds issued by a county court under the authority
2 of this article shall be limited obligations of the county,
3 the principal of and interest on which shall be payable out
4 of the revenues derived from the operation of the airport
5 for which the bonds are issued or any other revenue
6 derived from such airport, less operating and mainte-
7 nance costs and expenses. The bonds and interest coupons
8 issued under the authority of this article shall never con-
9 stitute evidence of indebtedness of the county issuing the
10 same within the meaning of any constitutional provision
11 or statutory limitation and shall never constitute or give
12 rise to a pecuniary liability of the county issuing the same.
13 Neither shall such bonds and interest thereon be a
14 charge against the general credit or taxing powers of the
15 county and such fact shall be plainly stated on the face
16 of each such bond. Such bonds may be executed, issued
17 and delivered at any time, and from time to time may be
18 in such form and denomination, may be of such tenor,
19 must be negotiable but may be registered as to the prin-
20 cipal thereof, may be payable in such amounts and at
21 such time or times, may be payable at such place or
22 places, may bear interest at such rate or rates not to
23 exceed six per cent per annum, payable at such place or
24 places and evidenced in such manner, and may contain
25 such provisions therein not inconsistent herewith, all as
26 shall be provided in the proceedings of the county
27 court whereunder the bonds shall be authorized to be
28 issued. Said bonds may be sold by the county court at
29 public or private sale and such sale shall be made at a
30 price not lower than a price which, computed upon stand-
31 ard tables of bond values, will have a net return of not
32 more than six per cent per annum to the purchaser upon

33 the amount paid therefor. The said bonds may also be
34 issued and delivered to the owners of an airport or private
35 facility for the landing and taking off of airplanes with
36 appurtenant facilities and conveniences in exchange there-
37 for and in payment of the purchase price thereof.

38 The bonds issued pursuant to this article by a county
39 court shall be signed by the president of the county court
40 and attested by the clerk of the county court under the
41 seal of the court. The coupons attached thereto shall bear
42 the facsimile signature of the president of the county
43 court. In case any of the officials whose signatures appear
44 on the bonds or coupons shall cease to be such officers be-
45 fore the delivery of such bonds, such signatures shall,
46 nevertheless, be valid and sufficient for all purposes to the
47 same extent as if they had remained in office until such
48 delivery.

49 If the proceeds of such bonds, by error of calculation
50 or otherwise, shall be less than the cost of the airport,
51 additional bonds may in like manner be issued to provide
52 the amount of the deficiency, and unless otherwise pro-
53 vided for in the trust agreement, mortgage, or deed of
54 trust, shall be deemed to be of the same issue, and shall
55 be entitled to payment from the same fund, without
56 preference or priority, and shall be of equal priority as to
57 any security.

§13-2D-6. Security for bonds.

There is hereby created a statutory mortgage lien upon
2 all real estate, buildings, structures, improvements and
3 personal property included as a part of an airport which
4 is acquired, purchased, constructed, or built or improved
5 with the proceeds of bonds authorized to be issued under
6 this article, for the purpose of securing the principal of
7 said bonds and the interest thereon. The principal of and
8 interest on any bonds issued under the authority of this
9 article shall be secured by a pledge of the income and
10 revenues derived from the operation of the airport and
11 any other revenue derived from such airport, less the
12 operating and maintenance costs and expenses, and also
13 be secured by a pledge of the proceeds of any sale thereof.
14 In the discretion and at the option of the county court,

15 such revenue bonds may be secured by a trust indenture
16 by and between the county court and a corporate trustee,
17 which may be a trust company or bank having trust
18 powers, within or without the state of West Virginia. The
19 county court may authorize the issuance of such revenue
20 bonds by order or resolution. The order or resolution
21 authorizing the revenue bonds and fixing the details
22 thereof may provide that such trust indenture may con-
23 tain such provisions for the protection and enforcement
24 of the rights and remedies of the bondholders as may be
25 reasonable and proper, and not in violation of law, in-
26 cluding covenants setting forth the duties of the county
27 court in relation to the construction or acquisition of an
28 airport, or part thereof, or an addition thereto, and the
29 improvement, operation, repair, maintenance and insur-
30 ance thereof, and for the custody, safeguarding and ap-
31 plication of all moneys, and may provide that the airport
32 shall be constructed and paid for under the supervision
33 and approval of the consulting engineers or architects
34 employed and designated by the county court and satis-
35 factory to the purchasers of the bonds, their successors,
36 assigns or nominees, who may require the security given
37 by any contractor and/or any depository of the proceeds
38 of the bonds or the revenues received from the operation
39 or sale of the airport to be satisfactory to such purchasers,
40 their successors, assigns or nominees, and/or be satisfac-
41 tory to the purchaser of the airport. Such indenture may
42 set forth the rights and remedies of the bondholders, the
43 county and/or such trustee and said indenture may pro-
44 vide for accelerating the maturity of the revenue bonds,
45 at the option of the bondholders upon default by the
46 county court issuing the same in the payment of the
47 principal of said bonds or the interest thereon. The county
48 court may also provide by order or resolution and in
49 such trust indenture for the payment of the proceeds
50 of the sale of the bonds and the revenues from the air-
51 port to such depository as it may determine for the
52 custody thereof and for the method of distribution there-
53 of, with such safeguards and restrictions as it may de-
54 termine to be necessary or advisable for the protection
55 thereof and upon the filing of a certified copy of such

56 order or resolution, or of the indenture agreement for
57 record in the office of the clerk of the county court of
58 any county in which an airport is located the same shall
59 have the same effect as to notice as the recordation of a
60 deed of trust or other recordable instrument.

61 In lieu of the indenture agreement provided for here-
62 inabove the principal of and interest on said bonds may
63 be secured by a mortgage or deed of trust covering all
64 or any part of the airport from which the revenues so
65 pledged may be derived and the same may be secured by
66 an assignment or pledge of the revenue received from
67 the airport, less operating and maintenance costs and ex-
68 penses. The proceedings under which such bonds are au-
69 thorized to be issued, when such bonds are to be secured
70 by a mortgage or deed of trust, may contain the same
71 terms, conditions and provisions provided for herein when
72 an indenture agreement is entered into between the coun-
73 ty court and a trustee, and any such mortgage or deed of
74 trust may contain any agreements and provisions custom-
75 arily contained in instruments securing bonds, including,
76 without limiting the generality of the foregoing, provi-
77 sions respecting the fixing and collection of revenue for
78 any airport covered by such proceedings or mortgage, the
79 terms to be incorporated in the agreement with respect
80 to such airport, the maintenance and insurance of such
81 airport, the creation and maintenance of special funds
82 from the revenues received from such airport and the
83 rights and remedies available to the bondholders, the
84 county court or to the trustee under such mortgage or
85 deed of trust, in event of default, all as the county court
86 shall deem advisable and as shall not be in conflict
87 with the provisions of this article or any existing law:
88 *Provided*, That in making any such agreements or pro-
89 visions a county shall not have the power to obligate
90 itself by indenture, order, resolution, mortgage or deed
91 of trust, except with respect to the airport and the appli-
92 cation of the revenues therefrom, and shall not have the
93 power to incur a pecuniary liability or a charge upon its
94 general credit or against its taxing powers. The proceed-
95 ings authorizing any bonds hereunder and any indenture,

96 mortgage or deed of trust securing such bonds may pro-
97 vide that, in the event of default in payment of the
98 principal of or the interest on such bonds or in the per-
99 formance of any agreement contained in such proceed-
100 ings, indenture, mortgage or deed of trust, such payment
101 and performance may be enforced by the appointment
102 of a receiver in a civil action with power to charge and
103 collect revenue and to apply the revenues from the air-
104 port in accordance with such proceedings or the pro-
105 visions of such indenture, agreement, mortgage or deed
106 of trust. Any such mortgage or deed of trust may pro-
107 vide also that, in the event of default in such payment
108 or the violation of any agreement contained in the mort-
109 gage or deed of trust, the mortgage or deed of trust may
110 be foreclosed either by sale at public outcry or by pro-
111 ceedings in a civil action, and may provide that the holder
112 of any of the bonds secured thereby may become the
113 purchaser at any foreclosure sale, if the highest bidder
114 therefor. No breach of any such agreement shall impose
115 any pecuniary liability upon a county or any charge upon
116 its general credit or against its taxing powers.

§13-2D-7. Redemption of bonds.

Revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any
3 of them, may be called for redemption at any time prior
4 to maturity by the county court, and at such redemption
5 prices, or premiums, which terms shall be stated in the
6 bonds.

§13-2D-8. Refunding bonds.

Any bonds issued hereunder and at any time outstand-
2 ing may at any time and from time to time be refunded
3 by a county by the issuance of its refunding bonds in
4 such amount as the county court may deem necessary to
5 refund the principal of the bonds so to be refunded, to-
6 gether with any unpaid interest thereon; to make any im-
7 provements or alterations to the airport; and to pay any
8 premiums and commissions necessary to be paid in con-
9 nection therewith. Any such refunding may be effected
10 whether the bonds to be refunded shall have then ma-

11 tured or shall thereafter mature, either by sale of the
12 refunding bonds and the application of the proceeds
13 thereof for the redemption of the bonds to be refunded
14 thereby, or by exchange of the refunding bonds for the
15 bonds to be refunded thereby: *Provided*, That the holders
16 of bonds so to be refunded shall not be compelled without
17 their consent to surrender their bonds for payment or
18 exchange prior to the date on which they are payable or,
19 if they are called for redemption, prior to the date on
20 which they are by their terms subject to redemption.
21 Any refunding bonds issued under the authority of this
22 article shall be payable from the revenues out of which
23 the bonds to be refunded thereby were payable, shall be
24 subject to the provisions contained in section five of this
25 article and shall be secured in accordance with the pro-
26 visions of section six of this article.

§13-2D-9. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the
3 purpose for which the bonds were issued: *Provided*, That
4 any accrued interest and premium received in any such
5 sale shall be applied to the payment of the principal of
6 or the interest on the bonds sold: *Provided, however*,
7 That if for any reason any portion of such proceeds shall
8 not be needed for the purpose for which the bonds were
9 issued, then such unneeded portion of said proceeds shall
10 be applied to the payment of the principal of or the inter-
11 est on said bonds, or held in reserve for the payment
12 thereof. The cost of acquiring any airport shall be deemed
13 to include the following: The cost of acquiring any real
14 estate or personal property deemed necessary, the actual
15 cost of the construction of any part of the airport and
16 appurtenances and facilities which may be constructed,
17 including architects', engineers', financial or other con-
18 sultants', and legal fees; the purchase price of any part
19 of the airport and appurtenances and facilities that may
20 be acquired by purchase; all expenses incurred in connec-
21 tion with the authorization, sale and issuance of the bonds
22 to finance such acquisition; and the interest on such bonds
23 for a reasonable time prior to construction, during con-

24 struction, and for a period not exceeding twelve months
25 after completion of construction and any other cost and
26 expense necessary to the establishment and acquisition of
27 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
2 general funds, or otherwise contribute, any of the cost of
3 acquiring or constructing an airport or its appurtenances
4 and facilities, which is to be financed out of the proceeds of
5 the sale of revenue bonds issued under the authority of
6 this article: *Provided*, That this provision shall not be con-
7 strued to prevent a county from paying for the acqui-
8 sition of property for an airport or for the construction,
9 equipment, improvement, maintenance and operation of
10 any airport pursuant to other provisions of this code so
11 long as any such acquisition of property or the construc-
12 tion, equipment, improvement, maintenance and opera-
13 tion of such airport is not financed by the proceeds from
14 the sale of revenue bonds issued under the authority of
15 this article: *Provided, however*, That this provision shall
16 not be construed to prevent a county from accepting do-
17 nations of property to be used as a part of any such air-
18 port. The bonds issued pursuant to this article shall be
19 payable solely from the revenue derived from the airport,
20 less operating and maintenance cost and expenses, and
21 shall not constitute an indebtedness of the county within
22 the meaning of any constitutional provision and it shall
23 be plainly stated on the face of each bond that it has
24 been issued under the provisions of this article and that
25 it does not constitute an indebtedness of the county within
26 the meaning of the constitution of West Virginia.

27 No county court shall have the authority under this
28 article to levy any taxes for the purpose of paying any
29 part of the cost of acquiring an airport to be financed
30 under the provisions of this article. However, all neces-
31 sary preliminary expenses actually incurred by a county
32 court in the making of studies, surveys, taking options,
33 preliminary planning, and all other expenses necessary
34 to be paid prior to the issuance, sale and delivery of
35 the revenue bonds, may be paid by such county court

36 out of any surplus contained in any item of budgetary
37 appropriation or any revenues collected in excess of an-
38 ticipated revenues, which shall be reimbursed and repaid
39 out of the proceeds of the sale of the revenue bonds.

§13-2D-11. Bonds made legal investments.

Bonds issued under the provisions of this article shall
2 be legal investments for banks, building and loan associ-
3 ations, and insurance companies organized under the laws
4 of this state and for a business development corporation
5 organized pursuant to article fourteen, chapter thirty-one
6 of the code of West Virginia.

§13-2D-12. Exemption from taxation.

The revenue bonds issued pursuant to this article and
2 the income therefrom shall be exempt from taxation ex-
3 cept inheritance, estate and transfer taxes; and the real
4 and personal property which a county court may acquire
5 for an airport according to the provisions of this article
6 shall be exempt from taxation by the state, or any
7 county, municipality or other levying body, as public
8 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 appur-
2 tenances and facilities of airports, including but not lim-
3 ited to any space in the airport terminal building or
4 hangars, or any other areas for automobile parking, or
5 any other areas for restaurant, hotel or motel purposes,
6 to any available lessee or lessees at such rentals and
7 upon such terms and conditions as to the county courts
8 shall seem proper. All such leases shall be for some pur-
9 pose associated with airport activities.

§13-2D-14. Construction of article.

Neither this article nor anything herein contained shall
2 be construed as a restriction or limitation upon any powers
3 which a county might otherwise have under any laws of
4 this state, but shall be construed as additional; and this
5 article shall not be construed as requiring an election by
6 the voters of a county prior to the issuance of bonds here-

7 under by such county, and same shall not be construed as
8 requiring any proceeding under any law or laws, other
9 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
2 court, other governmental body or public officer shall be
3 required as a prerequisite to the issuance or sale of any
4 bonds or the making of any agreement, mortgage or deed
5 of trust under the authority of this article. No publication
6 or notice shall be necessary to the validity of any resolu-
7 tion or proceeding had under this article.

§13-2D-16. Severability.

If any section, clause, provision or portion of this article
2 shall be held to be invalid or unconstitutional by any
3 court of competent jurisdiction, such holding shall not
4 affect any other section, clause or provision of this article
5 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 per-
2 sonally liable on any contract or obligation executed
3 pursuant to the authority herein contained, nor shall the
4 issuance of bonds hereunder be considered as misfeasance
5 in office.

§13-2D-18. Prohibition of financial interest of public officials.

No member of a county court issuing revenue bonds
2 under the provisions of this article shall have any finan-
3 cial interest, directly or indirectly, in an airport acquired
4 or constructed pursuant to this article.

— c —

CHAPTER 158

(Com. Sub. for Senate Bill No. 299—By Mr. Carson, Mr. President)

[Passed February 28, 1967; in effect from passage. Approved by the Governor.]

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.

Section

2. Definitions.
14. Service credit.
15. Military service credit.
20. Voluntary retirement.
21. Deferred retirement and early retirement.
27. Nonduty death annuities.
29. Members' deposit fund; members' contributions.
48. Reemployment after retirement.

§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

18 performance of a governmental function and whose juris-
19 diction is coextensive with one or more counties, cities
20 or towns;

21 (5) "Participating public employer" means the state
22 of West Virginia, any board, commission, department, in-
23 stitution or spending unit, and shall include any agency
24 created by rule of the supreme court of appeals having
25 full-time employees, which for the purposes of this article
26 shall be deemed a department of state government; and
27 any political subdivision in the state which has elected
28 to cover its employees, as defined in this article, under
29 the West Virginia public employees' retirement system;

30 (6) "Employee" means any person who serves regu-
31 larly as an officer or employee, full time, on a salary basis,
32 whose tenure is not restricted as to temporary or provi-
33 sional appointment, in the service of, and whose compen-
34 sation is payable in whole or in part by any political sub-
35 division, or an officer or employee whose compensation is
36 calculated on a daily basis and paid monthly or on com-
37 pletion of assignment, including technicians and other
38 personnel employed by the West Virginia national guard
39 whose compensation in whole or in part is paid by the
40 federal government: *Provided*, That members of the state
41 Legislature, the clerk of the house of delegates, the clerk
42 of the state senate and members of the legislative body
43 of any political subdivision shall be considered to be em-
44 ployees, anything contained herein to the contrary not-
45 withstanding. In any case of doubt as to who is an em-
46 ployee within the meaning of this article, the board of
47 trustees shall decide the question;

48 (7) "Member" means any person who is included in
49 the membership of the retirement system;

50 (8) "Retirant" means any member who retires with an
51 annuity payable by the retirement system;

52 (9) "Beneficiary" means any person, except a retirant,
53 who is entitled to, or will be entitled to, an annuity or
54 other benefit payable by the retirement system;

55 (10) "Service" means personal service rendered to a
56 participating public employer by an employee, as defined
57 in this article, of a participating public employer;

58 (11) "Prior service" means service rendered prior to
59 July one, one thousand nine hundred sixty-one, to the
60 extent credited a member as provided in this article;

61 (12) "Contributing service" means service rendered
62 by a member from and after the date of his entrance in
63 the retirement system, to the extent credited him as pro-
64 vided in this article;

65 (13) "Credited service" means the sum of a member's
66 prior service credit and contributing service credit stand-
67 ing to his credit as provided in this article;

68 (14) "Compensation" means the remuneration paid a
69 member by a participating public employer for personal
70 services rendered by him to the participating public em-
71 ployer. In the event a member's remuneration is not all
72 paid in money, his participating public employer shall
73 fix the value of the portion of his remuneration which is
74 not paid in money;

75 (15) "Final average salary" means the average of the
76 highest annual compensation received by a member dur-
77 ing any period of five consecutive years of his credited
78 service contained within his ten years of credited service
79 immediately preceding the date his employment with a
80 participating public employer last terminated. If he has
81 less than five years of credited service, his final average
82 salary shall be the average of the annual rate of com-
83 pensation received by him during his total years of
84 credited service. Final average salary for members of the
85 Legislature means their actual compensation serving as
86 a member of the Legislature multiplied by four;

87 (16) "Accumulated contributions" means the sum of
88 all amounts deducted from the compensations of a mem-
89 ber and credited to his individual account in the members'
90 deposit fund, together with regular interest thereon;

91 (17) "Regular interest" means such rate or rates of in-
92 terest per annum, compounded annually, as the board of
93 trustees shall from time to time adopt;

94 (18) "Annuity" means an annual amount payable by
95 the retirement system throughout the life of a person.
96 All annuities shall be paid in equal monthly installments,
97 using the upper cent for any fraction of a cent;

98 (19) "Annuity reserve" means the present value of all
99 payments to be made to a retirant or beneficiary of a re-
100 tirant on account of any annuity, computed upon the basis
101 of such mortality and other tables of experience, and
102 regular interest, as the board of trustees shall from time
103 to time adopt;

104 (20) "Retirement" means a member's withdrawal from
105 the employ of a participating public employer with an
106 annuity payable by the retirement system;

107 (21) "Actuarial equivalent" means a benefit of equal
108 value computed upon the basis of such mortality table
109 and regular interest as the board of trustees shall from
110 time to time adopt;

111 (22) The masculine gender shall include the feminine
112 gender, and words of the singular number with respect to
113 persons shall include the plural number, and vice versa.

§5-10-14. Service credit.

(a) The board of trustees shall credit each member
2 with the prior service and contributing service to which
3 he is entitled based upon such rules and regulations as
4 the board of trustees shall from time to time adopt: *Pro-*
5 *vided*, That in no case shall less than ten days of service
6 rendered by a member in any calendar month be credited
7 as a month of service; nor shall less than ten months of
8 service rendered in any calendar year be credited as a
9 year of service; nor shall more than one year of service be
10 credited any member for all service rendered by him in
11 any calendar year; nor shall any member who was not in
12 the employ of a political subdivision within a period of
13 fifteen years immediately preceding the date the political
14 subdivision became a participating public employer be
15 credited with prior service.

16 (b) The board of trustees may grant service credit to
17 employees of boards of health, the clerk of the house of
18 delegates and the clerk of the state senate who are par-
19 ticipating members, for service previously credited by
20 the state teachers' retirement system, and may require a
21 transfer of the members' contributions to the retirement

22 system, and may also require a deposit, with interest, of
23 any withdrawals of contributions.

24 (c) Court reporters who are acting in an official
25 capacity, although paid by funds other than the county
26 court or state auditor, may receive prior service credit
27 for such time as served in such capacity.

§5-10-15. Military service credit.

In the event a member, who, while employed by a par-
2 ticipating public employer, entered or enters the armed
3 forces of the United States during any period of com-
4 pulsory military service and reenters the employ of a
5 participating public employer, such armed service ren-
6 dered by him, not to exceed five years, shall be credited
7 to him: *Provided*, That (1) his reemployment by a par-
8 ticipating public employer occurs within a period of six
9 months from and after the date of termination of such
10 armed service actually required of him, and (2) he pays
11 to the members' deposit fund the amount he may have
12 withdrawn therefrom, together with regular interest from
13 the date of withdrawal to the date of repayment. In any
14 case of doubt as to the period of service to be so credited
15 a member, the board of trustees shall have final power to
16 determine such period. During the period of such armed
17 service and until his return to the employ of a participat-
18 ing public employer, his contributions to the retirement
19 system shall be suspended and any balance remaining to
20 his credit in the members' deposit fund shall be accum-
21 ulated at regular interest: *And provided further*, That
22 any member who, prior to July one, one thousand nine
23 hundred sixty-one, while employed by a public employer
24 who is now a participating public employer or while em-
25 ployed in a position covered under the teachers' retirement
26 system, entered the armed forces of the United States
27 during any period of compulsory military service and
28 reentered the employ of a public employer, who is now a
29 participating public employer, or reentered a position
30 covered under the teachers' retirement system, such
31 armed service rendered by him, not to exceed five years,
32 shall be credited to him under the provisions of this
33 section.

§5-10-20. Voluntary retirement.

Any member who has attained or attains age sixty
2 years and has five or more years of credited service in
3 force, at least one year of which he was a contributing
4 member of the retirement system, may retire upon his
5 written application filed with the board of trustees setting
6 forth at what time, not less than thirty days nor more than
7 ninety days subsequent to the execution and filing thereof
8 he desires to be retired. Upon his retirement he shall
9 receive an annuity provided for in section twenty-two
10 hereof.

§5-10-21. Deferred retirement and early retirement.

(a) Any member, who has five or more years of credited
2 service in force, of which at least three years are contribut-
3 ing service and who leaves the employ of a participating
4 public employer prior to his attainment of age sixty years
5 for any reason except his disability retirement or death,
6 shall be entitled to an annuity computed according to
7 section twenty-two hereof, as the said section was in force
8 as of the date of his said separation from the employ of a
9 participating public employer: *Provided*, That he does
10 not withdraw his accumulated contributions from the
11 members' deposit fund. His said annuity shall begin the
12 first day of the calendar month next following the month
13 in which his application for same is filed with the board
14 of trustees on or after his attainment of age sixty-two
15 years.

(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 in
19 force and who has attained age fifty-five as of the date of
20 his separation may, prior to the effective date of his re-
21 tirement, but not thereafter, elect to receive the actuarial
22 equivalent of his deferred retirement annuity as a
23 reduced annuity commencing on the first day of any
24 calendar month between his date of separation and his
25 attainment of age sixty-two years and payable through-
26 out 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

40 for in section twenty-four hereof, and (3) nominated his
41 said widow or widower, as the case may be, as beneficiary.

42 (c) In the event any member continues in the employ
43 of a participating public employer on or after the date he
44 (1) acquires ten or more years of credited service, and
45 (2) dies without leaving surviving him a spouse, but
46 (3) leaves surviving him an infant child or children, and
47 (4) does not have a beneficiary nominated as provided
48 in subsection (a) of this section, said infant child or
49 children shall be entitled to an annuity to be calculated
50 as follows: The annuity reserve shall be calculated as
51 though said member had retired as of the date of his de-
52 cease and elected a straight life annuity, and the amount
53 of said annuity reserve shall be paid in equal monthly
54 installments to said member's infant child or children
55 until said child or children attain age twenty-one or
56 sooner marry or become emancipated; however, in no
57 event shall any child or children receive more than two
58 hundred fifty dollars per month each. The said annuity
59 payments shall be computed as of the date of the death
60 of the said member and the amount of said annuity shall
61 remain constant during the period of payment. The an-
62 nual amount of the annuities payable by this section shall
63 not exceed sixty per cent of said deceased member's final
64 average salary.

§5-10-29. Members' deposit fund; members' contributions.

(a) The members' deposit fund is hereby created. It
2 shall be the fund in which shall be accumulated, at
3 regular interest, the contributions deducted from the
4 compensations of members, and from which refunds of
5 accumulated contributions shall be paid and transfers
6 made as provided in this section.

7 (b) The contributions of a member to the retirement
8 system shall be three and five-tenths per cent of his an-
9 nual compensations. The said contributions shall be made
10 notwithstanding that the minimum salary or wages pro-
11 vided by law for any member shall be thereby changed.
12 Each member shall be deemed to consent and agree to
13 the deductions made and provided for herein. Payment
14 of a member's compensation less said deductions shall

15 be a full and complete discharge and acquittance of all
16 claims and demands whatsoever for services rendered
17 by him to a participating public employer, except as to
18 benefits provided by this article.

19 (c) The officer or officers responsible for making up
20 the payrolls for payroll units of the state government and
21 for each of the other participating public employers shall
22 cause the contributions, provided for in subsection (b)
23 above, to be deducted from the compensations of each
24 member in the employ of the participating public em-
25 ployer, on each and every payroll, for each and every
26 payroll period, from the date the member enters the re-
27 tirement system to the date his membership terminates.
28 When deducted, each of said amounts shall be paid by the
29 participating public employer to the retirement system;
30 said payments to be made in such manner and form, and
31 in such frequency, and shall be accompanied by such sup-
32 porting data, as the board of trustees shall from time to
33 time prescribe. When paid to the retirement system, each
34 of said amounts shall be credited to the members' deposit
35 fund account of the member from whose compensations
36 said contributions were deducted.

37 (d) In addition to the contributions deducted from the
38 compensations of a member, as heretofore provided, a
39 member shall deposit in the members' deposit fund, by a
40 single contribution or by an increased rate of contribution
41 as approved by the board of trustees, the amounts he may
42 have withdrawn therefrom and not repaid thereto,
43 together with regular interest from the date of with-
44 drawal to the date of repayment. In no case shall a mem-
45 ber be given credit for service rendered prior to the date
46 he withdrew his contributions or accumulated contribu-
47 tions, as the case may be, until he returns to the members'
48 deposit fund all amounts due the said fund by him.

49 (e) Upon the retirement of a member, or if a survivor
50 annuity becomes payable on account of his death, in
51 either event his accumulated contributions standing to
52 his credit in the members' deposit fund shall be trans-
53 ferred to the retirement reserve fund.

54 (f) In the event an employee's membership in the re-
55 tirement system terminates and no annuity becomes or

56 will become payable on his account, any accumulated con-
57 tributions standing to his credit in the members' deposit
58 fund, unclaimed by the said employee, or his legal repre-
59 sentative, within three years from and after the date his
60 membership terminated, shall be transferred to the in-
61 come fund.

62 (g) Duly elected members of the Legislature who have
63 elected to become members of the retirement system,
64 pursuant to other sections of this article, shall contribute
65 to the retirement system fourteen per cent of their annual
66 compensation for serving as a member of the Legislature.

§5-10-48. Reemployment after retirement.

In the event a retirant becomes employed by a par-
2 ticipating public employer, payment of his annuity shall
3 be suspended during the period of his reemployment.
4 Upon termination of such reemployment, payment of
5 his annuity will be resumed without increase or decrease
6 due to such reemployment, except that nothing herein
7 to the contrary shall prohibit a retirant from accepting
8 temporary employment for a participating employer so
9 long as he shall not receive compensation in excess of
10 eighteen hundred dollars per year.

— c —

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, desig-
nated 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
2 authorized to lease to the municipality of Salem, or any
3 board or commission created by the governing body of
4 the municipality of Salem, for recreational purposes,
5 which said recreational purposes will be to the mutual
6 advantage of the state and the city of Salem, two tracts
7 of land titled in the state commissioner of public insti-
8 tutions, located in Tenmile District, Harrison County,
9 West Virginia, which said two tracts of land consist of
10 approximately 11.3 acres; the first tract, consisting of
11 approximately one acre, is bounded on the west by Long
12 Run Road; the southeast by the main line of the Chesapeake and Ohio Railroad (formerly the main line of the
13 Baltimore and Ohio Railroad); and on the north by the
14 Salem Fork of Tenmile Creek; the second tract of land
15 consists of approximately 10.3 acres of land and is
16 bounded on the north by U. S. Route 50; on the west by
17 the Broadwater property line; on the south by a bluff,
18 and by the Salem Fork of Tenmile Creek; and on the
19 east by Long Run Road.
20

CHAPTER 162

(Com. Sub. for Senate Bill No. 300—By Mr. Carson, Mr. President)

[Passed March 11, 1987; in effect from passage. Approved by the Governor.]

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 made available for investment 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.
6. Legal opinions.
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.
12. Exercise of judgment in making investments.
13. Duties of state treasurer.
14. Records of investments.
15. Reports of board.
16. Making funds available for investment.
17. Post-audit.
18. Severability of provisions.

§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
2 of investments, to be known as the "West Virginia State
3 Board of Investments," and the same is hereby made a
4 body corporate, and by that name the board may adopt
5 and use a seal; contract and be contracted with; acquire
6 and dispose of personal property; sue and be sued; and
7 otherwise exercise all powers and functions necessary
8 and germane to its public corporate existence and pur-
9 poses. The board shall consist of the governor, state
10 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
2 treasurer shall be the executive secretary of the board
3 and the custodian of all funds, securities and assets desig-
4 nated or described in this article; and the office of the
5 state treasurer shall act as staff agency for the board.

6 Each member of the state board of investments shall
7 give a separate and additional bond from a surety com-
8 pany qualified to do business within the state of West
9 Virginia in the penalty of two hundred fifty thousand
10 dollars for the faithful performance of his duties as a
11 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 regu-
2 lations for the protection of funds invested and obtain
3 such consultant services and expert advice from a nation-
4 ally recognized investment advisor or advisors as are
5 necessary for the prudent and proper management and
6 investment of said funds.

7 All costs for consultant services, expert advice, the
8 bonds provided for in the preceding section, and other
9 lawful costs shall be proper charges against and payable
10 on a prorata basis from the earnings of the various funds
11 subject to investment under the provisions of this article.

12 Any brokerage commission that may be paid shall
13 follow specifically the generally accepted brokerage com-
14 mission as set forth by the rules of fair practice of the
15 national association of security dealers or a recognized
16 national security exchange.

17 All expert advice and consultant opinions shall be re-
18 duced to writing and be always available for use in the
19 continuous post-audit provided for in section seventeen
20 hereof, and all such expert advice and consultant opin-
21 ions shall be filed in the office of the state treasurer and
22 made available for public inspection upon completion
23 of the transaction.

§12-6-6. Legal opinions.

Prior to making any investment in the classes of securi-
2 ties specified in subdivisions (b), excluding direct general
3 obligation securities of this state, (c), (d) and (e) of
4 section nine of this article, and subdivision (c) of section
5 ten of this article, the board shall require an original or
6 certified copy of the written opinion of a nationally recog-
7 nized bond attorney or attorneys certifying to the legality
8 of such securities.

**§12-6-7. Transfer of duties of state agencies to board respect-
ing investment of public funds; exceptions.**

All duties vested by law in any agency or board of the
2 state relating to the investment or reinvestment of mon-
3 eys, and the purchase, sale or exchange of any investment
4 or securities, of and for any funds, are hereby transferred
5 to and shall be exercised and performed for such fund
6 by the board: *Provided*, That neither this nor any other
7 section of this article shall in any manner apply (1) to
8 the "Board of the School Fund" and "School Fund"
9 established by section four, article twelve of the state's
10 constitution and legislation adopted thereunder, or (2)
11 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
2 agency or board shall continue to have all of the powers
3 and shall exercise all of the functions and duties vested

4 in or imposed upon it by law, as to any fund, and shall
5 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
2 be provided by law as to the securities in which funds
3 may be invested, funds made available for investment
4 for periods in excess of one year may be invested by
5 the board, without the approval of any other state agency
6 or official other than as required in section six of this
7 article, in the following classes of securities, and not
8 otherwise:

9 (a) Securities of the United States or agency thereof,
10 or those guaranteed by, or for which the credit of the
11 United States or agency thereof is pledged for the pay-
12 ment of the principal and interest thereof.

13 (b) Direct general obligation securities of this state,
14 or any other state or territory of the United States, or
15 the District of Columbia, unconditionally guaranteed as to
16 the principal and interest by such other state or territory
17 of the United States, or the District of Columbia: *Pro-*
18 *vided*, That (1) such other state, territory, or the District
19 of Columbia has the power to levy taxes for the payment
20 of the principal and interest of such securities, and (2)
21 at the time of investment such other state, territory, or
22 the District of Columbia is not in default in the payment
23 of any part of the principal or interest owing by it upon
24 any part of its funded indebtedness.

25 (c) Securities issued by a federal land bank, or by a
26 federal intermediate credit bank, under the act of Con-
27 gress of July seventeen, one thousand nine hundred six-
28 teen, known as the "Federal Farm Loan Act," as amended
29 or supplemented from time to time, or by the Federal
30 Home Loan Bank System, Federal National Mortgage As-
31 sociation, or banks for cooperatives.

32 (d) Securities issued, assumed or unconditionally guar-
33 anteed by the International Bank for Reconstruction and
34 Development, or Tennessee Valley Authority.

35 (e) Any fixed interest bond, note or debenture of any
36 corporation organized and operating within the United

37 States: *Provided*, That such corporation shall have a
38 minimum net worth of fifteen million dollars and its
39 securities or its parent corporation's securities are listed
40 on one or more of the national stock exchanges: *Pro-*
41 *vided, however*, That (1) such corporation has earned a
42 profit in eight of the preceding ten fiscal years as reflected
43 in its statements, and (2) such corporation has not de-
44 faulted in the payment of principal or interest on any
45 of its outstanding funded indebtedness during its pre-
46 ceding ten fiscal years, and (3) the bonds, notes or de-
47 bentures of such corporation to be purchased are rated
48 "AA" or the equivalent thereof or better than "AA" or
49 the equivalent thereof by at least two or more nationally
50 recognized rating services, such as Standard and Poor's,
51 Dun & Bradstreet, or Moody's.

§12-6-10. Investments for short-term periods.

Notwithstanding the restrictions which may otherwise
2 be provided by law as to the securities in which funds
3 may be invested, funds made available for investment
4 for periods of one year or less may be invested by the
5 board, without the approval of any other state agency
6 or official other than the written opinion as required in
7 section six of this article, in the following classes of
8 securities and not otherwise:

9 (a) Certificates or other obligations of the United
10 States or for which the full faith and credit of the United
11 States is pledged, which mature on such dates as will
12 make available such amount of cash as required.

13 (b) Obligations of the United States which are re-
14 deemable by the United States treasury at the owner's
15 option at fixed redemption values within one year from
16 the date of such investment.

17 (c) Securities issued by any corporation which will
18 meet the requirements of subdivision (e), section nine
19 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
2 each fund placed with it for investment in any bonds,
3 notes or debentures of any one corporation meeting the

4 requirements of subdivision (e) of section nine of this
5 article; nor shall the board invest more than thirty-five
6 per cent of each fund placed with it for investment in
7 bonds, notes or debentures of corporations meeting the
8 requirements of subdivision (e) of section nine of this
9 article.

10 Securities purchased or held under the provisions of
11 this article may be sold or exchanged for other securities:
12 *Provided*, That (1) no security shall be purchased, sold
13 or exchanged without the concurrence of a majority of
14 all members of the board, (2) no security shall be pur-
15 chased at a price above, nor sold or exchanged at a price
16 below, its prevailing fair market value, (3) no security
17 shall be purchased, sold, or exchanged for the purpose
18 of aiding any individual, firm or corporation by the pay-
19 ment of brokerage commissions or fees thereto, (4) no
20 security shall be received in exchange which does not
21 comply with the requirements of section nine or ten
22 of this article, and (5) the board shall not engage in any
23 arbitrage practices.

§12-6-12. Exercise of judgment in making investments.

Any investment made under this article shall be made
2 with the exercise of that degree of judgment and care,
3 under circumstances then prevailing, which men of
4 experience, prudence, discretion and intelligence exer-
5 cise in the management of their own affairs, not for specu-
6 lation but for investment, considering the probable safety
7 of their capital as well as the probable income to be
8 derived.

§12-6-13. Duties of state treasurer.

It shall be the duty of the state treasurer to collect
2 the interest, or other income on, and the principal of
3 such securities in his custody as said sums become due
4 and payable, and to credit same when so collected, to
5 the fund to which the investments belong. Whenever a
6 given investment is owned by two or more funds, the
7 income received shall be prorated in accordance with
8 the ownership of the respective funds.

§12-6-14. Records of investments.

The board shall keep for each such fund for which
2 investments are made a separate account, to be desig-
3 nated by name and number, in which shall be recorded
4 the individual amounts and the totals of all investments
5 belonging to such fund. Every receipt and collection or
6 disbursement when received or made shall be immedi-
7 ately recorded to the account of the particular fund to
8 which it belongs.

§12-6-15. Reports of board.

The board shall prepare quarterly a complete and full
2 report of its operations and its investments and furnish
3 a copy thereof to the governing authority of each fund,
4 the president of the senate, speaker of the house, legis-
5 lative auditor, and upon request to any legislative com-
6 mittee, any banking institution in this state, and any
7 member of any news media, and such report shall be
8 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
2 charged with the administration of any fund shall, con-
3 sistent with other provisions of law, determine what part
4 thereof is available for investment and shall, consistent
5 with other provisions of law, have the authority to direct
6 the board to collect, sell or otherwise realize upon any
7 investment whenever it becomes necessary or expedient
8 to use any of the funds invested.

§12-6-17. Post-audit.

There shall be a continuous post-audit conducted by
2 the legislative auditor of the investment transactions of
3 the board, and a copy of said post-audit for the preceding
4 calendar year shall be furnished to each member of the
5 Legislature upon its convening in January of each year.

§12-6-18. Severability of provisions.

If any provision of this article, or the applicability
2 thereof to any person or circumstance, is held invalid,
3 the remainder of this article and the applicability thereof

- 4 and of such provisions to other persons or circumstances
5 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

9. Duties of agency heads.

§5-8-9. Duties of agency heads.

- 1 The head of each agency shall:
- 2 (a) Establish and maintain an active, continuing pro-
- 3 gram for the economical and efficient management of
- 4 the records of the agency.
- 5 (b) Make and maintain records containing adequate
- 6 and proper documentation of the organization, functions,
- 7 policies, decisions, procedures and essential transactions
- 8 of the agency designed to furnish information to protect
- 9 the legal and financial rights of the state and of persons
- 10 directly affected by the agency's activities.
- 11 (c) Submit to the administrator, in accordance with
- 12 the standards established by him, schedules proposing

13 the length of time each state record series warrants reten-
14 tion for administrative, legal or fiscal purposes after it
15 has been received by the agency. The head of each agency
16 also shall submit lists of state records in his custody that
17 are not needed in the transaction of current business and
18 that do not have sufficient administrative, legal or fiscal
19 value to warrant their further keeping for disposal in
20 conformity with the requirements of section ten of this
21 article.

22 (d) Cooperate with the administrator in the conduct of
23 surveys made by him pursuant to the provisions of this
24 article.

25 (e) Comply with the rules, regulations, standards and
26 procedures issued by the administrator.

27 (f) First obtain the administrator's written approval
28 before purchasing or acquiring any equipment or sup-
29 plies used or to be used to store or preserve records of
30 his agency. If such approval is obtained the agency will
31 submit a requisition to the budget division together with
32 a copy of the administrator's said approval.

CHAPTER 164

(Senate Bill No. 149—By Mr. Carson, Mr. President, and
Mr. McCourt)

[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 six 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-

34 nual salary of six thousand two hundred sixteen dollars;
35 and each newly enlisted trooper shall receive a salary
36 of four hundred thirteen dollars during the period of
37 his basic training, and upon the satisfactory completion
38 of such training and assignment to active duty each
39 trooper shall receive, during the remainder of his first
40 year's service, a salary of four hundred sixty-three dol-
41 lars monthly. During the second year of his service in
42 the department each trooper shall receive an annual
43 salary of five thousand six hundred seventy-six dollars;
44 during the third year of his service each trooper shall
45 receive an annual salary of five thousand seven hundred
46 ninety-six dollars; and during the fourth and fifth years
47 of his service and for each year thereafter each trooper
48 shall receive an annual salary of five thousand nine hun-
49 dred sixteen dollars. Each member of the department
50 entitled thereto by the provisions hereof shall receive an
51 increase in salary over that hereinbefore set forth in this
52 section, for grade and rank, based on length of service,
53 including that heretofore and hereafter served, with the
54 department, as follows: For each five-year period of serv-
55 ice with the department from the date of first enlistment,
56 each member of the department shall receive a salary
57 increase of one hundred twenty dollars per year to be
58 effective during his next five years of service, which in-
59 creases shall be successive and cumulative until a total
60 of five such increases shall be received.

61 In applying the foregoing salary schedule where salary
62 increases are provided for length of service, members of
63 the department in service at the time this article becomes
64 effective shall be given credit for prior service and shall
65 be paid such salaries as the same length of service will
66 entitle them to receive under the provisions hereof.

67 Each member of the department of public safety, except
68 the superintendent and civilian employees, shall, before
69 entering upon the discharge of his duties, execute a bond
70 with security in the sum of three thousand five hundred
71 dollars payable to the state of West Virginia, conditioned
72 for the faithful performance of his duties as such, and
73 such bond shall be approved as to form by the attorney
74 general, and as to sufficiency by the board of public works,

75 and the same shall be filed with the secretary of state and
76 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
2 section of this article, the guardian of any minor, or the
3 committee of any insane person or convict, if he deem
4 that the interests of his ward or insane person or convict
5 will be promoted by a sale, lease or mortgage of, or trust
6 deed upon, his estate, or of any estate in which he with

7 others, infants or adults, is interested, whether the estate
8 of the minor, or insane person or convict, or of any of
9 the other persons interested, be absolute or limited, and
10 whether there be or be not limited thereon any other
11 estate, vested or contingent, may apply by petition, in a
12 summary way, to the circuit court, or to the judge
13 thereof in vacation, or to any court of concurrent juris-
14 diction with the circuit court, or to the judge thereof in
15 vacation, of the county in which the estate proposed to
16 be sold, leased or encumbered, or some part thereof may
17 be, describing all the estate, real and personal, belonging
18 to the minor, or insane person or convict and setting
19 forth plainly all the facts calculated to show the pro-
20 priety of the sale, lease, mortgage, or deed of trust. The
21 petition shall be verified by the oath of the plaintiff, and
22 all persons interested shall be made defendants, and ten
23 days' notice shall be given to such defendants before
24 such petition can be heard: *Provided*, That any notice
25 or service required by this section to be made upon any
26 infant under fourteen years of age shall be made by
27 delivering a copy of such notice and petition to his guard-
28 ian resident in this state; or, if there be no such guardian,
29 then either to his father or mother if they be found.
30 If there is no such guardian and if the father or mother
31 cannot be found, service of such notice and petition shall
32 be made upon a guardian ad litem appointed in the man-
33 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 Virginia, 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,

fire sales and defunct business sales; defining certain terms; providing for bonds; and providing penalties.

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.
2. Definitions.
3. License required; exceptions.
4. License application requirements.
5. Investigation of application; grounds for denial.
6. Duration of sale; license fee.
7. Revocation of license; grounds.
8. Notice of denial, refusal or revocation of license; judicial review thereof.
9. Bond required.
10. Branch stores and warehouses.
11. Substitution, addition and commingling of goods voids license; change of time or place of sale; certain purchases prohibited.
12. Copy of application, inventory and license to be posted; license to be referred to in advertisements.
13. Opening of a similar business within one year of sale prohibited.
14. Records.
15. Penalties for violations.
16. Severability.
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.

5 under the designation of "quitting business," "going out
6 of business," "discontinuance of business," "selling out,"
7 "liquidation," "lost our lease," "must vacate," "forced
8 out," "removal," "branch-store discontinuance sale,"
9 "building coming down," "end," "final days," "last days,"
10 "lease expires," "we give up sale," "we quit sale," "ware-
11 house closing sale," "reorganization sale" and any other
12 advertising or designation by any other expression or
13 characterization similar to any of the foregoing and giving
14 notice to the public that the sale will precede the aban-
15 donment of a business location.

16 (b) The term "sale of goods damaged by fire, smoke or
17 water" shall include but not be limited to all sales adver-
18 tised, represented or held forth under the designation of
19 "fire sale," "smoke damage sale," "water damage sale,"
20 "flood damage sale," "insurance sale" and any other ad-
21 vertising or designation by any other expression or char-
22 acterization similar to any of the foregoing and giving
23 notice to the public that the goods, wares or merchandise
24 offered for sale have been damaged.

25 (c) The term "defunct business sale" shall include but
26 not be limited to all sales advertised, represented or held
27 forth under the designation of "adjuster's sale," "admin-
28 istrator's sale," "assignee's sale," "bankrupt sale," "bank-
29 rupt stock sale," "benefit of administrator's sale," "benefit
30 of creditor's sale," "benefit of trustee's sale," "creditor's
31 committee sale," "creditor's sale," "executor's sale," "in-
32 solvent sale," "mortgage sale," "receiver's sale," "trustee's
33 sale" and any other advertising or designation by any
34 other expression or characterization similar to any of the
35 foregoing and conveying the same meaning or giving
36 notice to the public of a sale resulting from death, busi-
37 ness failure, or other adversity.

38 (d) "Unusual purchase or addition" shall mean any
39 purchase of goods, wares or merchandise during the
40 ninety days preceding the application for a license the
41 total value of which is at least twenty-five per cent greater
42 than purchases made by the applicant for a like ninety-
43 day period during any one of three years next immedi-
44 ately preceding the year in which the application is made

45 or his peak purchases for any ninety-day period if he has
46 been in business for less than three years.

47 (e) "Commissioner" shall mean the state commissioner
48 of labor.

49 (f) "Person" shall mean any individual, partnership,
50 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
2 advertise or conduct any sale of any goods, wares or
3 merchandise which is a "closing-out sale," "a sale of goods
4 damaged by fire, smoke or water," or a "defunct business
5 sale" unless a license is first obtained to conduct such a
6 sale from the commissioner as provided in this article.

7 This article shall, however, not be construed to apply
8 to or affect the following persons:

9 (1) Persons acting pursuant to an order or process of
10 a court of competent jurisdiction.

11 (2) Persons who are required to file an accounting with
12 a court of competent jurisdiction.

13 (3) Persons acting in accordance with their powers and
14 duties as public officers such as sheriffs, constables and
15 marshals.

16 (4) Any publisher or employee of a newspaper,
17 magazine or any operator or employee of a radio or tele-
18 vision broadcasting station who publishes or broadcasts
19 any such advertisement in good faith without knowledge
20 of its false, deceptive and misleading character or without
21 knowledge that the provisions of this article are not being
22 complied with.

23 (5) Persons conducting sales by and on behalf of
24 licensed insurers.

§47-11B-4. License application requirements.

Any person desiring to conduct a sale regulated by this
2 article shall make a written application under oath to the
3 commissioner. Said application shall be accompanied by
4 the approved bond specified in section nine of this article.
5 If the application is for a "closing-out sale" or a "defunct
6 business sale," it shall be filed at least ten days prior to

7 the date on which such sale is to commence. If the ap-
8 plication is for a "sale of goods damaged by fire, smoke
9 or water," it may be made at any time prior to the date
10 on which such sale is to commence.

11 All applications for a licensed sale regulated by this
12 article shall set forth and contain the following informa-
13 tion:

14 (1) The name and address of the applicant who must
15 be the true owner of the goods, wares or merchandise to
16 be sold, and if the applicant be a partnership, the names
17 and addresses of all partners, or if the applicant be a cor-
18 poration or association, the date and place of incorpor-
19 ation or organization, the address of the principal office
20 within the state and the names and addresses of all the
21 officers of the applicant.

22 (2) The name and address of the person or persons
23 who will be in charge and responsible for the conduct of
24 such sale.

25 (3) The exact address of the place at which the pro-
26 posed sale is to be conducted and the length of time the
27 applicant has been engaged in business at such location.

28 (4) The date on which it is proposed to begin the sale.

29 (5) The nature of the occupancy where such sale is
30 to be held whether by lease or otherwise and the effective
31 date of termination of such occupancy.

32 (6) The reason for the urgent and expeditious disposal
33 of the goods, wares or merchandise to be offered at such
34 sale.

35 (7) A statement of the descriptive name of the sale and
36 the reasons why the name is truthfully descriptive of the
37 sale.

38 (8) A statement that the business is to be terminated
39 permanently or reopened at another location, the location
40 of the premises at which the business is to be moved, if
41 the applicant intends to resume the operation of the
42 business upon the termination of the sale, and the name or
43 designation under which such business is to be resumed.

44 (9) A full, complete, detailed and itemized inventory
45 of the goods, wares and merchandise to be offered at such

46 sale as disclosed by applicant's records which inventory
47 shall:

48 (i) Itemize the goods to be offered for sale and con-
49 tain sufficient information concerning each item includ-
50 ing quantity, make, brand name, model and manufac-
51 turer's number, if any, to clearly identify it.

52 (ii) List separately any goods to be offered for sale
53 which were purchased and received during a ninety-day
54 period immediately prior to the date of making applica-
55 tion for the license.

56 (iii) The total retail value of the inventory of
57 goods, wares and merchandise to be offered at such sale
58 based on the inventory used for applicant's most recent
59 federal income tax return adjusted for sales and pur-
60 chases.

61 (iv) If the application is for a license to conduct a
62 "sale of goods damaged by fire, smoke or water" and
63 the applicant was not the owner at the time when the
64 goods, wares and merchandise to be offered at the con-
65 templated sale were damaged, he shall attach to the said
66 application certified copies of the bill of sale and all other
67 documents connected with such transfer obtained by him
68 from the previous owner of such goods, wares and
69 merchandise.

70 (v) If the application is for a license to conduct a
71 "defunct business sale" and the applicant was not the
72 owner of the goods, wares and merchandise to be offered
73 at the contemplated sale at the time of occurrence of the
74 circumstances warranting the termination of such busi-
75 ness, he shall attach to the application certified copies of
76 the bill of sale and the official appraisal made by the
77 trustee, receiver, assignee for benefit of creditor, referee
78 in bankruptcy or the personal representative of a de-
79 cedent.

80 (10) A statement that no goods will be added to the
81 inventory after the application is made.

82 (11) A statement that all goods included in such in-
83 ventory have been purchased by the applicant for resale
84 on bona fide orders without cancellation privileges and

85 that said inventory comprises no goods purchased on
86 consignment.

87 (12) A statement that no merchandise listed in the in-
88 ventory has been the subject of a licensed sale conducted
89 within one year prior to the date of the application unless
90 such merchandise was damaged by fire, smoke or water
91 while in the possession of the applicant.

§47-11B-5. Investigation of application; grounds for denial.

Upon receipt of the application, the commissioner may
2 in his discretion make or cause to be made an exami-
3 nation or order an investigation of the applicant and all
4 the facts contained in the application and inventory in
5 relation to the proposed sale. A license shall be denied
6 or refused if any one or more of the following facts or
7 circumstances are found by him to exist:

8 (1) That the applicant has not been the owner of the
9 business advertised or described in the application for
10 a license hereunder for a period of at least three months
11 prior to the date of the application, or if the applicant
12 be a partnership, corporation or association, controlling
13 interest in the corporation or association was transferred
14 within six months prior to the date of the application
15 for a license hereunder except:

16 (i) Where the application is for a license for a "sale
17 of goods damaged by fire, smoke or water" or a "defunct
18 business sale" and the inventory listed in the application
19 contains only those goods, wares or merchandise which
20 were on the premises at the time of the occurrence of
21 the circumstances warranting the granting of a license
22 hereunder.

23 (ii) Upon the death of a person doing business in
24 this state, his heirs, distributees, devisees, legatees or their
25 successors and assigns shall have the right to apply at
26 any time for a license hereunder.

27 (iii) Where a business is required or compelled to
28 be discontinued because the premises whereupon it is
29 being conducted has been condemned, taken for purposes
30 of urban renewal or development, or because the premises
31 must be vacated because of legal or judicial proceedings.

32 (2) That in the case of a "closing-out sale" the appli-
33 cant either as owner, partner, member of an association,
34 or principal stockholder of a corporation was granted
35 a prior license hereunder within one year preceding the
36 date of the filing of the application.

37 (3) That the inventory contains goods, wares or mer-
38 chandise not purchased by the applicant for resale on
39 bona fide orders without cancellation privileges.

40 (4) That the inventory contains goods, wares or mer-
41 chandise purchased by the applicant on consignment
42 except if the consigned goods, wares or merchandise have
43 been damaged while in the consignee's possession.

44 (5) That the applicant except in the case of an appli-
45 cation for a license to conduct a "sale of goods damaged
46 by fire, smoke or water" or a "defunct business sale"
47 either as owner, partner, officer of an association, or
48 principal stockholder of a corporation was granted a prior
49 license hereunder within one year preceding the date of
50 the filing of the application at the particular location
51 for which the license is sought or within one year prior
52 to the date of filing of the application has conducted a
53 sale in connection with which he advertised or repre-
54 sented that the entire business conducted at the particu-
55 lar location for which the license is sought was to be
56 closed out or terminated.

57 (6) That the applicant has within one year, prior to
58 the filing of the application, been convicted of a violation
59 of this article.

60 (7) That the goods, wares or merchandise as described
61 in the inventory were transferred or assigned to the
62 applicant prior to the date of the filing of the application
63 and that said transfer or assignment was not made for
64 a valuable and adequate consideration.

65 (8) That the inventory contains goods, wares or mer-
66 chandise purchased by the applicant or added to his stock
67 in contemplation of such sale and for the purpose of
68 selling the same at such sale. For this purpose any
69 unusual purchase or addition to the stock of such goods,
70 wares and merchandise made within ninety days prior
71 to the date of the filing of such application shall be pre-

72 sumptive evidence that such purchase or additions were
73 made in contemplation of such sale and for the purpose
74 of selling the same at such sale.

75 (9) That any representation made in the application
76 is false.

§47-11B-6. Duration of sale; license fee.

A license to conduct a sale issued pursuant to this arti-
2 cle shall be good for no more than a period of thirty con-
3 secutive calendar days and may be renewed for one con-
4 secutive period not exceeding thirty consecutive calendar
5 days upon the affidavit of the applicant that the goods
6 listed in the inventory have not been disposed of and that
7 no new goods have been or will be added to the inventory
8 previously filed pursuant to this article by purchase,
9 acquisition on consignment, or otherwise. The application
10 for renewal shall be made not more than ten days prior
11 to the time of the expiration of the license and shall con-
12 tain a new inventory of the goods remaining on hand at
13 the time the application for renewal is made which new
14 inventory shall be prepared and furnished in the same
15 manner and form as the original inventory. The commis-
16 sioner shall receive from the applicant for such license,
17 upon the granting thereof, a fee of fifty dollars and upon
18 the renewal thereof a fee of one hundred dollars. The
19 applicant shall not be entitled to a refund of the fee paid
20 if said application is refused, denied or revoked.

§47-11B-7. Revocation of license; grounds.

The commissioner may, on his own initiative, or shall,
2 upon the written and verified complaint of any resident
3 of this state, investigate any person licensed by him under
4 the provisions of this article to determine if such person
5 is violating or has violated this article. The commissioner
6 shall immediately revoke such person's license if, after
7 such investigation, he shall determine that:

8 (1) Any sale by the applicant is conducted in violation
9 of any provision of this article,

10 (2) The applicant has made any material misstatement
11 in his application for said license,

12 (3) The applicant has failed to include in the inventory

13 required by the provisions of this article the goods, wares
14 or merchandise required to be contained in such inven-
15 tory,

16 (4) The applicant has added or permitted to be added
17 to said sale or offered or permitted to be offered at said
18 sale any goods, wares or merchandise not described in the
19 original application and inventory, or

20 (5) The applicant made or permitted to be made any
21 false, misleading or deceptive statements in advertising
22 said sale, whether written or oral, or in displaying,
23 ticketing or pricing goods, wares or merchandise offered
24 for sale.

**§47-11B-8. Notice of denial, refusal or revocation of license;
judicial review thereof.**

Whenever the commissioner shall deny or refuse to
2 issue a license or shall revoke any license, he shall make
3 and enter an order to that effect and shall cause a copy
4 of such order to be served in person or by certified mail,
5 return receipt requested, on the applicant or person li-
6 censed by him, as the case may be. Such order shall be
7 accompanied by findings of fact and conclusions of law
8 upon which such order was made and entered. Any per-
9 son adversely affected by an order made and entered by
10 the board is entitled to judicial review thereof. Such
11 judicial review shall be in the circuit court for the county
12 in which the sale is to be or is being conducted. The judg-
13 ment of the circuit court shall be final unless reversed,
14 vacated or modified on appeal to the supreme court of ap-
15 peals of West Virginia. Legal counsel and services for
16 the commissioner in appeal proceedings in any circuit
17 court and the supreme court of appeals shall be provided
18 by the attorney general or his assistants, and in appeal
19 proceedings in any circuit court by the prosecuting at-
20 torney of the county as well, all without additional com-
21 pensation. The commissioner, with the written approval
22 of the attorney general, may employ special counsel to
23 represent the commissioner in a particular proceeding.

§47-11B-9. Bond required.

No license shall be issued unless the applicant files
2 with the commissioner a bond with corporate surety pay-

3 able to the state of West Virginia conditioned upon the
4 faithful observance of all the provisions of this article,
5 the payment to any municipality or the state of all taxes
6 due and owing or which may become due and the in-
7 demnifying of any purchaser at such sale who suffers any
8 loss by reason of misrepresentation made in connection
9 with such sale: *Provided*, That the aggregate liability
10 of the surety for all breaches of the conditions of the
11 bond shall in no event exceed the amount of said bond.
12 The amount of said bond shall be determined as follows:
13 Five per cent of the first one hundred thousand dollars
14 of the retail value of all the goods, wares and merchan-
15 dise to be offered at such sale, two per cent of the next
16 four hundred thousand dollars and one per cent of the
17 balance. Said bond shall be approved as to form and
18 sufficiency by the prosecuting attorney or his assistant
19 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
2 one store or warehouse in connection with such store or
3 warehouse specified in the application, the license issued
4 will apply only to the one store or warehouse for which
5 it was issued and no other store or warehouse may ad-
6 vertise or represent in any way that it is cooperating
7 with or participating in any way in the licensed sale, nor
8 shall the licensed store or warehouse or any person
9 advertise or represent that any other person, store or
10 warehouse is cooperating with or participating in the
11 licensed sale. The licensed sale conducted by any store
12 or warehouse of a chain or group of stores or warehouses
13 shall be conducted solely at the location of the store or
14 warehouse for which the license was obtained and no
15 goods, wares or merchandise shall be brought from any
16 other store or warehouse and placed on sale at the store
17 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
2 in an inventory filed pursuant to this article or any

3 change in the time or place for a sale conducted pur-
4 suant to this article shall be unlawful and shall void any
5 license issued to conduct a sale pursuant to this article
6 and such license shall be revoked.

7 (b) In the case of a sale licensed under this article
8 conducted by any person licensed under this article in
9 addition to conducting a business or selling other goods,
10 wares or merchandise not included in the inventory ac-
11 companying the application, the goods to be sold at such
12 sale shall be clearly and distinctly segregated, marked
13 or identified and advertised, if at all, so that both on
14 display and in advertising such goods may be readily
15 distinguished from other stocks and their identity readily
16 ascertained. Any commingling of such goods with other
17 stocks of such person in such a manner as to cause the
18 goods to lose their separate identity either on display
19 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
2 under this article, including a copy of the inventory
3 filed therewith, shall be posted in a conspicuous place in
4 the sales room or place where the inventoried goods are
5 to be sold so that the public may be informed of the facts
6 relating to the goods before purchasing same. Any ad-
7 vertisement or announcement published in connection
8 with the sale shall conspicuously show on its face the
9 number of the license, the date of its expiration, and if
10 applicable, the location where the business is to be re-
11 sumed.

§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
2 sale licensed pursuant to this article was conducted except
3 the licensed "sale of goods damaged by fire, smoke or
4 water" by the person, partner of a partnership, officer of
5 an association, or principal stockholder of a corporation
6 who or which conducted the sale upon the same premises
7 within one year of the termination of the sale shall con-

8 stitute a violation of this article. Every day in which
9 business is conducted within the prohibited period of
10 one year shall constitute a separate violation of this
11 article.

§47-11B-14. Records.

(a) Suitable books and records concerning said sale
2 shall be kept by the licensee for the duration of the li-
3 censed sale and one year thereafter and shall be open for
4 inspection by the commissioner or his duly authorized
5 representative.

(b) Upon the termination of a sale licensed hereunder
7 the applicant shall within thirty days of such termination
8 file a statement with the commissioner stating:

9 (1) The total retail value of the goods, wares or
10 merchandise not disposed of during the sale, and

11 (2) The ultimate disposition thereof and if trans-
12 ferred to another, the name and address of the transferee.

§47-11B-15. Penalties for violations.

Any person who shall violate any of the provisions of
2 this article is guilty of a misdemeanor, and, upon convic-
3 tion thereof, shall be punished by a fine of not more than
4 one hundred dollars or by imprisonment not exceeding
5 thirty days. Each day any sale is conducted in violation of
6 the provisions of this article shall constitute and be a
7 separate violation of the provisions of this article.

§47-11B-16. Severability.

If any part or parts of this article shall be held to be
2 unconstitutional or invalid, such unconstitutionality or
3 invalidity shall not affect the constitutionality or validity
4 of the remaining part or parts of this article. The Legis-
5 lature hereby declares that it would have passed the re-
6 maining part or parts of this article if it had known that
7 such part or parts would be declared unconstitutional or
8 invalid.

§47-11B-17. Effective date.

This article shall become effective on the first day of
2 July, one thousand nine hundred sixty-seven.

CHAPTER 167

(Senate Bill No. 323—By Mr. Carson, Mr. President)

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

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
- 2 Virginia, one thousand nine hundred thirty-one, as amend-
- 3 ed, 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.

§17-1-28. State and public roads.

“State road” shall mean and include all roads classified
 2 and prescribed as either “expressway,” “trunkline,” “feed-
 3 er,” or “state local service” roads. “Public roads” shall
 4 mean all other roads and bridges under the control of the
 5 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.

§17-2A-8. Powers, duties and responsibilities of commissioner.

In addition to all other duties, powers and responsibilities
 2 ties given and assigned to the commissioner in this chap-
 3 ter, the commissioner may:

4 (1) Exercise general supervision over the state road
 5 program and the construction, reconstruction, repair and
 6 maintenance of state roads and highways;

7 (2) Determine the various methods of road construc-
 8 tion best adapted to the various sections and areas of the
 9 state and establish standards for the construction and
 10 maintenance of roads and highways therein;

11 (3) Conduct investigations and experiments, hold
12 hearings and public meetings and attend and participate
13 in meetings and conferences within and without the state
14 for purposes of acquiring information, making findings
15 and determining courses of action and procedure relative
16 to advancement and improvement of the state road and
17 highway system;

18 (4) Enter private lands to make inspections and sur-
19 veys for road and highway purposes;

20 (5) Acquire, in name of the commission, by lease,
21 grant, right of eminent domain or other lawful means, all
22 lands and interests and rights in lands necessary and re-
23 quired for roads, right of ways, cuts, fills, drains, storage
24 for equipment and materials, and road construction and
25 maintenance in general;

26 (6) Procure photostatic copies of any or all public
27 records on file at the state capitol of Virginia which may
28 be deemed necessary or proper in ascertaining the loca-
29 tion and legal status of public road right of ways located
30 or established in what is now the state of West Virginia,
31 which photostatic copies, when certified by the commis-
32 sioner, may be admitted in evidence, in lieu of the orig-
33 inal, in any of the courts of this state;

34 (7) Plan for and hold annually a school of good roads,
35 of not less than three nor more than six days' duration,
36 for instruction of his employees, which school shall be
37 held in conjunction with West Virginia University and
38 may be held at the university or at any other suitable
39 place in the state;

40 (8) Negotiate and enter into reciprocal contracts and
41 agreements with proper authorities of other states and of
42 the United States relating to and regulating the use of
43 roads and highways with reference to weights and types
44 of vehicles, registration of vehicles and licensing of oper-
45 ators, military and emergency movements of personnel
46 and supplies and all other matters of interstate or national
47 interest;

48 (9) Classify and reclassify, locate and relocate, ex-
49 pressway, trunkline, feeder, and state local service roads,

- 50 and designate by number the routes within the state road
51 system;
- 52 (10) Create, extend or establish, upon petition of any
53 interested party or parties or on the commissioner's own
54 initiative, any new road or highway as may be found
55 necessary and proper;
- 56 (11) Exercise jurisdiction, control, supervision and au-
57 thority over local roads, outside the state road system, to
58 the extent determined by him to be expedient and prac-
59 ticable;
- 60 (12) Discontinue, vacate and close any road or high-
61 way, or any part thereof, the continuance and mainte-
62 nance of which are found unnecessary and improper, upon
63 petition and hearing, or upon investigation initiated by
64 the commissioner;
- 65 (13) Close any state road while under construction or
66 repair and provide a temporary road during the time of
67 such construction or repair;
- 68 (14) Adjust damages occasioned by construction, re-
69 construction or repair of any state road or the establish-
70 ment of any temporary road;
- 71 (15) Establish and maintain a uniform system of road
72 signs and markers;
- 73 (16) Fix standard widths for road right of ways,
74 bridges and approaches thereto and to fix and determine
75 grades and elevations therefor;
- 76 (17) Test and standardize materials used in road con-
77 struction and maintenance, either by governmental test-
78 ing and standardization activities or through contract by
79 private agencies;
- 80 (18) Allocate the cost of retaining walls and drainage
81 projects, for the protection of a state road or its right of
82 way, to the cost of construction, reconstruction, improve-
83 ment or maintenance;
- 84 (19) Acquire, establish, construct, maintain and oper-
85 ate, in the name of the commission, roadside recreational
86 areas along and adjacent to state roads and highways;
- 87 (20) Exercise general supervision over the construc-
88 tion and maintenance of airports and landing fields under

- 89 the jurisdiction of the West Virginia state aeronautics
90 commission, of which the commissioner is a member, and
91 to make a study and general plan of a state-wide system
92 of airports and landing fields;
- 93 (21) Provide traffic engineering services to municipali-
94 ties of the state upon request of the governing body of
95 any such municipality and upon such terms as may be
96 agreeably arranged;
- 97 (22) Institute complaints before the public service
98 commission or any other appropriate governmental
99 agency relating to freight rates, car service and movement
100 of road materials and equipment;
- 101 (23) Invoke any appropriate legal or equitable reme-
102 dies to enforce his orders, to compel compliance with re-
103 quirements of law and to protect and preserve the state
104 road and highway system or any part thereof;
- 105 (24) Make and promulgate rules and regulations for
106 the government and conduct of personnel, for the orderly
107 and efficient administration and supervision of the state
108 road program and for the effective and expeditious per-
109 formance and discharge of the duties and responsibilities
110 placed upon him by law;
- 111 (25) Delegate powers and duties to his appointees and
112 employees who shall act by and under his direction and
113 be responsible to him for their acts;
- 114 (26) Designate and define such construction and main-
115 tenance districts within the state road system as may be
116 found expedient and practicable;
- 117 (27) Contract for the construction, improvement and
118 maintenance of the roads;
- 119 (28) Have authority to comply with provisions of
120 present and future federal aid statutes and regulations,
121 including execution of contracts or agreements with and
122 cooperation in programs of the United States government
123 and any proper department, bureau or agency thereof re-
124 lating to plans, surveys, construction, reconstruction, im-
125 provement and maintenance of state roads and highways;
- 126 (29) Prepare budget estimates and requests;

- 127 (30) Establish a system of accounting covering and in-
128 cluding all fiscal and financial matters of the commission;
- 129 (31) Have authority to establish and advance right of
130 way acquisition revolving fund, a materials revolving
131 fund and an equipment revolving fund;
- 132 (32) Enter into contracts and agreements with and to
133 cooperate in programs of counties, municipalities and
134 other governmental agencies and subdivisions of the state
135 relating to plans, surveys, construction, reconstruction,
136 improvement, maintenance and supervision of highways,
137 roads, streets and other travel ways when and to the
138 extent determined by the commission to be expedient and
139 practical;
- 140 (33) Report, as provided by law, to the governor and
141 the Legislature;
- 142 (34) Purchase materials, supplies and equipment re-
143 quired for the state road program and system;
- 144 (35) Dispose of all obsolete and unusable and surplus
145 supplies and materials, which cannot be used advantage-
146 ously and beneficially by the commission in the state road
147 program, by transfer thereof to other governmental
148 agencies and institutions or by exchange, trade or sale
149 thereof;
- 150 (36) Investigate road conditions, official conduct of
151 commission personnel and fiscal and financial affairs of
152 the commission and hold hearings and make findings
153 thereon or on any other matters within the jurisdiction of
154 the commission; and
- 155 (37) Establish road policies and administrative prac-
156 tices.

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-

27 cating, grading, altering, improving, and maintaining state
28 roads;

29 (b) Right of ways for state roads, including those
30 needed for such roads within municipalities, such right of
31 ways to be as wide as deemed necessary by the commis-
32 sioner;

33 (c) Adequate drainage of state roads;

34 (d) Controlled-access facilities, as defined in section
35 thirty-nine, article four of this chapter, including exist-
36 ing and vested rights of access, air, view and light, wheth-
37 er privately or publicly owned, and local service roads
38 to controlled-access facilities;

39 (e) Broadcasting stations, weighing stations, shops,
40 equipment sheds, office buildings, storage buildings and
41 yards, snow fences, road maintenance or construction
42 sites;

43 (f) Road-building material storage sites, quarry sites,
44 gravel pits, sites for the acquisition or manufacture of
45 road-building materials including borrow pits, stock pile
46 sites, waste-material sites and access roads to any such
47 sites or places;

48 (g) The culture and support of trees which benefit any
49 state road by aiding in the maintenance and preservation
50 of the road;

51 (h) Landscape and roadside development, and main-
52 tenance thereof, within any state road right of way, and
53 the acquisition and maintenance of lands and interests in
54 lands for the restoration, preservation and enhancement of
55 places of scenic beauty, and other objects of attraction or
56 scenic value adjacent to or near any state road, and the
57 acquisition, development and maintenance of publicly
58 owned and controlled rest and recreation areas and sani-
59 tary and other facilities reasonably necessary for the
60 accommodation of the traveling public, within, adjacent
61 to or near the right of way of any road within the state
62 road system;

63 (i) Development and maintenance of parking places,
64 auto camps, camp sites, roadside parks, historic roadside
65 markers and sites, forest or timbered areas or other places
66 of attraction and scenic value which are adjacent to or

67 near any state road and which in the judgment of the com-
68 missioner are necessary for the convenience of the public
69 and will contribute to the general welfare and pleasure of
70 the motoring public or road users;

71 (j) Maintenance of an unobstructed view of any por-
72 tion of any state road in order to provide for the safety of
73 the traveling public;

74 (k) Erection and maintenance of markers, warning
75 signs and traffic signals;

76 (l) Construction and maintenance on state roads of
77 sidewalks and highway illumination;

78 (m) Elimination or prevention of hazardous or undesir-
79 able points of entry to state roads from adjacent property;

80 (n) Acquisition of property, or any interest or right
81 therein, for the purpose of exchanging it for other prop-
82 erty, or any interest or right therein, which the commis-
83 sioner is authorized to acquire by the other provisions of
84 this section: *Provided*, That such substitute property,
85 or any interest or right therein, may be acquired by the
86 commissioner by condemnation only if the following con-
87 ditions are satisfied: (1) Money compensation would be
88 substantially inadequate for the property, or interest or
89 right therein, which the commissioner is authorized to
90 acquire by the other provisions of this section, and (2)
91 the commission has entered into a written agreement to
92 exchange the substitute property, or the right or interest
93 therein, for the property, or right or interest therein,
94 which is needed for state road purposes, regardless of
95 whether the person who has agreed to accept the ex-
96 change has the right to condemn the substitute property,
97 or the right or interest therein;

98 (o) Acquisition of real property, not needed as such
99 for a state road, for the purpose of moving and relocating
100 thereon a building or other structure or appurtenance
101 which is situated on a lot or tract of land all or a portion
102 of which is needed for a state road and which, after relo-
103 cation, will be suitable for the purpose for which it was
104 used prior to its being relocated: *Provided, however*, That
105 such additional real property may be acquired by the
106 commissioner by condemnation only if the following con-

ditions are satisfied: (1) The building or other structure or appurtenance is of substantial value, (2) the real property on which it is to be relocated is not substantially improved and is adjacent to or near the location from which it is to be removed, (3) the owner of the real property needed for the state road has entered into a written agreement with the commission to accept in exchange the additional property with the relocated building or structure or appurtenance thereon, (4) substantial savings in expenditure of state road funds will result from condemning the additional property and relocating the building or structure or appurtenance rather than condemning the lot or tract, or the portion thereof, on which the building or other structure or appurtenance may be located, and (5) the real property with the relocated building or structure or appurtenance thereon will be relatively equal 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
2 the proceeds of all state license taxes imposed upon auto-
3 mobiles or other motor or steam driven vehicles; the
4 registration fees imposed upon all owners, chauffeurs,
5 operators, and dealers in automobiles or other motor
6 driven vehicles; all sums of money which may be donated
7 to such fund; all proceeds derived from the sale of state
8 bonds issued pursuant to any resolution or act of the
9 Legislature carrying into effect the "Better Roads Amend-
10 ment" to the constitution of this state, adopted in the
11 month of November, one thousand nine hundred sixty-
12 four, except that the proceeds from the sale of these bonds
13 shall be kept in a separate and distinct account in the
14 state road fund; all moneys and funds appropriated to it
15 by the Legislature; and all moneys allotted or appro-
16 priated by the federal government to this state for road
17 construction and maintenance pursuant to any act of the
18 Congress of the United States; the proceeds of all taxes
19 imposed upon and collected from any person, firm or
20 corporation and of all taxes or charges imposed upon and
21 collected from any county, district or municipality for
22 the benefit of such fund; the proceeds of all judgments,
23 decrees or awards recovered and collected from any per-
24 son, firm or corporation for damages done to, or sustained
25 by, any of the state roads or parts thereof; all moneys
26 recovered or received by reason of the violation of any
27 contract respecting the building, construction or mainte-
28 nance of any state road; all penalties and forfeitures im-
29 posed, recovered or received by reason thereof; and any
30 and all other moneys and funds appropriated to, imposed
31 and collected for the benefit of such fund, or collected by
32 virtue of any statute and payable to such fund.

33 When any money is collected from any of the sources
34 aforesaid, it shall be paid into the state treasury by the
35 officer whose duty it is to collect and account for the same,
36 and credited to the state road fund, and shall be used only
37 for the purposes named in this chapter, that is to say: (a)
38 To pay the principal and interest due on all state bonds
39 issued for the benefit of said fund, and set aside and

40 appropriated for that purpose; (b) to pay the expenses of
41 the administration of the road department; (c) to pay the
42 cost of maintenance, construction, reconstruction and
43 improvement of all state roads.

CHAPTER 172

(Senate Bill No. 8—By Mr. Barnett and Mr. Bowling)

[Passed February 24, 1967; in effect from passage. Approved by the Governor.]

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
2 state road commissioner shall ascertain and determine
3 the total amount of available funds for expenditure in
4 the whole state for the construction and reconstruction of
5 state roads for the succeeding fiscal year, and shall also
6 submit such determination of available funds together
7 with the proposed expenditure thereof as a part of his
8 budget request for such succeeding fiscal year. Of the
9 amount so ascertained the commissioner may set aside as
10 a "reserve fund" not to exceed twenty per cent thereof,
11 to be used and expended by him in his discretion in

12 making desirable connections or economizing in construc-
13 tion.

14 All moneys received from the federal government for
15 road construction shall be expended as provided, or as
16 may hereafter be provided by act of Congress.

17 If at the end of any annual period, any money in the
18 reserve fund remains unexpended or unappropriated, it
19 shall be placed in the general fund for reserve and dis-
20 tribution during the next annual period.

21 The remaining eighty per cent, or, if such reserve fund
22 is not set aside, then all the funds shall be appropriated
23 in the following order and preference:

24 (1) For the construction, reconstruction, and mainte-
25 nance of expressway and trunkline roads, and to comply
26 with the requirements for the receipt of aid from the
27 federal government;

28 (2) For the maintenance of all feeder and state local
29 service roads, as provided in section six-a of this article;

30 (3) For the construction and reconstruction of feeder
31 and state local service roads as prescribed in section six-a
32 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
2 there are funds available for the purpose of participating,
3 on a matching fund basis, with the county court of one
4 or more counties for the construction, reconstruction, re-
5 pair and maintenance of any feeder and state local service
6 roads within said county or counties, he shall in his dis-
7 cretion determine the amount the county court must
8 deposit or place in escrow for matching purposes before
9 the state road commissioner will commit any funds to a
10 proposed project.

11 Nothing in this section shall be construed to alter or
12 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 sections one, two and three, all relating to providing for a functional classification of the roads of the state road system, 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 proposed 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 sections 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

6 local service, shall be subject to change, however, when-
7 ever in the judgment of the commissioner altered con-
8 ditions require that a road be reclassified from one cate-
9 gory to another.

§17-4-4. Interstate and international highway planning.

The commissioner shall consider and plan the state's
2 part in any contemplated interstate or international sys-
3 tem of roads and highways, and may attend meetings and
4 conferences within and without the state for discussion
5 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
2 control over connecting parts of the state road system in
3 municipalities, except the regulation of traffic, that he
4 exercises over such system generally, but he shall assume
5 no greater duty or obligation in the construction, recon-
6 struction and maintenance of streets which are part of
7 the state road system than he is required to assume in the
8 case of state roads outside of municipalities. In order,
9 however, to promote the safe and efficient utilization of
10 such streets, the location, form and character of infor-
11 mational, regulatory and warning signs, curb and pave-
12 ment or other markings, and traffic signals installed or
13 placed by any municipality on any highway or street
14 hereafter constructed with state or federal aid shall be
15 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, re-
2 construct, improve or repair a section of the state road
3 system within a municipality he shall, where the road is
4 an "expressway" or "trunkline," and he may, where said
5 road is a "feeder" or "state local service" road, give the
6 municipality a notice of such proposed construction, re-
7 construction, improvement, and repair, and shall likewise
8 give notice to all public service companies and public
9 utilities of such proposed work. Upon receipt of such
10 notice, the municipality shall by ordinance compel all

11 abutting property owners to lay all necessary pipe and
12 to make necessary connections along, in, under, and
13 through the said section of said road before the construc-
14 tion, reconstruction, improvement, or repair is started.
15 All public service companies and public utilities receiving
16 notice from said state road commissioner shall also lay
17 all necessary pipe and make necessary connections along,
18 in, under, and through said section of said road before the
19 construction, reconstruction, improvement, or repair is
20 started.

21 Should any person, firm, association, or corporation, in-
22 cluding municipal corporation, fail or neglect to make all
23 such necessary repairs and connections within a reason-
24 able time after the enactment of such ordinance or the
25 service of notice on them by the state road commissioner,
26 then the said state road commissioner may lay such pipe
27 and make such connections and the cost and expenses of
28 laying such pipe and making such connections shall be
29 chargeable to the person, firm, association, or corporation
30 who shall have failed or refused to lay such pipe and make
31 such connections, and the state road commissioner shall
32 collect all of such necessary costs and expenses from the
33 person, firm, association, or corporation, who shall have
34 so failed, refused or neglected to perform such work, by
35 proper action in any court having jurisdiction thereof.
36 However, the cost and expenses shall not be chargeable
37 against any municipality to the extent that the same
38 would impose an indebtedness against any municipality
39 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.
14. Bond of out-of-state licensee.
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.
19. Consent of property owner for erection.
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.

1 The Legislature hereby finds and declares: (a) That
2 outdoor advertising is a legitimate, commercial use of
3 private property adjacent to roads and highways; (b) that
4 outdoor advertising is an integral part of the business
5 and marketing function and an established segment of
6 the national economy which serves to promote and pro-
7 tect private investments in commerce and industry; (c)
8 that the erection and maintenance of outdoor advertis-
9 ing signs, displays, and devices in areas adjacent to fed-
10 eral-aid interstate and primary highways should be reg-
11 ulated in order to protect the public investment in such
12 highways, to promote the recreational value of public
13 travel, to preserve natural beauty, and to promote the
14 reasonable, orderly and effective display of such signs,
15 displays and devices.

16 The Legislature further finds and declares that fiscal
17 actualities reflect that the people of the state of West
18 Virginia would suffer economically if the state failed
19 to participate fully in the allocation and apportionment
20 of federal-aid highway funds, more specifically that a
21 reduction in federal-aid highway funds would necessi-
22 tate increased local taxation to support and maintain the
23 state road program and system, and that it is the inten-
24 tion of this bill, among other things, to provide a statu-
25 tory basis for regulation of outdoor advertising consistent
26 with the public policy relating to areas adjacent to fed-
27 eral-aid interstate and primary highways declared by
28 the Congress of the United States, in Title 23, United
29 States Code, and that the economic benefit resulting from
30 full participation in the federal highway program would
31 constitute a benefit to the community as a whole.

§17-22-2. Definitions.

1 As used in this article:

2 The word "sign" shall mean any structure erected for
3 advertising purposes upon which any poster, bill, print-
4 ing, writing, drawing, painting, or advertising material
5 of any kind or character whatsoever, may be placed, posted,
6 painted, tacked, nailed, glued or otherwise fastened, af-
7 fixed or displayed.

8 The word "display" shall mean any poster, bill, print-
9 ing, writing, drawing, painting, or advertising material
10 of any kind or character whatsoever, designed and in-
11 tended to draw the attention of the public to any goods,
12 merchandise, property, real or personal, business service,
13 entertainment or amusement, produced, bought, sold, con-
14 ducted, furnished, or dealt in by any person, which is
15 placed, posted, painted, tacked, nailed, glued or other-
16 wise affixed or fastened to any advertising sign or struc-
17 ture, or otherwise displayed outdoors.

18 The word "device" shall mean any card, cloth, paper,
19 metal or wooden advertising emblem or sign of any
20 kind or character, which is posted, stuck, glued, tacked,
21 nailed, painted or otherwise fastened or affixed to or
22 upon any fence, post, tree or thing other than an adver-
23 tising sign or structure.

24 "Person" shall include an individual, partnership, as-
25 sociation, or corporation.

**§17-22-3. Certain outdoor advertising prohibited; when
removal required.**

1 Except as provided in this article, no outdoor adver-
2 tising sign, display, or device shall be erected or main-
3 tained within six hundred and sixty feet of the nearest
4 edge of and visible as to informative content from the
5 right of way of any road within the state road system des-
6 igned and classified for purposes of allocation of federal
7 highway funds as part of the federal-aid interstate or pri-
8 mary systems: *Provided, however,* That no outdoor adver-
9 tising sign, display or device lawfully in existence adja-
10 cent to the federal-aid interstate or primary systems on
11 September first, one thousand nine hundred sixty-five,
12 which does not conform to the requirements of this ar-
13 ticle, shall be required to be removed until July first,
14 one thousand nine hundred seventy: *Provided further,*
15 That no other sign, display, or device lawfully erected
16 which does not conform to the requirements of this ar-
17 ticle shall be required to be removed until the end of
18 the fifth year after such sign, display or devices be-
19 comes nonconforming.

§17-22-4. General restrictions as to outdoor advertising.

1 The following restrictions shall apply to all advertis-
2 ing signs, displays, and devices erected and maintained
3 adjacent to any roads within the state road system, in-
4 cluding federal-aid interstate and primary roads.

5 (1) No advertising sign shall be erected or main-
6 tained which involves rapid motion or rotation of the
7 structure or any part thereof;

8 (2) No advertising display or device shall use the
9 word "stop" or "danger," or present or imply the need
10 or requirement of stopping, or the existence of danger;

11 (3) No advertising sign, display, or device shall be
12 a copy or imitate a traffic sign or other official sign;

13 (4) No advertising display or device shall attempt
14 or purport to direct traffic;

15 (5) No advertising sign shall contain lighting which
16 is not shielded, and any lighting shall be of such low
17 intensity as not to cause glare or impair the vision of
18 the operator of any motor vehicle;

19 (6) No advertising display or device shall be illu-
20 minated by any rapid flashing, intermittent light or lights;

21 (7) No advertising display or device shall be painted,
22 affixed or attached to any natural feature;

23 (8) No advertising sign, display, or device shall hin-
24 der the clear, unobstructed view of approaching or merg-
25 ing traffic, or obscure from view any traffic sign or other
26 official sign;

27 (9) No advertising sign, display, or device shall be
28 so located as to obscure the view of any connecting road
29 or intersection;

30 (10) No advertising sign, display, or device shall be
31 erected, outside of any municipality, within five hundred
32 feet of any church, school, cemetery, public park, public
33 reservation, public playground, or state or national forest,
34 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 re-
2 moval of any outdoor advertising signs, displays or de-

3 vices, 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-

3 cial signs and notices required or authorized by law, in-
4 cluding but not limited to signs and notices pertaining
5 to natural wonders, scenic and historical attractions,
6 which such signs and notices shall conform to standards
7 respecting lighting, size, number, spacing and such other
8 appropriate requirements as may be designated and spec-
9 ified by the secretary of transportation of the United
10 States: *Provided*, That the state road commissioner shall
11 not establish any standards respecting lighting, size, num-
12 ber, spacing and other appropriate requirements which
13 are stricter than such standards designated and specified
14 by the secretary of transportation of the United States;
15 (b) signs, displays, and devices advertising the sale or
16 lease of property upon which they are located; and (c)
17 signs, displays, and devices advertising activities con-
18 ducted on the property on which they are located, in-
19 cluding markers of underground utility facilities.

§17-22-8. Exempted areas.

1 In order to promote the reasonable, orderly and effec-
2 tive display of outdoor advertising while remaining con-
3 sistent with the purposes of this article, signs, displays,
4 and devices, whose size, lighting and spacing shall be
5 determined by agreement between the state road commis-
6 sioner of West Virginia and the secretary of transporta-
7 tion of the United States, may be erected and maintained
8 within six hundred and sixty feet of the nearest edge
9 of the right of way of federal-aid interstate or primary
10 roads, within areas zoned industrial or commercial, or in
11 unzoned commercial or industrial areas, as may be deter-
12 mined by agreement between the state road commissioner
13 of West Virginia and the secretary of transportation of
14 the United States: *Provided*, That any such agree-
15 ment shall contain a definition of unzoned commer-
16 cial or industrial areas which reflects existing conditions
17 in this state, such as, without limiting the foregoing, ex-
18 isting land use, availability of land for urban develop-
19 ment, topography, and accepted zoning practices now pre-
20 vailing in this state. Any agreement between the state
21 road commissioner and the secretary of transportation
22 relating to size, lighting and spacing shall reflect cus-

23 tomary usage in this state. Any agreement between the
24 state road commissioner and the secretary of transporta-
25 tion defining unzoned commercial or industrial areas, or
26 relating to size, lighting and spacing, shall be no more
27 restrictive than necessary to secure to this state any
28 federal aid contingent upon compliance with federal
29 laws, or federal rules and regulations relating to outdoor
30 advertising, and shall be subject to amendment or rejec-
31 tion by the Legislature of West Virginia: *Provided, how-*
32 *ever,* That the terms of any such agreement shall be no
33 more restrictive than those included in any other similar
34 agreement made by the secretary of transportation and
35 other states: *Provided further,* That such agreement
36 shall provide for its modification and amendment in the
37 event and to the extent that the secretary of transporta-
38 tion and any other state shall thereafter agree to any
39 provisions which shall be less restrictive. The provisions
40 of this section shall not apply to signs, displays, and de-
41 vices referred to in clauses (b) and (c) of section seven
42 of this article.

**§17-22-9. Signs, displays and devices providing information
for the traveling public; location.**

1 Signs, displays and devices giving specific information
2 in the interest of the traveling public may be erected and
3 maintained, pursuant to agreement between the state
4 road commissioner and the secretary of transportation,
5 within the right of ways of highways within the federal-
6 aid interstate system, at appropriate distances from in-
7 terchanges on such interstate system.

§17-22-10. Special fund.

1 There is hereby created a special fund, to the credit
2 of which shall be paid such funds as from time to time
3 may be appropriated by the Legislature and all federal
4 funds allocated and distributed to the state of West Vir-
5 ginia in implementation of the provisions of Title 23,
6 United States Code, relating to outdoor advertising, to
7 be administered by the state road commissioner in the
8 enforcement and carrying out of the provisions of this
9 article.

§17-22-11. Enforcement of provisions by commissioner; rules and regulations.

1 It shall be the function and duty of the state road com-
2 missioner to administer and enforce the provisions of
3 this article, and in the performance of his duties here-
4 under, he may assign to division engineers, and other
5 employees in his department, such duties as he may deem
6 proper. The commissioner is hereby authorized and em-
7 powered to promulgate rules and regulations implement-
8 ing the provisions of this article, including rules and
9 regulations permitting the state of West Virginia to com-
10 ply with the provisions of Title 23, United States Code,
11 relating to the payment of bonuses for the regulation of
12 outdoor advertising adjacent to the interstate system,
13 and the terms and provisions of any agreement hereto-
14 fore entered into pursuant to law by and between the
15 state road commissioner of West Virginia and the secre-
16 tary of commerce of the United States relating to the
17 payment of such bonuses, any provisions of this article
18 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 commis-
2 sioner for the purposes of this article shall include
3 all of the state. The commissioner and all employees
4 under his direction, in the performance of their func-
5 tions and duties under the provisions of this article, may
6 enter into and upon any land upon which advertising
7 signs are standing or upon which displays or devices are
8 exhibited and make such examinations and surveys as
9 may be relevant.

**§17-22-13. Licenses required; application; expiration; excep-
tions; revocations; judicial review.**

1 No person shall engage or continue in the business of
2 outdoor advertising in this state without first obtain-
3 ing a license therefor from the commissioner; and no
4 person shall construct, erect, operate, use, maintain, lease
5 or sell any outdoor advertising sign, display, or device
6 in this state without first obtaining such a license from

7 the commissioner. The fee for such license, hereby
8 imposed for revenue for the use of the state, shall be
9 one hundred dollars per annum, payable annually in
10 advance. Applications for licenses, or renewal of licenses,
11 shall be made on forms furnished by the commissioner
12 and shall contain such pertinent information as the
13 commissioner may require, and shall be accompanied by
14 the annual fee. Licenses granted under this section shall
15 expire on the thirtieth day of June of each year, and
16 shall not be prorated. Applications for the renewal of
17 licenses shall be made not less than thirty days prior
18 to the date of expiration. Nothing in this section shall
19 be construed to require any person to obtain a license
20 who constructs, erects, operates, uses or maintains an
21 outdoor advertising sign, display, or device solely on his
22 own property.

23 The commissioner shall have authority, after thirty
24 days' notice in writing to the licensee, to make and enter
25 an order revoking any license granted by him upon re-
26 payment of a proportionate part of the license fee, in
27 any case where he shall find that any material informa-
28 tion required to be given in the application for the license
29 is knowingly false or misleading or that the licensee has
30 violated any of the provisions of this article, unless such
31 licensee shall, before the expiration of said thirty days,
32 correct such false or misleading information and comply
33 with the provisions of this article. Such order shall be
34 accompanied by findings of fact and conclusions of law
35 upon which such order was made and entered. Any
36 person adversely affected by an order made and en-
37 tered by the commissioner is entitled to judicial review
38 thereof. Such judicial review shall be in the circuit court
39 for the county in which the owner of such sign has his
40 principal place of business in this state, or in the circuit
41 court of Kanawha county if all parties agree thereto.
42 The judgment of the circuit court shall be final unless re-
43 versed, vacated or modified on appeal to the supreme court
44 of appeals of West Virginia. Legal counsel and services
45 for the commissioner in appeal proceedings in any circuit
46 court and the supreme court of appeals shall be provided
47 by the attorney general or his assistants, and in appeal

48 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.

§17-22-14. Bond of out-of-state licensee.

1 No such license as is provided for in section thirteen
2 of this article shall be granted to any person not residing in this state or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the commissioner a bond payable to the state, with surety approved by the commissioner and in form approved by the attorney general, in the sum of two thousand five hundred dollars, conditioned that such licensee shall fulfill all the requirements of law and observe and obey all requirements of this article. Such bond shall remain in full force and effect so long as any obligations of such license to the state shall remain unsatisfied. All sums received from the forfeiture of any bond or bonds required by this section shall be deposited in the special fund created in section ten of this article and such sums shall be administered as 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 commissioner and paying the annual fee therefor, as herein provided. The commissioner shall not issue such a permit to any person who has not obtained the license provided 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

14 duly authorized in writing to act for him, and shall de-
15 scribe and set forth the size, shape and the nature of the
16 proposed advertising sign, display, or device, and its ac-
17 tual or proposed location with sufficient accuracy to en-
18 able the commissioner to locate and identify it. Every
19 application shall be accompanied by a fee of one dollar
20 for each advertising sign, display, or device, which fee
21 shall be retained by the commissioner if the permit is
22 issued. Each portion of an advertising sign upon which
23 a display is posted or exhibited shall constitute a sep-
24 arate advertising sign for purposes of this section. If the
25 permit is refused the commissioner shall make and enter
26 an order to that effect and shall cause a copy of such
27 order to be served on such applicant by certified mail,
28 return receipt requested, and shall refund one half the
29 fee to the applicant. Such order shall be accompanied
30 by findings of fact and conclusions of law upon which
31 such order was made and entered. Each application shall
32 be accompanied by an affidavit of the applicant or his
33 agent that the owner or other person in control or posses-
34 sion of the real property upon which such advertising
35 sign, display, or device is to be constructed, erected, oper-
36 ated, used or maintained, has consented thereto. Applica-
37 tion shall be made in like manner for a permit to operate,
38 use or maintain any existing advertising sign, display or
39 device. Permits issued hereunder shall expire on the
40 thirtieth day of June of each year, and shall not be pro-
41 rated, and may be renewed upon the payment of the
42 same fee required to be paid upon application for a per-
43 mit. No application shall be required for a renewal of
44 a permit.

45 (c) If more than one side of an advertising sign is
46 used for advertising, a fee for each such side shall be re-
47 quired. Advertisements sculptured in the round shall be
48 treated as using three sides.

49 (d) The holder of a permit shall, during the term
50 thereof, have the right to change the advertising copy
51 on the structure or sign for which it was issued without
52 payment of any additional fee.

53 (e) The commissioner shall have authority, after
54 thirty days' notice in writing to the permittee, to make

55 and enter an order revoking any permit issued by
56 him under this section upon repayment of a propor-
57 tionate part of the fee in any case where it shall appear
58 to the commissioner that the application for the permit
59 contains knowingly false or misleading information or
60 that the permittee has violated any of the provisions of
61 this article, unless such permittee shall, before the ex-
62 piration of said thirty days, correct such false or mislead-
63 ing information and comply with the provisions of this
64 article. Such order shall be accompanied by findings of
65 fact and conclusions of law upon which such order was
66 made and entered. If the construction, erection, opera-
67 tion, use or maintenance of any advertising sign, display,
68 or device for which a permit is issued by the commis-
69 sioner and the permit fee has been paid as above pro-
70 vided, shall be prevented by any zoning board, commis-
71 sion or other public agency which also has jurisdiction
72 over the proposed advertising sign, display, or device,
73 or its site, the fee for such advertising sign, display, or
74 device shall be returned by the commissioner and the
75 permit revoked. But one half the fee shall be deemed
76 to have accrued upon the erection of an advertising sign
77 or structure or the display of advertising material fol-
78 lowed by an inspection by the commissioner or his repre-
79 sentatives.

80 (f) Any person adversely affected by an order made and
81 entered by the commissioner refusing to grant or re-
82 voking a permit is entitled to judicial review thereof.
83 Such judicial review shall be (1) in the county in
84 which the person applying for the permit has his prin-
85 cipal place of business in this state, or (2) in the cir-
86 cuit court for the county in which the sign for which
87 the permit is sought is to be located, or (3) in the
88 circuit court of Kanawha county if all parties agree
89 thereto. The judgment of the circuit court shall be final
90 unless reversed, vacated or modified on appeal to the
91 supreme court of appeals of West Virginia. Legal coun-
92 sel and services for the commissioner in appeal proceed-
93 ings in any circuit court and the supreme court of ap-
94 peals shall be provided by the attorney general or his
95 assistants, and in appeal proceedings in any circuit court

96 by the prosecuting attorney of the county as well, all
97 without additional compensation. The commissioner may
98 employ special counsel to represent the commissioner in
99 a particular proceeding.

§17-22-16. Permit identification number for signs; fastening to sign.

1 Every permit issued by the commissioner shall be as-
2 signed a separate identification number, and it shall be
3 the duty of each permittee to fasten to each advertising
4 sign or device and each advertising display not posted
5 on an advertising sign a label or marker not larger
6 than two inches by six inches, which shall be furnished
7 by the commissioner, and on which shall be plainly vis-
8 ible the said permit number, the expiration date of the
9 permit, and the name of the permittee. The construc-
10 tion, erection, operation, use or maintenance of an out-
11 door advertising sign, display, or device without having
12 affixed thereto such a label or marker shall be prima
13 facie evidence that the same has been constructed or
14 erected and is being operated, used or maintained in
15 violation of the provisions of this article.

§17-22-17. Removal of signs, etc., after expiration or revocation of permit.

1 All outdoor advertising signs, displays, or devices shall
2 be removed by the permittee within thirty days after
3 the date of the expiration or revocation of the permit
4 for the same. Any permittee failing to remove any such
5 advertising sign, display, or device within said thirty
6 days shall be deemed guilty of a misdemeanor. The pro-
7 visions of this section shall not apply to signs, displays
8 or devices required to be removed pursuant to the terms
9 and provisions of sections three, five, six and eight of
10 this article.

§17-22-18. Removal, defacing, etc., signs lawfully within highway limits.

1 Any person who willfully or maliciously displaces, re-
2 moves, destroys or injures a mile-board, milestone, dan-
3 ger-sign, signal, guide-sign, guidepost, highway sign, or
4 historical marker or any inscription thereon, lawfully

5 within or adjacent to a highway, or who in any manner
6 paints, prints, places, puts or affixes any advertisement
7 upon or to any rock, stone, tree, fence, stump, pole, mile-
8 board, milestone, danger-sign, guide-sign, guidepost,
9 highway sign, historical marker, building or other sub-
10 ject lawfully within the limits of any highway, shall be
11 guilty of a misdemeanor and shall be punished accord-
12 ingly.

§17-22-19. Consent of property owner for erection.

1 No person shall construct, erect, operate, use or main-
2 tain any outdoor advertising sign, display, or device
3 without the permission of the owner or other person
4 in lawful possession or control of the property on which
5 such sign, display, or device is located.

§17-22-20. Disposition of fees.

1 All moneys received by the commissioner under the
2 provisions of sections thirteen and fifteen of this article
3 shall be paid by him into the special fund created in
4 section ten of this article and such moneys shall be
5 administered as provided in said section ten.

§17-22-21. Prohibited signs not to be allowed by other agencies, etc.

1 No zoning board or commission nor any other public
2 officer or agency, shall permit any advertising sign, dis-
3 play, or device which is prohibited under the provisions
4 of this article, nor shall the commissioner permit any
5 advertising sign, display, or device which is prohibited
6 by any other public board, officer or agency in the lawful
7 exercise of its or their powers.

§17-22-22. Penalties; signs in violation of article declared nuisance; abatement.

1 Any person, violating any provision of this article,
2 whether as principal, agent or employee, for which vio-
3 lation no other penalty is prescribed, shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be pun-
5 ished by a fine of not less than fifty dollars nor more than

6 five hundred dollars; and such person shall be deemed
7 guilty of a separate offense for each month during any
8 portion of which any violation of this article is committed,
9 continued or permitted. The erection or maintenance
10 of any outdoor advertising sign, display, or device in vio-
11 lation of any provision of this article is hereby declared
12 to be a public nuisance, and in addition to other remedies
13 provided in this chapter, the state road commissioner or
14 the prosecuting attorney of the county in which such
15 sign, display, or device is located may apply to the cir-
16 cuit court, or other court of competent jurisdiction of the
17 county wherein such sign, display, or device is located,
18 for an injunction to abate such nuisance.

19 The provisions of this section shall not be deemed to
20 prevent the payment of just compensation for signs, dis-
21 plays or devices required to be removed under sections
22 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
3 device shall be removed under the provisions of sections
4 three, five, six or eight of this article unless at the time
5 of such removal there are sufficient funds in the special
6 fund created by section ten of this article to pay the
7 affected parties the just and full compensation required
8 to be paid under the provisions of sections five and six
9 of this article.

§17-22-24. Effective date.

1 The provisions of this article shall take effect on the
2 first day of January, one thousand nine hundred sixty-
3 eight.

§17-22-25. Separability.

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.

CHAPTER 178

(Senate Bill No. 17—By Mr. Moreland)

[Passed March 11, 1967; in effect July 1, 1967. Approved by the Governor.]

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.
11. Rules and regulations.
12. Certain other code provisions inapplicable.
13. Severability.

§17-23-1. Legislative finding.

The Legislature hereby finds and declares that the
2 establishment, operation, maintenance and use of salvage
3 yards in areas adjacent to state roads, including federal-
4 aid interstate and primary roads, is unsightly, visually
5 offensive, depresses the value of the public investment
6 in such roads, detracts from the safety and recreational
7 value of travel thereon and destroys natural beauty, and
8 therefore should be controlled in order to protect the pub-
9 lic investment in such highways, to promote the safety
10 and recreational value of public travel thereupon, and to
11 preserve natural beauty.

§17-23-2. Definitions.

As used in this article:

- 2 (a) "Salvage" shall mean old or scrap copper, brass,
3 rope, rags, batteries, paper, rubber, trash, waste, junked,
4 dismantled or wrecked machinery, machines or motor
5 vehicles or any parts of any junked, dismantled or
6 wrecked machinery, machines or motor vehicles, iron,
7 steel and other old or scrap ferrous or nonferrous ma-
8 terials.
- 9 (b) "Salvage yard" shall mean any place which is
10 maintained, operated or used for the storing, keeping,
11 buying, selling, or processing of salvage, or for the oper-
12 ation and maintenance of a motor vehicle graveyard, and
13 the term shall also include garbage dumps and sanitary
14 fills.
- 15 (c) "Fence" shall mean an enclosure, barrier or screen
16 constructed of materials or consisting of plantings, natural
17 objects or other appropriate means approved by the com-
18 missioner and located, placed or maintained so as effec-
19 tively to screen at all times salvage yards and the salvage
20 therein contained from the view of persons passing upon
21 the public roads of this state.
- 22 (d) "Owner or operator" shall include an individual,
23 firm, partnership, association or corporation or the plural
24 thereof.
- 25 (e) "Commissioner" shall mean the state road com-
26 missioner of West Virginia.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

No salvage yard or any part thereof shall be established, 2 operated or maintained without a license. The commis- 3 sioner shall have the sole authority to issue such a license, 4 and he shall charge therefor a fee of fifty dollars payable 5 annually in advance. All licenses issued under this sec- 6 tion shall expire on the first day of January following the 7 date of issuance. A license may be renewed from year 8 to year upon paying the commissioner the sum of fifty 9 dollars for each such renewal. All such license fees col- 10 lected under the provisions of this article shall be de- 11 posited in the special fund provided for in section ten of 12 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 2 license shall be issued to establish a salvage yard or any 3 part thereof within one thousand feet of the nearest edge 4 of the right of way of any road within the state road 5 system designated and classified or redesignated and re- 6 classified as expressway, trunkline, or feeder, or any road 7 within the state road system designated and classified or 8 redesignated and reclassified for purposes of allocation 9 of federal highway funds as part of the federal-aid inter- 10 state or primary systems, and (2) no license shall be 11 issued to establish a salvage yard or any part thereof 12 within three hundred feet of the nearest edge of the right 13 of way of any state local service road, unless the view 14 thereof from such state local service road shall be effec- 15 tively screened and obscured by fences.

The license of any salvage yard duly issued under the 17 former provisions of this article, which salvage yard or 18 any part thereof on the effective date of this article, is 19 (1) within one thousand feet of the nearest edge of the 20 right of way of any road within the state road system 21 designated and classified or redesignated and reclassified 22 as expressway, trunkline, or feeder, or any road within 23 the state road system designated and classified or redesi- 24 gnated and reclassified for purposes of allocation of federal

25 highway funds as part of the federal-aid interstate or pri-
26 mary systems or is (2) within three hundred feet of the
27 nearest edge of the right of way of any state local service
28 road, may be renewed only if the view of the said salvage
29 yard and all parts thereof is effectively screened from the
30 adjacent road by fences.

31 Any salvage yard which, on the effective date of this
32 article, is duly licensed under the former provisions of
33 this article may be established or continue to be operated
34 and maintained without screening by fences so long as
35 any part of such salvage yard is (1) not located within
36 one thousand feet of any road within the state road sys-
37 tem designated and classified or redesignated and reclassi-
38 fied as expressway, trunkline, or feeder, or any road with-
39 in the state road system designated and classified or re-
40 redesignated and reclassified for the purposes of allocation
41 of federal highway funds as part of the federal-aid inter-
42 state or primary systems or is (2) not located within three
43 hundred feet of the nearest edge of the right of way of
44 any state local service road.

§17-23-5. Requirements as to fences.

Fences shall be kept in good order and repair and
2 no advertisement shall be permitted thereon other than
3 the name of the licensee and the nature of the busi-
4 ness conducted on the premises. The height, location,
5 construction, planting, size and composition of any sign
6 or advertisement and maintenance of fences, living or
7 otherwise, shall conform to such rules and regulations as
8 are promulgated with respect thereto by the commis-
9 sioner.

§17-23-6. Payment of costs of screening.

The costs of screening by fences shall be paid by the
2 salvage yard owner or operator: *Provided*, That if in the
3 opinion of the commissioner, such screening cannot be ac-
4 complished by the usual and ordinary methods, the com-
5 missioner may determine and pay such additional costs
6 as are necessary and required to provide effective screen-
7 ing.

§17-23-7. Exempt areas in municipalities.

The provisions of this article shall not apply to salvage
2 yards or any parts thereof within municipalities situated
3 in areas zoned industrial, nor to salvage yards or any parts
4 thereof situated in areas within municipalities not
5 zoned industrial but which the commissioner determines
6 are used for industrial activities. The provisions of sec-
7 tion four of this article shall not apply to salvage yards
8 within municipalities in existence on the effective date
9 of this article but not required to be licensed under the
10 former provisions of this article if the view of said sal-
11 vage yards is effectively screened from the adjacent road
12 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
2 part thereof is or shall be required to be effectively
3 screened by fences as provided in section four of this
4 article, and the said salvage yard or any part thereof can-
5 not, in the opinion of the commissioner, be effectively
6 screened by fences to comply with the provisions of this
7 article, so that the owner or operator of the salvage yard
8 cannot lawfully continue to operate and do business in
9 compliance with the terms hereof, then and only in such
10 event, the commissioner, in addition to all other powers
11 herein conferred, may (1) with the consent of said owner
12 or operator pay the cost of removal of all salvage and
13 equipment from such salvage yard to such other location
14 as the said owner or operator may direct whereon a sal-
15 vage yard business may be conducted in compliance with
16 the provisions of this article, or (2) purchase at private
17 sale or acquire by proceeding in eminent domain, in ac-
18 cordance with the provisions of chapter fifty-four of this
19 code, all such property rights and interests, other than
20 title to real property, as are necessary and required to
21 effect a lawful termination of the salvage business con-
22 ducted on any such salvage yard, or on any part thereof.

23 If any salvage yard at any location is terminated under
24 the provisions of this section or by court order as provided

25 in section nine of this article, the commissioner shall not
26 thereafter license any salvage yard at any such location if
27 such location or any part thereof is (1) within one thou-
28 sand feet of the nearest edge of the right of way of any
29 road within the state road system designated and classi-
30 fied or redesignated and reclassified as expressway, trunk-
31 line or feeder, or any road within the state road system
32 designated and classified or redesignated and reclassified
33 for purposes of allocation of federal highway funds as
34 part of the federal-aid interstate or primary systems or
35 (2) within three hundred feet of the nearest edge of the
36 right of way of any state local service road unless and
37 until the view of such salvage yard or any part thereof
38 from such state local service road is screened by fences as
39 provided in this article.

**§17-23-9. Violations declared public nuisance; abatement; in-
junctions; penalties.**

The establishment, operation or maintenance of a sal-
2 vage yard or any part thereof in violation of any provision
3 of this article is hereby declared to be a public nuisance,
4 and the commissioner or the prosecuting attorney of the
5 county in which such salvage yard or any part thereof is
6 located shall apply to the circuit court or other court of
7 competent jurisdiction of the county in which said salvage
8 yard or any part thereof is located, for an injunction to
9 abate such nuisance. The court shall have authority to
10 hear and decide such questions and grant injunctions or
11 such other relief as the court may deem proper.

12 Any person violating any provision of this article,
13 whether as principal, agent or employee, shall be deemed
14 guilty of a misdemeanor, and, upon conviction thereof,
15 shall be punished by a fine of not less than one hundred
16 dollars nor more than one thousand dollars; and such per-
17 son shall be guilty of a separate offense for each month
18 during a portion of which any violation of this article is
19 committed, continued or permitted: *Provided, however,*
20 That in the event of an appeal from any such conviction,
21 the period between the date a notice of appeal is filed
22 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
2 which shall be paid such funds as may from time to time
3 be appropriated by the Legislature, all funds received
4 from licenses issued under section three of this article
5 and all federal funds allocated and distributed to the state
6 of West Virginia in implementation of the provisions of
7 Title 23, United States Code, relating to junkyards (sal-
8 vage yards), to be administered by the commissioner in
9 the enforcement and carrying out of the provisions of this
10 article.

§17-23-11. Rules and regulations.

To implement the provisions of this article, the com-
2 missioner is hereby authorized and empowered to promul-
3 gate rules and regulations in accordance with the pro-
4 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
2 eleven, and article thirteen-a, chapter eleven of this code,
3 shall not apply to salvage yards covered by the provisions
4 of this article.

§17-23-13. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of this article, and
5 to this end the provisions of this article are declared to be
6 severable.

— C —

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

20 and surrender of interest coupons, then due, in the case of
 21 coupon bonds. For the payment of interest on registered
 22 bonds, the treasurer of the state of West Virginia shall
 23 requisition a warrant from the auditor of the state to be
 24 drawn on the state treasurer, and shall mail such warrant
 25 to the registered owner at the address as shown by the
 26 record of registration. Both the principal and interest of
 27 the bonds shall be payable in lawful money of the United
 28 States of America and the bonds shall be exempt from
 29 taxation by the state of West Virginia, or by any county,
 30 district, or municipality thereof, which facts shall appear
 31 on the face of the bonds as part of the contract with the
 32 holder thereof.

§3. Form of bond.

The bonds shall be signed on behalf of the state of West
 2 Virginia, by the treasurer thereof, under the great seal of
 3 the state, and countersigned by the auditor of the state,
 4 and shall be in the following form or to the following
 5 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

10 \$..... No.....

11 The state of West Virginia, under and by virtue of
 12 authority of an amendment to the constitution, which was
 13 proposed by House Joint Resolution No. 10, adopted the
 14 seventh day of March, one thousand nine hundred sixty-
 15 three, and was ratified by a vote of the people at the gen-
 16 eral election on the third day of November, one thousand
 17 nine hundred sixty-four, which is hereby made a part
 18 hereof as fully as if set forth at length herein, acknowl-
 19 edges itself to be indebted to and hereby promises to pay
 20 to the bearer hereof (in case of a coupon bond) or to
 21 or assigns (the owner of record, in case
 22 of registered bonds) on the day of,
 23 19...., in lawful money of the United States of America at
 24 the office of the treasurer of the state of West Virginia
 25 at the capitol of said state, or at the option of the holder
 26 at bank in the city of New York, the sum

27 of _____ dollars, with interest thereon at _____
 28 per centum per annum from the date, payable semi-
 29 annually in like lawful money of the United States of
 30 America at the treasurer's office or bank aforesaid, on the
 31 first day of _____ and the first day of _____ of
 32 each year, (and in the case of coupon bonds) according to
 33 the tenor of the annexed coupons bearing the facsimile
 34 signature of the treasurer of the state of West Virginia,
 35 upon surrender of such coupons. This bond (in case of a
 36 coupon bond) may be exchanged for a registered bond of
 37 like tenor upon application to the treasurer of the state
 38 of West Virginia.

39 To secure the payment of the principal and interest of
 40 this bond, the state of West Virginia covenants and agrees
 41 with the holder as follows: (1) That this bond shall con-
 42 stitute a direct and general obligation of the state of West
 43 Virginia; (2) that the full faith and credit of the state is
 44 pledged to secure the payment of the principal and inter-
 45 est of this bond; (3) that an annual state tax shall be col-
 46 lected in an amount sufficient to pay as it may accrue the
 47 interest on this bond and the principal thereof; and (4)
 48 that such tax shall be levied in any year only to the extent
 49 that the moneys in the state road fund irrevocably set
 50 aside and appropriated for and applied to the payment of
 51 the interest on and principal of this bond becoming due
 52 and payable in such year are insufficient therefor.

53 This bond is hereby made exempt from any taxation by
 54 the state of West Virginia, or by any county, district, or
 55 municipal corporation thereof.

56 In testimony whereof, witness the signature of the
 57 treasurer of the state of West Virginia, and the counter-
 58 signature of the auditor of the state, hereto affixed ac-
 59 cording to law, dated the _____ day of _____, one
 60 thousand nine hundred _____, and the seal of
 61 the state of West Virginia.

62 (SEAL)

63 _____
 64 Treasurer of the State of West Virginia

65 Countersigned:

66 _____
 67 Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. _____ Coupon No. _____

5 On the first day of _____, 19____, the state of
6 West Virginia will pay to the bearer, in lawful money of
7 the United States of America, at the office of the treasurer
8 of the state, or at the option of the holder at _____
9 bank in the city of New York, the sum of _____
10 dollars, the same being semiannual interest on Road
11 Bond No. _____.

12

13 _____
Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be
15 by his facsimile signature and the coupons shall be num-
16 bered in the order of their maturity, from number one
17 consecutively. The bonds and coupons may be signed by
18 the present treasurer and auditor, or by any of their re-
19 spective successors in office, and the bonds signed by the
20 persons now in the office may be sold by the governor or
21 his successor in office without being signed by the suc-
22 cessor in office of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act
2 shall be separately listed by the auditor of the state in
3 books provided for the purpose, in each case giving the
4 date, number, character and amount of obligations issued,
5 and in case of registered bonds, the name and post-office
6 address of the person, firm or corporation registered as the
7 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
2 money from any and all appropriations made by the state
3 from the state road fund for the purpose of paying the
4 interest on such bonds or paying off and retiring the
5 bonds, from transfer and registration fees as herein pro-

6 vided, and from any other source whatsoever which is
7 made liable by law for the payment of the principal of
8 such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a sep-
10 arate account, under the designation aforesaid, and all
11 money belonging to the fund shall be deposited in the
12 state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the state
14 first to the payment of the semiannual interest on such
15 bonds as it shall become due as herein provided. The re-
16 mainder of the fund shall be turned over by the state
17 treasurer to the state sinking fund commission, whose
18 duty it shall be to invest the same in obligations of the
19 government of the United States, bonds of the state of
20 West Virginia, or any political subdivision thereof: *Pro-*
21 *vided*, That bonds or other obligations so purchased by the
22 state sinking fund commission shall mature so as to pro-
23 vide sufficient money to pay off all bonds herein provided
24 to be issued as they become due; and the money so paid
25 into the state road sinking fund under the provisions of
26 this act shall be expended for the purpose of paying the
27 interest and principal of the bonds hereby provided for
28 as they severally become due and payable and for no
29 other purpose except that the fund may be invested until
30 needed, as herein provided.

§7. Covenants of state.

The state of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as fol-
3 lows: (1) That such bonds shall constitute direct and
4 general obligation of the state of West Virginia; (2) that
5 the full faith and credit of the state is hereby pledged
6 to secure the payment of the principal and interest of
7 such bonds; (3) that an annual state tax shall be collected
8 in an amount sufficient to pay as it may accrue the interest
9 on such bonds and the principal thereof; and (4) that such
10 tax shall be levied in any year only to the extent that the
11 moneys in the state road fund irrevocably set aside and
12 appropriated for and applied to the payment of the in-
13 terest on and principal of said bonds becoming due and
14 payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at
2 such time or times as he may determine necessary to
3 provide funds for the building and construction of free
4 state roads and highways, as herein provided, upon the
5 recommendation of the state road commissioner, and after
6 reviewing the program of the state road commission and
7 subject to the limitations contained in section one hereof.
8 All sales shall be at not less than par and accrued interest.
9 All interest coupons becoming payable prior to the sale
10 date shall be cancelled by the treasurer and rendered
11 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
2 shall be paid into a separate and distinct account in the
3 state road fund, and shall be used and appropriated solely
4 for the building and construction of free state roads and
5 highways provided for by the state constitution and the
6 laws enacted thereunder. Except for such sums necessary
7 for current operating balances, such account shall be in-
8 vested and reinvested in short-term obligations of the
9 United States treasury: *Provided*, That no such invest-
10 ment or reinvestment shall adversely affect the current
11 operating balances of such account.

§10. Plates, etc., property of state.

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.

The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

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.

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 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-

missioner; assistant attorneys general to assist commissioner.

The office of the tax commissioner shall be continued
2 in all respects as heretofore constituted in the state
3 government, but is hereby designated as the state tax
4 department. The tax commissioner shall be the chief
5 executive officer of the department and shall be appointed
6 by the governor, by and with the advice and consent of
7 the senate, to serve at the will and pleasure of the gov-
8 ernor for the term for which the governor was elected
9 and until a successor has been appointed and has quali-
10 fied. The tax commissioner in office when this section
11 takes effect shall, unless sooner removed, continue to
12 serve until his term expires, and his successor has been
13 appointed and has qualified.

14 The tax commissioner, before entering upon the duties
15 of his office, shall take the oath or affirmation prescribed
16 by section five of article four of the constitution. He
17 shall give bond with good security, to be approved by the
18 governor, in the penalty of five thousand dollars. The sal-
19 ary of the tax commissioner shall be sixteen thousand dol-
20 lars a year. He shall be repaid his actual disbursements
21 for traveling expenses. He shall be provided with an office
22 in the capitol and with such furniture and clerical assist-
23 ance as shall be necessary.

24 The tax commissioner shall have control and supervision
25 of the state tax department and shall be responsible for
26 the work of each of its divisions. Each division shall be
27 headed by a director appointed by the tax commissioner
28 and who shall be responsible to the tax commissioner for
29 the work of his division. The tax commissioner may create
30 such divisions and employ such staff or employees as may
31 be necessary to administer the state tax laws for which he
32 or his department is responsible, and he shall have the au-
33 thority to appoint an assistant tax commissioner who shall
34 be his principal assistant. The powers and duties vested
35 in the tax commissioner by this chapter and other provi-
36 sions of law may be delegated by him to such assistant or
37 other employees, but the tax commissioner shall be re-
38 sponsible for all official acts of such delegates.

39 The tax commissioner, if he deems such action neces-
40 sary, may request the attorney general to appoint assistant
41 attorneys general who shall perform such duties as may
42 be required by the tax commissioner. The attorney gen-
43 eral, in pursuance of such request, may select and appoint
44 assistant attorneys general, to serve during the will and
45 pleasure of the attorney general, and such assistants shall
46 be paid out of any funds made available for that purpose
47 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, chap-
ter 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
2 taxpayer claiming to be aggrieved through being required
3 to pay any tax into the treasury of this state, may, within
4 five years from the date of the filing of the return in re-

5 spect of which the tax was imposed or within four years
6 from the date the tax was paid, whichever of such periods
7 expires the later, or if no return was filed by the tax-
8 payer, within four years from the time the tax was paid,
9 and not after, file with the official or department through
10 which the tax was paid, a petition in writing to have re-
11 funded to him any such tax, or any part thereof, the pay-
12 ment whereof is claimed by him to have been required
13 unlawfully; and if, on such petition, and the proofs filed
14 in support thereof, the official collecting the same shall be
15 of the opinion that the payment of the tax collected,
16 or any part thereof was improperly required, he shall re-
17 fund the same to the taxpayer by the issuance of his or
18 its requisition on the treasury upon which the auditor
19 shall issue his warrant as hereinafter provided; if the
20 official collecting the same shall be in doubt as to whether
21 or not such taxes were unlawfully paid, or if he be of
22 the opinion that the payment of the tax collected, or any
23 part thereof, was lawful, and the taxpayer within thirty
24 days after notice of such opinion is not satisfied with the
25 ruling of such official, then such tax official may on his
26 own initiative, and shall, upon written notice so to do
27 from the taxpayer given within said thirty-day period,
28 promptly institute against said taxpayer, in a court of
29 competent jurisdiction, a declaratory judgment proceed-
30 ing to ascertain whether any such tax, or part thereof,
31 has been unlawfully collected; if it be determined in
32 such proceeding that any such tax, or part thereof was
33 unlawfully collected, then such official shall promptly
34 refund the same to the taxpayer by the issuance of his
35 or its requisition on the treasury; and the auditor shall
36 issue his warrant on the treasurer for any refund requi-
37 sitioned under this section payable to the taxpayer en-
38 titled to the refund, and the treasurer shall pay such war-
39 rant out of the fund into which the amount so refunded
40 was originally paid: *Provided*, That no refund shall be
41 made at any time on any claim involving the assessed
42 valuation or appraisement of the property which was
43 fixed at the time the tax was originally paid: *Provided*
44 *further*, That such official shall be under no duty to in-
45 stitute any such declaratory judgment proceeding unless

46 it shall appear that the taxpayer giving the notice as
47 herein provided is acting in good faith and that there is
48 a substantial question as to the lawfulness of the collec-
49 tion of such tax.

50 (2) With respect to any tax imposed for any period
51 ending prior to the effective date of this section, the time
52 within which any taxpayer claiming to be aggrieved,
53 through being required to pay any tax into the treasury
54 of this state, may file with the official or department
55 through which the tax was paid the petition provided in
56 subsection (1) shall be three years from the date of such
57 payment, and not after.

58 (3) The provisions of this section shall take effect on
59 the first day of July, one thousand nine hundred sixty-
60 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.

1 The assessor shall complete his assessment and make
 2 up his official copy of the land and personal property
 3 books in time to submit the same to the board of equali-
 4 zation and review not later than February first of the
 5 assessment year. The assessor shall, as soon as practicable
 6 after the levy is laid, extend the levies on the land and
 7 personal property books, and shall forthwith make three
 8 copies of the land books and two copies of the personal
 9 property books with the levies extended; one of such
 10 copies of the land books he shall deliver to the sheriff not
 11 later than the seventh day of June, one copy he shall
 12 deliver to the clerk of the county court not later than the
 13 first day of July, and one copy he shall send to the state
 14 auditor not later than the first day of July, and one of
 15 such copies of the personal property books he shall de-
 16 liver to the sheriff and one to the clerk of the county court
 17 on or before the same date fixed above for the delivery
 18 of the land books and such copies so delivered shall be
 19 official records of the respective officers. He may require
 20 the written receipt of each of such officers for such copy.
 21 Before delivering any of such copies the assessor shall
 22 make and subscribe the following oath at the foot of each
 23 of them: I, _____, assessor of the county
 24 of _____, do solemnly swear, (or affirm)
 25 that in making the foregoing assessment I have to the
 26 best of my knowledge and ability pursued the law pre-
 27 scribing the duties of assessors and that I have not been
 28 influenced in making the same by fear, favor or partiality;
 29 so help me, God.

30

31

 Assessor.

32 The officer administering the foregoing oath shall
 33 append thereto a certificate in substantially the following
 34 form:

35 Subscribed and sworn to before me, a _____
 36 for the county of _____ and state of West Vir-
 37 ginia, by _____, assessor for said county,
 38 this the _____ day of _____, 19_____.

§11-3-25. Relief in circuit court against erroneous assessment.

1 Any person claiming to be aggrieved by any assessment
2 in any land or personal property book of any county who
3 shall have appeared and contested the valuation or whose
4 assessment has been raised by the county court above
5 the assessment fixed by the assessor, or who contested
6 the classification or taxability of his property may, at
7 any time up to thirty days after the adjournment of the
8 county court, apply for relief to the circuit court of the
9 county in which such books are made out; but he shall,
10 before any such application is heard, give ten days' notice
11 to the prosecuting attorney of the county, whose duty
12 it shall be to attend to the interests of the state, county
13 and district in the matter, and the prosecuting attorney
14 shall give at least five days' notice of such hearing to
15 the tax commissioner. The right of appeal from any
16 assessment by the county court, as hereinbefore provided,
17 may be taken either by the applicant or by the state, and
18 in case the applicant, by his agent or attorney, or the
19 state, by its prosecuting attorney or tax commissioner,
20 desires to take an appeal from the decision of the county
21 court, the party desiring to take such an appeal shall
22 have the evidence taken at the hearing of the applica-
23 tion before the county court. If there was an appearance
24 by or on behalf of the owner before the county court,
25 or if actual notice, certified by such court, was given to
26 the owner, the appeal, when allowed by the court or
27 judge in vacation, shall be determined from the evidence
28 so certified. If, however, there was no actual notice to
29 such owner, and no appearance by or on behalf of the
30 owner before the county court, or if a question of classi-
31 fication or taxability is presented, the matter shall be
32 heard de novo by the circuit court. If, upon the hearing
33 of such appeal, it is determined that any property has
34 been valued at more than its true and actual value, or
35 illegally classified or assessed, the circuit court shall, by
36 an order entered of record, correct the assessment, and
37 fix the property at its true and actual value. A copy of
38 such order or orders entered by the circuit court reducing
39 the valuation shall be certified to the auditor, if the order
40 or orders pertain to real property, by the clerk within

41 twenty days after the entering of the same, and every
42 order or judgment shall show that the prosecuting at-
43 torney or tax commissioner was present and defended the
44 interest of the state, county and district. If it be ascer-
45 tained that any property has been valued too high, and
46 that the owner has paid the excess tax, it shall be
47 refunded to him, and if not paid he shall be relieved
48 from the payment thereof. If it is ascertained that any
49 property is valued too low the circuit court shall, by an
50 order entered of record, correct the valuation and fix it at
51 its true and actual value. A copy of any order entered
52 by any circuit court increasing the valuation of property
53 shall be certified within twenty days, if the order pertains
54 to real property, to the auditor, the county clerk and the
55 sheriff; however, if the order pertains only to personal
56 property, then the copy shall be certified within twenty
57 days to the county clerk and to the sheriff and it shall
58 be the duty of the auditor, the county clerk and the
59 sheriff to charge the taxpayer affected with the increase
60 of taxes occasioned by the increase of valuation by ap-
61 plying the rate of levies for every purpose in the district
62 where such property is situated for the current year. The
63 order shall also be filed in the office of the auditor and
64 clerk of the county court. Any order disposing of a ques-
65 tion of classification or taxability shall be similarly pre-
66 pared, certified and filed, and the increase or decrease of
67 taxes resulting shall be treated as provided above for
68 changes in valuation. The state or the aggrieved taxpayer
69 may appeal a question of valuation to the supreme court
70 of appeals, if the assessed value of the property is fifty
71 thousand dollars or more, and either party may appeal a
72 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

21. Appeals from assessment.

§11-11-21. Appeals from assessment.

Within sixty days after the tax commissioner shall have
2 forwarded a certificate of the amount of tax assessed upon
3 the transfer of any property, any person interested in
4 such transfer, or in such property, may apply to the circuit
5 court of any county, in which such property or the greater
6 part thereof may be, for an appeal from the assessment
7 so made. Unless such appeal is taken within the time
8 period herein provided, the tax commissioner's assessment
9 shall be final and not subject to judicial review. Such
10 application shall be by petition in writing, stating the
11 names and addresses of all persons interested, showing the
12 grounds upon which the appellant claims to be aggrieved,
13 and an appeal shall be allowed thereon forthwith; and,
14 until the same shall have been heard and decided, pro-
15 ceedings for the collection of such taxes may be stayed by
16 order of such court for good cause shown, and upon such
17 conditions as it may direct. The appellant may amend his
18 petition once as a matter of right if done within twenty
19 days of the filing of his petition and before the appeal
20 has been placed on the court's calendar; otherwise appel-
21 lant may amend his petition only by leave of court. Such
22 appeal shall be heard and decided as soon as may be.
23 Before any such hearing reasonable notice thereof shall
24 be given to all other persons interested, and to the tax
25 commissioner and prosecuting attorney, who, with the
26 said commissioner, shall defend the interest of the state.
27 Upon such hearing the court shall consider all certificates
28 relating to such taxes, and all other pertinent evidence,
29 that may be offered by either party. If it be of the opinion
30 that the assessment appealed from was correct, it shall

31 affirm the same; if it be of the opinion that the transfer
32 was not subject to any such taxes, it shall set aside such
33 assessment and enter an order exonerating the property
34 from taxes. If it be of the opinion that the transfer was
35 subject to such taxation, but the amount of taxes assessed
36 was erroneous, it shall correct the assessment thereof by
37 increasing or decreasing the amount thereof, as it may
38 think just, and shall enter judgment accordingly. A copy
39 of the judgment upon any such appeal shall be certified
40 in duplicate, and forwarded and recorded as is herein
41 provided with respect to the certificate of the tax com-
42 missioner.

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.

Section

3a. Coin-operated laundries and coin-operated auto wash devices; license fee.

§11-12-3a. Coin-operated laundries and coin-operated auto wash devices; license fee.

Coin-operated devices which wash, dry, clean or dry
2 clean items of any description, including clothing, house-

3 hold items, automotive vehicles, boats, or dispense mer-
4 chandise for use in such washing, drying, cleaning or dry
5 cleaning, are hereby subject to a license tax.

6 All persons owning the aforementioned devices, or
7 like washing devices, shall be liable for payment of said
8 license tax. Ownership shall be deemed established by
9 determining who is the purchaser by either a bill of sale,
10 paid invoice, or a conditional sales contract or agreement
11 filed and recorded in the applicable county clerk's office
12 in this state or in the office of the secretary of state. Leasing
13 of machines will not be deemed a transfer of ownership.

14 The annual license fee to own machines being operated
15 in this state and whether operated by the owner or other
16 persons shall be as follows: Upon ten or more machines,
17 in any one location, the annual license fee shall be thirty
18 dollars. Upon less than ten machines, in any one location,
19 the annual license fee shall be three dollars for each
20 machine: *Provided*, That in no instance shall the annual
21 license fee be less than fifteen dollars.

22 Application for the license required herein shall be
23 made upon forms provided by the tax commissioner and
24 the applicant shall furnish such information as may be
25 required by the tax commissioner. The completed appli-
26 cation shall be subscribed and sworn to before a notary
27 public.

28 It is hereby provided that no machine or device licensed
29 under the provisions of this section shall be subject to the
30 license fees and taxes imposed by section three of this
31 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.

25 Nothing contained herein shall prevent a person from
26 qualifying in different capacities as both a "wholesaler"
27 and "retailer" under the applicable provisions of this
28 article.

29 (d) "Vending machine operator" is any person oper-
30 ating one or more cigarette vending machines.

31 (e) "Sale by wholesaler or sub-jobber" shall mean
32 and include any bona fide transfer of title to cigarettes
33 by a wholesaler or sub-jobber for a valuable considera-
34 tion, made in the ordinary course of trade or in the usual
35 conduct of the wholesaler's business.

36 (f) "Cigarette" means:

37 1. Any roll of tobacco wrapped in paper or in any
38 substance not containing tobacco, and

39 2. Any roll of tobacco wrapped in any substance
40 containing tobacco which, because of its appearance, the
41 type of tobacco used in the filler, or its packaging and
42 labeling, is likely to be offered to, or purchased by, con-
43 sumers as a cigarette described in paragraph 1.

44 (g) "Package" means the individual package, box or
45 other container in or from which retail sales of cigarettes
46 are normally made or intended to be made.

47 (h) "Stamp" shall mean any cigarette stamps required
48 under this article, or any meter or ink impression au-
49 thorized by the tax commissioner to serve as such stamp.

50 (i) "Commissioner" means the state tax commissioner
51 and where the meaning of the context requires, all depu-
52 ties and employees duly authorized by him.

53 (j) "Code" shall mean the code of West Virginia, one
54 thousand nine hundred thirty-one, as amended.

55 (k) "Retail sale" or "sale at retail" means a sale to a
56 consumer or to any person for any purpose other than
57 resale.

58 (l) "Sale" means selling, exchange, transfer of title,
59 barter, gift, offer for sale or distribution.

60 (m) "Consumer" means a person who receives or in
61 any way comes into possession of cigarettes for the pur-
62 pose of consuming them, giving them away or disposing

63 of them in any way other than by sale, barter, or
64 exchange.

65 (n) "Rules and regulations" means those made and
66 promulgated by the state tax commissioner.

67 (o) "Stamped cigarettes" means that the stamp or im-
68 pression as required by article seventeen has been affixed
69 to the bottom of the package of cigarettes.

70 (p) "Unstamped cigarettes" means that no stamp or
71 impression, as required by article seventeen, has been
72 affixed.

73 After the effective date of this section, no person shall
74 engage in, or conduct the business of purchasing, selling,
75 consigning or distributing cigarettes as defined herein,
76 in the state without having first obtained the appropriate
77 license for that purpose as prescribed in this section. The
78 annual license fee as a wholesaler or sub-jobber dealer
79 to sell cigarettes as defined herein shall be divided into
80 three classes as follows: (1) Class A—all dealers who
81 sell annually up to seven hundred fifty thousand pack-
82 ages of cigarettes, one hundred dollars; (2) Class B—all
83 dealers who sell annually from seven hundred fifty thou-
84 sand packages of cigarettes to one million five hundred
85 thousand packages, two hundred dollars; (3) Class C—all
86 dealers who sell annually more than one million five
87 hundred thousand packages of cigarettes, three hundred
88 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

28 ten dollars; if he travels with a vehicle of not more than
29 one-half ton capacity, fifteen dollars; if he travels with a
30 vehicle of more than one-half ton capacity, but not exceed-
31 ing one ton capacity, fifty dollars; if he travels with a
32 vehicle of more than one ton capacity, but not exceeding
33 two tons' capacity, one hundred dollars; and if he travels
34 with a vehicle of more than two tons' capacity, one hun-
35 dred fifty dollars, plus one hundred dollars for each addi-
36 tional ton or fraction thereof over two tons' capacity; and
37 the person licensed shall pay at the same rate for each and
38 every vehicle so used. Such person shall carry his license
39 in some conspicuous place in his vehicle or about his pack;
40 and in addition thereto he shall cause to be painted or
41 stenciled in a conspicuous place on the left-hand side of
42 his vehicle the number of such license and the words
43 "West Virginia Hawker and Peddler" and the license year
44 for which said license is issued, which said information
45 shall be in black letters on a white background, and the
46 whole thereof shall be at least eight by twenty inches in
47 size.

48 (b) The provisions of this section shall not apply to
49 any person who sells any goods, wares or merchandise to
50 be delivered in the future; or to any of the following who
51 offer immediate delivery of the goods, wares, or merchan-
52 dise being sold:

53 (1) Any person or persons engaged within this state in
54 the business or calling of agriculture, horticulture or graz-
55 ing, who sells or sell individually or collectively, one or
56 more for the other or others, the products derived from
57 his or their business or calling aforesaid.

58 (2) Any retail or wholesale business concern, estab-
59 lished and operating continuously for one year or more
60 within this state in the sale of any product or products
61 over regular routes who are licensed under other provi-
62 sions of this article.

63 (3) Any wholesaler or jobber selling soft drinks or
64 nonintoxicating beer for which he is duly licensed under
65 other provisions of this or another chapter of this code.

66 (4) Any person who sells petroleum products, ice,
67 wood, meat, ice cream, dairy products, bread, cakes, pies

68 and other bakery products, butter and eggs, manufactured,
69 grown or produced by any such person and not purchased
70 by him for resale.

71 (5) Sales made to persons by commercial travelers, or
72 selling agents in the usual course of business, nor to bona
73 fide sales of goods, wares or merchandise by sample for
74 future delivery; nor to any sales of goods, wares or mer-
75 chandise on the grounds of any agricultural association
76 during the continuance of any annual fair held by such
77 association; nor to any sales by organizations acting for
78 charitable, religious or benevolent purposes; nor to annual
79 showings or street exhibits, which may include sales of
80 their showings or exhibits conducted by members of art
81 associations; numismatic or philatelic societies or antique
82 associations or societies when such showing or exhibit
83 does not continue for more than one week each calendar
84 year; nor to judicial sales directed by law, or under the
85 orders of any court.

86 (6) Any agent or salesman selling manufactured prod-
87 ucts produced by his employer, and who sells the same to
88 retail dealers for the purpose of resale.

89 (7) Any firm, corporation, or individual having a stock
90 of goods, or merchandise, or manufacturing or processing
91 plant or plants kept or operating at a fixed situs in the
92 state of West Virginia, and declared for taxation in the
93 county where located, and using a vehicle or vehicles over
94 a fixed route or routes for the purpose of selling or dis-
95 tributing, at wholesale, their, his or its said merchandise,
96 stock of goods or plant products.

97 (8) Any person exempt from license as provided by
98 this section, shall obtain from the tax commissioner a
99 license receipt, without cost, showing that he is so exempt,
100 which shall be effective for the period as provided for an-
101 nual licenses in this article and shall be coextensive with
102 the entire state; but to obtain such license receipt, he shall
103 make an affidavit and produce such other evidence as to
104 the fact entitling him to such exemption as the tax com-
105 missioner, in his discretion, may require, which shall be
106 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,
2 all annual licenses issued under the provisions of this
3 article shall be for a period of one year beginning on the
4 first day of July and ending on the thirtieth day of the fol-
5 lowing June: *Provided*, That licenses issued prior to the
6 first day of January of any year shall be charged at the
7 full annual fee and all licenses issued on or after the first
8 day of January shall be charged at one half of the full
9 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.
11. Jeopardy assessments.
12. Notice of assessment; petition for reassessment; hearing.
13. Appeal.
14. Service of notice.
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 convenience and 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.

30 The phrase "one thousand cubic feet-mile" means the
31 transportation of one thousand cubic feet of gas, measured
32 at sixty degrees Fahrenheit and a pressure of thirty inches
33 of mercury, a distance of one mile.

34 The term "wire-mile" means the equivalent of a single
35 metallic telephone or telegraph conductor one mile in
36 length.

37 The phrase "motor vehicle-mile" means the operation
38 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
2 highways of this state and every railroad car carrier, rail-
3 road carrier, express company, pipeline company, tele-
4 phone and telegraph company, airline company and any
5 person operating a steamboat or other watercraft, for the
6 transportation of passengers or freight, doing business in
7 the state shall pay to the state an annual tax for each cal-
8 endar year. This tax shall be equal to the gross income
9 from all business beginning and ending within the state
10 multiplied by the respective rates as follows: Motor ve-
11 hicle carriers, railroad car carrier, railroad carrier, express
12 companies, pipeline companies, airline companies, any
13 person operating a steamboat or other watercraft and
14 telegraph companies, three per cent; and telephone com-
15 panies, three and four-tenths per cent: *Provided*, That any
16 motor vehicle carrier which is an urban or suburban bus
17 line shall be taxed at the rate of two per cent of such
18 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,
2 every motor vehicle carrier operating on the public high-
3 ways of the state and every railroad carrier, railroad car
4 carrier, express company, pipeline company, telephone
5 and telegraph company, airline company and any person
6 operating a steamboat or other watercraft, for the trans-
7 portation of passengers or freight, doing business in this
8 state shall pay an annual tax for each calendar year on

9 the net income earned within the state equal to three and
10 four-tenths per cent of such net income for telephone
11 companies and six per cent of such net income for all other
12 carriers included in this section, such net income to be
13 determined as follows:

14 (a) The net income of motor vehicle carriers earned
15 within the state shall be determined by ascertaining a
16 sum bearing the proportion to the total net income of the
17 motor vehicle carrier that its business done in West Vir-
18 ginia measured in motor vehicle-miles of motor vehicle
19 carrier operation, bears to all business done, measured in
20 like fashion;

21 (b) The net income of railroad carriers earned within
22 the state shall be determined by ascertaining a sum bear-
23 ing the proportion to total net income of the carriers that
24 its business done in West Virginia, measured in ton-miles,
25 bears to all business done, measured in like fashion;

26 (c) The net income of railroad car carriers and express
27 companies earned within the state shall be determined
28 by ascertaining a sum bearing the proportion to the total
29 net income of the carriers or company that its business
30 done in West Virginia, measured in car-miles of car oper-
31 ation, bears to all business done, measured in like fashion:
32 *Provided, however,* That nothing in this article shall be
33 construed as applying to railroad freight car carriers not
34 owned by railroad carriers or their subsidiaries;

35 (d) The net income of pipeline companies earned
36 within the state shall be determined by ascertaining a
37 sum bearing the proportion to the total net income of the
38 company that its business done in West Virginia, meas-
39 ured in barrel-miles in the case of oil and liquid coal or
40 slurry and of thousand cubic feet-miles in the case of gas,
41 bears to all business done, measured in like fashion;

42 (e) The net income of airline companies and any per-
43 son operating a steamboat or other watercraft for the
44 transportation of passengers or freight earned within the
45 state shall be determined by ascertaining a sum bearing
46 the proportion to the total net income of the corporation
47 that its business done in West Virginia, measured in pas-
48 senger-miles in the case of airline companies and ton-

49 miles in the case of any person operating a steamboat or
50 other watercraft, bears to all business done, measured in
51 like fashion;

52 (f) The net income of telephone and telegraph com-
53 panies shall be determined by ascertaining a sum bearing
54 the proportion to the total net income of the companies
55 that its business done in West Virginia, measured in wire-
56 miles, bears to all business done, measured in like fashion;

57 (g) In computing the tax imposed by this section, the
58 total net income of a taxpayer, who shall have been taxed
59 under the preceding section, shall be reduced by an
60 amount bearing the proportion to such total net income
61 that the gross income of the taxpayer which is the meas-
62 ure of the tax under the preceding section bears to its
63 total gross income from all business done wherever con-
64 ducted. No county, city, town, village or other political
65 subdivision of the state shall levy a license, net income
66 or any other kind of tax on the business taxed under this
67 article.

§11-12A-4. Effective date.

The provisions of sections two and three shall be given
2 effect in determining the taxes due and payable under
3 this article for all tax years or portion thereof beginning
4 on or after the first day of January, one thousand nine
5 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
2 become effective after the thirty-first day of December,
3 one thousand nine hundred sixty-six, and if the tax year
4 includes the effective date of change (unless that date is
5 the first day of the tax year), then: (1) The total taxes
6 due and payable under this article shall be computed by
7 applying the rate of tax for the period before the effective
8 date of the change, and the rate of tax for the period on
9 and after such date, against gross income as provided in
10 section two and against net income as provided in section
11 three of this article for the entire tax year; and (2) the
12 tax for such tax year shall be the sum of that portion of
13 the total taxes due and payable which the number of

14 days in each period bears to the number of days in the
15 entire tax year.

§11-12A-6. Annual return.

The taxpayer under this article shall file an annual re-
2 turn with the state tax commissioner upon a form pre-
3 scribed by the commissioner setting out the following and
4 such other information as that officer may deem necessary
5 or useful in aid of the assessment and computation of the
6 tax:

7 (1) The gross income from all transportation business
8 done within the state, namely, business beginning and
9 ending entirely within the state;

10 (2) The total gross income of the business wherever
11 conducted;

12 (3) The net transportation income of the business
13 wherever conducted. For this purpose the tax commis-
14 sioner may consider as relevant any determination of net
15 transportation income as made by the taxpayer for pur-
16 poses of the net income tax due the government of the
17 United States under the laws of the United States;

18 (4) The total amount of business done in this state,
19 measured in the units hereinbefore prescribed. The tax
20 commissioner may designate a single month in the tax
21 year as the period for which the amount of business done
22 in this state, measured in the units hereinbefore pre-
23 scribed, shall be reported and shall fix the total amount
24 of business done in the state for the whole tax year by
25 multiplying the amount determined for the designated
26 month by twelve;

27 (5) The total amount of business done, wherever con-
28 ducted, measured in the units hereinbefore prescribed.

29 Every return shall be signed and sworn to by the tax-
30 payer, if a natural person, and if a corporation, shall be
31 signed and sworn to by its president, vice president, sec-
32 retary or principal accounting officer.

§11-12A-7. Erroneous computation.

If the taxpayer shall make any clerical error which
2 shall be apparent on the face of the return in computing
3 the tax assessable against him, the tax commissioner shall

4 correct such error or reassess the proper amount of taxes,
5 and notify the taxpayer of his action by mailing to him
6 promptly a copy of the corrected assessment, and any
7 additional tax for which such taxpayer may be liable shall
8 be paid within fifteen days after the receipt of such state-
9 ment.

10 If the amount already paid exceeds that which should
11 have been paid on the basis of the tax so recomputed, the
12 excess so paid shall be immediately refunded to the tax-
13 payer upon the requisition of the tax commissioner to
14 the state auditor, who shall issue his warrant on the treas-
15 urer, which shall be payable out of any funds available
16 for the purpose. The taxpayer may, at his election, apply
17 an overpayment credit resulting from any clerical error
18 to taxes subsequently accruing hereunder.

§11-12A-8. Tax year.

The assessment of taxes under this article and the re-
2 turns required therefor shall be for the year ending on
3 the thirty-first day of December, one thousand nine hun-
4 dred sixty-seven, and any tax year thereafter. If the tax-
5 payer keeps the books reflecting the same on a basis other
6 than the calendar year, he may, with the assent of the tax
7 commissioner, make his annual returns and pay taxes for
8 the year covering his accounting period as shown by the
9 method of keeping his books. For a fractional part of a
10 tax year, the annual tax shall be computed in like pro-
11 portion to the tax for a full year.

§11-12A-9. Payment.

The total amount of tax imposed by this article shall be
2 paid on or before the fifteenth day of March following the
3 close of the calendar year, or if the returns should be made
4 on the basis of a taxpayer's fiscal year, then on or before
5 the fifteenth day of the third month following the close of
6 the fiscal year. The taxpayer may by writing, filed with
7 the tax commissioner, elect to pay the tax in two equal
8 installments in which case the first installment shall be
9 paid on the date hereinabove prescribed and the second
10 installment shall be paid on the fifteenth day of the third
11 month after such date.

§11-12A-10. Assessment of tax when insufficiently returned.

If the tax commissioner believes that the tax imposed
2 by this article is insufficiently returned by a taxpayer,
3 either because the taxpayer has failed to properly remit
4 the tax or has failed to make a return, or has made a
5 return which is incomplete, deficient or otherwise er-
6 roneous, he may proceed to investigate and determine or
7 estimate the tax liability of the taxpayer and make an
8 assessment therefor.

§11-12A-11. Jeopardy assessments.

If the tax commissioner believes that the collection of
2 any tax which he is required to administer will be jeop-
3 arded by delay, he shall thereupon make an assessment
4 of the tax, noting that fact upon the assessment. The
5 amount assessed shall be immediately due and payable.
6 Unless the taxpayer against whom a jeopardy assessment
7 is made petitions for reassessment within twenty days
8 after service of notice of the jeopardy assessment, such an
9 assessment becomes final.

10 A petition for reassessment by a taxpayer against whom
11 a jeopardy assessment has been made must be accom-
12 panied by such security as the tax commissioner may
13 deem necessary to insure compliance with this article.

§11-12A-12. Notice of assessment; petition for reassessment; hearing.

The tax commissioner shall give to the taxpayer written
2 notice of any assessment made pursuant to this article.
3 Unless the taxpayer to whom a notice of assessment is
4 directed shall, within thirty days after service thereof
5 (except in the case of jeopardy assessments), either per-
6 sonally or by certified mail, file with the tax commissioner
7 a petition in writing, verified under oath by said taxpayer
8 or his duly authorized agent, having knowledge of the
9 facts, setting forth with definiteness and particularity the
10 items of the assessment objected to, together with the
11 reason for such objections, said assessments shall become
12 due and be deemed conclusive and the amount thereof
13 shall be payable at the end of the thirty-day period. In
14 every case where a petition for reassessment as above

15 described is filed, the tax commissioner shall assign a
16 time and place for the hearing of same and shall notify
17 the petitioner of such hearing by written notice at least
18 twenty days in advance thereof and such hearing shall be
19 held within sixty days from the filing of the petition for
20 reassessment unless continued by agreement or by the tax
21 commissioner for good cause. The hearing shall be in-
22 formal and may be conducted by an examiner designated
23 by the tax commissioner. At such hearing evidence may
24 be offered to support the assessment or to prove that it is
25 incorrect. After such hearing the tax commissioner shall,
26 within a reasonable time, give notice in writing of the
27 decision. Unless an appeal is taken within thirty days
28 from service of this notice, the tax commissioner's de-
29 cision shall be final.

§11-12A-13. Appeal.

An appeal may be taken by the taxpayer to the circuit
2 court of the county in which the activity taxed was en-
3 gaged or in the circuit court of Kanawha county, within
4 thirty days after he shall have received notice from the
5 tax commissioner of his determination as provided in
6 section twelve.

7 The appeal shall be taken by a written notice and a
8 petition served upon the tax commissioner as an original
9 notice. When said notice and petition is so served it shall,
10 with the return thereon, be filed in the office of the clerk
11 of the circuit court and docketed as other cases with the
12 taxpayer as plaintiff and the tax commissioner as de-
13 fendant. Before the appeal is heard, the plaintiff shall file
14 with such clerk a bond for the use of the defendant, with
15 sureties approved by said clerk, the penalty of the bond
16 to be not less than the total amount of the tax and pen-
17 alties appealed from, and conditioned that the plaintiff
18 shall perform the orders of the court; except that in lieu
19 of said bond, the tax commissioner may upon a proper
20 showing find and certify to said clerk that the properties
21 of the plaintiff subject to the liens imposed by sections
22 sixteen and seventeen of this article are adequate to se-
23 cure the performance of the orders of the court.

24 The court shall hear the appeal in equity and determine

25 anew all questions submitted to it on appeal from the
26 determination of the tax commissioner. In such appeal a
27 certified copy of the tax commissioner's assessment shall
28 be admissible and shall constitute prima facie evidence of
29 the tax due under the provisions of this article. The court
30 shall render its decree thereon and a certified copy of said
31 decree shall be filed by the clerk of said court with the
32 tax commissioner who shall then correct the assessment
33 in accordance with said decree. An appeal may be taken
34 by the taxpayer or the tax commissioner to the supreme
35 court of appeals of this state in the same manner that
36 appeals are taken in equity.

§11-12A-14. Service of notice.

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
2 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
2 debt due the state. It shall be a personal obligation of the
3 taxpayer and shall be a lien upon all property used in the
4 business or occupation upon which such tax is imposed,
5 and said lien shall have priority over all other liens and
6 obligations except those given priority by the laws of the
7 United States. A penalty of one per cent per month shall
8 be added to the amount of the tax for each month of de-
9 linquency and shall be secured by said lien: *Provided,*
10 That if such delinquency is due to reasonable cause the
11 tax commissioner may waive or remit in whole or in part
12 said penalties.

§11-12A-17. Creation and release of lien.

The tax commissioner for the more effective collection
2 of such taxes, may file with the clerk of the county court
3 of any county a certified copy of any assessment of taxes
4 under this article. A certificate so filed shall be recorded
5 in a book provided for the purpose and shall thereby
6 create a lien upon all property and assets of the taxpayer
7 located in the county, which lien shall likewise be binding
8 against all other parties whose interest may arise after
9 such recordation. Upon payment of taxes delinquent
10 under this article and for which such lien shall have been
11 perfected as herein provided, the tax commissioner shall
12 certify in duplicate the fact and amount of payment and
13 the balance due, if any, and shall forward the certificate,
14 one to the taxpayer and one to the clerk of the county
15 court of the county wherein such certificate of assessment
16 shall have been recorded. The clerk of the county court
17 shall record the certificate in the book in which releases
18 are recorded, without payment of any fee, and the recorda-
19 tion of such certificate, certifying to the payment in full of
20 such delinquent taxes, shall constitute a release and full
21 discharge of said lien.

§11-12A-18. Collection by distraint.

The tax commissioner may distraint upon any goods,
2 chattels or intangibles represented by negotiable evi-
3 dences of indebtedness, of any taxpayer delinquent under
4 this article for the amount of all taxes and penalties ac-
5 crued. The commissioner may require the assistance of
6 the sheriff of any county of the state in levying such dis-
7 tress in the county of which such sheriff is an officer.
8 A sheriff so collecting taxes due hereunder shall be en-
9 titled to compensation in the amount of all penalties col-
10 lected over and above the principal amount of the tax due,
11 but in no case shall such compensation exceed twenty-five
12 dollars. All taxes and penalties so collected shall be re-
13 ported within ten days after collection to the tax com-
14 missioner, who shall prescribe by general regulation the
15 manner of remittance of such funds and of allowing the
16 collecting officer the compensation due him under this
17 section. The lien created by this article on real estate may

18 be enforced by suit in equity, and the provisions of section
19 seven, article two, chapter eleven-a of this code may also
20 be invoked for the collection of taxes accruing under this
21 article.

§11-12A-19. Payment before certificate of dissolution or withdrawal issues.

The secretary of state shall withhold the issuance of a
2 certificate of dissolution of any corporation organized
3 under the laws of this state, or a certificate of withdrawal
4 to any foreign corporation authorized to do business in
5 this state, until notified in writing by the tax commissioner
6 that all taxes imposed against such corporation have been
7 paid in full.

§11-12A-20. Contracts with political subdivisions; final payment withheld until taxes paid by contractor.

All state, county, district and municipal officers and
2 agents making contracts on behalf of the state of West
3 Virginia or any political subdivision thereof shall with-
4 hold final settlement under such contracts until notified
5 in writing by the tax commissioner that all taxes imposed
6 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
2 corporation, arising out of a creditor's suit, bankruptcy or
3 receivership proceeding, or assignment for the benefit of
4 creditors, all unpaid taxes accruing under this article shall
5 be paid from the first moneys available for distribution
6 for that purpose, in conformity with the liens created by
7 this article. Any person charged with the administration
8 of an estate who shall violate the provisions of this section
9 shall be personally liable for any taxes accrued and un-
10 paid under this article, which are chargeable against the
11 person, firm or corporation whose estate is in adminis-
12 tration.

§11-12A-22. Offenses; penalties.

It shall be unlawful for any person to refuse to make
2 the return required to be made by section six of this

3 article; or to make any false or fraudulent return or false
4 statement in any return, with intent to defraud the state
5 or to evade the payment of the tax, or any part thereof,
6 imposed by this article; or for any person to aid or abet
7 another in any attempt to evade the payment of the tax,
8 or any part thereof, imposed by this article; or for the
9 president, vice president, secretary or treasurer of any
10 corporation to make, or permit to be made, for any cor-
11 poration or association any false return or any false state-
12 ment in any return required in this article, with the intent
13 to evade the payment of any tax hereunder. A person
14 violating any of the provisions of this section shall be
15 guilty of a misdemeanor, and, on conviction thereof, shall
16 be fined not more than one thousand dollars or imprisoned
17 not exceeding one year in the county jail or punished by
18 both fine and imprisonment, at the discretion of the court,
19 within the limitations aforesaid. In addition to the fore-
20 going penalties, any person who shall knowingly swear to
21 or verify any false or fraudulent return, or any return
22 containing any false or fraudulent statement, with the
23 intent aforesaid, shall be guilty of the offense of false
24 swearing, and, on conviction thereof, shall be punished in
25 the manner provided by law. Any corporation for which
26 a false return, or a return containing a false statement as
27 aforesaid, shall be made, shall be guilty of a misdemeanor
28 and may be punished by a fine of not more than one thou-
29 sand dollars. The circuit and criminal courts of the
30 county in which the offender resides, or, if a corporation,
31 in which it carries on business, shall have concurrent juris-
32 diction to enforce this section.

CHAPTER 188

(Senate Bill No. 414—By Mr. Hylton and Mr. Bowling)

[Passed March 8, 1967; in effect April 1, 1967. Approved by the Governor.]

AN ACT to amend and reenact sections one and two-b, article thirteen, chapter eleven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the business and occupation tax 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 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.

"Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained 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 hereunder.

"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 personal), 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 account of the cost of property sold, the cost of materials

27 used, labor costs, taxes, royalties, interest or discount paid
28 or any other expense whatsoever.

29 "Gross proceeds of sales" means the value, whether in
30 money or other property, actually proceeding from the
31 sale of tangible property without any deduction on ac-
32 count of the cost of property sold or expenses of any kind.

33 The terms "gross income" and "gross proceeds of sales"
34 shall not be construed to include (1) cash discounts al-
35 lowed and taken on sales; (2) the proceeds of sale of
36 goods, wares or merchandise returned by customers when
37 the sale price is refunded either in cash or by credit; (3)
38 the amount allowed as "trade-in value" for any article
39 accepted as part payment for any article sold; (4) ex-
40 cise taxes imposed by this state; or (5) money or other
41 property received or held by the taxpayer for the use
42 and benefit of another person.

43 "Business" shall include all activities engaged in or
44 caused to be engaged in with the object of gain or eco-
45 nomic benefit, either direct or indirect. "Business" shall
46 not include a casual sale by a person who is not engaged in
47 the business of selling the type of property involved in
48 such casual sale. "Business" shall include the production
49 of natural resources or manufactured products which are
50 used or consumed by the producer or manufacturer.

51 "Service business or calling" shall include all activities
52 engaged in by a person for other persons for a considera-
53 tion, which involve the rendering of a service as dis-
54 tinguished from the sale of tangible property, but shall
55 not include the services rendered by an employee to his
56 employer. This term shall include persons engaged in
57 manufacturing, compounding or preparing for sale, profit,
58 or commercial use, articles, substances, or commodities
59 which are owned by another or others, as well as persons
60 engaged as independent contractors in producing natural
61 resource products for persons required to pay the tax
62 imposed by section two-a of this article.

63 "Selling at wholesale" or "wholesale sales" shall mean
64 and include: (1) Sales of any tangible personal property
65 for the purpose of resale in the form of tangible personal
66 property; (2) sales of machinery, supplies or materials

67 which are to be directly consumed or used by the pur-
68 chaser in the conduct of any business or activity which
69 is subject to the tax imposed by this article or by article
70 twelve-a of this chapter; (3) sales of any tangible per-
71 sonal property to the United States of America, its agen-
72 cies and instrumentalities or to the state of West Virginia,
73 its institutions or political subdivisions.

74 "Contracting" shall include the furnishing of work, or
75 both materials and work, in the fulfillment of a contract
76 for the construction, alteration, repair, decoration or im-
77 provement of a new or existing building or structure, or
78 any part thereof, or for the alteration, improvement or
79 development of real property.

**§11-13-2b. Manufacturing, compounding or preparing prod-
ucts; processing of poultry and turkeys excepted.**

Upon every person engaging or continuing within this
2 state in the business of manufacturing, compounding or
3 preparing for sale, profit, or commercial use, either di-
4 rectly or through the activity of others in whole or part,
5 any article or articles, substance or substances, com-
6 modity or commodities, or electric power not produced
7 by public utilities taxable under other provisions of this
8 article, the amount of the tax to be equal to the value of
9 the article, substance, commodity or electric power man-
10 ufactured, compounded or prepared for sale, as shown by
11 the gross proceeds derived from the sale thereof by the
12 manufacturer or person compounding or preparing the
13 same, except as otherwise provided, multiplied by a rate
14 of eight tenths of one per cent. The measure of this tax is
15 the value of the entire product manufactured, compound-
16 ed or prepared in this state for sale, profit or commercial
17 use, regardless of the place of sale or the fact that de-
18 liveries may be made to points outside the state. How-
19 ever, the dressing and processing of poultry and turkeys
20 by a person, firm or corporation, which poultry and tur-
21 keys are to be sold on a wholesale basis by such person,
22 firm or corporation shall not be considered as manufac-
23 turing or compounding, but the sale of these products on
24 a wholesale basis shall be subject to the same tax as is

25 imposed on the business of selling at wholesale as pro-
26 vided in section two-c.

27 It is further provided, however, that in those instances
28 in which the same person partially manufactures prod-
29 ucts within this state and partially manufactures such
30 products outside of this state the measure of his tax under
31 this section shall be that proportion of the sale price of
32 the manufactured product that the payroll cost of manu-
33 facturing within this state bears to the entire payroll
34 cost of manufacturing the product; or, at the option of the
35 taxpayer, the measure of his tax under this section shall
36 be the proportion of the sales value of the articles that
37 the cost of operations in West Virginia bears to the full
38 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.

§11-13-3. Exemptions.

1 There shall be an exemption in every case of fifty
2 dollars in amount of tax computed under the provisions
3 of this article. A person exercising a privilege taxable

4 hereunder for a fractional part of a tax year shall be
5 entitled to an exemption of the sum bearing the propor-
6 tion to fifty dollars that the period of time the privilege
7 is exercised bears to a whole year. Only one exemption
8 shall be allowed to any one person, whether he exercises
9 one or more privileges taxable hereunder.

10 The provisions of the article shall not apply to: (a)
11 Insurance companies which pay the state of West Vir-
12 ginia a tax upon premiums: *Provided, however,* That said
13 exemption shall not extend to that part of the gross in-
14 come of insurance companies which is received for the
15 use of real property, other than property in which any
16 such company maintains its office or offices, in this state,
17 whether such income be in the form of rentals or royal-
18 ties; (b) persons engaged in the business of banking:
19 *Provided, however,* That said exemptions shall not extend
20 to that part of the gross income of such persons which is
21 received for the use of real property owned, other than
22 the banking house or building in which the business of the
23 bank is transacted, whether such income be in the form of
24 rentals or royalties; (c) nonprofit cemetery companies
25 organized and operated for the exclusive benefit of their
26 members; (d) fraternal societies, organizations and as-
27 sociations organized and operated for the exclusive bene-
28 fit of their members and not for profit: *Provided, however,*
29 That said exemption shall not extend to that part of the
30 gross income arising from the sale of alcoholic liquor,
31 food and related services, of such fraternal societies,
32 organizations and associations which are licensed as
33 private clubs under the provisions of article seven, chap-
34 ter sixty of this code; (e) corporations, associations and
35 societies organized and operated exclusively for religious
36 or charitable purposes; (f) production credit association,
37 organized under the provisions of the federal "Farm
38 Credit Act of one thousand nine hundred thirty-three":
39 *Provided, however,* That the exemptions of this section
40 shall not apply to corporations or cooperative associations
41 organized under the provisions of article four, chapter
42 nineteen of the code of West Virginia, one thousand nine
43 hundred thirty-one, as amended; (g) building and loan
44 associations and federal savings and loan associations;

45 (h) persons engaged in conducting the business of in-
46 dustrial loans under authority granted them by article
47 seven, chapter thirty-one of the code of West Virginia, one
48 thousand nine hundred thirty-one: *Provided, however,*
49 That said exemption shall not extend to that part of the
50 gross income of such persons which is received from the
51 use of real property owned, other than the business house
52 or building in which the business of the industrial loan
53 company is transacted, whether such income be in the
54 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 four-
teen, chapter eleven of the code of West Virginia, one thou-
sand 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
2 shall be paid into the state treasury and shall be used
3 only for the purpose of the construction, reconstruction,
4 maintenance and repair of roads and highways, payment
5 of the interest and sinking fund on state bonds issued for
6 road purposes and the cost of administration and enforce-
7 ment of this article by the tax commissioner, which cost
8 of administration and enforcement shall not exceed three

9 fourths of one per cent of the total net gasoline excise tax
10 collections during each fiscal year.

11 Unless necessary for such bond requirements, five
12 fourteenths of the taxes collected under the provisions of
13 this article shall be used for state local service road
14 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.

1 It shall be unlawful to have affixed upon any beer, ale
2 or other malt beverage container sold, or for sale in this
3 state a label bearing any design, picture or wording,
4 indicating that the contents of the container are brewed
5 for one particular retailer or group of retailers, or use
6 any trademark other than that of the brewer. The pro-
7 visions of this section shall not apply to existing stocks
8 of beer, ale or other malt beverages in the hands of brew-
9 ers, distributors or retailers on the effective date of this

10 section, the labels on which would be in violation of this
11 section.

CHAPTER 192

(House Bill No. 907—By Mr. Boiarsky 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.

Section

12. Form of application for license; fee and bond; refusal of license.
13. Unlawful acts of licensees; penalties.

§11-16-12. Form of application for license; fee and bond; refusal of license.

- 1 A license may be issued by the commissioner to any
- 2 person who submits an application therefor, accompanied
- 3 by a license fee, and, where required, a bond, stating
- 4 under oath:
- 5 (a) The name and residence of the applicant, how
- 6 long he has resided there, that he has been a resident
- 7 of the state for a period of two years next preceding the
- 8 date of his application, that he is twenty-one years of
- 9 age, and, if a firm, association, partnership or corpora-
- 10 tion, the residence of the members or officers for a period

11 of two years next preceding the date of such application:
12 *Provided*, That if any person, firm, partnership, associa-
13 tion or corporation applies for a license as a distributor,
14 such person, or in the case of a firm, partnership, associa-
15 tion, the members or officers thereof, shall state under
16 oath that he or they have been bona fide residents of the
17 state for four years preceding the date of such appli-
18 cation;

19 (b) The place of birth of applicant and that he is a
20 citizen of the United States and, if a naturalized citizen,
21 when and where naturalized; and, if a corporation, or-
22 ganized or authorized to do business under the laws of
23 the state, when and where incorporated, with the name
24 and address of each officer; that each officer is a citizen
25 of the United States and a person of good moral charac-
26 ter; and if a firm, association or partnership, the place
27 of birth of each member of the firm, association or
28 partnership, that each member is a citizen of the United
29 States and if a naturalized citizen, when and where
30 naturalized, each of whom must qualify and sign the
31 application: *Provided, however*, That the requirements
32 as to residence shall not apply to the officers of a corpora-
33 tion which shall apply for a Class B retailer's license,
34 but the officers, agent, or employee who shall manage
35 and be in charge of the licensed premises shall possess
36 all of the qualifications required of an individual appli-
37 cant for a retailer's license, including the requirement as
38 to residence;

39 (c) The particular place for which the license is
40 desired and a detailed description thereof;

41 (d) The name of the owner of the building and, if
42 the owner is not the applicant, that such applicant is the
43 actual and bona fide lessee of the premises;

44 (e) That the place or building in which it is pro-
45 posed to do business conforms to all laws of health and
46 fire regulations applicable thereto, and is a safe and proper
47 place or building, and is not within three hundred feet
48 of any school or church, measured from front door to
49 front door, along the street or streets: *Provided*, That
50 this requirement shall not apply to a Class B licensee,

51 or to any place now occupied by a beer licensee, so long
52 as it is continuously so occupied: *Provided, however,*
53 That the prohibition against locating any such proposed
54 business in a place or building within three hundred feet
55 of any school shall not apply to any college or university
56 that has notified the commissioner, in writing, that it
57 has no objection to the location of any such proposed
58 business in a place or building within three hundred feet
59 of such college or university;

60 (f) That the applicant has never been convicted of
61 a felony, or a violation of the liquor laws either fed-
62 eral or state;

63 (g) That the applicant is the only person in any
64 manner pecuniarily interested in the business so asked
65 to be licensed, and that no other person shall be in any
66 manner pecuniarily interested therein during the con-
67 tinuance of the license;

68 (h) That the applicant has not during five years next
69 immediately preceding the date of said application had
70 a nonintoxicating beer license revoked, nor during the
71 same period been convicted of any criminal offense.

72 The foregoing provisions and requirements are manda-
73 tory prerequisites for the issuance of a license, and in the
74 event any applicant fails to qualify under the same,
75 license shall be refused. In addition to the information
76 furnished in any application, the commissioner may make
77 such additional and independent investigation of each
78 applicant, and of the place to be occupied, as deemed
79 necessary or advisable; and for this reason each and
80 all applications, with license fee and bond, must be filed
81 thirty days prior to the beginning of any fiscal year, and
82 if application is for an unexpired portion of any fiscal
83 year, issuance of license may be withheld for such rea-
84 sonable time as necessary for investigation.

85 The commissioner may refuse a license to any appli-
86 cant under the provisions of this article if he shall be
87 of the opinion:

88 (a) That the applicant is not a suitable person to be
89 licensed; or,

90 (b) That the place to be occupied by the applicant

91 is not a suitable place; or is within three hundred feet
92 of any school or church, measured from front door to
93 front door along the street or streets: *Provided*, That
94 this requirement shall not apply to a Class B licensee,
95 or to any place now occupied by a beer licensee, so long
96 as it is continuously so occupied: *Provided, however*,
97 That the prohibition against locating any such place to
98 be occupied by an applicant within three hundred feet
99 of any school shall not apply to any college or university
100 that has notified the commissioner, in writing, that it
101 has no objection to the location of any such place within
102 three hundred feet of such college or university; or,
103 (c) That the license should not be issued for reason
104 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
3 or employees to sell, give or dispense, or any individual
4 to drink or consume, in or on any licensed premises or
5 in any rooms directly connected therewith, nonintoxi-
6 cating beer between the hours of midnight and seven
7 o'clock the following morning on week days or before
8 one o'clock in the afternoon of any Sunday, except in
9 private clubs licensed under the provisions of article
10 seven, chapter sixty of this code, where the hours shall
11 conform with the hours of sale of alcoholic liquors;
12 (b) For any licensee, his, its or their servants, agents
13 or employees, to sell, furnish or give any nonintoxicating
14 beer to any person visibly or noticeably intoxicated, or
15 to any insane person, or to any habitual drunkard, or
16 to any person under the age of eighteen years;
17 (c) For any distributor to sell or offer to sell, or any
18 retailer to purchase or receive, any nonintoxicating beer
19 except for cash; and no right of action shall exist to
20 collect any claims for credit extended contrary to the
21 provisions of this clause. Nothing herein contained shall
22 prohibit a licensee from crediting to a purchaser the
23 actual price charged for packages or containers returned
24 by the original purchaser as a credit on any sale, or
25 from refunding to any purchaser the amount paid or

26 deposited for such containers when title is retained by
27 the vendor;

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

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

40 (f) For any licensee to transport, sell, deliver or pur-
41 chase any nonintoxicating beer or product of the brewing
42 industry upon which there shall appear a label or other
43 informative data which in any manner refers to the
44 alcoholic content of such beer or product of the brewing
45 industry, or upon the label of which there appears the
46 word or words "strong," "full strength," "extra strength,"
47 "prewar strength," "high test" or other similar expres-
48 sions bearing upon the alcoholic content of such product
49 of the brewing industry, or which refers in any manner
50 to the original alcoholic strength, extract or balling proof
51 from which such beverage was produced, except that
52 such label shall contain a statement that the alcoholic
53 content thereof does not exceed three and two-tenths
54 per cent by weight;

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

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

64 (i) For any licensee to obstruct the view of the interior
65 of his premises by enclosure, lattice, drapes or any means
66 which would prevent plain view of the patrons occupying

67 such premises. The interior of all licensed premises shall
68 be adequately lighted at all times: *Provided, however,*
69 That provisions of this paragraph shall not apply to the
70 premises of a Class B retailer or to the premises of a
71 private club licensed under the provisions of article
72 seven, chapter sixty of this code;

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

85 (k) For any licensee to print, paint or place upon the
86 door, window, or in any other public place in or about
87 the premises, the word "saloon" or word of similar char-
88 acter or nature, or for the word "saloon" or similar words
89 to be used in any advertisement by the licensee;

90 (l) For any retail licensee to sell or dispense non-
91 intoxicating beer purchased or acquired from any source
92 other than a licensed distributor or brewer under the
93 laws of this state;

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

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

108 (o) For any distributor to sell, possess for sale,
109 transport or distribute nonintoxicating beer except in
110 the original container;

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

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

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

132 Any person who violates any provision of this article
133 or who makes any false statement concerning any ma-
134 terial fact in submitting application for license or for a
135 renewal of a license or in any hearing concerning the
136 revocation thereof, or who commits any of the acts
137 herein declared to be unlawful, shall be guilty of a
138 misdemeanor, and shall be punished for each offense
139 by a fine of not less than twenty-five dollars, nor more
140 than five hundred dollars, or imprisoned in the county
141 jail for not less than thirty days or more than six months,
142 or by both fine and imprisonment in the discretion of the
143 court. Justices of the peace shall have concurrent juris-
144 diction with the circuit court, and any other courts having
145 criminal jurisdiction in their county, for the trial of all
146 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.
4. How tax paid; stamps; how affixed; violations.
5. Ultimate incidence for tax.
6. Dealer's records.
7. Cigarette retail dealer's license required; suspension or revocation.
- 7a. Wholesaler's and sub-jobber's license required; suspension or revocation.
- 7b. 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 un-stamped cigarettes prohibited; penalties.
- 9a. Operation as both wholesaler and retailer; separate places of business.
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.
- 10a. Jeopardy assessments.
- 10b. Notice of assessment; petition for reassessment; hearing.

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.

- 29 (d) "Vending machine operator" is any person oper-
30 ating one or more cigarette vending machines.
- 31 (e) "Sale by wholesaler or retailer" shall mean and
32 include any bona fide transfer of title to cigarettes by a
33 wholesaler or retailer for a valuable consideration, made
34 in the ordinary course of trade or in the usual conduct
35 of the wholesaler's or retailer's business.
- 36 (f) "Cigarette" means:
- 37 1. Any roll of tobacco wrapped in paper or in sub-
38 stance not containing tobacco, and
- 39 2. Any roll of tobacco wrapped in any substance
40 containing tobacco which, because of its appearance, the
41 type of tobacco used in the filler, or its packaging and
42 labeling, is likely to be offered to, or purchased by, con-
43 sumers as a cigarette described in paragraph 1.
- 44 (g) "Package" means the individual package, box or
45 other container in or from which retail sales of cigarettes
46 are normally made or intended to be made.
- 47 (h) "Stamp" shall mean any cigarette stamps required
48 under this article, or any meter or ink impression author-
49 ized by the tax commissioner to serve as such stamp.
- 50 (i) "Commissioner" means the state tax commissioner
51 and where the meaning of the context requires, all depu-
52 ties and employees duly authorized by him.
- 53 (j) "Code" shall mean the code of West Virginia, one
54 thousand nine hundred thirty-one, as amended.
- 55 (k) "Retail sale" or "sale at retail" means a sale to a
56 consumer or to any person for any purpose other than re-
57 sale.
- 58 (l) "Sale" means selling, exchange, transfer of title,
59 barter, gift, offer for sale or distribution.
- 60 (m) "Consumer" means a person who receives or in
61 any way comes into possession of cigarettes for the pur-
62 pose of consuming them, giving them away or disposing
63 of them in any way other than by sale, barter or exchange.
- 64 (n) "Rules and regulations" mean those made and
65 promulgated by the state tax commissioner.

66 (o) "Stamped cigarettes" means that the stamp or
67 impression as required by this article has been affixed to
68 the bottom of the package of cigarettes.

69 (p) "Unstamped cigarettes" means that no stamp or
70 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
2 of stamps as provided in this article. Payment for stamps
3 purchased from the commissioner shall be made by cash,
4 money order, bank draft, certified check or by noncerti-
5 fied check. However, in the event a noncertified check
6 is returned unpaid by its bank, then the license of the
7 maker of the check shall be, and without notice of hear-
8 ing, and in the discretion of the commissioner, subject to
9 suspension or revocation and such suspension or revoca-
10 tion shall in no manner prevent action by the commis-
11 sioner against the dealer's surety bonding company to
12 recover moneys in the amount of the unpaid check.

13 A stamp as described in the cigarette rules and regu-
14 lations shall be affixed to, or impressed upon each package
15 of cigarettes of an aggregate value of not less than the
16 amount of the tax upon the contents thereof. The stamp
17 or impression, so affixed, shall be prima facie evidence of
18 payment of the tax imposed by this article. Stamps or
19 meter impressions shall be purchased from the commis-
20 sioner by and paid for by properly licensed wholesalers.
21 Except as may be otherwise provided in the rules and
22 regulations prescribed by the commissioner under au-
23 thority of this article, and unless such stamps have been
24 previously affixed, they shall be so affixed by each whole-
25 sale dealer who must be licensed by this state and prior
26 to the sale or delivery of any cigarettes to any retail
27 dealer or sub-jobber in this state.

28 Whenever any cigarettes are found in the place of
29 business of any retail dealer or sub-jobber without the
30 stamps so affixed, the prima facie presumption shall arise
31 that such cigarettes are kept therein in violation of the
32 provisions of this article.

§11-17-5. Ultimate incidence for tax.

Any person who advances or pays the tax imposed by
2 this article through the purchase of such stamps shall add
3 the amount of the tax so advanced or paid to the price
4 of the cigarettes when sold by the wholesaler, it being
5 intended that the ultimate incidence for the tax shall be
6 upon the ultimate possessor, consumer or user.

§11-17-6. Dealer's records.

From and after the effective date hereof and at the time
2 of delivering cigarettes to any person, each wholesale
3 dealer and sub-jobber in this state shall make a true
4 duplicate invoice showing the date of delivery, the
5 amount and value of each shipment of cigarettes deliv-
6 ered and the name of purchaser to whom delivery is made,
7 and retain the same for a period of two years from the
8 date of such delivery, subject to the use and inspection
9 of the tax commissioner.

10 Each wholesaler, sub-jobber and retail dealer in this
11 state shall procure and retain as a part of his records,
12 invoices showing the amount and value of each shipment
13 of cigarettes received by him, the date thereof and the
14 name of the shipper, and shall retain the same for a
15 period of two years subject to the use and inspection of
16 the commissioner. The commissioner, in his discretion,
17 may require reports from all dealers pertaining to the
18 sale of cigarettes.

19 In each case in which cigarettes are shipped into the
20 state of West Virginia by common carrier, such common
21 carrier transporting any shipment thereof shall file with
22 the commissioner a copy of the freight bill within ten
23 days after delivery in this state of each shipment when
24 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
2 within this state without having first secured an annual
3 cigarette retail dealer's license, which shall be issued by

4 the state tax commissioner without charge. Cigarette
5 retail dealer's license will be subject to suspension or
6 revocation, in the discretion of the commissioner, for vio-
7 lation of any laws or for other good causes or rules and
8 regulations of article seventeen, chapter eleven of the
9 code.

**§11-17-7a. Wholesaler's and sub-jobber's license required;
suspension or revocation.**

No person shall engage in selling cigarettes as a whole-
2 saler or sub-jobber without having first secured a whole-
3 saler's or sub-jobber's license as required by article
4 twelve of this chapter and having complied with the pro-
5 visions of section seven-b of this article. Wholesaler's
6 and sub-jobber's licenses will be subject to suspension or
7 revocation, in the discretion of the commissioner, for vio-
8 lation of any laws or for other good causes or rules and
9 regulations of article twelve or article seventeen, chapter
10 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
2 shall be accompanied by payment of the proper license
3 fee together with a letter from at least three of the major
4 cigarette manufacturers indicating that they will sell to
5 the applicant on a direct basis in the event a proper
6 license is issued by this state. For the purpose of this
7 section, major cigarette manufacturers will be those man-
8 ufacturers who are among the six companies showing the
9 largest taxable cigarette removals during the previous
10 calendar year, as indicated by the records of the tobacco
11 tax branch of the United States Internal Revenue Service.
12 This section shall not apply to applications for renewal
13 of licenses provided the applicant is, at the time of apply-
14 ing for renewal, purchasing from at least three of the
15 major cigarette manufacturers.

16 Each application for a wholesale cigarette license shall
17 have attached thereto a surety bond in such amount as
18 the commissioner may designate, but in no event shall
19 the bond be less than one thousand dollars nor more

20 than ten thousand dollars, conditioned upon the payment
21 of the tax due upon the cigarettes stamped by the whole-
22 saler. This surety bond will not be required from per-
23 sons who have filed a surety bond for the purpose of
24 purchasing stamps on credit as provided for in section
25 eleven of this article.

26 Wholesaler's or sub-jobber's licenses shall be issued only
27 to persons, except corporations, of good moral character,
28 who are not less than twenty-one years of age. No whole-
29 saler's or sub-jobber's license shall be issued to any person
30 who has been convicted within the past five years of any
31 offense against the cigarette laws of this state or who has
32 been convicted in this state, or any state of the United
33 States, during the past five years of any offense designated
34 as a felony by such state or the United States, or to a
35 corporation, any of whose officers have been so convicted.
36 The term "conviction" shall include the adjudication of
37 guilt on a plea of nolo contendere, or the forfeiture of a
38 bond when charged with a crime. The commissioner may
39 refuse to issue any license provided for under this sec-
40 tion to any person, firm or corporation whose license
41 under the cigarette law has been suspended or revoked
42 or to any corporation, an officer of which has had his
43 cigarette license suspended or revoked, or to any person
44 who is or has been an officer of a corporation whose cig-
45 arette license has been suspended or revoked.

§11-17-8. Cigarette vending machine operators; licenses.

A cigarette vending machine operator is any person
2 owning and operating one or more cigarette vending
3 machines. Cigarette vending machine operators who pur-
4 chase cigarettes directly from the manufacturer are re-
5 quired to secure a wholesaler's license; however, for the
6 purposes of this article, the sale of cigarettes through a
7 vending machine will be construed as sales at retail and
8 will subject the cigarette vending machine operator to
9 the cigarette law and rules and regulations pertaining to
10 cigarette retail dealers. Cigarette vending machines are
11 licensed under the general license law, section three, arti-
12 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
2 in this state other than to another licensed wholesaler,
3 licensed sub-jobber or licensed retail dealer and no per-
4 son in this state other than a licensed wholesaler, or
5 licensed sub-jobber, shall sell cigarettes to a licensed re-
6 tail dealer. It shall be unlawful and a violation of this
7 article for any licensed retail cigarette dealer to purchase
8 or acquire cigarettes from any person other than a li-
9 censed wholesaler or licensed sub-jobber. The original
10 wholesaler who purchases unstamped cigarettes from the
11 manufacturer is liable for the excise tax and the affixing
12 of the required stamps, and the sale of unstamped cig-
13 arettes in this state is hereby expressly prohibited and
14 any sale of unstamped cigarettes shall be a violation of
15 this article and any person violating this section shall be
16 guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not less than five hundred dollars nor more
18 than five thousand dollars, or imprisoned in the county
19 jail for not more than six months, or both, in the discre-
20 tion 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
2 a wholesale dealer and a retail dealer at the same place
3 of business. However, one person may operate as both a
4 wholesale dealer and a retail dealer: *Provided*, That the
5 two said operations are completely set apart by walls or
6 partitions, or an entirely different address, and the stocks
7 of cigarettes are not intermingled and separate and com-
8 plete records are maintained which may be inspected dur-
9 ing 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
2 to enforce and administer the provisions of this article.

3 The tax commissioner shall have authority to promulgate
4 in accordance with the provisions of this article such rules
5 and regulations as he may deem necessary to carry out
6 its provisions, and may adopt different detailed regula-
7 tions applicable to diverse methods and conditions of sale
8 of cigarettes in this state.

9 All books, papers, invoices and records of any whole-
10 saler, sub-jobber or retail dealer in this state shall at all
11 times, during the usual business hours of the day, be open
12 for the inspection of the tax commissioner, or his au-
13 thorized agent, for such purposes; and the tax commis-
14 sioner or a deputy shall have power to investigate the
15 stock of cigarettes in and upon the premises where the
16 same are placed, stored, or sold, for the purpose of de-
17 termining compliance by the dealers with the provisions
18 of this article.

19 The tax commissioner, if he shall determine that it is
20 practicable to stamp packages of cigarettes by impression
21 by means of a metering device, shall provide that such
22 metering device and its impression may be used in lieu
23 of the stamps otherwise required by law. The tax com-
24 missioner may authorize any wholesaler purchasing un-
25 stamped cigarettes and holding the licenses herein re-
26 quired, to use any metering device approved by the com-
27 missioner, such devices to be sealed by the commissioner
28 or a deputy, or agent, authorized by the commissioner,
29 before being used, which device shall be used only in
30 accordance with the regulations prescribed by the com-
31 missioner.

32 Any wholesaler authorized by the tax commissioner
33 to affix stamps to packages of cigarettes by means of a
34 metering device shall file with the tax commissioner a
35 bond in such amount as the tax commissioner may des-
36 ignate, conditioned upon the payment of the tax upon
37 the cigarettes so stamped.

38 Wholesalers licensed to use said device shall make a
39 monthly return to the commissioner and remit monthly
40 the amounts of tax due the state: *Provided, however,*
41 *That a wholesaler may elect to pay the tax in advance*
42 *where a metering device is used, in which event such*

43 dealer shall deliver the metering device to the commis-
44 sioner, or his agent authorized for the purpose, who shall
45 seal the meter in accordance with the prepayment so
46 made. The commissioner may designate and authorize
47 any bank or trust company with banking offices in any
48 county of this state, to act as his deputy or agent for the
49 purpose of performing his duties with respect to sealing
50 of metering devices or the selling of stamps in such
51 county, and may require bond, and the action of any such
52 deputy by its duly authorized officer or employees shall
53 be as valid as though performed by the commissioner.

54 The commissioner shall have power to make an assess-
55 ment against any wholesaler who fails to return or makes
56 a false or erroneous return. The commissioner may col-
57 lect such assessment by levy, action at law, distraint, or
58 any other method of enforcing taxes which may be pro-
59 vided by law and shall have the right to file liens there-
60 for in any county.

§11-17-10a. Jeopardy assessments.

If the tax commissioner believes that the collection of
2 any tax which he is required to administer will be
3 jeopardized by delay, he shall thereupon make an assess-
4 ment of the tax, noting that fact upon the assessment.
5 The amount assessed shall be immediately due and pay-
6 able. Unless the taxpayer against whom a jeopardy as-
7 sessment is made petitions for reassessment within twenty
8 days after service of notice of the jeopardy assessment,
9 such an assessment becomes final.

10 A petition for reassessment by a person against whom
11 a jeopardy assessment has been made must be accompa-
12 nied by such security as the tax commissioner may deem
13 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-
2 ten notice of any assessment made pursuant to this ar-
3 ticle. Unless the taxpayer to whom a notice of assess-
4 ment is directed, shall, within thirty days after service
5 thereof (except in the case of jeopardy assessments),

6 either personally or by certified mail, file with the tax
7 commissioner a petition in writing, verified under oath
8 by said taxpayer or his duly authorized agent, having
9 knowledge of the facts, setting forth with definiteness and
10 particularity the items of the assessment objected to, to-
11 gether with the reason for such objections, said assess-
12 ments shall become and be deemed conclusive and the
13 amount thereof shall be payable at the end of the thirty-
14 day period. In every case where a petition for reassess-
15 ment as above described is filed, the tax commissioner
16 shall assign a time and place for the hearing of same and
17 shall notify the petitioner of such hearing by written
18 notice at least twenty days in advance thereof and such
19 hearing shall be held within sixty days from the filing
20 of the petition for reassessment unless continued by
21 agreement or by the tax commissioner for good cause.
22 The hearing shall be informal and may be conducted by
23 an examiner designated by the tax commissioner. At
24 such hearing evidence may be offered to support the as-
25 sessment or to prove that it is incorrect. After such hear-
26 ing the tax commissioner shall, within a reasonable time,
27 give notice in writing of the decision. Unless an appeal
28 is taken within thirty days from service of this notice,
29 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
2 be used as herein provided for, affixed and attached to
3 containers, packages or receptacle of whatever kind that
4 may be used for containing cigarettes. In the preparing
5 of said stamp or stamps the same shall have printed or
6 impressed thereon the words "State of West Virginia—
7 Cigarette Tax Stamp" and such other words and figures
8 as he may deem proper to show the value and denomina-
9 tion of the stamp or stamps. He shall also prescribe the
10 form of impression to be placed upon any package or con-
11 tainer of cigarettes by any metering device. The state tax
12 commissioner shall collect the taxes provided for by this
13 article.

14 Such stamps shall be kept in the custody of the state

15 tax commissioner or such deputies as he may designate to
16 sell the same. Such stamps shall be sold and accounted for
17 at the face value thereof except that the tax commissioner
18 may authorize sale thereof, or sell to wholesalers in this
19 state, or to wholesalers outside of this state such stamps
20 at a discount of four per cent of the face value of such
21 stamps, the same to be allowed as a commission for affix-
22 ing the stamps and prepaying the cigarette tax; and ex-
23 cepting further that the tax commissioner may, by like
24 regulation so certified, authorize the delivery of stamps to
25 wholesalers in this state, or to wholesalers outside of this
26 state on credit, allowing the same discount as when sold
27 for cash, if and when the purchaser shall file with the tax
28 commissioner a bond made payable to the state of West
29 Virginia, in such form and amount as the commissioner
30 shall prescribe, and with surety or sureties to the satis-
31 faction of the commissioner, conditioned as he may re-
32 quire, to guarantee payment within thirty days for stamps
33 so delivered within such period of time and by making
34 of such reports and settlement as the commissioner may
35 require. The commissioner may, by further regulations,
36 provide for cancelling, renewing or increasing such bond
37 or for the substitution of the surety thereon. The com-
38 missioner shall redeem any unused or mutilated, but iden-
39 tifiable, stamps, that any licensed wholesaler or retail
40 dealer may present for redemption, on written verified
41 requests made by the purchaser, his administrators, ex-
42 ecutors, successors, or assigns, and refund therefor, ninety-
43 five per cent of the face value of said stamps, less any
44 discounts allowed on the purchase of said stamps. The
45 commissioner shall pay on a like basis for stamps de-
46 stroyed by fire or flood upon presentation of proof of such
47 loss satisfactory to him. Such payments shall for the pur-
48 poses hereof be deemed to be refunds of taxes improperly
49 collected and shall be allowed and paid as part of the cost
50 of administration of this article as in this article provided.

**§11-17-13. Possession of unstamped cigarettes; failure to pro-
duce invoices; penalty; seizure and sale of unstamped
cigarettes and vending machines.**

Whoever, being a retail dealer in this state, has in his

2 possession packages of cigarettes not bearing the stamps
3 herein required to be affixed thereto or, whoever fails to
4 produce on demand by the commissioner invoices of all
5 cigarettes purchased or received by him within two years
6 prior to such demand, unless upon satisfactory proof it is
7 shown that such nonproduction is due to providential or
8 other causes beyond his control, shall be guilty of a mis-
9 demeanor, and, upon conviction thereof, shall be fined not
10 less than one hundred dollars nor more than one thousand
11 dollars, or imprisoned in the county jail not more than
12 ninety days, or both, in the discretion of the court.

13 If unstamped cigarettes be found in any vending ma-
14 chine, both the cigarettes and the vending machine shall
15 be contraband goods and may be seized by the commis-
16 sioner, his agents or employees or by any peace officer of
17 the state at the discretion of the commissioner, his agents
18 or employees, without a warrant.

19 Cigarettes and vending machines seized under this sec-
20 tion shall be forthwith sold in the manner provided by law
21 for the sale of personal property for taxes and such sale
22 shall not relieve the owner of the sold personal property
23 of any action by the commissioner for violations of any
24 sections of this article.

§11-17-14. False records; penalties.

Whoever makes any false entry upon an invoice, pack-
2 age or container of cigarettes required to be made under
3 the provisions of this article, or with intent to evade the
4 tax imposed by this article, presents any such false entry
5 for the inspection of the commissioner, shall be guilty of
6 a misdemeanor, and, upon conviction thereof, shall be
7 fined not less than one hundred dollars nor more than
8 one thousand dollars, or imprisoned in the county jail not
9 more than ninety days, or both, in the discretion of the
10 court.

§11-17-15. Preventing inspections; penalties.

Whoever prevents or hinders the commissioner or his
2 deputy from making a full inspection of any place where
3 cigarettes subject to the tax imposed by this state are sold
4 or stored, or prevents or hinders the full inspection of in-

5 voices, books, records, or papers required to be kept under
6 the provisions of this article, shall be guilty of a misde-
7 meanor, and, upon conviction thereof, shall be fined not
8 less than one hundred dollars nor more than one thousand
9 dollars, or imprisoned in the county jail not more than
10 ninety days, or both, in the discretion of the court.

§11-17-16. Sales or possession without affixing stamps; penalties.

Whoever sells cigarettes in this state without there hav-
2 ing been first affixed to each individual package thereof
3 the stamp or stamps required to be affixed thereto by this
4 article, shall be guilty of a misdemeanor, and, upon con-
5 viction thereof, shall be fined not less than two dollars and
6 fifty cents per package of cigarettes or imprisoned in the
7 county jail not more than ninety days, or both, in the
8 discretion of the court.

9 If a person, firm or corporation, who is not a regularly
10 licensed dealer in tobacco products, as provided by this
11 article, shall have in his possession within the state more
12 than ten packages of cigarettes not bearing cigarette tax
13 paid indicia of this state, such possession shall be pre-
14 sumed to be for the purpose of evading the payment of the
15 taxes due thereon and shall be subject to the penalties as
16 outlined in this section.

§11-17-17. Altering or counterfeiting stamps; penalties.

Whoever falsely or fraudulently makes, forges, alters,
2 or counterfeits any stamp prescribed by the commissioner
3 under the provisions of this article and cigarette tax rules
4 and regulations, and any person who knowingly and wil-
5 fully makes, causes to be made, purchases, receives or has
6 in his possession, any device for forging or counterfeiting
7 any stamp, or uses more than once any stamp provided for
8 and required by this article for the purpose of evading the
9 tax hereby imposed, shall be guilty of a felony, and, upon
10 conviction thereof, shall be sentenced to pay a fine of not
11 less than five thousand dollars nor more than ten thousand
12 dollars and imprisoned in the penitentiary for a term of
13 not less than one year nor more than five years. For the
14 purpose of this section, the words "stamp provided for and

15 required by this article" shall include a stamp or imprint
16 made by a metering machine to evidence the payment of
17 the excise tax on cigarettes as required by this article and
18 the stamps and metering device as described in the West
19 Virginia administrative regulations pertaining to the ex-
20 cise 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
2 by the tax commissioner shall have all the lawful powers
3 delegated to members of the department of public safety
4 to enforce the provisions of this article in any county or
5 city of this state, and such employee shall, before entering
6 upon the discharge of his duties, execute a bond with
7 security in the sum of thirty-five hundred dollars, payable
8 to the state of West Virginia, conditioned for the faithful
9 performance of his duties as such, and such bond shall be
10 approved as to form by the attorney general, and as to
11 sufficiency by the board of public works, and the same
12 shall be filed with the secretary of state and preserved in
13 his office.

14 The state department of public safety is hereby author-
15 ized and may be requested to assist in the enforcement of
16 the provisions of this article as directed by the tax com-
17 missioner or his agents.

§11-17-18. Penalties.

Whoever violates any of the provisions of this article or
2 any lawful rule or regulation promulgated by the com-
3 missioner under authority of this article for the violation
4 of which no penalty is provided by law shall be guilty of
5 a misdemeanor, and, upon conviction thereof, shall be
6 fined not less than one hundred dollars nor more than five
7 hundred dollars, or imprisoned in the county jail not more
8 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
2 shall expire on the thirtieth day of June of each year. On

3 or before the first day of July of each year, every person
4 having a license shall apply to the state tax commissioner
5 for a renewal for the year next ensuing, unless such per-
6 son has ceased to operate or does not propose to continue
7 operation during the year next ensuing, in which event he
8 shall notify the state tax commissioner that he has ceased
9 operation or that he proposes to cease operation prior to
10 the first day of July of the year next ensuing. All appli-
11 cations for renewal shall be made on the forms prescribed
12 by the state tax commissioner.

13 Each new license issued prior to the first day of January
14 of any year shall be charged for at the full rate and each
15 license issued on or after the first day of January shall be
16 charged for at one half of the full rate, as prescribed in
17 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
2 as required by this article upon the public highways,
3 waterways, roads or streets of this state shall have in his
4 actual possession invoices or delivery tickets for such ciga-
5 rettes which shall show the true name and complete and
6 exact address of the consignor or seller, the true name
7 and complete and exact address of the consignee, or pur-
8 chaser, the quantity and brands of the cigarettes trans-
9 ported and the true name and complete and exact address
10 of the person who has or shall assume payment of the
11 West Virginia state tax, or the tax, if any, of the state or
12 foreign country at the point of ultimate destination:
13 *Provided*, That any common carrier which has issued a
14 bill of lading for a shipment of cigarettes and is without
15 notice to itself or to any of its agents or employees that
16 said cigarettes are not stamped as required by this article
17 shall be deemed to have complied with this article and the
18 vehicle or vessel in which said cigarettes are being trans-
19 ported shall not be subject to confiscation hereunder. In
20 the absence of such invoices, delivery tickets or bills of
21 lading, as the case may be, the cigarettes so transported,
22 the vehicle or vessel in which the cigarettes are being
23 transported and any paraphernalia or devices used in con-

24 nection with the unstamped cigarettes, are declared to be
25 contraband goods and may be seized by the commissioner,
26 his agents or employees or by any peace officer of the state
27 when directed by the commissioner, his agents or em-
28 ployees so to do without a warrant.

29 The person or persons transporting unstamped ciga-
30 rattes in violation of this section shall be guilty of a mis-
31 demeanor, and, upon conviction thereof, shall be fined not
32 less than three hundred dollars nor more than five thou-
33 sand dollars, or imprisoned in the county jail not more
34 than one year, or both, in the discretion of the court.

35 The commissioner shall immediately, after any seizure
36 made pursuant to this section, institute a proceeding for
37 the confiscation thereof in the circuit court of the county
38 in which the seizure is made. The court may proceed in a
39 summary manner and may direct confiscation to the com-
40 missioner: *Provided, however,* That anything to the con-
41 trary notwithstanding that any person claiming to be the
42 holder of a mortgage, conditional sales contract or other
43 security interest in any vehicle or vessel, the disposition of
44 which is provided for above, may present his petition so
45 alleging and be heard, and in the event it appears to the
46 court that the property was unlawfully used by a person
47 other than such claimant, and if the said claimant acquired
48 his security interest in good faith and without knowledge
49 that the vehicle or vessel was going to be so used, the court
50 shall either waive forfeiture in favor of such claimant
51 and order the vehicle or vessel returned or delivered to
52 such claimant or if it is found that the value thereof ex-
53 ceeds the amount of the claim, the court shall order pay-
54 ment of the amount of the claim out of the proceeds of the
55 sale.

§11-17-28. Separability of provisions of article.

The various provisions of the several sections of article
2 seventeen, contained in this act, shall be deemed to be
3 separable insofar as they or their meaning is not insepara-
4 bly connected, and if any provisions of this act shall be
5 held unconstitutional, such holding shall not affect any of
6 the other provisions of this act not inseparably connected

7 in meaning and effect with such part so held unconstitu-
8 tional.

CHAPTER 194

(Senate Bill No. 322—By Mr. Carson, Mr. President)

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

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
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 195

(House Bill No. 883—By Mr. Beneke and Mr. Seibert)

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

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 en-
 2 dorser, guarantor, or accommodator to another person or
 3 corporation for the purpose of assisting another in ob-
 4 taining credit shall not be, or construed to be, an in-
 5 vestor in said borrower as to the amount so borrowed,
 6 nor shall any payments by said borrower on the indebted-
 7 ness be, or construed to be, dividend to the endorser,
 8 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

5 proper amount are attached thereto as a prerequisite to
6 acceptance of the instrument for recordation.

7 When offered for recording, each instrument subject
8 to the tax as herein provided shall have appended on
9 the face or at the end thereof, a statement or declara-
10 tion signed by the grantor, grantee or other responsible
11 party familiar with the transaction therein involved
12 declaring the consideration paid for or the value of the
13 property thereby conveyed. Such declaration may be in
14 the following language:

15 "DECLARATION OF CONSIDERATION OR VALUE
16 I hereby declare:

17 (a) The total consideration paid for the property con-
18 veyed by the document to which this declaration is ap-
19 pended is \$.....; or,

20 (b) The true and actual value of the property trans-
21 ferred by the document to which this declaration is ap-
22 pended is, to the best of my knowledge and belief,
23 \$.....; or,

24 (c) The proportion of all the property included in the
25 document to which this declaration is appended which is
26 real property located in West Virginia is%;
27 the value of all the property \$.....; the value of
28 real estate in West Virginia is \$.....; or,

29 (d) This deed conveys real estate located in more than
30 one county in West Virginia; the total consideration paid
31 for, or actual cash value of, all the real estate located in
32 West Virginia conveyed by this document is \$.....;
33 and documentary stamps showing payment of all of the
34 excise tax on all of said real estate are attached to an
35 executed counterpart of this deed recorded in
36 county.

37 Given under my hand this day of, 19....

38 Signature
39 (Indicate whether grantor, grantee,
40 or other interest in conveyance).

41
42 Address"

43 Such declaration shall be considered by the clerk in
44 ascertaining the correct number of stamps required, and

45 if declaration (d) is used no stamps shall be required on
46 the duplicate deed to which it is attached and such
47 duplicate deed shall be admitted to record, and when
48 recorded shall have the same effect for all purposes as if
49 stamps were attached thereto.

50 The clerk shall, at the end of the month, pay all of the
51 proceeds collected from the sale of stamps for the state
52 excise tax to the state auditor in the manner provided by
53 law which shall be credited to the state general revenue
54 fund.

55 The clerk shall, at the end of the month, pay all of the
56 proceeds collected from the sale of stamps for the county
57 excise tax into the county general fund for the use of the
58 county.

§11-22-10. **Erroneous collections; refund.**

Any person who may have been required to pay the
2 state tax provided for in this article because of any
3 mistake of law or fact or because the tax herein provided
4 for was improperly collected may apply for a refund
5 thereof either to the county clerk receiving such payment,
6 or to the state auditor.

7 Any person who may have been required to pay the
8 county tax provided for in this article because of any
9 mistake of law or fact or because the tax herein provided
10 for was improperly collected may apply for a refund
11 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.

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§11-24-1. Legislative findings.

The Legislature hereby finds and declares that the
2 adoption by this state for its corporation net income tax
3 purposes of certain provisions of the laws of the United
4 States relating to the determination of income for federal
5 income tax purposes will (1) simplify preparation of state
6 corporation net income tax returns by taxpayers, (2)
7 improve enforcement of the state corporation net income
8 tax through better use of information obtained from
9 federal income tax audits, and (3) aid interpretation of
10 the state corporation net income tax law through in-
11 creased use of federal judicial and administrative deter-
12 minations and precedents.

13 The Legislature does therefore declare that this article
14 twenty-four be construed so as to accomplish the fore-
15 going purposes.

§11-24-2. Short title; arrangement and classification.

This article may be cited as the "West Virginia Corpora-
2 tion Net Income Tax Act." No inference, implication or
3 presumption of legislative construction shall be drawn or
4 made by reason of the location or grouping of any par-
5 ticular section or provision or portion of this article, nor
6 shall the descriptive matter or headings relating to any

7 part, section, subsection or paragraph be given any legal
8 effect.

**PART I—DEFINITIONS, IMPOSITION OF TAX
AND RATE, AND EXEMPTIONS**

§11-24-3. Meaning of terms.

(a) *General.*—Any term used in this article shall
2 have the same meaning as when used in a comparable
3 context in the laws of the United States relating to federal
4 income taxes, unless a different meaning is clearly re-
5 quired by the context or by definition in this article. Any
6 reference in this article to the laws of the United States
7 or to the Internal Revenue Code or to the federal income
8 tax law shall mean the provisions of the laws of the
9 United States as relate to the determination of income
10 for federal income tax purposes. All amendments made
11 to the laws of the United States prior to the first day of
12 January, one thousand nine hundred sixty-seven, shall
13 be given effect in determining the taxes imposed by this
14 article for the tax period beginning the first day of July,
15 one thousand nine hundred sixty-seven, and thereafter,
16 but no amendment to laws of the United States made on
17 or after the first day of January, one thousand nine hun-
18 dred sixty-seven, shall be given effect.

(b) *Certain Terms Defined.*—For purposes of this
20 article:

21 (1) The term “tax commissioner” means the tax
22 commissioner of the state of West Virginia or his delegate.

23 (2) The term “corporation” means and includes
24 a joint stock company or any association which is taxable
25 as a corporation under the federal income tax law.

26 (3) The term “domestic corporation” means any
27 corporation organized under the laws of West Virginia.

28 (4) The term “foreign corporation” means any
29 corporation other than a domestic corporation.

30 (5) The term “state” means any state of the United
31 States, the District of Columbia, the Commonwealth of
32 Puerto Rico, any territory or possession of the United
33 States, and any foreign country or political subdivision
34 thereof.

35 (6) The term "taxable year" means the taxable
36 year for which the taxable income of the taxpayer is com-
37 puted under the federal income tax law.

38 (7) The term "taxpayer" means a corporation sub-
39 ject to the tax imposed by this article.

40 (8) The term "tax" includes, within its meaning,
41 interest and penalties unless the intention to give it a
42 more limited meaning is disclosed by the context.

43 (9) The term "commercial domicile" means the
44 principal place from which the trade or business of the
45 taxpayer is directed or managed.

46 (10) The term "compensation" means wages, sala-
47 ries, commissions and any form of remuneration paid to
48 employees for personal services.

49 (11) The term "West Virginia taxable income"
50 means the taxable income of a corporation as defined by
51 the laws of the United States for federal income tax pur-
52 poses, adjusted as provided in section six: *Provided*, That
53 in the case of a corporation having income from business
54 activity which is taxable without this state, its "West Vir-
55 ginia taxable income" shall be such portion of its taxable
56 income as so defined and adjusted as is allocated or ap-
57 portioned to this state under the provisions of section
58 seven.

59 (12) The term "business income" means income
60 arising from transactions and activity in the regular
61 course of the taxpayer's trade or business and includes
62 income from tangible and intangible property if the ac-
63 quisition and disposition of the property constitute in-
64 tegral parts of the taxpayer's regular trade or business
65 operations.

66 (13) "Nonbusiness income" means all income other
67 than business income.

68 (14) The term "public utility" means any business
69 activity to which the jurisdiction of the public service
70 commission of West Virginia extends under section one,
71 article two, chapter twenty-four of the code of West Vir-
72 ginia, as amended.

73 (15) The term "this code" means the code of West

74 Virginia, one thousand nine hundred thirty-one, as
75 amended.

76 (16) The term "this state" means the state of West
77 Virginia.

§11-24-4. Imposition of tax and rate.

(1) In the case of taxable years beginning after
2 the thirtieth day of June, one thousand nine hundred
3 sixty-seven, a tax is hereby imposed for each taxable
4 year at the rate of six per centum per annum on the
5 West Virginia taxable income of every domestic or for-
6 eign corporation engaging in business in this state or
7 deriving income from property, activity or other sources
8 in this state, except corporations exempt under section
9 five.

(2) In the case of a taxable year beginning on
11 the first day of January, one thousand nine hundred
12 sixty-seven, and ending on the thirty-first day of De-
13 cember, one thousand nine hundred sixty-seven, a tax
14 of one half of the rate set forth in paragraph (1) is here-
15 by imposed for such taxable year on the West Vir-
16 ginia taxable income of every domestic or foreign
17 corporation engaging in business in this state or de-
18 riving income from property, activity or other sources in
19 this state, except corporations exempt under section
20 five.

(3) In the case of taxable years, other than the
22 year beginning on the first day of January, one thousand
23 nine hundred sixty-seven, beginning after the thirtieth
24 day of June, one thousand nine hundred sixty-six, and
25 before the first day of July, one thousand nine hundred
26 sixty-seven, a tax is hereby imposed on the West Vir-
27 ginia taxable income of every domestic or foreign cor-
28 poration engaging in business in West Virginia or de-
29 riving income from property, activity or other sources
30 in this state, except corporations exempt under section
31 five, in an amount equal to that portion of the tax cal-
32 culated in the manner set forth in paragraph (1) which
33 the number of days in such taxable year after the thir-
34 tieth day of June, one thousand nine hundred sixty-seven,
35 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

40 the laws of the United States (enacted as section three
41 hundred two (c) of the labor management relations act,
42 one thousand nine hundred forty-seven), as amended,
43 prior to the first day of January, one thousand nine
44 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;

34 (2) Interest or dividend income on obligations or
35 securities of any authority, commission or instrumen-
36 tality of the United States to the extent includable in gross
37 income for federal income tax purposes, but exempt from
38 state income taxes under the laws of the United States;

39 (3) Any gain from the sale or other disposition
40 of property having a higher fair market value on the
41 first day of July, one thousand nine hundred sixty-seven,
42 than the adjusted basis at said date for federal income
43 tax purposes: *Provided*, That the amount of this adjust-
44 ment is limited to that portion of any such gain which
45 does not exceed the difference between such fair market
46 value and such adjusted basis;

47 (4) The amount of any refund or credit for over-
48 payment of income taxes imposed by this state or any
49 other taxing jurisdiction, to the extent properly included
50 in gross income for federal income tax purposes; and

51 (5) The amount of dividends received, to the ex-
52 tent included in federal taxable income.

53 (d) *Adjustment Resulting from Recomputation of*
54 *Net Operating Loss Deduction.*—In determining the West
55 Virginia taxable income of a corporation entitled to a
56 net operating loss deduction for the taxable year for
57 federal income tax purposes, there shall be added to or
58 subtracted from the federal taxable income the amount
59 of an adjustment reflecting a recomputation of such
60 net operating loss deduction in which the adjustments
61 required by subsections (b) and (c) are made for each
62 taxable year involved in the computation of such net
63 operating loss deduction.

64 (e) *Special Adjustments for Expenditures for Water*
65 *and Air Pollution Control Facilities.*

66 (1) If the taxpayer so elects under paragraph (2)
67 of this subsection, there shall be—

68 (A) subtracted from federal taxable income
69 the total of the amounts paid or incurred during the tax-
70 able year for the acquisition, construction or develop-
71 ment within this state of water pollution control facili-
72 ties and air pollution control facilities as defined in sec-

73 tion 48 (h) (12) (B) and (C) of the Internal Revenue
74 Code, and

75 (B) added to federal taxable income the total
76 of the amounts of any allowances for depreciation and
77 amortization of such water pollution control facilities
78 and air pollution control facilities, as so defined, to the
79 extent deductible in determining federal taxable income.

80 (2) The election referred to in paragraph (1)
81 of this subsection shall be made in the return filed within
82 the time prescribed by law (including extensions there-
83 of) for the taxable year in which such amounts were
84 paid or incurred. Such election shall be made in such
85 manner, and the scope and application of such election
86 shall be defined, as the tax commissioner may by regu-
87 lations prescribe, and shall be irrevocable when made
88 as to all amounts paid or incurred for any particular
89 water pollution control facility or air pollution control
90 facility.

91 (3) Notwithstanding any other provisions of this
92 subsection or of section seven to the contrary, if the tax-
93 payer's federal taxable income is subject to allocation
94 and apportionment under section seven, the adjustments
95 prescribed in subparagraphs (A) and (B) of paragraph
96 (1) of this subsection shall (instead of being made to
97 the taxpayer's federal taxable income before allocation
98 and apportionment thereof as provided in section seven)
99 be made to the portion of the taxpayer's net income, com-
100 puted without regard to such adjustments, allocated and
101 apportioned to this state in accordance with section seven.

§11-24-7. Allocation and apportionment.

(a) *General.*—Any taxpayer having income from busi-
2 ness activity which is taxable both in this state and in
3 another state shall allocate and apportion its net income
4 as provided in subsection (d) or by one of the methods
5 provided in subsection (e). For purposes of this section,
6 the term "net income" means the taxpayer's federal tax-
7 able income adjusted as provided in section six.

8 (b) *"Taxable in Another State" Defined.*—For pur-
9 poses of allocation and apportionment of net income under

10 this section, a taxpayer is taxable in another state if (1)
11 in that state the taxpayer is subject to a net income tax, a
12 franchise tax measured by net income, a franchise tax for
13 the privilege of doing business, or a corporate stock tax,
14 or (2) that state has jurisdiction to subject the taxpayer
15 to a net income tax, regardless of whether, in fact, that
16 state does or does not subject the taxpayer to such tax.

17 (c) *Business Activities Entirely within West Virginia.*
18 —If the business activities of a taxpayer take place en-
19 tirely within this state, and if such taxpayer is not taxable
20 in another state, the entire net income of such taxpayer
21 is subject to the tax imposed by this article.

22 (d) *Business Activities Partially within and Partially*
23 *without West Virginia.*—If the business activities of a
24 taxpayer take place partially within and partially without
25 this state and such taxpayer is also taxable in another
26 state:

27 (1) Rents and royalties from real or tangible per-
28 sonal property, interest, dividends, or patent or copyright
29 royalties, to the extent that they constitute nonbusiness
30 income of the taxpayer, shall be allocated as provided in
31 paragraphs (2) through (4).

32 (2) (A) Net rents and royalties from real prop-
33 erty located in this state are allocable to this state.

34 (B) Net rents and royalties from tangible per-
35 sonal property are allocable to this state:

36 (i) if and to the extent that the property
37 is utilized in this state, or

38 (ii) in their entirety if the taxpayer's
39 commercial domicile is in this state and the taxpayer is
40 not organized under the laws of or taxable in the state
41 in which the property is utilized.

42 (C) The extent of utilization of tangible per-
43 sonal property in a state is determined by multiplying
44 the rents and royalties by a fraction, the numerator of
45 which is the number of days of physical location of the
46 property in the state during the rental or royalty period
47 in the taxable year and the denominator of which is the
48 number of days of physical location of the property every-
49 where during all rental or royalty periods in the taxable

50 year. If the physical location of the property during the
51 rental or royalty period is unknown or unascertainable
52 by the taxpayer, tangible personal property is utilized in
53 the state in which the property was located at the time
54 the rental or royalty payer obtained possession.

55 (3) Interest is allocable to this state if the tax-
56 payer's commercial domicile is in this state.

57 (4) (A) Patent and copyright royalties are allo-
58 cable to this state:

59 (i) if and to the extent that the patent or
60 copyright is utilized by the payer in this state, or

61 (ii) if and to the extent that the patent or
62 copyright is utilized by the payer in a state in which the
63 taxpayer is not taxable and the taxpayer's commercial
64 domicile is in this state.

65 (B) A patent is utilized in a state to the extent
66 that it is employed in production, fabrication, manufac-
67 turing or other processing in the state or to the extent that
68 a patented product is produced in the state. If the basis of
69 receipts from patent royalties does not permit allocation
70 to states or if the accounting procedures do not reflect
71 states of utilization, the patent is utilized in the state in
72 which the taxpayer's commercial domicile is located.

73 (C) A copyright is utilized in a state to the
74 extent that printing or other publication originates in the
75 state. If the basis of receipts from copyright royalties does
76 not permit allocation to states or if the accounting pro-
77 cedures do not reflect states of utilization, the copyright
78 is utilized in the state in which the taxpayer's commercial
79 domicile is located.

80 (5) All net income, after deducting those items
81 specifically allocated under paragraphs (1) through (4),
82 shall be apportioned to this state by multiplying such net
83 income by a fraction, the numerator of which is the prop-
84 erty factor plus the payroll factor, and the denominator
85 of which is two.

86 (A) The property factor is a fraction, the
87 numerator of which is the average value of the taxpayer's
88 real and tangible personal property owned or rented and
89 used in this state during the taxable year and the denomi-

90 nator of which is the average value of all the taxpayer's
91 real and tangible personal property owned or rented and
92 used during the taxable year.

93 (B) Property owned by the taxpayer is valued
94 at its original cost: *Provided*, That where records of orig-
95 inal cost are unavailable or cannot be obtained without
96 unreasonable expense, property shall be valued at original
97 cost as determined under regulations of the tax commis-
98 sioner. Property rented by the taxpayer from others is
99 valued at eight times the annual rental rate.

100 (C) The average value of property shall be
101 determined by averaging the values at the beginning and
102 ending of the taxable year, but the tax commissioner may
103 require the averaging of monthly values during the tax
104 period if reasonably required to reflect properly the aver-
105 age value of the taxpayer's property.

106 (D) The payroll factor is a fraction, the nu-
107 merator of which is the total amount paid in this state
108 during the taxable year by the taxpayer for compensation,
109 and the denominator of which is the total compensation
110 paid everywhere during the taxable year.

111 (E) Compensation is paid in this state if:

112 (i) the individual's service is performed
113 entirely within the state; or

114 (ii) the individual's service is performed
115 both within and without the state, but the service per-
116 formed without the state is incidental to the individual's
117 service within the state; or

118 (iii) some of the service is performed in
119 the state and (1) the base of operations or, if there is no
120 base of operations, the place from which the service is
121 directed or controlled is in the state, or (2) the base of
122 operations or the place from which the service is directed
123 or controlled is not in any state in which some part of the
124 service is performed, but the individual's residence is in
125 this state.

126 (e) *Other Methods of Allocation.*—(1) *General.*—If
127 the allocation and apportionment provisions of subsection
128 (d) do not fairly represent the extent of the taxpayer's
129 business activities in this state, the taxpayer may petition

130 for or the tax commissioner may require, in respect to all
131 or any part of the taxpayer's business activities, if reason-
132 able:

133 (A) separate accounting;

134 (B) the exclusion of one of the factors;

135 (C) the inclusion of one or more additional
136 factors which will fairly represent the taxpayer's business
137 activity in this state; or

138 (D) the employment of any other method to
139 effectuate an equitable allocation or apportionment of the
140 taxpayer's income.

141 (2) *Alternative method for public utilities.*—If the
142 taxpayer is a public utility and if the allocation and ap-
143 portionment provisions of subsection (d) do not fairly
144 represent the taxpayer's business activities in this state,
145 the taxpayer may petition for or the tax commissioner
146 may require, as an alternative to the other methods pro-
147 vided for in paragraph (1) of this subsection, the alloca-
148 tion and apportionment of the taxpayer's net income in
149 accordance with any system of accounts prescribed by
150 the public service commission of this state pursuant to
151 the provisions of section eight, article two, chapter
152 twenty-four of this code, provided the allocation and ap-
153 portionment provisions of such system of accounts fairly
154 represent the extent of the taxpayer's business activities
155 in this state for the purposes of the tax imposed by this
156 article.

157 (3) *Burden of Proof.*—In any proceeding before
158 the tax commissioner or in any court in which employ-
159 ment of one of the methods of allocation or apportionment
160 provided for in paragraph (1) or (2) of this subsection
161 is sought, on the ground that the allocation and appor-
162 tionment provisions of subsection (d) do not fairly repre-
163 sent the extent of the taxpayer's business activities in
164 this state, the burden of proof shall—

165 (A) If the tax commissioner seeks employ-
166 ment of one of such methods, be on the tax commis-
167 sioner, or

168 (B) If the taxpayer seeks employment of one
169 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

39 used the method of accounting from which the change
40 is made.

41 (2) *Change from accrual to installment method.*—

42 If a taxpayer's method of accounting is changed from an
43 accrual to an installment method, any additional tax for
44 the year of such change of method and for any subse-
45 quent year which is attributable to the receipts of in-
46 stallment payments properly accrued in a prior year shall
47 be reduced by the portion of tax for any prior taxable
48 year attributable to the accrual of such installment pay-
49 ments, under regulations prescribed by the tax com-
50 missioner.

51 (f) *Application of Federal Accounting Adjustments.*—

52 Notwithstanding any of the other provisions of this sec-
53 tion, any accounting adjustments made for federal income
54 tax purposes for any taxable year shall be applied in
55 computing the taxpayer's taxable income for such taxable
56 year.

57 (g) *Taxpayer Currently on the Installment Method of*

58 *Accounting.*—If a taxpayer is using the installment
59 method of accounting at the time of the enactment of this
60 article, any tax for the year of the enactment of this
61 article and for any subsequent year which is attributable
62 to the receipts of installment payments properly accrued
63 in a period prior to the enactment of this article and
64 which were subject to the privilege tax as imposed by
65 article thirteen of chapter eleven of this code shall, under
66 regulations of the tax commissioner, be reduced by the
67 portion of such privilege tax previously paid on such
68 receipts.

§11-24-9. Credits against tax.

(a) *Credit for Taxes Imposed under Article Thirteen,
2 Chapter Eleven of This Code.*

3 A credit shall be allowed against the tax imposed by
4 this article equal to the amount of the liability of the
5 taxpayer for the taxable year for any tax imposed under
6 article thirteen, chapter eleven of this code: *Provided,*
7 That the amount of such credit shall not exceed the por-
8 tion of the tax imposed by this article which is attribut-
9 able to the West Virginia taxable income derived by the

10 taxpayer for the taxable year from the business or occupa-
11 tion with respect to which said tax under article thirteen
12 was imposed and shall not in any event exceed the tax im-
13 posed by this article for such taxable year: *Provided*
14 *further*, That no such credit shall be allowed for any tax
15 imposed under article thirteen with respect to any period
16 prior to the first day of July, one thousand nine hundred
17 sixty-seven.

18 (b) *Credit for Taxes Imposed under Article Twelve-A,*
19 *Chapter Eleven of This Code.*

20 A credit shall be allowed against the tax imposed by
21 this article equal to the amount of the liability of the tax-
22 payer for the taxable year for any tax imposed on the
23 taxpayer under article twelve-a, chapter eleven of this
24 code: *Provided*, That the amount of such credit shall not
25 exceed the portion of the tax imposed by this article
26 which is attributable to the West Virginia taxable income
27 derived by the taxpayer for the taxable year from any
28 source with respect to which said tax under article
29 twelve-a was imposed and shall not in any event exceed
30 the tax imposed by this article for such taxable year:
31 *Provided further*, That no such credit shall be allowed for
32 any tax imposed under article twelve-a with respect to
33 any period prior to the first day of July, one thousand nine
34 hundred sixty-seven.

§§11-24-10 through 11-24-12. (Reserved for future use.)

PART II—RETURNS, DECLARATIONS AND PAYMENT OF TAX

§11-24-13. Returns.

(a) *Time for Filing.*—On or before the fifteenth day
2 of the third month following the close of a taxable year,
3 an income tax return under this article shall be made
4 and filed by or for every corporation subject to the tax
5 imposed by this article.

6 (b) *Consolidated Returns of Corporations.*—Any cor-
7 poration subject to tax under this article which is affili-
8 ated through controlling stock ownership with one or
9 more other corporations shall be permitted, under regu-
10 lations prescribed by the tax commissioner, to make a

11 consolidated return showing the consolidated taxable in-
12 come of all such affiliated corporations wherever incor-
13 porated, and such other information as the tax commis-
14 sioner may require to establish the West Virginia taxable
15 income of the consolidated group. If such corporation
16 does not make a consolidated return, the tax commissioner
17 may, if he determines that the intercompany prices or
18 transactions of such corporation have been artificially
19 arranged to shift taxable income from itself to another
20 member or members of its affiliated group not subject to
21 tax under this article, require such corporation to make
22 a consolidated return in order clearly to reflect the taxable
23 income of such corporation. In the event that such a con-
24 solidated return is filed, whether voluntarily or by re-
25 quirement of the tax commissioner, the net income or loss
26 of each member of the group, after proper intercorporate
27 eliminations, shall be consolidated pursuant to regulations
28 prescribed by the tax commissioner to produce the con-
29 solidated taxable income of the group, and the tax im-
30 posed by this article shall be computed and assessed upon
31 the taxable income of the consolidated group, determined
32 according to the provisions of section seven, in the appli-
33 cation of which the consolidated group shall be treated
34 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
2 article shall pay any tax shown to be due by such return,
3 without assessment, notice or demand, to the tax com-
4 missioner on or before the date fixed for filing such re-
5 turn determined without regard to any extension of time
6 for filing the return. The tax commissioner shall pre-
7 scribe by regulation the place for filing any return, state-
8 ment or other document required to be filed by this
9 article and for the payment of any tax.

§11-24-15. Signing of returns and other documents.

(a) Any return, statement or other document required
2 to be made pursuant to this article shall be filed in ac-
3 cordance with regulations or instructions prescribed by
4 the tax commissioner. The fact that an individual's name

5 is signed to a return, statement or other document shall
6 be prima facie evidence for all purposes that the return,
7 statement or other document was actually signed by him.
8 The fact that a return, statement or other document is
9 signed by an officer of a corporation shall be prima facie
10 evidence for all purposes that such officer is authorized
11 to sign on behalf of the corporation.

12 (b) The making or filing of any return, statement or
13 other document or copy thereof required to be made or
14 filed pursuant to this article, including a copy of a federal
15 return, shall constitute a certification by the person, cor-
16 poration or officer making or filing such return, statement
17 or other document or copy thereof that the statements
18 contained therein are true and that any copy filed is a
19 true copy.

§11-24-16. Declarations of estimated tax.

(a) *Requirement of Declaration.*—Every corporation
2 subject to tax under this article shall make a declaration
3 of estimated tax for the taxable year if its West Virginia
4 taxable income can be reasonably expected to exceed ten
5 thousand dollars.

6 (b) *Definition of Estimated Tax.*—The term “estimated
7 tax” means the amount which a corporation estimates to
8 be its income tax under this article for the taxable year,
9 less an amount which such corporation estimates to be the
10 sum of any credits allowable against the tax.

11 (c) *Contents of Declaration.*—The declaration shall
12 contain such pertinent information as the tax commis-
13 sioner may by forms or regulations prescribe, including,
14 but not limited to, such detailed information as may be
15 necessary to clearly reflect the estimated West Virginia
16 taxable income of the corporation for the taxable year.

17 (d) *Amendment of Declaration.*—A corporation may
18 make amendments of a declaration filed during the tax-
19 able year under regulations prescribed by the tax com-
20 missioner.

21 (e) *Time for Filing Declaration.*—If the requirements
22 of subsection (a) are first met before the first day of the
23 fourth month of the taxable year a declaration of esti-

24 mated tax of a corporation shall be filed on or before the
25 fifteenth day of the fourth month of the taxable year,
26 except that if the requirements of subsection (a) are first
27 met—

28 (1) after the last day of the third month and be-
29 fore the first day of the sixth month of the taxable year,
30 the declaration shall be filed on or before the fifteenth
31 day of the sixth month of the taxable year, or

32 (2) after the last day of the fifth month and before
33 the first day of the ninth month of the taxable year, the
34 declaration shall be filed on or before the fifteenth day of
35 the ninth month of the taxable year, or

36 (3) after the last day of the eighth month and
37 before the first day of the twelfth month of the taxable
38 year, the declaration shall be filed on or before the fif-
39 teenth day of the twelfth month of the taxable year.

40 (f) *Declaration of Estimated Tax of One Hundred*
41 *Dollars or Less.*—A declaration of estimated tax of a cor-
42 poration having a total estimated tax for the taxable year
43 of one hundred dollars or less may be filed at any time on
44 or before the fifteenth day of the first month of the suc-
45 ceeding taxable year under regulations of the tax com-
46 missioner.

47 (g) *Return as Declaration or Amendment.*—If on or
48 before the fifteenth day of the second month of the suc-
49 ceeding taxable year a corporation files its return for the
50 taxable year for which the declaration is required, and
51 pays therewith the full amount of the tax shown to be due
52 on the return:

53 (1) Such return shall be considered as such cor-
54 poration's declaration, if no declaration was required to
55 be filed during the taxable year, but is otherwise required
56 to be filed on or before the fifteenth day of the first month
57 of the succeeding taxable year.

58 (2) Such return, if filed on or before such appli-
59 cable date shall be considered an amendment permitted
60 by subsection (d) if the tax shown on the return is greater
61 than the estimated tax shown in a declaration previously
62 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

40 the time of such filing all installments of estimated tax
41 payable at or before such time, and the remaining in-
42 stallments shall be paid at the times at which, and in the
43 amounts in which, they would have been payable if the
44 declaration had been filed when due.

45 (b) *Amendments of Declaration by Any Corporation.*
46 —If any amendment of a declaration is filed by a corpora-
47 tion, the remaining installments, if any, shall be rateably
48 increased or decreased (as the case may be) to reflect
49 any increase or decrease in the estimated tax by reason
50 of such amendment, and if any amendment is made after
51 the fifteenth day of the ninth month of the taxable year,
52 any increase in the estimated tax by reason thereof shall
53 be paid at the time of making such amendment.

54 (c) *Application to Short Taxable Year.*—This section
55 shall apply to a taxable year of less than twelve months
56 in accordance with regulations of the tax commissioner.

57 (d) *Installment Paid in Advance.*— Any corporation
58 may elect to pay any installment of its estimated tax
59 prior to the date prescribed for its payment.

§11-24-18. Extensions of time.

(a) *General.*—The tax commissioner may grant a rea-
2 sonable extension of time for payment of tax or estimated
3 tax (or any installment), or for filing any return, declara-
4 tion, statement, or other document required pursuant to
5 this article, on such terms and conditions as he may re-
6 quire.

7 (b) *Amount Determined as Deficiency.*—The tax com-
8 missioner may, under regulations, extend the time for
9 payment of an amount determined as a deficiency for a
10 period not to exceed eighteen months from the date
11 designated for payment of the deficiency, and under ex-
12 ceptional circumstances, for a further period not to exceed
13 twelve months. An extension under this subsection may
14 be granted only where it is established to the satisfaction
15 of the tax commissioner that the payment of a deficiency
16 upon the date designated for payment would result in
17 undue hardship. No extension shall be granted if any part
18 of the deficiency is due to intentional disregard of rules
19 and regulations or to fraud.

20 (c) *Claims in Bankruptcy or Receivership Proceedings.*
21 —Extension of time for payment of any portion of a claim
22 for tax allowed in bankruptcy, receivership or similar
23 proceedings, which is unpaid, may be granted subject to
24 the same provisions and limitations as in the case of a
25 deficiency in such tax.

26 (d) *Furnishing of Security.*—If any extension of time
27 is granted for payment of any tax or deficiency, the tax
28 commissioner may require the taxpayer to furnish a bond
29 or other security in an amount not exceeding the amount
30 for which the extension of time for payment is granted
31 on such terms and conditions as the tax commissioner
32 may require.

§11-24-19. Requirements concerning returns, notices, records
and statements.

(a) *General.*—The tax commissioner may prescribe
2 regulations as to the keeping of records, the content and
3 form of returns and statements, and the filing of copies of
4 federal income tax returns and determinations. The tax
5 commissioner may require any corporation, by regulation
6 or notice served upon such corporation, to make such
7 returns, render such statements, or keep such records,
8 as the tax commissioner may deem sufficient to show
9 whether or not such corporation is liable under this article
10 for tax.

11 (b) *Information at Source.*—The tax commissioner
12 may prescribe regulations and instructions requiring re-
13 turns of information to be made by any person, including
14 lessees or mortgagors of real or personal property, fiduci-
15 aries, employers, and all officers and employees of this
16 state, or of any municipal corporation or political sub-
17 division of this state, having the control, receipt, custody,
18 disposal or payment of interest, rents, salaries, wages,
19 premiums, annuities, compensations, remunerations,
20 emoluments or other fixed or determinable gains, profits
21 or income, except interest coupons payable to bearer.

22 (c) *Notice of Qualification as Receiver, Etc.*—Every
23 receiver, trustee in bankruptcy, assignee for benefit of
24 creditors, or other like fiduciary shall give notice of his

25 qualification as such to the tax commissioner, as may be
26 required by regulation.

§11-24-20. Report of change in federal taxable income.

If the amount of a taxpayer's federal taxable income
2 reported on its federal income tax return for any taxable
3 year is changed or corrected by the United States Internal
4 Revenue Service or other competent authority, or as the
5 result of a renegotiation of a contract or subcontract with
6 the United States, the taxpayer shall report such change
7 or correction in federal taxable income within ninety days
8 after the final determination of such change, correction or
9 renegotiation, or as otherwise required by the tax com-
10 missioner, and shall concede the accuracy of such de-
11 termination or state wherein it is erroneous. Any tax-
12 payer filing an amended federal income tax return shall
13 also file within ninety days thereafter an amended return
14 under this article, and shall give such information as the
15 tax commissioner may require. The tax commissioner
16 may by regulation prescribe such exceptions to the re-
17 quirements of this section as he deems appropriate.

§11-24-21. Change of election.

Any election expressly authorized by this article, other
2 than any election expressly stated to be irrevocable, may
3 be changed on such terms and conditions as the tax com-
4 missioner may prescribe by regulation.

§§11-24-22 through 11-24-25. (Reserved for future use.)

PART III—PROCEDURE AND ADMINISTRATION

§11-24-26. General provisions.

(a) *Regulations.*—The tax commissioner shall admin-
2 ister and enforce the tax imposed by this article. He shall
3 make all needful regulations, rules and interpretations
4 thereof as provided in article three, chapter twenty nine-a
5 of this code and shall file the same with the secretary of
6 state of West Virginia as provided in article two, chapter
7 twenty nine-a of this code.

(b) *Investigations.*—The tax commissioner for the pur-
8 pose of ascertaining the correctness of any returns or for
9

10 the purpose of making an estimate of any taxpayer's in-
11 come subject to tax under this article shall have the power
12 to examine or cause to be examined, by any agent or
13 any representative designated by the tax commissioner,
14 any books, papers, records or memoranda bearing upon
15 the matters required to be included in the return and
16 may require the attendance of the person rendering the
17 return or the attendance of any other person having
18 knowledge in the premises and may take testimony and
19 may require material proof with power to administer
20 oath to such person or persons.

21 (c) *Returns by Tax Commissioner.*—If any taxpayer
22 fails to file a return at the time required by law or by
23 regulation made under authority of law, the tax commis-
24 sioner may proceed to make a return from any informa-
25 tion available.

26 (d) *Secrecy of Returns.*—Except when required in an
27 official investigation or proceedings in court involving
28 taxes payable under this article and except as provided
29 in subsection (e) of this section, it shall be unlawful
30 for any officer or employee of the state to divulge or
31 make known in any manner the amount of income or any
32 particulars set forth or disclosed in any report, declara-
33 tion or return required to be filed with the tax commis-
34 sioner by this article or by any regulation of the tax com-
35 missioner issued hereunder.

36 (e) *Reciprocal Exchange.*—The tax commissioner may
37 permit the proper officer of the United States or any state,
38 territory or political subdivision of the United States, or
39 his authorized representative, to inspect reports, declara-
40 tions, or returns filed with the tax commissioner or may
41 furnish to such officer or representative a copy of any
42 such document provided such other jurisdiction grants
43 substantially similar privileges to the tax commissioner
44 or to the attorney general of this state. Subsection (d) of
45 this section shall not be construed to prohibit the publica-
46 tion of statistics so classified as to prevent the identifica-
47 tion of particular reports and the items thereof.

48 (f) *Service of Notice.*—Any written notice required by
49 this article shall, unless otherwise specifically provided,

50 be served upon the taxpayer personally or by certified
51 mail.

§11-24-27. Assessment.

(a) *Assessment of Deficiencies.*—Whenever the tax
2 commissioner shall determine that any tax due under this
3 article has not been paid in full, the tax commissioner
4 shall make an assessment against the taxpayer of such
5 deficiency in tax, addition to tax, interest or penalties as
6 he may find to be due, and shall serve the taxpayer with
7 written notice of such assessment, either in person or by
8 certified mail. For purposes of this article such written
9 notice is termed a “notice of assessment.”

10 (b) *Jeopardy Assessment.*—If the tax commissioner
11 believes that the assessment or collection of a deficiency,
12 as defined in subsection (a), or the collection of any tax
13 due under this article, will be jeopardized by delay, he
14 shall, notwithstanding the provisions of section twenty-
15 eight of this article, immediately make an assessment of
16 such deficiency or such tax due (together with all addi-
17 tional amounts, interest or penalties provided for by this
18 article), noting that fact upon the assessment. The amount
19 so assessed shall be immediately due and payable, and
20 a notice of assessment and demand for the payment
21 thereof shall be served upon the taxpayer. Unless the
22 taxpayer against whom a jeopardy assessment is made
23 petitions the tax commissioner for reassessment within
24 twenty days after service of notice of the jeopardy assess-
25 ment, such assessment shall become final: *Provided*, That
26 the tax commissioner may, upon the written request of
27 the taxpayer made within such twenty-day period, show-
28 ing reasonable cause therefor, grant an extension of time
29 not to exceed thirty additional days within which such
30 petition may be filed. A petition for reassessment by a
31 taxpayer against whom or which a jeopardy assessment
32 has been made shall be accompanied by such security as
33 the tax commissioner may deem necessary to insure com-
34 pliance with this article. If such petition for reassessment
35 is filed, accompanied by the necessary security, the pro-
36 visions for hearing, determination and appeal set forth in
37 section twenty-eight shall then be applicable.

38 (c) *Abatement of Assessments.*—The tax commis-
39 sioner may abate in whole or in part any assessment
40 which he shall determine to be erroneous.

§11-24-28. **Deficiency procedure.**

(a) *Informal Proceedings.*—(1) *General.*—Prior to as-
2 ssuming a deficiency and giving a notice of assessment as
3 provided in section twenty-seven, the tax commissioner
4 shall notify the taxpayer in writing by certified mail that
5 he proposes to make such assessment and shall afford
6 the taxpayer in person or by his representative an oppor-
7 tunity to be heard with respect to the proposed assess-
8 ment, either by the filing of a written protest against the
9 proposed assessment or by informal conference or both.

10 (2) *Written protest.*—The tax commissioner shall,
11 by regulations, prescribe the circumstances under which
12 the taxpayer shall be required to file a written protest and
13 the formal requirements thereof. Such written protest,
14 whether the filing thereof is required by the tax com-
15 missioner or whether it is filed voluntarily by the tax-
16 payer, shall be filed by the taxpayer within thirty days
17 after the receipt by the taxpayer of the tax commission-
18 er's written notice of the proposed assessment. The tax
19 commissioner may, upon the written request of the tax-
20 payer made within such thirty-day period, showing rea-
21 sonable cause therefor, grant an extension of time within
22 which such protest may be filed.

23 (3) *Time and place for hearing.*—The tax com-
24 missioner shall assign a time and place for any hearing on
25 the proposed assessment and shall notify the taxpayer of
26 such hearing by written notice at least twenty days in
27 advance thereof and such hearing shall be held within
28 sixty days from the filing of a written protest or within
29 ninety days after the date of the tax commissioner's notice
30 of the proposed assessment, whichever is later, unless
31 continued by agreement or by the tax commissioner for
32 cause.

33 (4) *Determination by tax commissioner.*—(A)
34 After the hearing on a proposed assessment the tax com-
35 missioner shall, within a reasonable time, give the tax-
36 payer written notice of his determination. If the tax com-

37 missioner determines that any tax is due from the tax-
38 payer, he shall make an assessment as provided in section
39 twenty-seven (a).

40 (B) If the taxpayer fails to file a written pro-
41 test when required to do so by the tax commissioner, or
42 if the taxpayer fails to request an informal hearing, or if
43 the taxpayer having requested a hearing fails to appear,
44 the tax commissioner shall then, in any case, make an
45 assessment as provided in section twenty-seven (a).

46 (C) Except as provided in subsection (b) (2),
47 any assessment made pursuant to section twenty-seven
48 (a) and subsection (a) of this section shall be payable at
49 the expiration of ninety days from the date of the notice
50 of assessment unless the taxpayer takes an appeal from
51 such assessment as provided in subsection (c) of this sec-
52 tion.

53 (b) *Exceptions for Mathematical Errors; Collection of*
54 *Balance Due on Return without a Remittance.—*(1)
55 When a mathematical error appears on the face of a return
56 (including an overstatement of the credit for the amount
57 paid as estimated tax), the tax commissioner shall correct
58 such error and notify the taxpayer, in writing, of the
59 deficiency in tax; and the taxpayer shall have fifteen days
60 after receipt of such notice within which to pay such
61 deficiency. If the taxpayer fails to pay such deficiency
62 within fifteen days, the tax commissioner shall, notwith-
63 standing the provisions of subsection (a) of this section,
64 promptly make an assessment of such deficiency in tax
65 against the taxpayer and shall give the taxpayer written
66 notice thereof.

67 (2) If a taxpayer files a mathematically correct
68 return which reflects a balance due of the tax imposed by
69 this article, and if no payment thereof has been made, the
70 tax commissioner shall notify the taxpayer, in writing, of
71 the amount of tax, additions to tax, interest or penalties
72 due, and the taxpayer shall have fifteen days after receipt
73 of such notice within which to make such payment. If
74 the taxpayer fails to make payment within such fifteen-
75 day period the tax commissioner shall, notwithstanding
76 the provisions of subsection (a) of this section, promptly

77 make an assessment against the taxpayer for such amount
78 due and shall give the taxpayer written notice thereof.
79 Notwithstanding the provisions of subsection (c) of this
80 section, the amount of such assessment shall be immedi-
81 ately due and payable.

82 (c) *Appeal*.—(1) An appeal may be taken by the tax-
83 payer to the circuit court of the county in which the tax-
84 payer engages in or carries on business, or, at the election
85 of the taxpayer, to the circuit court of the county in which
86 the seat of the state government is located, within ninety
87 days after the date of the notice of assessment.

88 (2) The appeal shall be taken by the filing of a
89 petition and notice which petition and notice shall be
90 served upon the tax commissioner as an original notice.
91 When said petition and notice is so served it shall, with
92 the return thereon, be filed in the office of the clerk of the
93 circuit court and docketed as other cases with the tax-
94 payer as plaintiff and the tax commissioner as defendant.
95 Before the appeal is heard, the plaintiff shall file with
96 such clerk a bond for the use of the defendant, with sure-
97 ties approved by said clerk, the penalty of the bond to be
98 not less than the total amount of the tax, interest and
99 penalties appealed from, and conditioned that the plaintiff
100 shall perform the orders of the court; except that in lieu
101 of said bond, the tax commissioner may upon a proper
102 showing find and certify to said clerk that the properties
103 of the plaintiff subject to the liens imposed by sections
104 twenty-nine and thirty of this article are adequate to
105 secure the performance of the orders of the court.

106 (3) The court shall hear the appeal and determine
107 anew all questions submitted to it on appeal from the
108 determination of the tax commissioner. Any pleadings
109 filed by the taxpayer or the tax commissioner may be
110 amended upon leave of the court any time prior to the
111 final determination by the court. In such appeal a certi-
112 fied copy of the tax commissioner's notice of assessment
113 shall be admissible and shall constitute prima facie evi-
114 dence of the tax due under the provisions of this article:
115 *Provided*, That the tax commissioner shall have the
116 burden of proof on any new issue raised by him subse-
117 quent to the commencement of the appeal proceeding. The

118 court shall render its decree thereon and a certified copy
119 of said decree shall be filed by the clerk of said court
120 with the tax commissioner who shall then correct the as-
121 sessment in accordance with said decree. An appeal may
122 be taken by the taxpayer or the tax commissioner to the
123 supreme court of appeals of this state.

§11-24-29. Collection.

(a) *General.*—The tax commissioner shall collect the
2 taxes, additions to tax, interest and penalties imposed
3 by this article. In addition to all other remedies avail-
4 able for the collection of debts due the state, the tax
5 commissioner may proceed by foreclosure of the lien pro-
6 vided in section thirty, or by distraint and sale under
7 section thirty-one. Every assessment made by the tax
8 commissioner under this article which has become final
9 and is not subject to appeal by the taxpayer under sec-
10 tion twenty-eight (c) shall constitute a judgment and
11 may be collected as judgments are collected.

(b) *Prerequisite to Final Settlement with Nonresident
13 Contractor; User Personally Liable.*

(1) Any person contracting with a nonresident con-
15 tractor subject to the provisions of this article shall with-
16 hold payment, in the final settlement of such contract, of
17 such sufficient amount, not exceeding six per centum
18 of the contract price, as will in such person's opinion be
19 sufficient, until the receipt of a certificate from the tax
20 commissioner to the effect that all taxes imposed by this
21 article against the contractor have been paid or provided
22 for.

(2) If any person shall fail to withhold as provided
24 herein, such person shall be personally liable for the pay-
25 ment of all such taxes, and the same shall be recoverable
26 by the tax commissioner by appropriate legal proceed-
27 ings.

(c) *Prerequisite for Issuance of Certificate of Disso-
29 lution or Withdrawal of Corporation.*—The secretary of
30 state shall withhold the issuance of any certificate of dis-
31 solution or withdrawal in the case of any corporation
32 organized under the laws of this state, or organized under
33 the laws of another state and admitted to do business

34 in this state, until the receipt of a notice from the tax
35 commissioner to the effect that the tax imposed by this
36 article against any such corporation has been paid or pro-
37 vided for, if any such corporation is a taxpayer under this
38 article, or until the secretary of state shall be notified by
39 the tax commissioner that the applicant is not liable for
40 any tax imposed by this article.

41 (d) *Prerequisite to Final Settlement with State or*
42 *Political Subdivision Contractor; Penalty.*—All state,
43 county, district and municipal officers and agents mak-
44 ing contracts on behalf of the state of West Vir-
45 ginia, or any political subdivision thereof, shall with-
46 hold payment, in the final settlement of any such
47 contract, until the receipt of a certificate from the
48 tax commissioner to the effect that all taxes imposed
49 by this article against the contractor have been paid.
50 Any official violating this section shall be guilty of
51 a misdemeanor, and, on conviction thereof, shall be
52 fined not more than one thousand dollars or impris-
53 oned not exceeding one year in the county jail or
54 shall be subject to fine and imprisonment in the dis-
55 cretion of the court.

56 (e) *Payment When Person Sells Out or Quits Busi-*
57 *ness; Lien.*

58 (1) If any person subject to tax under this article
59 sells out his or its business or stock of goods, or shall cease
60 doing such business, any tax, interest, additions to tax and
61 penalties imposed by this article shall become due and
62 payable immediately, and such person shall make a final
63 return and remit the entire tax that may be chargeable
64 against him because of all business done, within thirty
65 days after selling out his or its business or stock of goods,
66 or ceasing to do such business. The tax imposed by this
67 article shall be a lien upon the property of such person.

68 (2) The successor in business of any such person
69 shall withhold so much of the purchase money as will sat-
70 isfy the tax, interest, additions to tax and penalties which
71 may be due until the former owner shall produce a receipt
72 from the tax commissioner evidencing the payment there-
73 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.

§11-24-30. Lien.

(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.

13 (c) The lien imposed by this section shall be subject to
14 the restrictions and conditions embodied in article ten-c,
15 chapter thirty-eight of this code and any amendment made
16 or which may hereafter be made thereto.

17 (d) The tax commissioner, pursuant to regulations pre-
18 scribed by him, may issue his certificate of release of any
19 lien imposed pursuant to this section upon finding that the
20 liability for the amount assessed has been fully satisfied
21 or has become legally unenforceable or is adequately se-
22 cured by bond or other security.

23 (e) For purposes of this section, the meaning of the
24 term "person" is the same as that provided in section
25 twenty-nine (g).

§11-24-31. Distraint.

If any tax imposed by this article required to be paid at
2 the time a return is filed, or any portion of such tax be
3 not so paid, or if an assessment of the tax be made by the
4 tax commissioner and notice thereof be given as required
5 by this article and such assessment has become final and
6 is not subject to appeal by the taxpayer under section
7 twenty-eight (c), or if any installment of a tax be not
8 paid within thirty days after the same becomes due, the
9 tax commissioner may issue a warrant directed to the
10 sheriff of any county of the state commanding him to levy
11 upon and sell the real and personal property of the tax-
12 payer owing the same found within his county for the pay-
13 ment of the amount thereof with the added penalties,
14 interest, and the cost of executing the warrant, and to
15 return such warrant to the tax commissioner and pay to
16 him the money collected by virtue thereof by a time to be
17 therein specified and not less than sixty days from the
18 date of such warrant. In case the tax commissioner shall
19 find that the collection of a tax would be jeopardized by
20 the delay of thirty days, as above provided, he may issue
21 his warrant within said period. The sheriff shall within
22 five days after the receipt of the warrant file with the
23 clerk of the county court a copy thereof and thereupon
24 the clerk shall enter in the judgment docket the name of
25 the taxpayer mentioned in the warrant and the amount of
26 the tax or portion thereof and penalties for which the

27 warrant is issued and the date when such copy is filed and
28 thereupon the amount so docketed shall become a lien
29 upon the title to and interest in real property or chattels
30 real of the person against whom it is issued in the same
31 manner as a judgment duly docketed in the office of such
32 clerk. The said sheriff shall thereupon proceed upon the
33 same in all respects, with like effect, and in the same man-
34 ner prescribed by law in respect to executions issued
35 against property upon judgments of a court of record, and
36 shall be entitled to the same fees for his services in exe-
37 cuting the warrant, to be collected in the same manner.
38 In the discretion of the tax commissioner a warrant of
39 like terms, force and effect may be issued and directed to
40 any officer or employee of the tax commissioner and in
41 the execution thereof such officer or employee shall have
42 all the powers conferred by law upon sheriffs, but shall
43 be entitled to no fee or compensation in excess of actual
44 expenses paid in the performance of such duty. If a war-
45 rant be returned not satisfied in full, the tax commissioner
46 shall have the same remedies to enforce the claim for
47 taxes against the taxpayer as if the state had recovered
48 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
2 overpayment of any tax, addition to tax, interest or pen-
3 alties imposed by this article, whether by reason of error
4 on the part of the taxpayer or an erroneous assessment of
5 tax, the tax commissioner shall refund the amount of the
6 overpayment to the taxpayer. If any overpayment is not
7 refunded within six months from the date a claim for the
8 refund thereof is filed by the taxpayer, interest shall be
9 paid upon the amount of such overpayment at the rate of
10 six per centum per annum from the date of the overpay-
11 ment. The tax commissioner may prescribe by regulation
12 the form and content of a claim for refund.

(b) *Credits.*—At the request of the taxpayer and with
14 the approval of the tax commissioner, the amount of any
15 overpayment (including interest) may be applied by the
16 taxpayer as a credit against the taxpayer's liability for
17 taxes under this article for subsequent periods.

18 (c) *Petitions for Refund.*—In the event that any over-
19 payment of tax, addition to tax, interest or penalty paid
20 under this article is not refunded or credited pursuant to
21 subsection (a) or (b) within six months after the filing
22 of a claim for the refund thereof, or in the event such
23 claim is denied by the tax commissioner, the taxpayer
24 may file a petition for refund pursuant to section two-a
25 of article one, chapter eleven of this code. Notwithstand-
26 ing the period of limitations prescribed in said section, a
27 taxpayer may file a petition for refund at the latest within
28 six months after a final determination by the United
29 States Internal Revenue Service or other competent au-
30 thority of an overpayment in the taxpayer's federal in-
31 come tax liability.

§11-24-33. Limitations on assessment.

(a) *General Rule.*—The amount of any tax imposed by
2 this article shall be assessed within five years after the due
3 date of the return: *Provided*, That in the case of a false or
4 fraudulent return filed with the intent to evade tax or in
5 the case no return is filed the tax may be assessed or a
6 proceeding in court for the collection of such tax may be
7 begun at any time: *Provided further*, That in the event the
8 tax commissioner notifies the taxpayer of a proposed as-
9 sessment pursuant to section twenty-eight, within five
10 years after the due date of the return, the assessment may
11 be made when the tax commissioner makes the determi-
12 nation provided in section twenty-eight.

(b) *Extension by Agreement.*—The tax commissioner
14 and the taxpayer may by a written agreement extend the
15 period within which the tax may be assessed in accordance
16 with regulations promulgated by the tax commissioner.

(c) *Deficiency in Federal Tax.*—In the event of a final
18 determination by the United States Internal Revenue
19 Service or other competent authority of a deficiency in the
20 taxpayer's federal income tax liability, the period of
21 limitation upon assessment of a deficiency reflecting said
22 final determination in the tax imposed by this article shall
23 not expire until ninety days after the tax commissioner is
24 advised of the determination by the taxpayer as provided
25 in section twenty.

§11-24-34. Limitations on collection.

No proceeding shall be maintained in any court to collect
2 any tax imposed by this article or to subject any property
3 to sale under the lien provided for in section thirty after
4 the expiration of the period of limitation on assessment
5 provided in section thirty-three, unless the tax was as-
6 sessed prior to the expiration of such period.

§11-24-35. Interest.

Taxes imposed by this article, if not paid when due,
2 shall bear interest at the rate of six per centum per annum
3 from the due date of the return. Each assessment made
4 by the tax commissioner shall bear interest at the rate
5 of six per centum per annum from the date thereof if
6 not paid within ten days from receipt of notice thereof by
7 the taxpayer.

§11-24-36. Additions to tax.

(a) *Delinquency*.—In the case of any failure to make or
2 file a return or whenever the full amount of the tax or
3 any portion thereof as shown on a return has not been
4 paid as required by this article, unless it be shown that
5 such failure be due to reasonable cause there shall be
6 added to the tax five per centum if a failure is not for
7 more than thirty days with an additional five per centum
8 for each additional thirty days or fraction thereof during
9 which failure shall continue not to exceed twenty-five per
10 centum in the aggregate. The amount so added to any tax
11 shall be collected at the same time and in the same man-
12 ner and as a part of the tax unless the tax has been paid
13 before the discovery of the neglect by the tax commission-
14 er in which case the amount so added shall be collected in
15 the same manner as the tax: *Provided*, That in all cases
16 of delinquency, interest shall be assessed.

(b) *Fraud*.—In the case of the filing of any false or
18 fraudulent return with intent to evade the tax imposed by
19 this article, or in the case of a wilful failure to file a re-
20 turn with intent to evade the tax, there shall be added to
21 the tax an amount equal to fifty per centum thereof which
22 shall be in lieu of the addition to the tax provided for in

23 subsection (a). The burden of proving fraud, wilfulness,
24 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.

§11-24-38. Crimes.

(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

14 imprisoned for not more than one year, or both, together
15 with the costs of prosecution.

16 (b) *Failure to Collect and Pay Over Tax, or Attempt*
17 *to Defeat or Evade Tax.*—Any person required under this
18 article to collect, account for, and pay over any tax im-
19 posed by this article, who wilfully fails to collect or truth-
20 fully to account for and pay over such tax, and any person
21 who wilfully attempts in any manner to evade or defeat
22 any tax imposed by this article or the payment thereof,
23 shall in addition to other penalties provided by law, be
24 guilty of a misdemeanor, and, upon conviction thereof, be
25 fined not more than one thousand dollars or imprisoned
26 for not more than one year, or both, together with the
27 costs of prosecution.

28 (c) *False Returns or Certification.*—Any person who
29 wilfully makes and subscribes a return which he does not
30 believe to be true and correct as to every material matter,
31 or who wilfully makes a certification (as defined in sub-
32 section (b) of section fifteen) that is false, shall be guilty
33 of a misdemeanor, and, upon conviction thereof, shall be
34 fined not more than one thousand dollars or imprisoned
35 for not more than one year, or both, together with the
36 costs of prosecution.

37 (d) *“Person” Defined.*—The term “person” as used in
38 this section includes, but is not limited to, an officer or
39 employee of a corporation, or a member or employee of a
40 partnership, who, as such officer, employee or member,
41 is under a duty to perform the act in respect of which the
42 violation occurs.

43 (e) *State Officers or Employees.*—Any officer or em-
44 ployee of the state who violates subsection (d) of section
45 twenty-six shall be guilty of a misdemeanor, and, upon
46 conviction thereof, shall be fined not more than one
47 thousand dollars or imprisoned for not more than one
48 year, or both, together with the costs of prosecution.

49 (f) *Certificate of Tax Commissioner as Evidence.*—The
50 certificate of the tax commissioner to the effect that
51 a tax has not been paid, that a return has not been filed,
52 or that information has not been supplied as required
53 by or under the provisions of this article shall be evidence

54 that such tax has not been paid, that such return has not
55 been filed, or that such information has not been supplied.

56 (g) *Venue*.—The tax commissioner or any other public
57 officer initiating proceedings against any person under
58 this section shall do so in the county wherein such person
59 resides, or if such person be a nonresident, then in the
60 county wherein such nonresident is employed, or, if
61 such nonresident is not employed in this state then in
62 the county in which the seat of the state government is
63 located.

§11-24-39. Disposition of revenue.

Pursuant to the Legislature's authority under section
2 one of article ten of the constitution of this state, where-
3 by the Legislature is authorized to impose a tax upon
4 incomes of persons and corporations and to classify and
5 graduate the tax on all incomes according to the amount
6 thereof and to exempt from taxation incomes below a
7 minimum to be fixed by the Legislature, and whereby
8 revenues so derived may be appropriated as the Legisla-
9 ture may provide, of the revenue collected under this
10 article the state treasurer shall retain in his hands such
11 amount as the tax commissioner may determine to be
12 necessary for refunds to which taxpayers shall be entitled
13 under this article and on or before the tenth day of each
14 month the state treasurer shall, after reserving such
15 refund amount, pay all interests, penalties and taxes col-
16 lected under this article, and remaining to his credit in
17 banks, banking houses or trust companies at the close
18 of business on the last day of the preceding month, into
19 the general fund of the state treasury.

§11-24-40. Effective date; severability.

(a) *Effective Date*.—The provisions of this article shall
2 take effect on the first day of July, one thousand nine
3 hundred sixty-seven.

(b) *Severability*.—If any provision of this article or
4 the application thereof shall for any reason be adjudged
5 by any court of competent jurisdiction to be invalid, such
6 judgment shall not affect, impair or invalidate the re-
7 mainder of said article, but shall be confined in its opera-
8 tion to the provision thereof directly involved in the con-
9

10 troversy in which such judgment shall have been ren-
 11 dered, and the applicability of such provision to other
 12 persons or circumstances shall not be affected thereby.

C

CHAPTER 198

(House Bill No. 796—By Mr. Speaker, Mr. White, and
 Mr. Watson)

[Passed March 10, 1987; in effect from passage. Approved by the Governor.]

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
 2 the delinquent lists to the county court for examination.
 3 The court having become satisfied that the lists are cor-
 4 rect, or having corrected them if erroneous, shall direct
 5 the clerk of the court to certify a copy of each list, per-
 6 taining to real property, to the auditor not later than
 7 July first. The original lists shall be preserved by the
 8 clerk in his office, and the list of delinquent real estate
 9 shall be recorded in a permanent book to be kept by him
 10 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
2 and redemptions included in such list in the same way
3 he accounts for other taxes collected by him, except that
4 if the purchase money paid for any property sold is in
5 excess of the amount of taxes, interest and charges due
6 thereon, the surplus shall be deposited in a special county

7 fund to be known and designated as the "Sale of Land
8 Surplus Fund," and disposed of as follows:

9 (a) In any case where the property was redeemed,
10 such surplus shall be distributed to the person or persons
11 who redeemed such property, or the heirs, devisees, lega-
12 tees, executors, administrators, successors or assigns
13 thereof, if a proper claim therefor is filed with the
14 sheriff within two years from and after the date of the
15 sale; or

16 (b) If a claim as specified in subdivision (a) hereof
17 is not timely filed, or if there were no redemption, such
18 surplus shall be distributed to the person or persons who
19 owned the property at the time of the sale, or the heirs,
20 devisees, legatees, executors, administrators, successors
21 or assigns thereof, if a proper claim thereof is filed with
22 the sheriff within three years from and after the date
23 of the sale; or

24 (c) If there be no proper claim filed under either
25 subdivision (a) or (b) within the time limits aforesaid,
26 all claims to such surplus shall be forfeited and such
27 surplus shall be distributed by the sheriff in the manner
28 provided by law for the distribution of property taxes
29 collected by him.

30 All real estate included in the first delinquent list sent
31 to the auditor, and not accounted for in the list of sales,
32 suspensions and redemptions, shall be deemed to have
33 been redeemed before sale, and the taxes, interest and
34 charges due thereon shall be accounted for by the sheriff
35 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

2. **The Commissioner of Employment Security.**
3. **Advisory Council.**
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
- 2 seven, chapter six of the code of West Virginia, one
- 3 thousand nine hundred thirty-one, as amended, the com-
- 4 missioner of employment security shall receive a yearly
- 5 salary of sixteen thousand dollars and the necessary
- 6 traveling expenses incident to the performance of his
- 7 duties. Requisition for traveling expenses shall be ac-
- 8 companied by a sworn itemized statement which shall
- 9 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 honor-
2 arium of thirty-five dollars for each day actually
3 served in attendance at meetings of the council and
4 such traveling expenses as are incurred in the perfor-
5 mance of his duties under the provisions of this chapter.

6 Requisition for traveling expenses shall be accompanied
7 by a sworn and itemized statement which shall be filed
8 with the auditor and permanently preserved as a public
9 record.

10 Members shall not be compensated for more than thirty
11 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
2 seven, chapter six of the code of West Virginia, one thou-
3 sand nine hundred thirty-one, as amended, each member
4 of the board shall receive an annual salary of nine thou-
5 sand dollars and the necessary traveling expenses in-
6 curred in the performance of his duties.

7 Requisition for traveling expenses shall be accom-
8 panied by a sworn and itemized statement which shall
9 be filed with the auditor and permanently preserved as
10 a public record.

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

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**Section**

- 5. Rate of contribution.
- 7. Joint and separate accounts.
- 10. Experience ratings; decreased rates.
- 10a. Same—modification or suspension of decreased rates.

§21A-5-5. Rate of contribution.

1 On and after January first, one thousand nine hundred
2 forty-one, an employer shall make payments to the unem-
3 ployment compensation fund equal to two and seven-
4 tenths per cent of wages paid by him with respect to
5 employment during each calendar year beginning with

6 the calendar year one thousand nine hundred forty-one,
7 subject, however, to other provisions of this article.

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate
2 account for each employer, and shall credit his account
3 with all contributions paid by him prior to July first,
4 one thousand nine hundred sixty-one. On and after July
5 first, one thousand nine hundred sixty-one, the commis-
6 sioner shall maintain a separate account for each em-
7 ployer, and shall credit said employer's account with all
8 contributions of such employer in excess of seven tenths
9 of one per cent of taxable wages: *Provided*, That any ad-
10 justment made in an employer's account after the com-
11 putation date shall not be used in the computation of
12 the balance of an employer until the next following
13 computation date: *Provided further*, That nothing in
14 this chapter shall be construed to grant an employer
15 or individual in his service prior claims or rights to
16 the amounts paid by him into the fund, either on his
17 behalf or on behalf of such individuals. The account of
18 any employer which has been inactive for a period of
19 four consecutive calendar years shall be terminated for
20 all purposes.

21 (2) Benefits paid to an eligible individual for total
22 unemployment beginning after the effective date of
23 this act shall be charged to the account of the last em-
24 ployer with whom he has been employed as much as
25 thirty working days, whether or not such days are con-
26 secutive: *Provided*, That no employer's account shall
27 be charged with benefits paid to any individual who has
28 been separated from a noncovered employing unit in
29 which he was employed as much as thirty days, whether
30 or not such days are consecutive: *And provided further*,
31 That benefits paid to an eligible individual for partial
32 unemployment beginning after the effective date of this
33 act shall be charged to the account of the claimant's
34 current employer.

35 (3) The commissioner shall, for each calendar year here-
36 after, classify employers in accordance with their actual
37 experience in the payment of contributions on their own

38 behalf and with respect to benefits charged against
39 their accounts, with a view of fixing such contribution
40 rates as will reflect such experiences. For the purpose
41 of fixing such contribution rates for each calendar year,
42 the books of the department shall be closed on July
43 thirty-one of the preceding calendar year, and any con-
44 tributions thereafter paid, as well as benefits thereafter
45 paid with respect to compensable weeks ending on or
46 before June thirty of the preceding calendar year, shall
47 not be taken into account until the next annual date
48 for fixing contribution rates: *Provided, however,* That
49 if an employer has failed to furnish to the commissioner
50 on or before July thirty-one of such preceding calendar
51 year the wage information for all past periods necessary
52 for the computation of the contribution rate, such em-
53 ployer's rate shall be, if it is immediately prior to such
54 July thirty-one, less than three and three-tenths per cent,
55 increased to three and three-tenths per cent: *Provided*
56 *further,* That any payment made or any information
57 necessary for the computation of a reduced rate furnished
58 on or before the termination of an extension of time
59 for such payment or reporting of such information
60 granted pursuant to a regulation of the commissioner
61 authorizing such extension, shall be taken into account
62 for the purposes of fixing contribution rates: *Provided*
63 *further,* That when the time for filing any report or
64 making any payment required hereunder falls on Satur-
65 day, Sunday, or a legal holiday, the due date shall be
66 deemed to be the next succeeding business day: *And*
67 *provided further,* That whenever through mistake or
68 inadvertence erroneous credits or charges are found to
69 have been made to or against the reserve account of any
70 employer, the rate shall be adjusted as of January
71 one of the calendar year in which such mistake or in-
72 advertence is discovered, but payments made under any
73 rate assigned prior to January one of such year shall
74 not be deemed to be erroneously collected.

75 (4) The commissioner may prescribe regulations for
76 the establishment, maintenance, and dissolution of joint
77 accounts by two or more employers, and shall, in ac-
78 cordance with such regulations and upon application by

79 two or more employers to establish such an account, or
 80 to merge their several individual accounts in a joint ac-
 81 count, maintain such joint account as if it constituted a
 82 single employer's account.

§21A-5-10. Experience ratings; decreased rates.

1 (a) On and after January one, one thousand nine hun-
 2 dred fifty-four, after the requirements of section nine have
 3 been complied with, an employer's payment shall remain
 4 two and seven-tenths per cent until:

5 (1) There have elapsed thirty-six consecutive months
 6 immediately preceding the computation date throughout
 7 which an employer's account was chargeable with bene-
 8 fits.

9 (2) His payments credited to his account for all past
 10 years exceed the benefits charged to his account by an
 11 amount equal to at least the per cent of his average annual
 12 payroll as shown in column B of Table II. His rate
 13 shall be the amount appearing in column C of Table II
 14 on line with the percentage in column B.

15 The commissioner shall determine an employer's com-
 16 pliance with these requirements.

17 TABLE II

18	Col. B			
19	Col. A	Per Cent of Average		Col. C
20	Rate	Annual Payroll by Which		Employer's
21	Class	Credits Exceed	Charges	Rate
22	(1)	6.0		2.5
23	(2)	7.0		2.3
24	(3)	8.0		2.1
25	(4)	9.0		1.9
26	(5)	10.0		1.7
27	(6)	10.5		1.5
28	(7)	11.0		1.3
29	(8)	11.5		1.1
30	(9)	12.0		0.9
31	(10)	12.5		0.7
32	(11)	13.0		0.5
33	(12)	14.0		0.3
34	(13)	16.0		0.1
35	(14)	18.0	and over	0.0

36 (b) All employer accounts in which charges for all past
37 years exceed credits for such past years shall be ad-
38 justed effective June thirty, one thousand nine hundred
39 sixty-seven, so that as of said date, for the purpose of
40 determining such employer's rate of contribution, the
41 credits for all past years shall be deemed to equal the
42 charges to such accounts.

43 Effective on and after the computation date of June
44 thirty, one thousand nine hundred sixty-eight, and not-
45 withstanding the provisions of subsection one of section
46 seven of article five relating to the noncrediting of em-
47 ployers' accounts with the first seven tenths of one per
48 cent of contributions paid; for the purpose of determin-
49 ing whether or not an employer shall pay contributions
50 at a rate in excess of two and seven-tenths per cent as
51 hereinafter set forth, but not for the purpose of deter-
52 mining such rate, the department shall, only for the
53 purpose set forth herein and not as a credit to such
54 account, add to the accounts of all employers having a
55 debit balance, contribution payments made by such em-
56 ployers on and after July one, one thousand nine hun-
57 dred sixty-seven, which payments are not credited to
58 employers' accounts by reason of the provisions con-
59 tained in subsection one of section seven of article five.
60 If, after such contribution payments have been added
61 to such employers' accounts, such accounts continue to
62 show a debit balance, such employers shall make pay-
63 ments at a rate in excess of two and seven-tenths per
64 cent. If, after such contribution payments have been
65 added to such employers' accounts, such accounts show
66 a credit balance, such employers shall make payments at
67 the rate of two and seven-tenths per cent. If, under the
68 conditions set forth in this paragraph, it is determined
69 that an employer shall pay contributions at a rate in
70 excess of two and seven-tenths per cent, the rate in
71 excess of two and seven-tenths per cent at which an
72 employer shall pay contributions shall then be deter-
73 mined solely under the conditions set forth in the follow-
74 ing paragraphs of this subsection. The provisions con-
75 tained in this paragraph shall in no way be considered
76 as providing for the crediting to an employer's account,

77 of amounts of employer contribution payments which are
78 expressly not credited to employers' accounts in sub-
79 section one of section seven of article five.

80 Effective on and after the computation date of June
81 thirty, one thousand nine hundred sixty-seven, all em-
82 ployers with a debit balance account in which the bene-
83 fits charged to their account for all past years exceed
84 the payments credited to their account for such past
85 years by an amount up to and including ten per cent
86 of their average annual payroll, shall make payments to
87 the unemployment compensation fund at the rate of
88 three per cent of wages paid by them with respect to
89 employment.

90 Effective on and after the computation date of June
91 thirty, one thousand nine hundred sixty-seven, all em-
92 ployers with a debit balance account in which the bene-
93 fits charged to their account for all past years exceed
94 the payments credited to their account for such past years
95 by an amount in excess of ten per cent of their average
96 annual payroll, shall make payments to the unemploy-
97 ment compensation fund at the rate of three and three-
98 tenths per cent of wages paid by them with respect to
99 employment.

100 "Debit Balance Account" for the purposes of this sub-
101 section means an account in which the benefits charged
102 for all past years exceed the payments credited for such
103 past years.

104 "Credit Balance Account" for the purposes of this sub-
105 section means an account in which the payments credited
106 for all past years exceed the benefits charged for such
107 past years.

108 Once a debit balance account rate is established for
109 an employer's account for a year, it shall apply for the
110 entire year notwithstanding the provisions of section
111 ten-a of this article.

§21A-5-10a. Same—Modification or suspension of decreased rates.

1 (1) As used in this section, unless the context clearly
2 requires otherwise:

3 "Due date" means the last day of the month next fol-
4 lowing a calendar quarter. In determining the amount
5 in the fund on any due date, contributions received, but
6 not benefits paid, for such month next following the end
7 of a calendar quarter shall be included.

8 (2) The commissioner shall as of the due date for
9 the payment of contributions for each calendar quarter
10 determine the amount in the unemployment compensa-
11 tion fund, including the trust fund, the clearing account,
12 and the benefit account; and if, at any such time or times
13 the fund is below the sum of sixty-five million dollars,
14 the commissioner shall, effective at the commencement
15 of the next calendar quarter, increase each employer's
16 rate one step; and if, at any time or times the fund is
17 below the sum of sixty million dollars, the commissioner
18 shall further increase each employer's rate one additional
19 step; and if, at any such time or times the fund is be-
20 low the sum of fifty-five million dollars, the commis-
21 sioner shall further increase each employer's rate one
22 additional step.

23 Where the employer rates have been increased by vir-
24 tue of the provisions of this section, they shall be cor-
25 respondingly decreased in the same manner when the
26 balance in the fund returns to the successive levels here-
27 inabove set forth.

28 For purposes of this subsection the term "one step" or
29 "one additional step" shall mean four tenths of one per
30 cent, except that, for an employer whose rate is zero the
31 term "one step" shall mean three tenths of one per cent:
32 *Provided, however,* That under no circumstances shall
33 an employer's rate be increased above two and seven-
34 tenths per cent if such employer's contribution rate, as
35 computed by the commissioner in compliance with sub-
36 section three, section seven, article five of this chapter, is
37 two and seven-tenths per cent or less: *Provided further,*
38 That if the contribution rate of such employer as com-
39 puted by the commissioner in compliance with subsec-
40 tion three, section seven, article five of this chapter, is
41 three per cent or higher, then such employer's rate shall
42 not be increased above three and three-tenths per cent.

43 (3) If, as of the due date for the payment of contribu-
44 tions for any calendar quarter the unemployment com-
45 pensation fund, including the trust fund, clearing ac-
46 count and benefit account, is below the sum of fifty
47 million dollars, the commissioner shall, effective at the
48 commencement of the next calendar quarter, suspend
49 the decreased rates as provided in this chapter, and all
50 contributions of employers due thereafter whose con-
51 tribution rate as computed by the commissioner in com-
52 pliance with subsection three, section seven of this
53 article, is two and seven-tenths per cent or less, shall be
54 paid at the rate of two and seven-tenths per cent; and
55 all contributions of employers due thereafter whose con-
56 tribution rate as computed by the commissioner in com-
57 pliance with subsection (b), section ten of this article,
58 is over two and seven-tenths per cent, shall remain and
59 be paid at said rate over two and seven-tenths per cent.

60 (4) As of January first of the year next following the
61 date on which the unemployment compensation fund,
62 including the trust fund, clearing account and benefit
63 account, reaches and remains above the sum of fifty-
64 five million dollars, the commissioner shall supersede
65 the suspension of the decreased rates as provided for
66 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.

1 An individual filing a claim for benefits which, if other-
2 wise valid, would establish a subsequent benefit year,
3 in order to be eligible for benefits for such subsequent
4 benefit year, must have earned wages in covered em-
5 ployment after the beginning of his previous benefit
6 year equal to or exceeding an amount eight times his
7 weekly benefit rate amount established for the previous
8 benefit year, and be otherwise eligible under the pro-
9 visions of this article and of this chapter.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commis-
2 sioner, an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent
4 work voluntarily without good cause involving fault
5 on the part of the employer and the six weeks im-
6 mediately following such week. Such disqualification
7 shall carry a reduction in the maximum benefit amount
8 equal to six times the individual's weekly benefit rate.
9 However, if the claimant returns to work in covered
10 employment during his benefit year, the maximum
11 benefit amount shall be increased by the amount of
12 the decrease imposed under the disqualification. For
13 the purpose of this subdivision, the term "work" means
14 employment with the last employing unit with whom
15 such individual was employed as much as thirty days,
16 whether or not such days are consecutive.

17 (2) For the week in which he was discharged from
18 his most recent work for misconduct and the six weeks
19 immediately following such week. Such disqualifica-
20 tion shall carry a reduction in the maximum benefit
21 amount equal to six times the individual's weekly bene-
22 fit. However, if the claimant returns to work in cov-
23 ered employment for thirty days during his benefit
24 year, whether or not such days are consecutive, the
25 maximum benefit amount shall be increased by the
26 amount of the decrease imposed under the disqualifica-
27 tion; except that:

28 If he were discharged from his most recent work
29 for one of the following reasons: Misconduct consist-
30 ing of wilful destruction of his employer's property;
31 assault upon the person of his employer or any em-
32 ployee of his employer, if such assault is committed
33 at such individual's place of employment or in the course
34 of employment; reporting to work in an intoxicated
35 condition, or being intoxicated while at work; arson,
36 theft, larceny, fraud or embezzlement in connection
37 with his work; or any other gross misconduct; he shall
38 be and remain disqualified for benefits until he has
39 thereafter worked for at least thirty days in covered
40 employment.

41 (3) For the week in which he failed without good
42 cause to apply for available suitable work, accept suit-
43 able work when offered, or return to his customary
44 self-employment when directed to do so by the com-
45 missioner, and for the four weeks which immediately
46 follow and for such an additional period as any offer
47 of suitable work shall continue open for his acceptance,
48 and his maximum benefit amount shall be reduced by
49 an amount equal to his weekly benefit rate times the
50 number of weeks of disqualification. However, if the
51 claimant returns to work in covered employment dur-
52 ing his benefit year, the maximum benefit amount shall
53 be increased by the amount of the decrease imposed
54 under the disqualification.

55 (4) For a week in which his total or partial un-
56 employment is due to a stoppage of work which exists
57 because of a labor dispute at the factory, establish-
58 ment, or other premises at which he was last employed,
59 unless the commissioner is satisfied that he was not
60 (one) participating, financing, or directly interested in
61 such dispute, and (two) did not belong to a grade or
62 class of workers who were participating, financing,
63 or directly interested in the labor dispute which re-
64 sulted in the stoppage of work. No disqualification
65 under this subdivision shall be imposed if the employees
66 are required to accept wages, hours or conditions of
67 employment substantially less favorable than those
68 prevailing for similar work in the locality, or if em-
69 ployees are denied the right of collective bargaining
70 under generally prevailing conditions, or if an employer
71 shuts down his plant or operation or dismisses his em-
72 ployees in order to force wage reduction, changes in
73 hours or working conditions.

74 For the purposes of this subdivision, if any stoppage
75 of work continues longer than four weeks after the
76 termination of the labor dispute which caused stoppage
77 of work, there shall be a rebuttable presumption that
78 that part of the stoppage of work which exists after
79 said period of four weeks after the termination of said
80 labor dispute, did not exist because of said labor dis-
81 pute; and in such event the burden shall be upon the

82 employer or other interested party to show other-
83 wise.

84 (5) For a week with respect to which he is receiving
85 or has received:

86 (a) Wages in lieu of notice or payments under any
87 form of a separation wage plan;

88 (b) Compensation for temporary total disability
89 under the workmen's compensation law of any state
90 or under a similar law of the United States;

91 (c) Unemployment compensation benefits under the
92 laws of the United States or any other state.

93 (6) For the week in which an individual has volun-
94 tarily quit employment to marry or to perform any
95 marital, parental or family duty, or to attend to his or
96 her personal business or affairs, and until the individual
97 returns to covered employment and has been em-
98 ployed in covered employment at least thirty working
99 days.

100 (7) For the week in which an individual:

101 (a) Voluntarily quit her employment because of
102 pregnancy, whether or not upon a physician's advice,
103 and until she returns to covered employment and has
104 been employed therein at least thirty working days;
105 except that such disqualification shall last no longer
106 than six weeks subsequent to the birth of her child,
107 provided such individual furnishes to the department
108 a certificate from a physician that she is physically able
109 to work;

110 (b) Was discharged or laid off from her employment
111 because of pregnancy and until she returns to cov-
112 ered employment and has been employed therein at
113 least thirty working days; except that such disqualifi-
114 cation shall last no longer than six weeks prior to and
115 six weeks subsequent to the date of birth of the child,
116 provided such individual furnishes to the department
117 certificates from a physician that she is physically able
118 to work.

119 (8) For each week in which an individual is un-
120 employed because, having voluntarily left employment
121 to attend a school, college, university, or other edu-

122 cational institution, he is attending such school, college,
123 university, or other educational institution, or is await-
124 ing entrance thereto or is awaiting the starting of a
125 new term or session thereof, and until the individual
126 returns to covered employment.

127 (9) For each week in which he is unemployed be-
128 cause of his request, or that of his duly authorized
129 agent, for a vacation period at a specified time that
130 would leave the employer no other alternative but to
131 suspend operations.

132 (10) For each week in which he is receiving or
133 has received remuneration in the form of an annuity,
134 pension, or other retirement pay, from an employer
135 or from any trust or fund contributed to by an em-
136 ployer. But if such remuneration for any week is less
137 than the benefits which would otherwise be due him
138 for such week under this chapter, he shall be entitled
139 to receive for such week, if otherwise eligible, benefits
140 reduced by the amount of such remuneration: *Pro-*
141 *vided*, That if such amount of benefits is not a multiple
142 of one dollar, it shall be computed to the next higher
143 multiple of one dollar: *Provided further*, That there
144 shall be no disqualification if in the individual's base
145 period there are no wages which were paid by the
146 employer paying such remuneration, or by a fund into
147 which the employer has paid during said base period.
148 Claimant may be required to certify as to whether or
149 not he is receiving or has received remuneration in the
150 form of an annuity, pension, or other retirement pay
151 from an employer or from a trust fund contributed to
152 by an employer.

153 (11) For each week in which he knowingly made a
154 false statement or representation knowing it to be false
155 or knowingly failed to disclose a material fact in order
156 to obtain or increase a benefit under this article. For
157 each such week of disqualification he shall be disquali-
158 fied an additional five weeks and his maximum benefit
159 amount shall be reduced by an amount equal to five
160 times his weekly benefit rate. Such five weeks disquali-
161 fication periods are to run consecutively beginning with
162 the first week in which it is determined a fraudulent

163 claim was filed: *Provided*, That an individual shall not
164 be disqualified under this subdivision for a period of
165 more than fifty-two consecutive weeks: *Provided further*,
166 That disqualification under this subdivision shall not
167 preclude prosecution under article ten, section seven.

168 (12) For the purposes of this section an employer's
169 account shall not be charged under any of the follow-
170 ing conditions: When benefits are paid for unemploy-
171 ment immediately after the expiration of a period of
172 disqualification for (a) leaving work voluntarily with-
173 out good cause involving fault on the part of the em-
174 ployer, (b) discharge for any of the causes set forth in
175 subdivision (2) of this section, (c) failing without good
176 cause to apply for available suitable work, accept suit-
177 able work, when offered, or return to his customary self-
178 employment when directed to do so by the commissioner.

**§21A-6-10. Benefit rate—Total unemployment; annual compu-
tation and publication of rates.**

1 Each eligible individual who is totally unemployed in
2 any week shall be paid benefits with respect to that
3 week at the weekly rate appearing in column (C) in
4 Table A in this paragraph, on the line on which in column
5 (A) there is indicated the employee's wage class, except
6 as otherwise provided under the term "total and partial
7 unemployment" in section three, article one of this chap-
8 ter. The employee's wage class shall be determined by
9 his base period wages as shown in column (B) in Table
10 A. The right of an employee to receive benefits shall
11 not be prejudiced nor the amount thereof be diminished
12 by reason of failure by an employer to pay either the
13 wages earned by the employee or the contribution due
14 on such wages. An individual who is totally unemployed
15 but earns in excess of ten dollars as a result of odd-job
16 or subsidiary work in any benefit week shall be paid
17 benefits for such week in accordance with the provisions
18 of this chapter pertaining to benefits for partial unem-
19 ployment. The provisions of this section shall apply to
20 all benefit weeks occurring in benefit years beginning
21 after the effective date of this act; for benefit weeks

22 occurring in benefit years beginning prior thereto the
23 provisions then in effect shall apply.

24 TABLE A

25				
26				Maximum Benefit
27	Wage	Wages in	Weekly	in Benefit Year for
28	Class	Base Period	Benefit	Total and/or Partial
			Rate	Unemployment
29	(Column A)	(Column B)	(Column C)	(Column D)
30		Under \$700.00	Ineligible	-----
31	1	700.00- 799.99	\$12.00	\$312.00
32	2	800.00- 899.99	13.00	338.00
33	3	900.00- 999.99	14.00	364.00
34	4	1000.00-1149.99	15.00	390.00
35	5	1150.00-1299.99	16.00	416.00
36	6	1300.00-1449.99	17.00	442.00
37	7	1450.00-1599.99	18.00	468.00
38	8	1600.00-1749.99	19.00	494.00
39	9	1750.00-1899.99	20.00	520.00
40	10	1900.00-2049.99	21.00	546.00
41	11	2050.00-2199.99	22.00	572.00
42	12	2200.00-2349.99	23.00	598.00
43	13	2350.00-2499.99	24.00	624.00
44	14	2500.00-2599.99	25.00	650.00
45	15	2600.00-2699.99	26.00	676.00
46	16	2700.00-2799.99	27.00	702.00
47	17	2800.00-2899.99	28.00	728.00
48	18	2900.00-2999.99	29.00	754.00
49	19	3000.00-3099.99	30.00	780.00
50	20	3100.00-3199.99	31.00	806.00
51	21	3200.00-3349.99	32.00	832.00
52	22	3350.00-3499.99	33.00	858.00
53	23	3500.00-3649.99	34.00	884.00
54	24	3650.00-3799.99	35.00	910.00

55 Notwithstanding any of the foregoing provisions of
56 this section, on and after July one, one thousand nine
57 hundred sixty-seven, the maximum weekly benefit rate
58 shall be forty per cent of the average weekly wage in
59 West Virginia.

60 The commissioner, after he has determined the maxi-
61 mum weekly benefit rate upon the basis of the above
62 formula, shall establish as many additional wage classes
63 as are required, increasing the amount of base period
64 wages required for each class by one hundred fifty dol-
65 lars, the weekly benefit rate for each class by one dollar,
66 and the maximum benefit by twenty-six dollars.

67 After he has established such additional wage classes,
68 the commissioner shall prepare and publish a table set-
69 ting forth such information.

70 Average weekly wage shall be computed by dividing
71 the number of employees in West Virginia earning wages
72 in covered employment into the total wages paid to em-
73 ployees in West Virginia in covered employment, and
74 by further dividing said result by fifty-two, and shall be
75 determined from employer wage and contribution reports
76 for the previous calendar year which are furnished to the
77 department on or before June one following such calen-
78 dar year. The average weekly wage, as determined by
79 the commissioner, shall be rounded to the next higher
80 dollar.

81 The computation and determination of rates as afore-
82 said shall be completed annually before July one, and
83 any such new wage class, with its corresponding wages
84 in base period, weekly benefit rate, and maximum bene-
85 fit in a benefit year established by the commissioner in
86 the foregoing manner effective on a July one, shall ap-
87 ply only to a new claim established by a claimant on and
88 after said July one, and shall not apply to continued
89 claims of a claimant based on his new claim established
90 before said July one.

ARTICLE 7. CLAIM PROCEDURE.

Section

11. Benefits pending appeal.
17. Finality of board's decision—judicial review.

§21A-7-11. Benefits pending appeal.

1 If an appeal is filed, benefits for the period prior to
2 final determination of the board shall be paid only after
3 such determination. If benefits are allowed by the deci-
4 sion of the board on appeal from the decision of the ap-

5 peal tribunal the benefits shall be paid whether such
6 decision reverses or affirms the decision of the appeal
7 tribunal and regardless of any further appeal: *Provided*,
8 That such decision does not relate to a disqualification
9 under subdivision (4) of section three of article six; but
10 if the decision of the board is reversed on appeal an
11 employer's account shall not be charged with the benefits
12 so paid.

§21A-7-17. Finality of board's decision—Judicial review.

1 The decision of the board shall be final and benefits
2 shall be paid or denied in accordance therewith, unless
3 a claimant, last employer, or other interested party ap-
4 peals to the circuit court of Kanawha county within
5 thirty days after mailing of notification of the board's
6 decision: *Provided*, That, in cases relating to a disqual-
7 ification under subdivision (4) of section three of article
8 six, the decision of the board shall be final and benefits
9 shall be paid or denied in accordance therewith, unless
10 a claimant, last employer, or other interested party ap-
11 peals to the circuit court of Kanawha county within
12 twenty days after mailing of notification of the board's
13 decision.

14 Parties to the proceedings before the board shall be
15 made defendants in any such appeal; and the commis-
16 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 organ-
23. ized as aforesaid, to elect to subscribe to, and to pay
24. premiums into, the workmen's compensation fund, shall
25. not impose any liability upon them, or either of them,
26. other than such liability as would exist notwithstanding
27. the provisions of this chapter. All persons in the service
28. of employers as herein defined, and employed by them for
29. the purpose of carrying on the industry, business, service,
30. or work in which they are engaged, including persons
31. regularly employed in the state whose duties necessitate
32. employment of a temporary or transitory nature by the
33. same employer without the state, and check-weighmen
34. employed according to law, all members of rescue teams
35. assisting in mine accidents with the consent of the owner
36. who, in such case, shall be deemed the employer, or at
37. the direction of the director of the department of mines,
38. and all forest fire fighters who, under the supervision of
39. the director of the department of natural resources or his
40. designated representative, assist in the prevention, con-
41. finement and suppression of any forest fire, are employees
42. within the meaning of this chapter and subject to its pro-
43. visions: *Provided further*, That this chapter shall not
44. apply to employers of employees in domestic service or
45. persons whose employment is prohibited by law, nor to
46. employees of an employer while employed without the
47. state, except in case of temporary employment without
48. the state as hereinbefore provided; nor shall a member of
49. a firm of employers, or any official of an association or of a
50. corporate employer, including managers, or any elective or
51. appointive official of the state, county, county court, board
52. of education, municipality, other political subdivision of
53. the state, or civil defense organization organized as afore-
54. said, whose term of office is definitely fixed by law, be
55. deemed an employee within the meaning of this chapter:
56. *And provided further*, That employers of not more than
57. three employees for a period of not more than one month,
58. who shall be called herein "casual employers," employers
59. of employees in agricultural service and duly incorporated
60. volunteer fire departments or companies may voluntarily
61. elect to subscribe to, and pay premiums into, the work-
62. men's compensation fund for the protection of the em-

63 ployees of such employers and all of the members, includ-
64 ing the chief, commander or other officials thereof, of such
65 duly incorporated volunteer fire departments or com-
66 panies, and in such case shall be subject to all require-
67 ments of this chapter and all rules and regulations pre-
68 scribed by the commissioner with reference to rates,
69 classifications and premium payments; but such casual
70 employers, employers of employees in agricultural service
71 and duly incorporated volunteer fire departments or com-
72 panies shall not be required to subscribe to the workmen's
73 compensation fund and their failure to subscribe to such
74 fund shall not impose any liability upon them other than
75 such liability as would exist notwithstanding the provi-
76 sions of this chapter; nor shall the provisions of section
77 eight of this article apply to casual employers, employers
78 of employees in agricultural service or to such duly in-
79 corporated volunteer fire departments or companies.

80 The premium and actual expenses in connection with
81 governmental agencies and departments of the state of
82 West Virginia shall be paid out of the state treasury from
83 appropriations made for such agencies and departments,
84 in the same manner as other disbursements are made by
85 such agencies and departments.

86 County courts, municipalities, other political subdivi-
87 sions of the state, county boards of education, civil defense
88 organizations organized as aforesaid, and duly incorpo-
89 rated volunteer fire departments or companies which shall
90 elect to become subscribers to the workmen's compensa-
91 tion fund shall provide for the funds to pay their pre-
92 scribed premiums into the fund, and such premiums, and
93 premiums of state agencies and departments, including
94 county boards of education, shall be paid into the fund
95 in the same manner as herein provided for other employ-
96 ers subject to this chapter. In addition to its usual and
97 ordinary meaning, the term "employer" or "employers,"
98 as used in this chapter, shall be taken to extend to and
99 include any duly incorporated volunteer fire department
100 or company, or civil defense organization organized as
101 aforesaid, which shall elect to subscribe to, and pay
102 premiums into, the workmen's compensation fund, and in

103 addition to its usual and ordinary meaning, the term
104 "employee" or "employees," as used in this chapter, shall
105 be taken to extend to and include all of the members of
106 any such department, company or organization. All duly
107 incorporated volunteer fire departments or companies,
108 and civil defense organizations organized as aforesaid,
109 which shall elect to subscribe to, and pay premiums into,
110 such fund, shall be placed in a separate group or class of
111 subscribers to be established by the commissioner, and
112 such departments, companies or organizations shall pay
113 into the fund such premiums (computed, notwithstanding
114 the provisions of section five of this article, on such basis
115 as to the commissioner shall seem right and proper) as
116 may be necessary to keep such group or class entirely self-
117 supporting.

118 Any employer whose employment in this state is to be
119 for a definite or limited period, which could not be con-
120 sidered "regularly employing" within the meaning of this
121 section, may elect to pay into the workmen's compensa-
122 tion fund the premiums herein provided for, and at the
123 time of making application to the commissioner such
124 employer shall furnish a statement under oath showing
125 the probable length of time the employment will continue
126 in this state, the character of the work, an estimate of the
127 monthly payroll, and any other information which may
128 be required by the commissioner. At the time of making
129 application such employer shall deposit with the state
130 compensation commissioner to the credit of the work-
131 men's compensation fund the amount required by section
132 five of this article, which amount shall be returned to such
133 employer, if his application be rejected by the commis-
134 sioner. Upon notice to such employer of the acceptance
135 of his application by the commissioner, he shall be an
136 employer within the meaning of this chapter and subject
137 to all of its provisions.

138 Any foreign corporation employer electing to comply
139 with the provisions of this chapter and to receive the
140 benefits hereunder, shall, at the time of making applica-
141 tion to the commissioner, in addition to other require-
142 ments of this chapter, furnish such commissioner with a

143 certificate from the secretary of state showing that it has
144 complied with all the requirements necessary to enable
145 it legally to do business in this state, and no application of
146 such foreign corporation employer shall be accepted by
147 the commissioner until such certificate is filed.

148 For the purpose of this chapter, a mine shall be ad-
149 judged within this state when the main opening, drift,
150 shaft or slope is located wholly within this state.

151 Any employee within the meaning of this chapter whose
152 employment necessitates his temporary absence from this
153 state in connection with such employment, and such
154 absence is directly incidental to carrying on an industry
155 in this state, who shall have received injury during such
156 absence in the course of and resulting from his employ-
157 ment, shall not be denied the right to participate in the
158 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 hundred thirty-one, as amended, relating to workmen's compensation.

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 occupational diseases included in "injury" and "personal injury"; definitions of silicosis and other occupational diseases.

4. Funeral expenses.
6. Classification of disability benefits.
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

30 in the course of and resulting from their employment, or
31 to the dependents, if any, of such employees, in case
32 death has ensued, according to the provisions hereinafter
33 made: *Provided, however,* That compensation shall not
34 be payable for the disease of silicosis, or death resulting
35 therefrom, unless in the state of West Virginia the em-
36 ployee has been exposed to the hazard of silicon dioxide
37 dust over a continuous period of not less than two years
38 during the ten years immediately preceding the date of
39 his last exposure to such hazards. An application for bene-
40 fits on account of silicosis shall set forth the name of the
41 employer or employers and the time worked for each, and
42 the commissioner may allocate to and divide any charges
43 on account of such claim among the employers by whom
44 the claimant was employed for as much as sixty days
45 during the period of three years immediately preceding
46 the filing of the application. The allocation shall be based
47 upon the time and degree of exposure with each employer.

48 For the purpose of this chapter silicosis is defined as an
49 insidious fibrotic disease of the lung or lungs due to the
50 prolonged inhalation and accumulation, sustained in the
51 course of and resulting from employment, of minute par-
52 ticles of dust containing silicon dioxide (SiO_2) over such
53 a period of time and in such amounts as result in the
54 substitution of fibrous tissues for normal lung tissues,
55 whether or not accompanied by tuberculosis of the lungs.

56 Whenever the expression "injurious exposure to silicon
57 dioxide dust," or "injurious exposure to silicon dioxide
58 dust in harmful quantities," or "exposure to the hazard
59 of silicon dioxide dust," or any similar language shall
60 appear in this chapter, such expression shall be construed
61 to mean the exposure of an employee in the course of his
62 employment to a working condition in which the air con-
63 tains such a concentration of silicon dioxide dust that the
64 breathing of such air by a person over a long period of
65 time would be likely to cause him to contract the disease
66 of silicosis.

67 For the purpose of this chapter, occupational disease
68 means a disease incurred in the course of and resulting
69 from employment. No ordinary disease of life to which
70 the general public is exposed outside of the employment

71 shall be compensable except when it follows as an inci-
72 dent of occupational disease as defined in this chapter.
73 Except in the case of silicosis, a disease shall be deemed
74 to have been incurred in the course of or to have resulted
75 from the employment only if it is apparent to the rational
76 mind, upon consideration of all the circumstances (1)
77 that there is a direct causal connection between the condi-
78 tions under which work is performed and the occupational
79 disease, (2) that it can be seen to have followed as a
80 natural incident of the work as a result of the exposure
81 occasioned by the nature of the employment, (3) that it
82 can be fairly traced to the employment as the proximate
83 cause, (4) that it does not come from a hazard to which
84 workmen would have been equally exposed outside of the
85 employment, (5) that it is incidental to the character of
86 the business and not independent of the relation of em-
87 ployer and employee, and (6) that it must appear to
88 have had its origin in a risk connected with the employ-
89 ment and to have flowed from that source as a natural
90 consequence, though it need not have been foreseen or ex-
91 pected before its contraction.

92 Except in the case of silicosis, no award shall be made
93 under the provisions of this chapter for any occupational
94 disease contracted prior to the first day of July, one thou-
95 sand nine hundred forty-nine. An employee shall be
96 deemed to have contracted an occupational disease within
97 the meaning of this paragraph if the disease or condition
98 has developed to such an extent that it can be diagnosed
99 as an occupational disease.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, and disabil-
2 ity is continuous from the date of such injury to date
3 of death, reasonable funeral expenses, not to exceed
4 five hundred dollars, shall be paid from the fund, pay-
5 ment to be made to the persons who have furnished the
6 services and supplies, or to the persons who have ad-
7 vanced payment for same, as the commissioner may
8 deem proper, in addition to such award as may be made
9 to the employee's dependents.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for a personal injury other
3 than first stage silicosis, such compensation shall be
4 as provided in the following schedule:

5 (a) If the injury causes temporary total disability, the
6 employee shall receive during the continuance thereof sixty-
7 six and two-thirds per cent of his average weekly earnings,
8 not to exceed a maximum of forty-seven dollars a week nor
9 to be less than a minimum of twenty-four dollars a week.

10 (b) Subdivision (a) shall be limited as follows: Aggre-
11 gate award for a single injury causing temporary disability
12 shall be for a period not exceeding two hundred eight
13 weeks.

14 (c) If the injury causes permanent disability, the per-
15 centage of disability to total disability shall be determined
16 and the award computed and allowed as follows:

17 For permanent disability of from one per cent to
18 eighty-four per cent, inclusive, sixty-six and two-thirds
19 per cent of the average weekly earnings for a period
20 to be computed on the basis of four weeks compensation
21 for each per cent of disability determined.

22 For a disability of eighty-five to one hundred per cent,
23 sixty-six and two-thirds per cent of the average weekly
24 earnings during the remainder of life.

25 (d) If the injury results in the total loss by sever-
26 ance of any of the members named in this subdivision,
27 the percentage of disability shall be determined in
28 accordance with the following table, and award made as
29 provided in subdivision (c) of this section:

30 The loss of a great toe shall be considered a ten per-
31 cent disability.

32 The loss of a great toe (one phalanx) shall be consid-
33 ered a five percent disability.

34 The loss of other toes shall be considered a four per-
35 cent disability.

36 The loss of other toes (one phalanx) shall be consid-
37 ered a two percent disability.

38 The loss of all toes shall be considered a twenty-five
39 percent disability.

40 The loss of fore part of foot shall be considered a
41 thirty percent disability.

42 The loss of foot shall be considered a thirty-five per-
43 cent disability.

44 The loss of a leg shall be considered a forty-five per-
45 cent disability.

46 The loss of thigh shall be considered a fifty percent
47 disability.

48 The loss of thigh at hip joint shall be considered a
49 sixty percent disability.

50 The loss of little or fourth finger (one phalanx) shall
51 be considered a three percent disability.

52 The loss of little or fourth finger shall be considered
53 a five percent disability.

54 The loss of ring or third finger (one phalanx) shall be
55 considered a three percent disability.

56 The loss of ring or third finger shall be considered a
57 five percent disability.

58 The loss of middle or second finger (one phalanx)
59 shall be considered a three percent disability.

60 The loss of middle or second finger shall be considered
61 a seven percent disability.

62 The loss of index or first finger (one phalanx) shall
63 be considered a six percent disability.

64 The loss of index or first finger shall be considered a
65 ten percent disability.

66 The loss of thumb (one phalanx) shall be considered
67 a twelve percent disability.

68 The loss of thumb shall be considered a twenty per-
69 cent disability.

70 The loss of thumb and index finger shall be consid-
71 ered a thirty-two percent disability.

72 The loss of index and middle finger shall be considered
73 a twenty percent disability.

74 The loss of middle and ring finger shall be consid-
75 ered a fifteen percent disability.

76 The loss of ring and little finger shall be considered
77 a ten percent disability.

78 The loss of thumb, index and middle finger shall be
79 considered a forty percent disability.

80 The loss of index, middle and ring finger shall be
81 considered a thirty percent disability.

82 The loss of middle, ring and little finger shall be con-
83 sidered a twenty percent disability.

84 The loss of four fingers shall be considered a thirty-
85 two percent disability.

86 The loss of hand shall be considered a fifty percent
87 disability.

88 The loss of forearm shall be considered a fifty-five
89 percent disability.

90 The loss of arm shall be considered a sixty percent
91 disability.

92 The total and irrecoverable loss of the sight of one eye
93 shall be considered a thirty-three percent disability.

94 For the partial loss of vision in one, or both
95 eyes, the percentage of disability shall be determined
96 by the commissioner, using as a basis the total loss of
97 one eye.

98 The total and irrecoverable loss of the hearing of one
99 ear shall be considered a fifteen percent disability, and
100 the injured employee shall be entitled to compensation
101 for a period of sixty weeks. The total and irrecoverable
102 loss of the hearing of both ears shall be considered a
103 forty-five percent disability, and the injured employee
104 shall be entitled to compensation for a period of one
105 hundred eighty weeks.

106 For the partial loss of hearing in one, or both ears,
107 the percentage of disability shall be determined by the
108 commissioner, using as a basis the total loss of hearing in
109 both ears.

110 (e) Should a claimant to whom has been made a
111 permanent partial award of from one per cent to eighty-
112 four per cent, both inclusive, die from sickness or non-
113 compensable injury, the unpaid balance of such award

114 shall be paid to claimant's dependents as defined in
115 this chapter, if any; such payment to be made in the
116 same installments that would have been paid to claim-
117 ant if living: *Provided, however,* That no payment shall
118 be made to any widow of such claimant after her re-
119 marriage, and that this liability shall not accrue to
120 the estate of such claimant and shall not be subject to
121 any debts of, or charges against, such estate.

122 (f) The award for permanent disabilities intermediate
123 to those fixed by the foregoing schedule and permanent
124 disability of from one per cent to eighty-four per cent
125 shall be in the same proportion and shall be computed
126 and allowed by the commissioner.

127 (g) The percentage of all permanent disabilities other
128 than those enumerated in subdivisions (c), (d), (e) and
129 (f) of this section shall be determined by the commis-
130 sioner, and award made in accordance with the provi-
131 sions of subdivision (c).

132 (h) Compensation payable under any subdivision of
133 this section shall be limited as follows: Not to exceed
134 a maximum of forty-seven dollars a week nor to be less
135 than a minimum of twenty-four dollars a week.

136 (i) Where an injury results in temporary total dis-
137 ability for which compensation is awarded under sub-
138 division (a) of this section and such injury is later
139 determined permanent partial disability under subdivi-
140 sion (c), the amount of compensation so paid shall
141 be considered as payment of the compensation payable
142 for such injury in accordance with the schedule in
143 subdivision (c): *Provided,* That in cases where the
144 amount of permanent partial disability is specifically
145 provided for under subdivision (d) of this section, pay-
146 ments made under subdivision (a) shall not be consid-
147 ered as payment of the compensation for such injury.
148 Compensation, either total temporary or permanent par-
149 tial, under this section shall be payable only to the injured
150 employee and the right thereto shall not vest in his or
151 her estate, except that any unpaid compensation which
152 would have been paid or payable to the employee up
153 to the time of his death, if he had lived, shall be paid to

154 the dependents of such injured employee if there be
155 such dependents at the time of death.

156 (j) The following permanent disabilities shall be con-
157 clusively presumed to be total in character:

158 Loss of both eyes or the sight thereof.

159 Loss of both hands or the use thereof.

160 Loss of both feet or the use thereof.

161 Loss of one hand and one foot or the use thereof.

162 In all other cases permanent disability shall be deter-
163 mined by the commissioner in accordance with the facts
164 in the case, and award made in accordance with the
165 provisions of subdivision (c).

§23-4-8. Physical examination of claimant; expenses.

1 The commissioner shall have authority, after due no-
2 tice to the employer and claimant, whenever in his opin-
3 ion it shall be necessary, to order a claimant of com-
4 pensation for a personal injury other than silicosis or
5 other occupational disease to appear for examination
6 before a medical examiner or examiners selected by
7 the commissioner; and the claimant and employer, re-
8 spectively, shall each have the right to select a physi-
9 cian of his or its own choosing and at his or its own
10 expense to participate in such examination. The claim-
11 ant and employer shall, respectively, be furnished with
12 a copy of the report of examination made by the medi-
13 cal examiner or examiners selected by the commissioner.
14 The respective physicians selected by the claimant and
15 employer shall have the right to concur in any report
16 made by the medical examiner or examiners selected
17 by the commissioner, or each may file with the commis-
18 sioner a separate report, which separate report shall
19 be considered by the commissioner in passing upon the
20 claim. If the compensation claimed is for silicosis, the
21 commissioner shall have the power, after due notice
22 to the employer, and whenever in his opinion it shall
23 be necessary, to order a claimant to appear for exami-
24 nation before the silicosis medical board hereinafter
25 provided. If the compensation claimed is for an occu-
26 pational disease other than silicosis, the commissioner

27 shall have the power after due notice to the employer,
28 and whenever in his opinion it shall be necessary, to
29 order a claimant to appear for examination before
30 the occupational diseases medical board hereinafter pro-
31 vided. In any case the claimant shall be entitled to
32 reasonable traveling and other expenses necessarily
33 incurred by him in obeying such order, which shall be
34 paid out of the amount allowed under this chapter for
35 medical, surgical, dental and hospital treatment.

36 Where the claimant is required to undergo a medi-
37 cal examination or examinations by a physician or physi-
38 cians selected by the employer, in addition to the reason-
39 able traveling and other expenses, not to exceed the ex-
40 penses paid when a claimant is examined by a physician
41 or physicians selected by the commissioner, such claimant
42 shall be reimbursed by the employer for loss of wages
43 necessarily incurred by him in connection with such ex-
44 amination or examinations.

§23-4-10. Classification of death benefits; "dependent" defined.

In case a personal injury other than silicosis or other
2 occupational disease, suffered by an employee in the
3 course of and resulting from his employment, causes
4 death within the period of ten years and disability is con-
5 tinuous from date of such injury until date of death, or if
6 death results from silicosis or from any other occupational
7 disease within ten years from the date of the last ex-
8 posure to the hazard of silicon dioxide dust or to the other
9 particular occupational hazard involved, as the case may
10 be, the benefits shall be in the amounts and to the persons
11 as follows:

12 (a) If there be no dependents, the disbursements shall
13 be limited to the expense provided for in sections three
14 and four of this article.

15 (b) If the deceased employee leaves a dependent
16 widow or invalid widower, the payment shall be ninety
17 dollars a month until death or remarriage of such widow
18 or widower, and in addition twenty-five dollars a month
19 for each child under eighteen years of age, to be paid until
20 such child reaches such age, or where such child after reach-
21 ing eighteen years of age continues as a full-time student

22 in an accredited high school, college, university, business
23 or trade school, to be paid until such child reaches the age
24 of twenty-two years, or, if an invalid child, thirty-five
25 dollars and fifty cents a month, to continue as long as
26 such child remains an invalid: *Provided, however,* That
27 if such widow or invalid widower shall remarry within
28 ten years from the date of the death of such employee,
29 such widow or widower shall be paid at the time of re-
30 marriage twenty per cent of the amount that would be
31 due for the period remaining between the date of such
32 remarriage and the end of ten years from the date of
33 death of such employee, and such widow or widower shall
34 be advised in writing by the commissioner of his or her
35 rights under this proviso at the time of making the original
36 award: *Provided further,* That if upon investigation and
37 hearing, as provided in article five of this chapter, it shall
38 be ascertained that such widow or widower is living with
39 a man or woman, as the case may be, as man and wife
40 and not married, or that the widow is living a life of
41 prostitution, the commissioner shall stop the payments of
42 the benefits herein provided to such widow or widower.

43 If the deceased employee be a widow or widower and
44 leaves a child or children under the age of eighteen years,
45 the payments shall be thirty dollars a month to each child
46 until he or she reaches the age of eighteen years, or where
47 such child after reaching eighteen years of age continues
48 as a full-time student in an accredited high school, college,
49 university, business or trade school to be paid until such
50 child reaches the age of twenty-two years.

51 In all awards of compensation to children, unless other-
52 wise provided herein, the award shall be until they reach
53 the age of eighteen years or until their death prior thereto.

54 (c) If the deceased employee leaves no dependent
55 widow or widower and leaves a wholly dependent father
56 or mother, he or she shall be paid the sum of seventy
57 dollars a month, payments to continue until death, and if
58 there be no widow or widower and both the father and
59 mother are wholly dependent, then a joint award shall be
60 made to the father and mother in the sum of seventy
61 dollars a month until death.

62 Upon the death of either the father or mother in any
63 case in which a joint award has been made to them, the
64 full award of seventy dollars a month shall be paid to the
65 survivor until his or her death.

66 (d) If the deceased employee leaves no dependent
67 widow or widower or wholly dependent father or mother
68 but there are other wholly dependent persons, as defined
69 in subdivision (f) of this section, the payment shall be
70 fifty-seven dollars and fifty cents a month, to continue for
71 six years after the death of the deceased, except as other-
72 wise provided herein.

73 (e) If the deceased employee leaves no dependent
74 widow or widower, child under eighteen years of age, or
75 wholly dependent person, but there are partially depend-
76 ent persons at the time of death, the payment shall be
77 thirty dollars a month, to continue for such portion of the
78 period of six years after the death, as the commissioner
79 may determine, but no such partially dependent person
80 shall receive compensation payments as a result of the
81 death of more than one employee.

82 Compensation under subdivisions (b), (c), (d) and (e)
83 hereof shall, except as may be specifically provided to
84 the contrary therein, cease upon the death of the depend-
85 ent, and the right thereto shall not vest in his or her estate.

86 (f) Dependent, as used in this chapter, shall mean a
87 widow, invalid widower, child under eighteen years of
88 age, or under twenty-two years of age when a full-time
89 student as provided herein, invalid child or posthumous
90 child, who, at the time of the injury causing death, is de-
91 pendent in whole or in part for his or her support upon
92 the earnings of the employee; also the following persons
93 who are and continue to be residents of the United States
94 or its territorial possessions: Stepchild under eighteen
95 years of age, or under twenty-two years of age when a
96 full-time student as provided herein, child under eighteen
97 years of age legally adopted prior to the injury causing
98 death, or under twenty-two years of age when a full-time
99 student as provided herein, father, mother, grandfather or
100 grandmother, who at the time of the injury causing death,
101 is dependent in whole or in part for his or her support

102 upon the earnings of the employee; an invalid brother or
103 sister wholly dependent for his or her support upon the
104 earnings of the employee at the time of the injury causing
105 death.

§23-4-15. Application for benefits; report of injuries by employer.

To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than
3 for silicosis or other occupational disease, the application
4 therefor must be made on the form or forms prescribed
5 by the commissioner and filed in the office of the com-
6 missioner within one year from and after the injury or
7 death, as the case may be, and all proofs of dependency
8 in fatal cases must likewise be filed with the commissioner
9 within one year from and after the death. In case the
10 employee is mentally or physically incapable of filing
11 such application, it may be filed by his attorney or by a
12 member of his family. It shall be the duty of every
13 employer to report to the commissioner every injury
14 sustained by any person in his employ. Such report shall
15 be on forms prescribed by the commissioner and shall
16 be made within sixty days from the date the employer
17 first receives knowledge of such injury.

To entitle any employee to compensation for silicosis
19 under the provisions hereof, the application therefor
20 must be made on the form or forms prescribed by the
21 commissioner and filed in the office of the commissioner
22 within three years from and after the last day of the
23 last continuous period of sixty days or more during which
24 the employee was exposed to the hazard of silicon dioxide
25 dust or to the other particular occupational hazard in-
26 volved, as the case may be, or, in the case of death, the
27 application shall be filed as aforesaid by the dependent
28 of such employee within one year from and after such
29 employee's death.

To entitle any employee to compensation for occupa-
31 tional disease other than silicosis under the provisions
32 hereof, the application therefor must be made on the
33 form or forms prescribed by the commissioner and filed
34 in the office of the commissioner within three years from

35 and after the day on which the employee was last exposed
36 to the particular occupational hazard involved, or, in
37 the case of death, the application shall be filed as afore-
38 said by the dependent of such employee within one year
39 from and after such employee's death.

**§23-4-15b. Determination of nonmedical questions by commis-
sioner—Claims for silicosis; hearing.**

If a claim for silicosis benefits be filed by an employee,
2 the commissioner shall determine whether the claimant
3 was exposed to the hazard of silicon dioxide dust for a
4 continuous period of not less than sixty days while in the
5 employ of the employer within three years prior to the
6 filing of his claim, and whether in the state of West Vir-
7 ginia the claimant was exposed to such hazard over a
8 continuous period of not less than two years during the ten
9 years immediately preceding the date of his last exposure
10 thereto. If a claim for silicosis benefits be filed by a
11 dependent of a deceased employee, the commissioner shall
12 determine whether the deceased employee was exposed
13 to the hazard of silicon dioxide dust for a continuous
14 period of not less than sixty days while in the employ
15 of the employer within ten years prior to the filing of the
16 claim, and whether in the state of West Virginia the de-
17 ceased employee was exposed to such hazard over a con-
18 tinuous period of not less than two years during the ten
19 years immediately preceding the date of his last exposure
20 thereto. The commissioner shall also determine such
21 other nonmedical facts as may in his opinion be pertinent
22 to a decision on the validity of the claim.

23 The commissioner shall give each interested party
24 notice in writing of his findings with respect to all such
25 nonmedical facts and such findings shall be subject to
26 objection and hearing as provided in section one, article
27 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
2 occupational disease other than silicosis, the commissioner
3 shall hear, determine and file findings covering, but not
4 limited to, the following nonmedical questions:

5 (a) Whether the employee was in fact, within three
6 years prior to the filing of his claim, in the employ of
7 the employer, and, if so, the duration of such employment
8 and whether or not such employment was subject to the
9 provisions hereof.

10 (b) The occupation or occupations, process or proc-
11 esses, in which the employee was engaged during such
12 employment and the approximate periods of work in
13 each such occupation or process.

14 (c) The employments, previous and subsequent to the
15 employment out of which the claim arose, the duration
16 thereof and the exposure therein to the hazard causing
17 the occupational disease.

18 (d) Whether the last injurious exposure to the hazard
19 causing occupational disease in the employment with
20 the employer occurred within three years prior to the
21 filing of the claim, and if the employee is no longer in
22 the service of the employer, the date upon which such
23 employee ceased so to work; and, if the employee has
24 died, the date and place of such death, and the place of
25 interment of the body.

26 The parties may in writing waive the hearing required
27 by this section, in which case the commissioner shall
28 determine the nonmedical facts listed above, and such
29 other nonmedical facts as may in his opinion be pertinent
30 to a decision on the validity of the claim.

31 The commissioner shall give each interested party
32 notice in writing of his findings with respect to all such
33 nonmedical facts, and such findings shall be subject to
34 objection and hearing as provided in section one, article
35 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.

§23-5-2. Workmen's compensation appeal board.

There shall be a board to be known as the "Workmen's
2 Compensation Appeal Board," which shall be referred to
3 in this article as the "board," to be composed of three
4 members, none of whom shall be a contributor to the
5 compensation fund or in any way connected with a con-
6 tributor thereto and none of whom shall be a beneficiary
7 of the compensation fund or in any way connected with
8 a beneficiary thereof. Two members of such board shall
9 be of opposite politics to the third, and all three shall be
10 citizens of this state who have resided therein for a period
11 of at least five years. All members of the board shall be
12 appointed by the governor for a term of six years. The
13 governor is hereby vested with power to remove any
14 member of the board in accordance with the provisions of
15 section four, article six, chapter six of this code. Notwith-
16 standing the provisions of section two-a, article seven,
17 chapter six of this code, they shall each receive an annual
18 salary of six thousand dollars, payable in monthly in-
19 stallments, and shall also be entitled to reasonable and
20 necessary traveling and other expenses incurred while
21 actually engaged in the performance of their duties. The
22 governor shall designate one of the members of the board
23 as chairman thereof, and the board shall meet at the
24 capitol or at such other places throughout the state as it
25 may deem proper at regular sessions commencing on the
26 first Tuesday in February, April, June, August, October
27 and December, and continuing as long as may be neces-
28 sary for the proper and expeditious transaction of the
29 business before it. All clerical services required by the

30 board shall be paid for by the compensation commissioner
31 from any funds at his disposal. The board shall, from time
32 to time, compile and promulgate such rules of practice and
33 procedure as to it shall appear proper for the prompt
34 and efficient discharge of its business and such rules shall
35 be submitted to the supreme court of appeals for approval,
36 and if approved by such court shall have the same force
37 and effect as the approved rules of procedure of circuit
38 courts. The board shall employ such clerical staff as may
39 be necessary for the efficient conduct of its business but
40 the number of such employees shall not exceed two.
41 Salaries of the board, and its employees, and all of its
42 necessary operating expense shall be paid from the work-
43 men's compensation fund. The board shall submit its
44 annual budget to the state compensation commissioner for
45 inclusion as a separate item in the budget estimates pre-
46 pared by him annually, and within the limits of such
47 budget, all expenses of the board shall be by requisition
48 to the commissioner. Salaries of the employees of the
49 board shall be fixed by the board.

C

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.**

1 In addition to all other powers conferred upon it, the

2 county court of Berkeley county is hereby authorized
3 and empowered to use any unexpended funds of said
4 county and any surplus in any county fund, now or here-
5 after created, for the purpose of acquiring, by purchase
6 or otherwise, land for use as public refuse dumps or
7 sanitary landfills, and to purchase equipment for such
8 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.
 8. Public corporation.
 9. Powers generally.
 13. County court authorized to convey properties and facilities to authority.
 16. Contributions; funds and accounts; publication of annual report.
 20. 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
 - 2 hereby authorized to create and establish a public agency

3 to be known as the "Braxton County Recreational Devel-
4 opment Authority" (hereinafter called the authority), to
5 succeed to all the rights, interests and authority herein-
6 before vested in the Braxton county Four-H club develop-
7 ment authority, for the purposes and in the manner here-
8 inafter set forth.

§2. Acquisition, construction, maintenance, etc., of county youth camps and recreational areas and facilities.

1 The authority is hereby authorized to acquire, equip,
2 construct, improve, maintain and operate county youth
3 camps and general public recreational areas and facilities
4 in Braxton county with all usual and convenient appur-
5 tenances, including but not limited to recreational facili-
6 ties, such as swimming pools, tennis courts, golf courses
7 and horse riding stables; and to operate, either directly
8 or on a concession basis, any activity that is necessary
9 or convenient, customary or desirable, and related or
10 incidental to the above-mentioned camps and recreational
11 areas and facilities, including but not limited to hotels,
12 restaurants and gift shops.

§8. Public corporation.

1 The authority when created, and the members thereof,
2 shall constitute and be a public corporation under the
3 name of "Braxton County Recreational Development
4 Authority" and as such shall have perpetual succes-
5 sion, may contract and be contracted with, sue and be
6 sued, plead and be impleaded and have and use a com-
7 mon seal.

§9. Powers generally.

1 The 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 operation 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
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 nego-
34 tiable 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

48 (10) To expend its funds in the execution of the pow-
49 ers and authority herein given.

§13. County court authorized to convey properties and facilities to authority.

1 The county court of the county of Braxton is hereby
2 authorized to convey to the newly created author-
3 ity property owned by the county of Braxton, together
4 with all the appurtenances and facilities therewith, such
5 conveyance to be without consideration or for such price
6 and upon such terms and conditions as the county court
7 of the county of Braxton shall deem proper.

§16. Contributions; funds and accounts; publication of annual report.

1 Contributions may be made to the authority from time
2 to time by the county court of the county of Braxton,
3 the board of education of Braxton county, the federal
4 government, and by any persons, firms or corporations
5 that shall desire so to do. All such funds and all other
6 funds received by the authority shall be deposited
7 in such bank or banks as the authority may direct and
8 shall be withdrawn therefrom in such manner as the
9 authority may direct. The authority shall keep strict
10 account of all its receipts and expenditures and shall
11 each quarter make a report to the board of education
12 of the county of Braxton containing an itemized account
13 of its receipts and disbursements during the preceding
14 quarter. Such report shall be made within sixty days
15 after the termination of the quarter. Within sixty days
16 after the end of each fiscal year, the authority shall make
17 an annual report containing an itemized statement of
18 its receipts and disbursements for the preceding year
19 and such annual report shall be published once a week
20 for two successive weeks in two newspapers of oppo-
21 site politics published in Braxton county, West Vir-
22 ginia, and of general circulation in Braxton county,
23 West Virginia, if there be two such papers, or other-
24 wise in any newspaper of general circulation in said
25 county. The books, records and accounts of the author-
26 ity shall be subject to audit and examination by the

27 office of the state tax commissioner of West Virginia
28 and by any other proper public official or body in the
29 manner provided by law.

§20. Construction of act; additional powers of board of education and county court.

1 It is the purpose of this act to provide for the acquisition,
2 construction, improvement, extension, maintenance
3 and operation of a camp or camps and recreational facilities
4 and appurtenant facilities in a prudent and economical
5 manner, and this act shall be liberally construed as
6 giving to the authority full and complete power reasonably
7 required to give effect to the purposes hereof. The
8 provisions of this act are in addition to and not in derogation
9 of any power existing in the board of education
10 and the county court of the county of Braxton under
11 any constitutional or statutory provisions which they
12 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.
9. Severability.

§1. Public library; created; joint support by board of education and county court.

1 There is hereby created a public library, which shall be
2 known as the "Cabell County Public Library," which
3 shall be supported by the board of education of the county
4 of Cabell and the county court of Cabell county, as a
5 joint endeavor of the two governing authorities in the
6 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
2 without compensation. Before the first day of July, one
3 thousand nine hundred sixty-seven, the board of edu-
4 cation of the county of Cabell shall appoint two members
5 of the said board of directors—appointing one person for
6 a term of one year, and one person for a term of three
7 years; the county court of Cabell county shall appoint
8 two members of the said board of directors—appointing
9 one person for a term of two years, and one person for a
10 term of four years; and the city of Huntington shall ap-
11 point one member of the said board of directors for a
12 term of five years. Said initial terms of office shall com-
13 mence July first, one thousand nine hundred sixty-seven.
14 Each successor member of said board of directors shall be
15 appointed by that governing authority which shall have
16 appointed the predecessor member, and each such suc-
17 cessor member shall be appointed for a term of five years
18 each, except that any person appointed to fill a vacancy
19 occurring before the expiration of the term vacated shall
20 serve only for the unexpired term. A member shall be

21 eligible for reappointment. The governing authority
22 which appointed any member may remove such member
23 for cause. There shall be an annual meeting of the board
24 of directors on the second Friday in July in each year,
25 and a monthly meeting on the day in each month which
26 the board may designate in its bylaws. A special meet-
27 ing may be called by the president, the secretary or any
28 two members of the board, and shall be held only after
29 all the directors are given notice thereof. At all meet-
30 ings three members shall constitute a quorum. At each
31 annual meeting the board of directors shall elect, from
32 its membership, a president, a vice president, a secretary
33 and a treasurer: *Provided, however,* That the librarian
34 may be elected secretary and/or treasurer. The board of
35 directors shall adopt such bylaws, rules and regulations
36 as are necessary for its own guidance and for the admin-
37 istration, supervision and protection of the library and
38 all property belonging thereto. The board of directors
39 shall have all the powers necessary, convenient and ad-
40 visable for the proper operation, equipment and manage-
41 ment of the said library; and, except as otherwise spe-
42 cially provided in this act, shall have the powers and be
43 subject to the duties which are conferred and imposed,
44 respectively, upon library directors by sections six, seven,
45 eight, nine, ten and eleven of article one of chapter ten
46 of the West Virginia code. The board of directors shall
47 have the benefits arising out of the creation and con-
48 tinuance of the state library commission of West Vir-
49 ginia.

§3. Same—A body corporate.

1 The board of directors of the public library hereby
2 created shall be a corporation. As such it may contract
3 and be contracted with, sue and be sued, plead and be
4 impleaded, and shall have and use a common seal.

§4. Title to property.

1 The title to all property, both real and personal, now
2 devoted to public library purposes by the board of edu-
3 cation of the county of Cabell in connection with the
4 operation by it of a public library in the city of Hunting-
5 ton and the county of Cabell, shall, on July first, one

6 thousand nine hundred sixty-seven, vest in the board of
7 directors of the Cabell county public library hereby
8 created.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance and
2 operation of the public library hereby created and any
3 and all branches thereof the said supporting governing
4 authorities shall, upon written request by the board of
5 directors of the public library, levy annually as follows
6 within the respective taxing districts of the governing
7 authorities, on each one hundred dollars of assessed val-
8 uation of the property taxable in the area served by it
9 according to the last assessment for state and county
10 purposes, amounts not exceeding the following amounts
11 for the fiscal year beginning July first, one thousand nine
12 hundred sixty-seven:

13 A. The county court of Cabell county, for the first
14 year of the act and annually thereafter: Class one, one
15 and four-tenths cents; class two, two and eight-tenths
16 cents; class three, five and six-tenths cents; class four,
17 five and six-tenths cents.

18 B. The board of education of the county of Cabell
19 shall provide funds available to the board through spe-
20 cial and excess levies for the first year of the act: Class
21 one, one-half cent; class two, one cent; class three, two
22 cents; class four, two cents; for the second year of the
23 act: Class one, one cent; class two, two cents; class three,
24 four cents; class four, four cents; for the third year of
25 the act: Class one, one and four-tenths cents; class two,
26 two and eight-tenths cents; class three, five and six-tenths
27 cents; class four, five and six-tenths cents; and thereafter
28 the board shall provide from special and excess levies
29 as follows: Class one, one and four-tenths cents; class
30 two, two and eight-tenths cents; class three, five and
31 six-tenths cents; class four, five and six-tenths cents.

32 In addition to the aforesaid amounts which, upon writ-
33 ten request by said board, the governing authorities shall
34 levy, each such governing authority may support the pub-
35 lic library with any other general or special revenues or
36 excess levies. All income realized by the operation of

37 the public library from any sources other than the above
38 levies shall be used by the board of directors for support
39 of the public library.

§6. Deposit and disbursement of funds.

1 All money collected or appropriated by said two govern-
2 ing authorities for library purposes shall be deposited in
3 a special account of the board of directors of the Cabell
4 county public library, and shall be disbursed by that
5 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
2 shall be entitled to the benefits of the provisions of chap-
3 ter twenty-three and of articles seven and ten of chapter
4 five of the West Virginia code.

§8. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the West
2 Virginia code, and other general laws shall control this
3 act only to the extent that they do not conflict with the
4 special features hereof, or unless the intent to amend
5 this act is clear and unmistakable.

§9. 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
4 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.
24. Salary of judge.

§2. Jurisdiction.

1 That common pleas court of Cabell county shall have
2 jurisdiction within said county, common and concurrent
3 with the circuit court, of all felonies and misdemeanors
4 committed within said county, and shall have the super-
5 vision and control of criminal and civil proceedings be-
6 fore justices of said county, the police judge or mayor
7 of any incorporated city, town or village therein, by
8 appeal, mandamus, prohibition and certiorari; the said
9 court shall have original jurisdiction within said county
10 concurrent with the circuit court of Cabell county of all
11 suits and proceedings, and of all civil actions and proceed-
12 ings at law, except where it shall appear from the pleadings
13 that the matter in controversy exceeds the value of one
14 hundred thousand dollars; appellate jurisdiction in all
15 cases, civil and criminal, from judgments of justices of the
16 peace in said county, police judge or mayor of any incor-
17 porated city, town or village, or of any inferior tribunal
18 therein, wherein an appeal, writ of error, supersedeas or
19 writ of certiorari may be allowed. The foregoing jurisdic-
20 tion shall extend to and include, but not be restricted to all
21 matters and causes contained in chapter forty-eight of the

22 code of West Virginia commonly known as the adoption
23 law; all matters and causes contained in chapter forty-
24 eight of the code of West Virginia commonly known as
25 the change of name law; all matters and causes con-
26 tained in chapter forty-eight of the code of West
27 Virginia commonly known as the maintenance of ille-
28 gitimate children law; all matters and causes con-
29 tained in chapter forty-four of the code of West Vir-
30 ginia commonly known as the approval and compro-
31 mise of infants' claims for damages; all matters and
32 causes contained in chapter forty-eight of the code of
33 West Virginia commonly known as the issuance of mar-
34 riage licenses in cases of emergencies or extraordinary
35 circumstances; all matters and causes contained in chapter
36 thirty-seven of the code of West Virginia commonly
37 known as the approval of the sale, lease or mortgage of
38 infants' lands. The proceedings, modes of procedure,
39 powers and jurisdiction of this court in all of the fore-
40 going matters shall be common and concurrent with the
41 powers and jurisdiction of the circuit court, subject to the
42 right to proceed by appeal, writ of error, supersedeas or
43 certiorari in all matters to the circuit court of Cabell
44 county, as provided in section fifteen, chapter twenty-
45 eight, acts of the Legislature, regular session, one thou-
46 sand eight hundred ninety-three, and section twenty-six,
47 chapter ninety, acts of the Legislature, regular session,
48 one thousand nine hundred seventeen. This act shall be-
49 come effective on the first day of July, one thousand nine
50 hundred sixty-seven.

§24. Salary of judge.

1 The judge of the common pleas court of Cabell county
2 shall receive for his services seventeen thousand five
3 hundred dollars annually, payable monthly in install-
4 ments beginning on the first day of January, one thousand
5 nine hundred sixty-nine, which amount shall be pro-
6 vided for and paid by the county court, out of the treasury
7 of said county, which provision as to salary shall not
8 repeal the existing provision until the said first day of
9 January, one thousand nine hundred sixty-nine.

10 All acts or parts of acts inconsistent or in conflict with
11 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 juris-
2 diction within the said county of Cabell, concurrent with
3 the circuit court, of all matters and causes arising out
4 of or pertaining to annulment of marriages, separate
5 maintenance suits, divorce, alimony, the custody and
6 maintenance of children of litigants and the adjudica-
7 tion of property rights arising out of the same, and all
8 other matters and causes coming within the purview
9 of chapter forty-eight of the code of West Virginia, one
10 thousand nine hundred thirty-one, and all amendments
11 and reenactments thereof concerning domestic relations,

12 habeas corpus proceedings involving the award and cus-
13 tody of children under the age of twenty-one years;
14 of all matters and causes coming within the purview of
15 chapter forty-nine of the code of West Virginia, one
16 thousand nine hundred thirty-one, as enacted by chap-
17 ter one, acts of the Legislature of West Virginia, one
18 thousand nine hundred thirty-six, and of all amendments
19 and reenactments thereof, commonly known as the child
20 welfare law; of all matters and causes coming within
21 the purview of chapter eighteen of the code of West
22 Virginia, one thousand nine hundred thirty-one, and
23 all amendments and reenactments thereof, commonly
24 called the general school law; of all matters and causes
25 coming within the purview of chapter forty-eight of
26 the code of West Virginia, one thousand nine hundred
27 thirty-one, and of all amendments and reenactments
28 thereof, commonly known as the reciprocal dependency
29 law; of all matters and causes coming within the pur-
30 view of chapter forty-eight of the code of West Virginia,
31 one thousand nine hundred thirty-one, and all amend-
32 ments and reenactments thereof, commonly known as
33 the adoption law; and of all matters and causes coming
34 within the purview of chapter forty-eight of the code
35 of West Virginia, one thousand nine hundred thirty-one,
36 and of all amendments and reenactments thereof, com-
37 monly known as the change of name law; and of all
38 matters and causes coming within the purview of chap-
39 ter forty-eight of the code of West Virginia, one thousand
40 nine hundred thirty-one, and of all amendments and re-
41 enactments thereof, commonly known as the maintenance
42 of illegitimate children law; and of all matters and causes
43 coming within the purview of chapter forty-four, arti-
44 cle ten, section fourteen of the code of West Virginia,
45 one thousand nine hundred thirty-one, and of all amend-
46 ments and reenactments thereof, commonly known as the
47 approval of the compromising of infants' claims for dam-
48 ages; and of all matters and causes coming within the
49 purview of chapter forty-eight, article one, section six-c
50 of the code of West Virginia, one thousand nine hundred
51 thirty-one, and of all amendments and reenactments
52 thereof, commonly known as the issuance of marriage

53 license in case of emergency or extraordinary circum-
54 stances, and of all matters and causes coming within
55 the purview of chapter thirty-seven of the code of West
56 Virginia, one thousand nine hundred thirty-one, and of
57 all amendments and reenactments thereof, commonly
58 known as the approval of the sale, lease or mortgage
59 of infants' lands, and of all matters and causes coming
60 within the purview of all other or future acts of the
61 Legislature touching the subject matter of any and all
62 said laws and acts, and the amendments and reenact-
63 ments thereof, and of the common law of said state re-
64 lating to the subject matter thereof. Independently of
65 any of the foregoing matters, the said domestic relations
66 court shall also have and is hereby given what was
67 heretofore recognized as general equity jurisdiction con-
68 current with the circuit court, excepting in cases in-
69 volving the enforcement of criminal laws and labor dis-
70 putes, and excepting cases where it shall appear from
71 the pleadings that matter or thing in controversy exceeds
72 in value the sum of three hundred fifty thousand dollars.
73 The proceedings and modes of procedure and power and
74 jurisdiction conferred by law upon the circuit court or
75 the common pleas court in any and all of said matters
76 and causes are hereby conferred upon and shall be exer-
77 cised by said domestic relations court.

78 The court is authorized and empowered to appoint
79 and discharge one probation officer at a yearly salary
80 of six thousand five hundred dollars, which said salary
81 shall be paid by the county court monthly, and in addi-
82 tion thereto the said county court shall reimburse the
83 said probation officer of his or her necessary expenses
84 actually incurred monthly in the performance of official
85 duties including an allowance of ten cents per mile for
86 his or her automobile driven in the performance of offi-
87 cial duties. The court is further authorized and empow-
88 ered to appoint and discharge such medical, clerical and
89 secretarial assistance as shall enable it to discharge all
90 of the duties required of it under the provisions of this
91 act and the general laws of the state and such person
92 or persons shall be paid by the county court monthly upon
93 the written approval of the judge of the said court.

§4. Salary of judge.

1 The judge of the domestic relations court of Cabell
2 county shall receive for his services seventeen thousand
3 five hundred dollars, annually, payable monthly in install-
4 ments beginning on the first day of January, one thousand
5 nine hundred sixty-nine, which amount shall be pro-
6 vided for and paid by the county court, out of the treas-
7 ury of said county, which provision as to salary shall
8 not repeal the existing provision until the said first day
9 of January, one thousand nine hundred sixty-nine.

10 All acts or parts of acts inconsistent or in conflict with
11 this act are hereby repealed.

C

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
2 Legislature of West Virginia, regular session, one thou-

3 sand nine hundred twenty-seven, relating to the estab-
4 lishment of a special tribunal known as the county
5 court of Grant county under section twenty-nine, article
6 eight of the constitution of West Virginia, be and
7 the same is hereby repealed, and that after the thirty-
8 first day of December, one thousand nine hundred sixty-
9 eight, the county court of Grant county shall be com-
10 posed of three commissioners, as established by section
11 twenty-two, article eight of the constitution of West Vir-
12 ginia, and who, in all respects, shall be elected, com-
13 pensated, regulated, controlled and governed by the pro-
14 visions of the constitution and the laws of the state of
15 West Virginia respecting county courts generally. At the
16 next general election to be held in November, one thousand
17 nine hundred sixty-eight, there shall be elected by the
18 voters of said county of Grant three commissioners of
19 said county court; the commissioners shall hold their
20 office for the term of six years, except that at the first
21 meeting of said commissioners they shall designate by
22 lot, or otherwise, in such manner as they may determine,
23 one of their number, who shall hold his office for the
24 term of two years, one for four years, and one for six
25 years, so that one shall be elected every two years: *Pro-*
26 *vided, however,* That the commissioners now in office
27 shall continue in their respective offices and in the per-
28 formance of the duties thereof until the expiration of
29 their terms of office, and will be regulated, controlled,
30 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.

5 All funds in said special jail fund shall be transferred
6 to the fund created by this act.

CHAPTER 212

(House Bill No. 1149—By Mr. Marsteller 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
2 county of Harrison concurrent with the circuit court of
3 all felonies and misdemeanors committed within said
4 county of Harrison. Said court shall also have jurisdic-
5 tion concurrent with the circuit court of said county,
6 and shall have the supervision and control of criminal
7 proceedings before justices of said county, the mayor of
8 any incorporated city, town or village, or other police

9 court of any incorporated city, town or village therein,
10 by appeal, mandamus, prohibition and certiorari. It shall
11 also have jurisdiction concurrent with said circuit court
12 for the collection of all recognizances taken by said crimi-
13 nal court and for the collection of all bonds taken by said
14 criminal court, or by the clerk thereof in vacation, to
15 secure the payment of judgments for fines and costs ren-
16 dered by said court, and for the collection of all recog-
17 nizances and bonds taken by the justices of said county
18 or the mayor of any incorporated city, town or village
19 in said county in relation to criminal proceedings before
20 said justices or mayor. The said court shall also have
21 jurisdiction concurrent with the circuit court of said
22 county in all matters set forth in articles one, two, three,
23 four, five, seven, eight and nine of chapter forty-eight,
24 code of West Virginia, one thousand nine hundred thirty-
25 one, as amended.

§4. Salary of judge.

1 The judge of the criminal court of Harrison county,
2 West Virginia, shall from and after the first day of
3 July, one thousand nine hundred sixty-seven, receive
4 for his services a salary of fifteen thousand dollars per
5 year; said amount to be paid in twelve equal monthly
6 installments from year to year by the county court of
7 said county, out of funds of said county, in the manner
8 provided by statute. The salary of said judge shall con-
9 tinue as provided in section four, chapter thirty-one,
10 acts of the Legislature, regular session, one thousand nine
11 hundred sixty-four, until the first day of July, one thou-
12 sand 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.
4. Qualification of members of the authority.

§3. Members of authority.

1 The management and control of the "Benedum Air-
2 port Authority," its property, operations, business and
3 affairs, shall be lodged in a board of ten persons who
4 shall be known as the members of the authority and who
5 shall be appointed for a term of three years each, five
6 members by the county court of Harrison county, and
7 five members by the county court of Marion county, ex-
8 cept that, as to the first board appointed, the term of one
9 member appointed by each county court shall expire on
10 the first day of March next ensuing, the term of another
11 member appointed by each county court shall expire
12 on the first day of the following March, and the term
13 of the third original member appointed by each county
14 court shall expire on the first day of the next following
15 March. All members of the board except the members
16 of the first board shall be appointed for full three-year
17 terms. As a member's term expires, the county court
18 which appointed such member shall appoint a member
19 for a full term of three years. A member may be re-
20 appointed for such additional term or terms as the county
21 court appointing him may deem proper. If a member
22 resigns, is removed or for any reason his membership
23 terminates during his term of office, a successor member
24 to fill out the remainder of his term shall be appointed
25 by the county court which appointed him. Members in
26 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.]

AN ACT to amend and reenact 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, 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 hun-
2 dred sixty-nine, the judge of the court of common pleas
3 then taking office shall for his services receive seventeen
4 thousand five hundred dollars per annum, and after the
5 first day of January, one thousand nine hundred seventy-
6 three, the judge of the court of common pleas then taking
7 office shall for his services receive seventeen thousand
8 five hundred dollars per annum, to be paid in monthly
9 installments out of the county treasury of Kanawha
10 county, out of the funds of said treasury, in the manner
11 provided by statute. The salaries of the present judges
12 of said court shall continue as provided in chapter thirty-
13 two, acts of the Legislature, regular session, one
14 thousand nine hundred sixty-four, until the dates afore-
15 said.

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
 2 county, West Virginia, shall, from and after the first
 3 day of January, one thousand nine hundred seventy-
 4 three, receive for his services a salary in the amount of
 5 seventeen thousand five hundred dollars per annum, to
 6 be paid in monthly installments out of the county treasury
 7 of Kanawha county in the manner provided by statute.
 8 The salary of said judge shall continue as provided in
 9 chapter thirty-three, acts of the Legislature, regular
 10 session, one thousand nine hundred sixty-four, until the
 11 first day of January, one thousand nine hundred seventy-
 12 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.

§9. Salary of judge.

1 The judge of the intermediate court of Kanawha county,
2 West Virginia, shall, from and after the first day of
3 January, one thousand nine hundred seventy-five, re-
4 ceive for his services a salary in the amount of seventeen
5 thousand five hundred dollars per annum, to be paid in
6 monthly installments out of the county treasury of Kana-
7 wha county, out of funds of said treasury, in the manner
8 provided by statute. The salary of said judge shall con-
9 tinue as provided in chapter one hundred sixty-eight, acts
10 of the Legislature, regular session, one thousand nine
11 hundred sixty-five, until the first day of January, one
12 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, 1967; 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 circuit 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

2 the circuit court of Kanawha county, West Virginia (thir-
3 teenth judicial circuit), may appoint a law assistant, who
4 shall be a person duly licensed to practice law in this
5 state, and who shall discharge such secretarial duties
6 as may be assigned to him by the judge; said law assistant,
7 while acting as such, shall not engage in the practice of
8 law, but shall devote his time to the duties of his office,
9 and may be removed and his successor appointed at any
10 time by the judge. Said law assistant shall receive a
11 salary of nine thousand dollars per year payable monthly,
12 and the county court of Kanawha county shall annually,
13 at its levy session, provide for the payment out of general
14 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
2 the sum of thirteen thousand dollars per annum, to be paid
3 in monthly installments out of the treasury of Marshall
4 county. The county court shall annually make provision
5 by appropriate levy and appropriation for the payment of
6 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
2 established by chapter eighteen, acts of the Legisla-
3 ture, regular session, one thousand eight hundred ninety-
4 three, but with its name and jurisdiction changed as in
5 this act provided, shall continue to have jurisdiction
6 within the county of Mercer, concurrent with the cir-
7 cuit court of said county, of all felonies, misdemeanors
8 and offenses committed or which may be committed
9 within the said county of Mercer, and shall also have,
10 concurrent with the circuit court of said county, juris-
11 diction, supervision and control by appeal, mandamus,
12 prohibition and certiorari of all proceedings before jus-
13 tices of the peace of said county or the police court,
14 mayor or other constituted tribunal, board or commis-
15 sion of any city, town or village in said county. The
16 said court shall likewise have jurisdiction within said
17 county of Mercer, concurrent with the circuit court
18 of said county, of all suits and proceedings in equity,

19 in all actions of ejectment, and in all civil actions or
20 proceedings at law, except where it shall appear from
21 the pleadings that the matter or thing in contro-
22 versy in any such suit, proceeding or action, exclu-
23 sive of interest and costs, exceeds in value the sum
24 of fifty thousand dollars, and all summary proceed-
25 ings at law and any other manner of action or proceed-
26 ing at law authorized by the general laws of West
27 Virginia, as well as of appeals from judgments of the
28 justices of said county when such appeals shall lie to
29 the said court in the same manner and under the same
30 regulations as provided in the general laws for appeals
31 from justices. The said court shall likewise have jurisdic-
32 tion within said county of Mercer, concurrent with the
33 circuit court of said county, of suits for divorce, annul-
34 ment of marriage and separate maintenance, of bastardy
35 proceedings and actions for maintenance of illegitimate
36 children as provided by the general laws of West Vir-
37 ginia, and the said court shall continue to have juris-
38 diction within said county of proceedings for adoption
39 and all juvenile and other matters of which the afore-
40 said criminal court of Mercer county was given juris-
41 diction by the general laws of West Virginia or of
42 which the court hereby established may be given juris-
43 diction by such general laws.

§4. Salary of judge.

1 The judge of said intermediate court shall receive
2 for his services the sum of fifteen thousand dollars per
3 annum to be paid out of the county treasury of said
4 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
2 hereby authorized and empowered to sell and transfer to
3 the state of West Virginia, a certain tract or parcel of
4 land owned by the county of Ohio, located on Roney's
5 Point in Triadelphia district of said county, commonly
6 known as the Ohio county sanitarium, being approxi-
7 mately three hundred seventy-six acres, more or less:
8 *Provided*, That the conveyance and transfer be condi-
9 tioned upon an agreement with the state that the said
10 property will be used solely for mental or physical health
11 and rehabilitation purposes, or any other purpose of a
12 similar nature thereto, but expressly excluding therefrom
13 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.
6. Effect of future amendments of general law.
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 opera-
 2 tion of said public library and any and all branches
 3 thereof, and to provide funds for the purchase, acqui-
 4 sition and construction of a new library or libraries and
 5 library facilities, the board of education of Ohio county
 6 and the board of commissioners of Ohio county, upon
 7 request by the said board of trustees, shall each levy
 8 annually, on each one hundred dollars of the assessed
 9 valuation of property within the limits of Ohio county,
 10 according to the last assessment thereof for state and
 11 county purposes, amounts not exceeding the following

12 amounts for each fiscal year as follows: By the board of
13 education of Ohio county, three cents on one hundred
14 dollars of said assessed valuation; by the board of com-
15 missioners of Ohio county, one and two-tenths cents on
16 Class I, two and four-tenths cents on Class II, four and
17 eight-tenths cents on Class III, and four and eight-tenths
18 cents on Class IV, of each one hundred dollars of said
19 assessed valuation. The proceeds of these levies shall
20 be for the exclusive use of said public library, any
21 branches thereof, and any other public libraries acquired
22 by purchase or otherwise by said board of trustees, and
23 shall be disbursed only upon order of the said board of
24 trustees, evidenced by warrants drawn on the sheriff of
25 Ohio county, and signed by the chairman and secretary-
26 treasurer of said board. Said levies shall be included with-
27 in the limits and be a part of the levy or levies authorized
28 to be made by the said board of education of Ohio county,
29 and the board of commissioners of Ohio county.

30 The proceeds of said levies may be used by the board
31 of trustees of said public library for the maintenance,
32 support, operation, equipping and management of said
33 library, and any and all other public libraries or branch
34 libraries acquired by the said board, either by gift or
35 purchase, the purchase of real estate, the construction
36 and equipping of buildings, either by way of replace-
37 ment of present library property and facilities or addi-
38 tional libraries and library facilities.

39 The board is hereby vested with authority to accumu-
40 late out of the proceeds of said levies any surplus thereof
41 over and above the amount currently required for the
42 proper operation, maintenance and management of pres-
43 ent library facilities from year to year for a period not
44 to exceed five years and such accumulated surplus may
45 be used for the purchase of land, construction of build-
46 ings and the equipping of such buildings for library
47 purposes. The board is further vested with full power
48 and authority to borrow funds from such sources as the
49 same may be available for the purchase of land, the
50 construction of new buildings and the equipping of said
51 buildings for library purposes, and to pledge by the
52 execution and the delivery of appropriate legal instru-

53 ments, any real estate the said board of trustees may
54 now own or which it may hereafter acquire for the re-
55 payment of such borrowed funds; the principal thereof
56 and interest thereon may be paid out of the proceeds
57 of the levies hereinbefore authorized: *Provided, how-*
58 *ever,* That not more than thirty-three and one-third per
59 cent of the proceeds from said levies may be so used
60 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.

§6. Effect of future amendments of general law.

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 author-
2 ized and empowered to build, equip, maintain and oper-
3 ate a county cannery to be erected upon county-owned
4 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 author-
2 ized to make expenditures from its general fund or from
3 any special fund to build, equip, maintain and operate
4 the county cannery and may set and charge fees for its
5 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.

- 3. Sale of Fitzpatrick Park property for industrial development purposes authorized.
- 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

10 equal to or in excess of the fair market value of the
11 property. The Legislature hereby finds and declares that,
12 in the particular circumstances existing in regard to the
13 said property, the method of accomplishing its industrial
14 development, which is hereby declared to be a public pur-
15 pose, would be best accomplished by the method set forth
16 in this section.

17 Based on the above legislative findings and declarations,
18 the county court of Raleigh county is hereby authorized
19 and empowered to sell and convey that certain tract or
20 parcel of land, known as Fitzpatrick Park, located in
21 Town District, Raleigh county, to any person, including,
22 but not limited to, a private or public corporation, under
23 such terms and conditions as, in the sole discretion of said
24 county court, will insure the use of the land for the public
25 purpose of industrial development.

§4. Severability.

If any provision of this act or the application thereof to
2 any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the act, and to
5 this end each and every provision of this act is declared
6 to be severable. The Legislature hereby declares that it
7 would have enacted the remaining provisions of this act
8 even if it had known that any provisions thereof would
9 be declared to be unconstitutional or invalid, and that it
10 would have enacted this act even if it had known that the
11 application thereof to any person or circumstance would
12 be held to be unconstitutional or invalid.

C

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 hun-
dred 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.

§9. Salary of judge.

1 The judge of the criminal court of Raleigh county, West
2 Virginia, shall from and after the first day of January,
3 one thousand nine hundred sixty-nine, receive for his
4 services a salary in the amount of ten thousand five
5 hundred dollars per annum, to be paid in monthly in-
6 stallments out of the county treasury of Raleigh county,
7 out of funds of said treasury, in the manner provided
8 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
2 to provide all record and other books and stationery that
3 may be necessary for said court. Likewise a seal for
4 said court shall be provided and full faith and credit
5 shall be given to the records of the court and certificates
6 of its judge or clerk in like manner and with the same
7 effect as if the same were records of the circuit court
8 similarly authenticated. The county court of Wood
9 county shall likewise furnish such rooms, furniture and
10 equipment for the proper conduct and administration of
11 said court and shall, through annual levy and appropri-
12 ations, make provision for the payment for all such rooms,
13 supplies and equipment. It shall be the duty of the county
14 court of Wood county to pay the salary of a full-time
15 secretary in the office of the judge of said court, to be
16 appointed by him, whose compensation shall be not less
17 than four thousand dollars nor more than five thousand
18 five hundred dollars annually, to be determined by the
19 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

3 to transfer into such fund, sums raised by levy and such
4 amounts as it shall deem proper from unexpended or
5 surplus moneys or from any other special fund, to borrow
6 money, to accept gifts, and to accept grants and federal
7 money.

§2. Expenditures from fund; purposes.

The county court of Wyoming county is hereby author-
2 ized and empowered to make expenditures from the hos-
3 pital fund herein created for the purposes of purchasing or
4 acquiring land, building, equipping, staffing and main-
5 taining a hospital and/or a nursing home, or for any other
6 purpose consistent with this act as the county court shall
7 deem 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, west-bound 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

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, 1967.]

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.

HOUSE RESOLUTION NO. 36

(By Mr. Mulneix)

[Adopted March 9, 1967.]

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.

SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Carson, Mr. President, and Mr. Carrigan)

[Adopted February 7, 1967.]

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 hundred 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.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1968

FIRST EXTRAORDINARY SESSION (January 3-January 10, 1968)

Chapter 1

(Senate Bill No. 1—By Mr. Carson, Mr. President)

[Passed January 6, 1968; in effect ninety days from passage. Approved by the Governor.]

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

3 United States shall be apportioned among the several
4 counties of the state, arranged into five congressional
5 districts, numbered as follows, that is to say:

6 First District: Brooke, Calhoun, Doddridge, Gilmer,
7 Hancock, Harrison, Marion, Marshall, Ohio, Tyler and
8 Wetzel.

9 Second District: Barbour, Berkeley, Grant, Greenbrier,
10 Hampshire, Hardy, Jefferson, Lewis, Mineral, Monon-
11 galia, Monroe, Morgan, Pendleton, Pocahontas, Preston,
12 Randolph, Taylor, Tucker, Upshur and Webster.

13 Third District: Boone, Braxton, Clay, Kanawha,
14 Nicholas, Putnam and Roane.

15 Fourth District: Cabell, Jackson, Lincoln, Logan,
16 Mason, Pleasants, Ritchie, Wayne, Wirt and Wood.

17 Fifth District: Fayette, McDowell, Mercer, Mingo,
18 Raleigh, Summers and Wyoming.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1968

REGULAR SESSION

CHAPTER 1

(House Bill No. 321—By Mr. Harman)

[Passed February 6, 1968; in effect ninety days from passage. Approved by the Governor.]

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
2 judge thereof in vacation, the same shall be ordered
3 filed with the clerk of such court, and the court or judge
4 thereof shall appoint a day for the hearing of such
5 petition and the examination under oath of the parties
6 in interest. And the court or judge thereof may adjourn
7 the hearing of such petition or the examination of the
8 parties in interest from time to time, as the nature of
9 the case may require. Between the time of the filing
10 of the petition for adoption and the hearing thereon,
11 the court may cause a discreet inquiry to be made
12 respecting the child, for the purpose of ascertaining
13 whether such child is a proper subject for adoption and

14 shall cause a discreet inquiry to be made respecting
15 the home of the petitioner or petitioners to determine
16 whether it is a suitable home for such child. Such in-
17 quiry shall be made by any suitable person or agency
18 designated by the court, and the results thereof shall
19 be embodied in a full written report and shall be sub-
20 mitted to the court at or prior to the hearing upon the
21 petition and shall be filed with the records of the pro-
22 ceeding and become a part thereof. If it shall be neces-
23 sary, under the provisions of this article, that a discreet
24 and suitable person shall be appointed to act as the
25 next friend of the child sought to be adopted, then and
26 in that case the court or judge thereof shall order a
27 notice of the petition and of the time and place when
28 and where the appointment of next friend will be made,
29 to be published as a Class II legal advertisement
30 in compliance with the provisions of article three, chap-
31 ter fifty-nine of this code, and the publication area for
32 such publication shall be the county where such court
33 is located. At the time and place so named and upon
34 due proof of the publication of such notice, the court
35 or judge thereof shall make such appointment, and shall
36 thereupon assign a day for the hearing of such petition
37 and the examination of the parties interested. Upon
38 the day so appointed the court or judge thereof shall
39 proceed to a full hearing of the petition and examina-
40 tion of the parties in interest, under oath and of such
41 other witnesses as the court or the judge thereof may
42 deem necessary to fully develop the standing of the peti-
43 tioners and their responsibility, and the status of the
44 child sought to be adopted; and if the court or judge
45 thereof shall be of the opinion from the testimony that
46 the facts stated in the petition are true, and if upon
47 examination the court or the judge thereof is satisfied
48 that the petitioner is, or the petitioners are, of good
49 moral character, and of respectable standing in the com-
50 munity, and are able properly to maintain and educate
51 the child sought to be adopted, and that the best in-
52 terests of the child would be promoted by such adoption,
53 then and in such case the court or judge thereof shall
54 make a decree reciting at length the facts proved and
55 the name by which the child shall thereafter be known,

56 and declaring and adjudging that from the date of such
57 decree, the rights, duties, privileges and relations, there-
58 tofore existing between the child and his or her parents,
59 shall be in all respects at an end, and that the rights,
60 duties, privileges and relations between the child and
61 his or her parent or parents by adoption shall thence-
62 forth in all respects be the same, including the right of
63 inheritance, as if the child had been born to such adopt-
64 ing parent or parents in lawful wedlock, except only
65 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-2. Definitions.
- 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.
- 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.
- 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.

19-2B-8. Exemptions.

19-2B-10. Additional prohibitions.

§19-2B-2. Definitions.

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

3 (a) "Department" means the department of agricul-
4 ture of the state of West Virginia;

5 (b) "Commissioner" means the commissioner of agri-
6 culture of the state of West Virginia and his duly author-
7 ized representatives;

8 (c) "Person" means any individual, partnership, cor-
9 poration, association, or other entity;

10 (d) "Contract veterinarian" means a graduate of a
11 school of veterinary medicine accredited by the Ameri-
12 can Veterinary Medical Association who provides services
13 for the department under contract;

14 (e) "Veterinary supervisor" means a graduate of a
15 school of veterinary medicine accredited by the Ameri-
16 can Veterinary Medical Association, and employed by the
17 department to inspect and supervise the inspection of
18 animals, carcasses, meat, meat food products or meat by-
19 products;

20 (f) "Meat inspector" means an individual employed
21 by the department to inspect animals, carcasses, meat,
22 meat food products or meat by-products under the super-
23 vision of a veterinary supervisor;

24 (g) "State inspection" means inspection services con-
25 ducted by the department at or in connection with estab-
26 lishments required to be licensed by this article;

27 (h) "W. Va. condemned," or abbreviation thereof,
28 means the animal so marked has been inspected and
29 found to be in a dying condition, or to be affected with
30 any other condition or disease that would require con-
31 demnation of its carcass;

32 (i) "W. Va. inspected and condemned," or abbrevia-
33 tion thereof, means that the carcass, meat, meat food
34 product or meat by-product, so marked or so identified,
35 is unwholesome or adulterated and shall be disposed of
36 in the manner prescribed by the commissioner;

37 (j) "W. Va. retained" means that the carcass, meat,
38 meat food product or meat by-product so identified is
39 held for further examination by a veterinary supervisor
40 or contract veterinarian to determine its disposal;

41 (k) "W. Va. suspect" means that the animal so
42 marked and identified is suspected of being affected with
43 a disease or condition which may require its condemna-
44 tion, in whole or in part, when slaughtered, and is sub-
45 ject to further examination by a contract veterinarian
46 or veterinary supervisor to determine its disposal;

47 (l) "W. Va. inspected and passed," or abbreviation
48 thereof, means that the carcass, meat, meat food product
49 or meat by-product, so marked or so identified, was at
50 the time it was so marked or so identified found to be
51 wholesome;

52 (m) "Country" when used in the name of a meat,
53 meat food product or meat by-product means that such
54 meat, meat food product or meat by-product was actually
55 prepared on a farm;

56 (n) "Federal inspection" means the meat and poultry
57 inspection service conducted or approved by the meat
58 inspection division and the poultry inspection division
59 of the United States department of agriculture;

60 (o) "Federal Meat Inspection Act" means the act
61 so entitled, approved March four, one thousand nine hun-
62 dred seven, as amended by the Wholesome Meat Act.

63 (p) "Federal Poultry Products Inspection Act"
64 means the act of Congress approved August twenty-
65 eighth, one thousand nine hundred fifty-seven, as
66 amended;

67 (q) "Inspection legend" means a mark or a statement
68 on a carcass, meat, meat food product or meat by-product
69 indicating the same has been inspected and passed in
70 this state under the provisions of this article;

71 (r) "Meat label" means a display of written, printed
72 or graphic matter on a container indicating the carcass,
73 meat, meat food products or meat by-products contained
74 therein have been inspected and passed in this state
75 under the provisions of this article;

76 (s) "Official inspection mark" means any symbol pre-

77 scribed by the commissioner for the purpose of identifying
78 the inspection status of any article so inspected;

79 (t) "Establishment number" means an official num-
80 ber assigned by the commissioner to each establishment
81 and included on the inspection legend and meat label to
82 identify all inspected and passed carcasses, meat, meat
83 food products and meat by-products handled in that
84 establishment;

85 (u) "Container" and "package" shall include but not
86 be limited to any box, can, tin, cloth, plastic or any other
87 receptacle, wrapper or cover;

88 (v) "Sell" means offer for sale, expose for sale, have
89 in possession for sale, exchange, barter or trade;

90 (w) "Animals" mean cattle, swine, sheep, goats and
91 rabbits;

92 (x) "Carcass" means all or any part of a slaughtered
93 animal, including viscera, which is capable of being used
94 for human consumption;

95 (y) "Meat" means the edible part of the muscle of
96 animals, which is skeletal or which is found in the
97 tongue, in the diaphragm, in the heart or in the esopha-
98 gus, with or without the accompanying or overlying fat,
99 and the portions of bone, skin, sinew nerve and blood
100 vessels which normally accompany the muscle tissue
101 and which are not separated from it in the process of
102 dressing; it does not include the muscle found in the
103 lips, snout or ears;

104 (z) "Meat food product" means any article of food
105 for human consumption or any article which enters into
106 the composition of food for human consumption, which
107 is derived or prepared in whole or in part from any por-
108 tion of any animal, except organotherapeutic substances,
109 meat juices, meat extract and the like which are only
110 for medicinal purposes and are advertised only to the
111 medical profession; any edible part of the carcass which
112 has been manufactured, cured, smoked, processed or
113 otherwise treated shall be considered a meat food prod-
114 uct;

115 (aa) "Meat by-product" means any edible part of an
116 animal other than meat or meat food product;

117 (bb) "Denature" means the uniform application of
118 sufficient quantities of crude carbolic acid, cresylic dis-
119 infectant, or any other agent approved by the commis-
120 sioner upon and into the freely slashed flesh of any car-
121 cass or product condemned;

122 (cc) "Decharacterization" means the uniform appli-
123 cation of sufficient quantities of dye, charcoal, malodor-
124 ous fish oil, or any other agent approved by the commis-
125 sioner, upon and into the freely slashed flesh of car-
126 casses or meat not being rendered, so as to unequivocally
127 preclude its use for human food;

128 (dd) "Inedible" means meat, meat food prod-
129 ucts and meat by-products derived from 4-D or con-
130 demned animals, or animals which the meat, meat food
131 products or meat by-products are otherwise unsuitable
132 for human consumption and shall include meat, meat
133 food products or meat by-products regardless of origin,
134 which have deteriorated so far as to be unfit for human
135 consumption;

136 (ee) "4-D animal" means an animal that is dead, dy-
137 ing, down or diseased on arrival at the slaughterhouse;

138 (ff) "Commercial slaughterer" means a person en-
139 gaged for profit in this state in the business of slaughter-
140 ing or dressing animals for human consumption which
141 are to be sold or offered for sale through a commercial
142 outlet or establishment, and shall include a person who
143 in addition to such commercial slaughtering also engages
144 in the business of a custom slaughterer;

145 (gg) "Custom slaughterer" means a person engaged
146 for profit in this state in the business of slaughtering or
147 dressing animals for human consumption which are not
148 to be sold or offered for sale through a commercial out-
149 let or establishment, and shall include the boning or
150 cutting up of carcasses of such animals and the grinding,
151 chopping and mixing of the carcasses thereof;

152 (hh) "Slaughterhouse" shall include but not be lim-
153 ited to all buildings, structures and facilities used in the
154 slaughtering or dressing of animals for human consump-
155 tion;

156 (ii) "Distributor" means a person engaged for profit

157 in this state in the business where carcasses, meat, meat
158 food products or meat by-products are received from
159 state or federally inspected establishments, or approved
160 by the United States department of agriculture, and who
161 stores and distributes to commercial outlets, processors
162 or individuals, and who conducts no processing other
163 than wrapping and/or cutting of carcasses or its parts
164 into quarters or wholesale cuts;

165 (jj) "Processor" means a person who engages for
166 profit in this state in the business of packing or packaging
167 carcasses, meat, meat food products or meat by-products
168 for human consumption or a person engaged for profit
169 in the business of curing, salting, smoking, processing or
170 other preparing of carcasses, meat, meat food products or
171 meat by-products for human consumption;

172 (kk) "Commercial processor" means a processor for
173 commercial outlets or distributors and shall include the
174 business of custom processing;

175 (ll) "Custom processor" means a processor in which
176 the meat, meat food products or meat by-products de-
177 rived through processing cannot be sold or be offered for
178 sale through a commercial outlet, or distributor;

179 (mm) "Processing plant" shall include but not be lim-
180 ited to all buildings, structures, chill rooms, aging rooms,
181 processing rooms, sanitary facilities, other facilities, and
182 utensils, used by or in connection with the operations of
183 a processor;

184 (nn) "Establishment" means any slaughterhouse, pro-
185 cessing plant or distributor in this state;

186 (oo) "Related industries" means rendering plants,
187 refrigerated meat warehouses, food lockers, meat and
188 poultry wholesalers, brokers, pet food manufacturers,
189 other animal food manufacturers, animal impoundments
190 whose main source of food supply is derived from the raw
191 meats, transportation firms and private carriers;

192 (pp) "Commercial outlet" means a place of business
193 in this state and shall include all retail stores and public
194 eating places in which carcasses, meat, meat food prod-
195 ucts or meat by-products are stored, sold or offered for
196 sale for human consumption by the purchaser or others;

197 (qq) "Commercial dealer" means any person who op-
198 erates one or more commercial outlets and who sells or
199 offers for sale thereat any carcasses, meat, meat food
200 products or meat by-products for human consumption,
201 and who does not can, cook, cure, dry, smoke or render
202 any carcass, meat, meat food products or meat by-
203 products at such outlets and who conducts no slaughter-
204 ing or preparing of carcasses, meat, meat food products
205 or meat by-products at such outlets other than boning or
206 cutting up of carcasses, and other than grinding, chopping
207 and mixing operations at such outlets with respect to
208 trim or meat derived only from such boning or cutting
209 up operations;

210 (rr) "Custom slaughtered carcass or meat," "custom
211 slaughtered meat food products" or "custom slaughtered
212 meat by-products" mean, respectively, carcasses, meat,
213 meat food products or meat by-products which were
214 slaughtered, dressed or otherwise processed by a custom
215 slaughterer;

216 (ss) "Wholesome" means sound, healthful, clean, and
217 otherwise fit for human consumption;

218 (tt) "Unwholesome" means any animal, carcass, meat,
219 meat food product or meat by-product which:

220 (i) Is unsound, injurious to health, contains any bio-
221 logical residue not permitted under reasonable rules and
222 regulations promulgated by the commissioner, or is other-
223 wise unfit for human consumption,

224 (ii) Consists in whole or in part of any filthy, putrid,
225 or decomposed substance,

226 (iii) Was processed, prepared, packed, or held under
227 insanitary conditions so that the same may have become
228 contaminated or may have become injurious to health,
229 or

230 (iv) Was produced in whole or in part from animals
231 which died other than by slaughter;

232 (uu) "Adulterated" means any animal, carcass, meat,
233 meat food product or meat by-product:

234 (i) Which bears or contains any poisonous or dele-
235 terious substance, whether added or natural, that may

- 236 render it injurious to health or unfit for human consump-
237 tion,
- 238 (ii) Concerning which a substance has been substi-
239 tuted, wholly or in part,
- 240 (iii) In which damage or inferiority has been con-
241 cealed in any manner,
- 242 (iv) Concerning which any casing has been used
243 which contains any dye or artificial coloring not author-
244 ized by reasonable rules and regulations promulgated by
245 the commissioner,
- 246 (v) From which a valuable constituent has been in
247 whole or in part omitted or abstracted, or
- 248 (vi) To or with which any substance has been added,
249 mixed or packed for the purpose of increasing its bulk
250 or weight, or so as to reduce its quality or strength, or
251 to make it appear better or of greater value than it is,
252 unless authorized by reasonable rules and regulations
253 promulgated by the commissioner;
- 254 (vv) "Licensee" means any person licensed under the
255 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.

- 1 (a) No commercial slaughterer, custom slaughterer,
2 commercial processor, custom processor or distributor
3 shall operate an establishment unless he shall first have
4 obtained a license from the commissioner so to do, which
5 license remains unsuspended and unrevoked. Applica-
6 tion for such license shall be made on forms prescribed
7 by the commissioner and shall be accompanied by the
8 fee required in this section. When such a person operates
9 as a commercial slaughterer and also operates as a com-
10 mercial processor, whether such operations are located
11 on the same or different premises in this state, each
12 such operation shall be licensed. When such a person
13 operates two or more slaughterhouses not on the same
14 premises in this state, or operates two or more processing
15 plants not on the same premises in this state, a separate

16 license shall be required for each such slaughterhouse
 17 and each such processing plant. Each license shall
 18 expire on the thirtieth day of June next following its
 19 issuance, and the annual fee for each such license shall be
 20 based upon the average number of animals slaughtered
 21 per year and upon the average finished product pound-
 22 age processed per year as set forth in the following table,
 23 except that the annual fee for the license of a person who
 24 operates solely as a custom slaughterer shall be ten dollars
 25 or as a custom processor shall be five dollars or as a dis-
 26 tributor shall be five dollars.

27	Average Number of Animals	Annual
28 Class	Slaughtered Per Year	Fee
29 Small	1 - 500	\$10.00
30 Medium	501 - 1000	\$25.00
31 Large	1001 - 5000	\$50.00
32 Extra Large	Over 5000	\$75.00

33	Average Finished Product	Annual
34 Class	Poundage Processed Per Year	Fee
35 Small	1 - 25,000	\$10.00
36 Medium	25,001 - 250,000	\$25.00
37 Large	250,001 - 1,000,000	\$50.00
38 Extra Large	Over 1,000,000	\$75.00

39 Before issuing any license required by the provisions
 40 of this section, the commissioner shall inspect the appli-
 41 cant's establishment and if the commissioner is satisfied
 42 that the establishment is clean and sanitary, is properly
 43 equipped, and is in conformity with the provisions of
 44 this article and any reasonable rules and regulations
 45 promulgated by the commissioner, and if he is further
 46 satisfied that the carcasses, meat, meat food products
 47 or meat by-products to be sold or offered for sale there-
 48 from through commercial outlets will be wholesome
 49 and unadulterated, he shall issue the license. Each
 50 license shall specify the location of the establishment
 51 at which the licensee shall carry on his operations. The
 52 license shall also contain the establishment number
 53 assigned by the commissioner.

54 (b) When a licensee changes the location of his
 55 establishment, he shall not operate at such new location
 56 unless and until his establishment at such new location

57 has been inspected by the commissioner and a new
58 license has been issued, or when a licensee leases, sells,
59 changes name, incorporates or in any other way changes
60 the status of his establishment with relationship to
61 issuance of current license, the new lessee, owner, etc.,
62 shall not operate at the location unless and until the
63 establishment at such location has been inspected and
64 approved by the commissioner and a new license has
65 been issued in accordance with the provisions of sub-
66 section (a) of this section: *Provided*, That a fee shall
67 not be charged for such new license during the license
68 year in which the change in location or change in owner-
69 ship, name or leasing was made.

70 (c) The commissioner may refuse to grant a license
71 or may suspend or revoke a license issued under the
72 provisions of this section whenever he finds that the
73 applicant's or licensee's establishment, as the case may
74 be, is not clean or sanitary, or is not properly equipped,
75 or is not in conformity with the provisions of this article
76 or any reasonable rules and regulations promulgated
77 by the commissioner, or if he finds that the carcasses,
78 meat, meat food products or meat by-products to be
79 sold or offered for sale therefrom through commercial
80 outlets are or will be unwholesome or adulterated. Upon
81 the refusal to grant a license, the commissioner shall
82 furnish a written statement to the applicant specifying
83 the grounds for such refusal. No such revocation or
84 suspension of a license shall be effective until the licensee
85 has received written notice thereof, which notice shall
86 specify the grounds for such revocation or suspension.
87 Whenever there is sufficient cause for the revocation
88 or suspension of a license as hereinabove specified, the
89 commissioner may in lieu of such revocation or sus-
90 pension, suspend inspections at the establishment.
91 Immediately upon suspension of such inspections the
92 commissioner shall give the licensee written notice
93 thereof, and such notice shall contain a recitation of
94 the deficiencies which must be fully and completely
95 corrected before inspections shall be resumed. Upon
96 receipt of a written statement advising that a license
97 has been refused or upon receipt of a written notice

98 of the revocation or suspension of a license, or upon the
99 suspension of inspections at the licensee's establishment,
100 the applicant or licensee, as the case may be, may, in
101 writing, demand a hearing. The commissioner shall hold
102 such a hearing within ten days after receipt of such
103 written demand, in accordance with the provisions of
104 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 inspec-
tion marks.**

1 (a) The commissioner shall provide antemortem
2 inspection of all animals before they are slaughtered
3 for human consumption in any establishment under state
4 inspection.

5 (b) The commissioner shall provide postmortem
6 inspection of all animals slaughtered for human con-
7 sumption in any establishment under state inspec-
8 tion.

9 (c) All inspections under the provisions of this
10 article shall be performed in accordance with reasonable
11 rules and regulations promulgated by the commissioner.

12 (d) The commissioner shall inspect all establish-
13 ments under state inspection to make certain that they
14 are operating in accordance with the provisions of this
15 article and all reasonable rules and regulations pro-
16 mulgated by the commissioner.

17 (e) When one inspector is assigned to make inspec-
18 tions at two or more establishments where few animals
19 are slaughtered, or where small quantities of carcasses,
20 meat, meat food products or meat by-products are
21 handled, or where the operations at such establishments
22 are sporadic, and such establishments in any of such
23 cases are in reasonably close proximity to one another,
24 the commissioner, giving full consideration to the con-
25 venience of the licensees of such establishments, may
26 by written notice to such licensees specify a reasonable

27 schedule for such operations: *Provided*, That the com-
28 missioner may not require operations other than during
29 normal working hours.

30 (f) Every conveyance used by any establishment
31 under state inspection, and, notwithstanding the pro-
32 visions of subsection (a) of section seven of this article,
33 every conveyance used by any slaughterhouse, processing
34 plant or distributor operating under federal inspection
35 or approved by the United States department of agri-
36 culture, for the transportation of carcasses, meat, meat
37 food products or meat by-products shall be maintained
38 in a clean and sanitary condition and may be inspected
39 in accordance with the provisions of this article and
40 reasonable rules and regulations promulgated by the
41 commissioner.

42 (g) The commissioner shall require such quarantine
43 and segregation of animals, carcasses, meat, meat food
44 products and meat by-products in establishments as is
45 deemed necessary to effectuate the provisions of this
46 article.

47 (h) The head, tongue, tail, thymus glands, viscera,
48 blood and other parts of any slaughtered animal shall
49 be retained in such a manner as to preserve their
50 identity until after the postmortem inspection has been
51 completed.

52 (i) Each licensee shall pay for such devices for the
53 affixing of marks, brands or stamps and for such meat
54 labels as may be prescribed for his establishment by
55 the commissioner. Such devices and meat labels shall be
56 under the exclusive control and supervision of the
57 commissioner. The meat label used by any licensee
58 shall be of the form and size prescribed by reasonable
59 rules and regulations promulgated by the commissioner.

60 (j) Each carcass that has been inspected and passed
61 in this state by the commissioner shall be marked at
62 the time of inspection with the inspection legend. Any
63 carcass which is not passed shall be marked conspicuously
64 by the commissioner at the time of inspection in the
65 following manner: "W. Va. inspected and condemned,"
66 or any abbreviation thereof.

67 (k) Each primal part of a carcass that has been

68 inspected and passed shall be marked with the inspection
69 legend, and each liver, beef heart and beef tongue that
70 has been inspected and passed shall be branded with
71 the inspection legend at the time of final inspection.
72 Meat that has been boned out, cut from primal parts
73 or otherwise changed so that the inspection legend is
74 no longer plainly visible, and meat food products and
75 meat by-products that are too small to be marked with
76 the inspection legend shall be packed in closed con-
77 tainers to which shall be affixed the meat label indicating
78 that the meat, meat food products or meat by-products
79 contained therein have been inspected and passed. Upon
80 removal of the contents of such containers bearing
81 such label, the label shall be defaced to prevent its
82 reuse.

83 (l) All carcasses, meat, meat food products and meat
84 by-products which have been derived from an animal
85 slaughtered by a custom slaughterer or processed by
86 a custom slaughterer or custom processor shall be
87 marked "W. Va. custom slaughtered" in letters not less
88 than three eighths of an inch in height.

89 (m) Each official inspection mark shall contain the
90 establishment number of the establishment involved,
91 unless otherwise authorized by rules and regulations
92 promulgated by the commissioner.

93 (n) The commissioner is hereby authorized and em-
94 powered to seize and destroy (i) any animal to be
95 slaughtered in this state and thereafter sold or offered
96 for sale through a commercial outlet or distributor which
97 cannot be made fit for human consumption; (ii) any
98 animal, carcass, meat, meat food product or meat by-
99 product slaughtered or processed in this state in violation
100 of the provisions of this article or any reasonable rules
101 and regulations promulgated by the commissioner; (iii)
102 any carcass, meat, meat food product or meat by-
103 product that does not bear an inspection legend or meat
104 label provided for by this article or which has not been
105 inspected and passed under federal inspection or
106 approved by the United States department of agricul-
107 ture and which is intended to be sold or offered for
108 sale through a commercial outlet or distributor; and

109 (iv) any animal, carcass, meat, meat food product or
110 meat by-product which is unwholesome or adulterated.
111 Where appropriate the commissioner may in lieu of
112 destruction as aforesaid denature, decharacterize, muti-
113 late or slash any carcass, meat, meat food product or
114 meat by-product intended to be sold or offered for sale
115 through a commercial outlet or distributor. The com-
116 missioner is also authorized and empowered to seize
117 and retain under a retained tag any animal, carcass,
118 meat, meat food product or meat by-product until the
119 commissioner determines to destroy, denature, dechar-
120 acterize, mutilate, slash or release the same. Whenever
121 the commissioner is authorized or empowered to take
122 any of the actions specified in this subsection, he may
123 order and direct the person having custody or possession
124 of such animal, carcass, meat, meat food product or
125 meat by-product, or the licensee of the establishment
126 in which it is found, to be responsible for the disposition
127 thereof, as well as any necessary storage, handling or
128 other incidentals related thereto. Such disposition shall
129 be carried out only under the direction and supervision
130 of the commissioner.

131 (o) Whenever practicable, the commissioner shall
132 forgo the actions authorized in the immediately pre-
133 ceding subsection and permit reprocessing if such
134 reprocessing will correct or eliminate the conditions
135 which would have justified any of such actions. Any
136 such reprocessing in this state shall be under the super-
137 vision of the commissioner.

138 (p) Whenever the commissioner has good cause to
139 believe that any carcass, meat, meat food product or
140 meat by-product whether fresh, frozen, cured or other-
141 wise prepared, and which is intended to be sold or
142 offered for sale through a commercial outlet or distrib-
143 utor, may be unwholesome or adulterated or otherwise
144 injurious to health, he may inspect or reinspect the
145 same under the provisions of this article and any reason-
146 able rules and regulations promulgated by him, even
147 though such carcass, meat, meat food product or meat
148 by-product may have been previously inspected and
149 passed.

150 (q) No licensee shall employ in any establishment
151 any person who has any communicable disease or in-
152 fected wounds or who is a carrier of any communicable
153 disease. To enforce the provisions of this subsection,
154 the commissioner may require any employee or prospec-
155 tive employee to submit to a health examination by
156 a physician and furnish to the commissioner a certificate
157 from such physician concerning his findings. The cost
158 of conducting such examination and furnishing such
159 certificate shall be borne by the licensee concerned.

160 (r) Whenever the commissioner inspects any room,
161 compartment, equipment or utensil in any establishment
162 subject to state inspection and finds the same not to
163 be clean and sanitary or finds the same to be otherwise
164 unsuitable for the slaughtering or processing operations
165 carried on in such establishment, he shall affix thereto
166 a rejection tag or rejection notice. No such rejected
167 room, compartment, equipment or utensil shall be used
168 until the deficiencies requiring such rejection shall
169 have been fully and completely corrected. No person
170 other than the commissioner shall remove any such re-
171 jection tag or notice.

172 (s) When any animal, carcass, meat, meat food
173 product or meat by-product has been inspected here-
174 under, the appropriate official inspection mark shall be
175 affixed thereto, and no person shall remove the same
176 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.**

1 (a) The provisions of this article shall not apply to
2 any slaughterhouse or processing plant operating under
3 the Federal Meat Inspection Act or the Federal Poultry
4 Products Inspection Act, or approved by the United
5 States department of agriculture.

6 (b) For the purposes of this subsection, a farmer is
7 a person who owns or operates a farm or farms in this
8 state and does not engage, directly or indirectly, in the
9 business of buying or selling any animals, other than

10 as a part of his normal farming operations, and does
11 not engage in any business that involves the slaughtering
12 or processing of any animals other than those owned
13 by him, or the buying or selling of any carcasses, meat,
14 meat food products or meat by-products of any animals
15 other than those owned by him. Without being licensed
16 under the provisions of this article, a farmer may
17 slaughter or process or cause to be slaughtered or pro-
18 cessed his own animals on his own premises, on the
19 premises of another person or in the establishment of
20 a West Virginia licensed commercial or custom slaugh-
21 terer or a West Virginia licensed commercial or custom
22 processor, and a farmer shall not sell or trade such
23 animals or the carcasses, meat, meat food products or
24 meat by-products thereof to commercial dealers or dis-
25 tributors.

§19-2B-8. Exemptions.

- 1 (a) The provisions of this article shall not apply to:
2 (i) Any commercial dealer, provided all carcasses,
3 meat, meat food products and meat by-products sold or
4 offered for sale by such dealer were slaughtered and/or
5 processed in commercial establishments under state
6 inspection or have been inspected and passed by the
7 United States department of agriculture or have been
8 approved by the United States department of agricul-
9 ture and shall be identified and labeled as prescribed
10 by reasonable rules and regulations promulgated by the
11 commissioner;
12 (ii) Any educational activities relating to animals,
13 carcasses, meat, meat food products or meat by-products
14 and conducted by 4-H clubs, Future Farmers of America,
15 Future Homemakers of America; and
16 (iii) The West Virginia University meat laboratory.
17 (b) The commissioner may by reasonable rules and
18 regulations exempt any other activity, any animal,
19 carcass, meat, meat food product or meat by-product,
20 or any person, from all of the provisions of this article
21 or one or more of such provisions.
22 (c) The commissioner may by reasonable rules and
23 regulations exempt a licensed custom slaughterer from

24 the requirements of this article relating to antemortem
25 and postmortem inspection.

26 (d) The commissioner may by written order to the
27 person concerned suspend, limit or terminate any ex-
28 emption provided under this section or granted by rules
29 and regulations authorized under subsections (b) and
30 (c) hereof when he determines that such suspension,
31 limitation or termination is necessary to effectuate the
32 purposes of this article: *Provided*, That the person
33 affected by any such suspension, limitation or termination
34 may demand a hearing in writing which shall be held
35 by the commissioner in accordance with the provisions
36 of section nine of this article. The commissioner shall
37 hold such a hearing within ten days after receipt of
38 such written demand.

§19-2B-10. Additional prohibitions.

1 In addition to any other prohibitions contained in this
2 article, it shall be unlawful:

3 (a) For any person to operate any establishment under
4 state inspection which is not clean and sanitary;

5 (b) To slaughter any unwholesome or adulterated
6 animal intended to be sold or offered for sale through a
7 commercial outlet or distributor;

8 (c) To sell or offer for sale through a commercial
9 outlet or distributor any carcass, meat, meat food product
10 or meat by-product for human consumption which is un-
11 wholesome or adulterated;

12 (d) To slaughter for human consumption any animal
13 tagged or permanently identified as "W. Va. condemned,"
14 or abbreviation thereof;

15 (e) To process, sell or offer for sale for human con-
16 sumption any carcass, meat, meat food product or meat
17 by-product which is mislabeled with intent to deceive or
18 which is marked "W. Va. inspected and condemned," or
19 abbreviation thereof;

20 (f) To process in an establishment under state inspec-
21 tion for sale through any commercial outlet or distrib-
22 utor any carcass, meat, meat food product or meat by-
23 product intended for human consumption and derived in

24 whole or in part from any calf, pig, kid or lamb which is
25 so immature as to be lacking in nutritional value;

26 (g) To knowingly or intentionally expose any carcass,
27 meat, meat food product or meat by-product in
28 any establishment under state inspection to insects, live
29 animals or any contamination;

30 (h) To add kangaroo meat, horse meat, mule meat or
31 other equine meat to any animal meat, or meat food
32 product or meat by-product derived from animals and
33 to be sold or offered for sale through commercial outlets
34 or distributors for human consumption;

35 (i) To remove any hide, skin or any other part of
36 an unborn or stillborn animal in the confines of a room in
37 an establishment where any animals, carcasses, meat, meat
38 food products or meat by-products are slaughtered or
39 processed, as the case may be, or to be sold or offered for
40 sale through a commercial outlet or distributor;

41 (j) To process for human consumption in any estab-
42 lishment subject to state inspection any carcass, meat,
43 meat food product or meat by-product derived from any
44 animal which died other than by slaughter;

45 (k) To transport to any commercial outlet or distrib-
46 utor for the purpose of being sold or offered for sale
47 therein, any carcass, meat, meat food product or meat
48 by-product which is not marked, branded or stamped as
49 having been inspected and passed by the commissioner or
50 by the United States department of agriculture or which
51 has not been approved by the United States department of
52 agriculture;

53 (l) For any commercial outlet or distributor to re-
54 ceive, for the purpose of being sold or offered for sale
55 therein, any carcass, meat, meat food product or meat
56 by-product which is not marked, branded or stamped as
57 having been inspected and passed by the commissioner
58 or by the United States department of agriculture or
59 which has not been approved by the United States de-
60 partment of agriculture;

61 (m) To slaughter any horse, mule or other equine in
62 any establishment under state inspection in which ani-
63 mals are slaughtered for human consumption for the

64 purpose of being sold or offered for sale through com-
65 mercial outlets;

66 (n) To bring any kangaroo meat, horse meat, mule
67 meat or other equine meat into any establishment under
68 state inspection where animal carcasses, meat, meat food
69 products or meat by-products are processed for human
70 consumption for the purpose of being sold or offered for
71 sale through commercial outlets;

72 (o) To transport, process, sell or offer for sale any
73 kangaroo meat, horse meat, mule meat or other equine
74 meat within this state for human consumption unless it
75 is conspicuously and plainly identified or stamped as
76 such;

77 (p) For any person to use an establishment number
78 not assigned to him or to use an establishment number in
79 connection with operations concerning which a different
80 establishment number was assigned by the commis-
81 sioner;

82 (q) To remove from any article any retained tag
83 affixed by the commissioner, unless such removal is au-
84 thorized by him;

85 (r) For a licensee to use any container bearing an offi-
86 cial inspection mark unless it contains the exact carcass,
87 meat, meat food product or meat by-product which was
88 in the container at the time such contents were inspected
89 and passed: *Provided*, That such a container may be other-
90 wise used if such official inspection mark thereon is re-
91 moved, obliterated or destroyed, and such other use is
92 authorized by reasonable rules and regulations promul-
93 gated by the commissioner;

94 (s) For any person, other than the commissioner, to
95 possess, keep or use, except as authorized by the com-
96 missioner, any meat label or device for the affixing of
97 a mark, brand or stamp prescribed for inspection pur-
98 poses hereunder;

99 (t) For any person, with intent to deceive, to possess,
100 keep or use any meat label, mark, brand or stamp similar
101 in character or import to an official meat label, mark, brand
102 or stamp prescribed by the commissioner hereunder or to

103 an official meat label, mark, brand or stamp used by the
104 United States department of agriculture;

105 (u) To falsely make, falsely issue, falsely publish,
106 alter, forge, simulate or counterfeit any inspection certifi-
107 cate, memorandum, meat label, mark, brand, or stamp,
108 or device for making an inspection mark, brand or stamp,
109 or to possess, keep or use the same, with intent to de-
110 ceive;

111 (v) For any person to refuse to permit the commis-
112 sioner to enter and inspect at any time, upon presenta-
113 tion of appropriate credentials, an establishment under
114 state inspection, or to interfere with any such lawful
115 entry or inspection;

116 (w) For any person to refuse to permit the commis-
117 sioner, upon presentation of appropriate credentials, to
118 examine and copy the records described in section five
119 of this article;

120 (x) For a person to prevent or fail to decharacterize or
121 denature carcasses, meat or meat food products as pre-
122 scribed by reasonable rules and regulations promulgated
123 by the commissioner;

124 (y) For a person to transport offal, blood, or inedible
125 and condemned parts of animal bodies from slaughter-
126 houses, meat processing plants or other related industries:
127 *Provided*, That such products may be transported if
128 placed in suitable containers with tight covers, or water-
129 tight tanks so as not to contaminate the public highways
130 or private roadways while going to or from the points of
131 pickup;

132 (z) For a person to store offal, blood, or inedible and
133 condemned parts of animal bodies from slaughterhouses,
134 meat processing plants or other related industries during
135 interim transit movement in refrigerated warehouses,
136 food lockers or other related industries: *Provided*, That
137 such products may be otherwise stored if properly marked
138 "NOT FOR HUMAN FOOD" "FOR ANIMAL FOOD
139 ONLY" and identified as approved products to be used for
140 animal food;

141 (aa) For a person knowingly to purchase or deliver,
142 or both, a 4-D animal to an establishment in this state;

143 (bb) For any person to transport carcasses, meat, meat
144 food products or meat by-products that are intended for
145 human consumption in a manner which would permit the
146 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-2. Appropriations for insurance fund.
- 19-12B-3. Filing of bylaws and amendments.
- 19-12B-4. Compact administrator.
- 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
- 2 and entered into with all other jurisdictions legally join-
- 3 ing therein in accordance with its terms, in the form sub-
- 4 stantially 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

3 among them possible under this compact, the annual loss
4 of approximately seven billion dollars from the depreda-
5 tions of pests is virtually certain to continue, if not to
6 increase.

7 (b) Because of varying climatic, geographic and
8 economic factors, each state may be affected differently
9 by particular species of pests; but all states share the in-
10 ability to protect themselves fully against those pests
11 which present serious dangers to them.

12 (c) The migratory character of pest infestations makes
13 it necessary for states both adjacent to and distant from
14 one another, to complement each other's activities when
15 faced with conditions of infestation and reinfestation.

16 (d) While every state is seriously affected by a sub-
17 stantial number of pests, and every state is susceptible
18 of infestation by many species of pests not now causing
19 damage to its crop and plant life and products, the fact
20 that relatively few species of pests present equal danger
21 to or are of interest to all states makes the establishment
22 and operation of an insurance fund, from which indi-
23 vidual states may obtain financial support for pest control
24 programs of benefit to them in other states and to which
25 they may contribute in accordance with their relative
26 interests, the most equitable means of financing cooper-
27 ative pest eradication and control programs.

ARTICLE II. DEFINITIONS.

1 As used in this compact, unless the context clearly re-
2 quires a different construction:

3 (a) "State" means a state, territory or possession of
4 the United States, the District of Columbia, and the Com-
5 monwealth of Puerto Rico.

6 (b) "Requesting state" means a state which revokes
7 the procedures of the compact to secure the undertak-
8 ing or intensification of measures to control or eradicate
9 one or more pests within one or more other states.

10 (c) "Responding state" means a state requested to
11 undertake or intensify the measures referred to in sub-
12 division (b) of this article.

13 (d) "Pest" means any invertebrate animal, pathogen,
14 parasitic plant or similar or allied organism which can

15 cause disease or damage in any crops, trees, shrubs, grasses
16 or other plants of substantial value.

17 (e) "Insurance fund" means the pest control insurance
18 fund established pursuant to this compact.

19 (f) "Governing board" means the administrators of
20 this compact representing all of the party states when
21 such administrators are acting as a body in pursuance
22 of authority vested in them by this compact.

23 (g) "Executive committee" means the committee es-
24 tablished pursuant to Article V (e) of this compact.

ARTICLE III. THE INSURANCE FUND.

1 There is hereby established the pest control insur-
2 ance fund for the purpose of financing other than normal
3 pest control operations which states may be called upon
4 to engage in pursuant to this compact. The insurance fund
5 shall contain moneys appropriated to it by the party
6 states and any donations and grants accepted by it. All
7 appropriations, except as conditioned by the rights and
8 obligations of party states expressly set forth in this
9 compact, shall be unconditional and may not be restricted
10 by the appropriating state to use in the control of any
11 specified pest or pests. Donations and grants may be con-
12 ditional or unconditional: *Provided*, That the insurance
13 fund shall not accept any donation or grant whose terms
14 are inconsistent with any provision of this compact.

ARTICLE IV. THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT.

1 (a) The insurance fund shall be administered by a
2 governing board and executive committee as hereinafter
3 provided. The actions of the governing board and execu-
4 tive committee pursuant to this compact shall be deemed
5 the actions of the insurance fund.

6 (b) The members of the governing board shall be
7 entitled to one vote each on such board. No action of
8 the governing board shall be binding unless taken at a
9 meeting at which a majority of the total number of
10 votes of the governing board are cast in favor thereof.
11 Action of the governing board shall be only at a meeting
12 at which a majority of the members are present.

13 (c) The insurance fund shall have a seal which may
14 be employed as an official symbol and which may be
15 affixed to documents and otherwise used as the gov-
16 erning board may provide.

17 (d) The governing board shall elect annually, from
18 among its members, a chairman, a vice chairman, a sec-
19 retary and a treasurer. The chairman may not succeed
20 himself. The governing board may appoint an executive
21 director and fix his duties and his compensation, if any.
22 Such executive director shall serve at the pleasure of
23 the governing board. The governing board shall make
24 provision for the bonding of such of the officers and
25 employees of the insurance fund as may be appropriate.

26 (e) Irrespective of the civil service, personnel or other
27 merit system laws of any of the party states, the execu-
28 tive director, or if there be no executive director, the
29 chairman, in accordance with such procedures as the
30 bylaws may provide, shall appoint, remove or discharge
31 such personnel as may be necessary for the performance
32 of the functions of the insurance fund and shall fix the
33 duties and compensation of such personnel. The gov-
34 erning board in its bylaws shall provide for the personnel
35 policies and programs of the insurance fund.

36 (f) The insurance fund may borrow, accept or con-
37 tract for the services of personnel from any state, the
38 United States, or any other governmental agency, or
39 from any person, firm, association or corporation.

40 (g) The insurance fund may accept for any of its
41 purposes and functions under this compact any and all
42 donations, and grants of money, equipment, supplies, ma-
43 terials and services, conditional or otherwise, from any
44 state, the United States, or any other governmental
45 agency, or from any person, firm, association or cor-
46 poration, and may receive, utilize and dispose of the
47 same. Any donation, gift or grant accepted by the gov-
48 erning board pursuant to this paragraph or services bor-
49 rowed pursuant to paragraph (f) of this article shall
50 be reported in the annual report of the insurance fund.
51 Such report shall include the nature, amount and condi-
52 tions, if any, of the donation, gift, grant or services
53 borrowed and the identity of the donor or lender.

54 (h) The governing board shall adopt bylaws for the
55 conduct of the business of the insurance fund and shall
56 have the power to amend and rescind these bylaws. The
57 insurance fund shall publish its bylaws in convenient
58 form and shall file a copy thereof and a copy of any
59 amendment thereto with the appropriate agency or officer
60 in each of the party states.

61 (i) The insurance fund annually shall make to the
62 governor and legislature of each party state a report
63 covering its activities for the preceding year. The in-
64 surance fund may make such additional reports as it
65 may deem desirable.

66 (j) In addition to the powers and duties specifically
67 authorized and imposed, the insurance fund may do
68 such other things as are necessary and incidental to the
69 conduct of its affairs pursuant to this compact.

**ARTICLE V. COMPACT AND INSURANCE FUND
ADMINISTRATION.**

1 (a) In each party state there shall be a compact ad-
2 ministrator, who shall be selected and serve in such man-
3 ner as the laws of his state may provide, and who shall:

4 1. Assist in the coordination of activities pursuant to
5 the compact in his state; and

6 2. Represent his state on the governing board of the
7 insurance fund.

8 (b) If the laws of the United States specifically so
9 provide, or if administrative provision is made therefor
10 within the federal government, the United States may
11 be represented on the governing board of the insurance
12 fund by not to exceed three representatives. Any such
13 representative or representatives of the United States
14 shall be appointed and serve in such manner as may be
15 provided by or pursuant to federal law, but no such repre-
16 sentative shall have a vote on the governing board or on
17 the executive committee thereof.

18 (c) The governing board shall meet at least once each
19 year for the purpose of determining policies and pro-
20 cedures in the administration of the insurance fund and,
21 consistent with the provisions of the compact, supervising

22 and giving direction to the expenditure of moneys from
23 the insurance fund. Additional meetings of the governing
24 board shall be held on call of the chairman, the executive
25 committee, or a majority of the membership of the gov-
26 erning board.

27 (d) At such times as it may be meeting, the governing
28 board shall pass upon applications for assistance from
29 the insurance fund and authorize disbursements there-
30 from. When the governing board is not in session, the
31 executive committee thereof shall act as agent of the
32 governing board, with full authority to act for it in passing
33 upon such applications.

34 (e) The executive committee shall be composed of the
35 chairman of the governing board and four additional
36 members of the governing board chosen by it so that there
37 shall be one member representing each of four geographic
38 groupings of party states. The governing board shall
39 make such geographic groupings. If there is representa-
40 tion of the United States on the governing board, one
41 such representative may meet with the executive com-
42 mittee. The chairman of the governing board shall be
43 chairman of the executive committee. No action of the
44 executive committee shall be binding unless taken at a
45 meeting at which at least four members of such com-
46 mittee are present and vote in favor thereof. Necessary
47 expenses of each of the five members of the executive
48 committee incurred in attending meetings of such com-
49 mittee, when not held at the same time and place as a
50 meeting of the governing board, shall be charges against
51 the insurance fund.

ARTICLE VI. ASSISTANCE AND REIMBURSEMENT.

1 (a) Each party state pledges to each other party state
2 that it will employ its best efforts to eradicate, or control
3 within the strictest practicable limits, any and all pests.
4 It is recognized that performance of this responsibility
5 involves:

6 1. The maintenance of pest control and eradication
7 activities of interstate significance by a party state at a
8 level that would be reasonable for its own protection in
9 the absence of this compact.

10 2. The meeting of emergency outbreaks of infestations
11 of interstate significance to no less an extent than would
12 have been done in the absence of this compact.

13 (b) Whenever a party state is threatened by a pest not
14 present within its borders but present within another
15 party state, or whenever a party state is undertaking or
16 engaged in activities for the control or eradication of a
17 pest or pests, and find that such activities are or would
18 be impracticable or substantially more difficult of success
19 by reason of failure of another party state to cope with
20 infestation or threatened infestation, that state may re-
21 quest the governing board to authorize expenditures from
22 the insurance fund for eradication or control measures to
23 be taken by one or more of such other party states at a
24 level sufficient to prevent, or to reduce to the greatest
25 practicable extent, infestation or reinfestation of the re-
26 questing state. Upon such authorization the responding
27 state or states shall take or increase such eradication or
28 control measures as may be warranted. A responding
29 state shall use moneys made available from the insurance
30 fund expeditiously and efficiently to assist in affording
31 the protection requested.

32 (c) In order to apply for expenditures from the insur-
33 ance fund, a requesting state shall submit the following
34 in writing:

35 1. A detailed statement of the circumstances which
36 occasion the request for the invoking of the compact.

37 2. Evidence that the pest on account of whose eradica-
38 tion or control assistance is requested constitutes a danger
39 to an agricultural or forest crop, product, tree, shrub,
40 grass or other plant having a substantial value to the re-
41 questing state.

42 3. A statement of the extent of the present and pro-
43 jected program of the requesting state and its subdivi-
44 sions, including full information as to the legal authority
45 for the conduct of such program or programs and the ex-
46 penditures being made or budgeted therefor, in connection
47 with the eradication, control or prevention of introduction
48 of the pest concerned.

49 4. Proof that the expenditures being made or budgeted
50 as detailed in item 3 do not constitute a reduction of the
51 effort for the control or eradication of the pest concerned
52 or, if there is a reduction, the reasons why the level of
53 program detailed in item 3 constitutes a normal level of
54 pest control activity.

55 5. A declaration as to whether, to the best of its knowl-
56 edge and belief, the conditions which in its view occasion
57 the invoking of the compact in the particular instance can
58 be abated by a program undertaken with the aid of
59 moneys from the insurance fund in one year or less, or
60 whether the request is for an installment in a program
61 which is likely to continue for a longer period of time.

62 6. Such other information as the governing board may
63 require consistent with the provisions of this compact.

64 (d) The governing board or executive committee shall
65 give due notice of any meeting at which an application
66 for assistance from the insurance fund is to be considered.
67 Such notice shall be given to the compact administrator
68 of each party state and to such other officers and agencies
69 as may be designated by the laws of the party states. The
70 requesting state and any other party state shall be entitled
71 to be represented and present evidence and argument at
72 such meeting.

73 (e) Upon the submission as required by paragraph (c)
74 of this article and such other information as it may have
75 or acquire, and upon determining that an expenditure of
76 funds is within the purposes of this compact and justified
77 thereby, the governing board or executive committee shall
78 authorize support of the program. The governing board
79 or executive committee may meet at any time or place for
80 the purpose of receiving and considering an application.
81 Any and all determinations of the governing board or
82 executive committee, with respect to an application, to-
83 gether with the reasons therefor shall be recorded and
84 subscribed in such manner as to show and preserve the
85 votes of the individual members thereof.

86 (f) A requesting state which is dissatisfied with a de-
87 termination of the executive committee shall upon notice
88 in writing given within twenty days of the determination

89 with which it is dissatisfied, be entitled to receive a review
90 thereof at the next meeting of the governing board. De-
91 termination of the executive committee shall be review-
92 able only by the governing board at one of its regular
93 meetings, or at a special meeting held in such manner as
94 the governing board may authorize.

95 (g) Responding states required to undertake or in-
96 crease measures pursuant to this compact may receive
97 moneys from the insurance fund, either at the time or
98 times when such state incurs expenditures on account of
99 such measures, or as reimbursement for expenses in-
100 curred and chargeable to the insurance fund. The govern-
101 ing board shall adopt and, from time to time, may amend
102 or revise procedures for submission of claims upon it and
103 for payment thereof.

104 (h) Before authorizing the expenditure of moneys
105 from the insurance fund pursuant to an application of a
106 requesting state, the insurance fund shall ascertain the
107 extent and nature of any timely assistance or participation
108 which may be available from the federal government and
109 shall request the appropriate agency or agencies of the
110 federal government for such assistance and participation.

111 (i) The insurance fund may negotiate and execute a
112 memorandum of understanding or other appropriate
113 instrument defining the extent and degree of assistance
114 or participation between and among the insurance fund,
115 cooperating federal agencies, states and any other entities
116 concerned.

ARTICLE VII. ADVISORY AND TECHNICAL COMMITTEES.

1 The governing board may establish advisory and tech-
2 nical committees composed of state, local, and federal
3 officials, and private persons to advise it with respect to
4 any one or more of its functions. Any such advisory or
5 technical committee, or any member or members thereof
6 may meet with and participate in its deliberations. Upon
7 request of the governing board or executive committee
8 an advisory or technical committee may furnish informa-
9 tion and recommendations with respect to any applica-
10 tion for assistance from the insurance fund being con-
11 sidered by such board or committee and the board or

12 committee may receive and consider the same: *Provided*,
13 That any participant in a meeting of the governing
14 board or executive committee held pursuant to Article
15 VI (d) of the compact shall be entitled to know the sub-
16 stance of any such information and recommendations, at
17 the time of the meeting if made prior thereto or as a part
18 thereof or, if made thereafter, no later than the time at
19 which the governing board or executive committee makes
20 its disposition of the application.

ARTICLE VIII. RELATIONS WITH NONPARTY JURISDICTIONS.

1 (a) A party state may make application for assistance
2 from the insurance fund in respect of a pest in a nonparty
3 state. Such application shall be considered and disposed
4 of by the governing board or executive committee in the
5 same manner as an application with respect to a pest
6 within a party state, except as provided in this article.

7 (b) At or in connection with any meeting of the
8 governing board or executive committee held pursuant to
9 Article VI (d) of this compact a nonparty state shall be
10 entitled to appear, participate, and receive information
11 only to such extent as the governing board or executive
12 committee may provide. A nonparty state shall not be
13 entitled to review of any determination made by the
14 executive committee.

15 (c) The governing board or executive committee shall
16 authorize expenditures from the insurance fund to be
17 made in a nonparty state only after determining that the
18 conditions in such state and the value of such expendi-
19 tures to the party states as a whole justify them. The
20 governing board or executive committee may set any con-
21 ditions which it deems appropriate with respect to the
22 expenditure of moneys from the insurance fund in a
23 nonparty state and may enter into such agreement or
24 agreements with nonparty states and other jurisdictions
25 or entities as it may deem necessary or appropriate to
26 protect the interests of the insurance fund with respect
27 to expenditures and activities outside of party states.

ARTICLE IX. FINANCE.

1 (a) The insurance fund shall submit to the executive
2 head or designated officer or officers of each party state

3 a budget for the insurance fund for such period as may
4 be required by the laws of that party state for presenta-
5 tion to the legislature thereof.

6 (b) Each of the budgets shall contain specific recom-
7 mendations of the amount or amounts to be appropriated
8 by each of the party states. The requests for appropria-
9 tions shall be apportioned among the party states as
10 follows: One tenth of the total budget in equal shares
11 and the remainder in proportion to the value of agri-
12 cultural and forest crops and products, excluding animals
13 and animal products, produced in each party state. In
14 determining the value of such crops and products the
15 insurance fund may employ such source or sources of
16 information as in its judgment present the most equit-
17 able and accurate comparisons among the party states.
18 Each of the budgets and requests for appropriations shall
19 indicate the source or sources used in obtaining informa-
20 tion concerning value of products.

21 (c) The financial assets of the insurance fund shall be
22 maintained in two accounts to be designated respectively
23 as the "Operating Account" and the "Claims Account."
24 The operating account shall consist only of those assets
25 necessary for the administration of the insurance fund
26 during the next ensuing two-year period. The claims
27 account shall contain all moneys not included in the
28 operating account and shall not exceed the amount reason-
29 ably estimated to be sufficient to pay all legitimate claims
30 on the insurance fund for a period of three years. At any
31 time when the claims account has reached its maximum
32 limit or would reach its maximum limit by the addition
33 of moneys requested for appropriation by the party states,
34 the governing board shall reduce its budget requests on
35 a pro rata basis in such manner as to keep the claims ac-
36 count within such maximum limit. Any moneys in the
37 claims account by virtue of conditional donations, grants
38 or gifts shall be included in calculations made pursuant to
39 this paragraph only to the extent that such moneys are
40 available to meet demands arising out of claims.

41 (d) The insurance fund shall not pledge the credit of
42 any party state. The insurance fund may meet any of its
43 obligations in whole or in part with moneys available to

44 it under Article IV (g) of this compact, providing that the
45 governing board takes specific action setting aside such
46 moneys prior to incurring any obligation to be met in
47 whole or in part in such manner. Except where the in-
48 surance fund makes use of moneys available to it under
49 Article IV (g) hereof, the insurance fund shall not incur
50 any obligation prior to the allotment of moneys by the
51 party states adequate to meet the same.

52 (e) The insurance fund shall keep accurate accounts
53 of all receipts and disbursements. The receipts and dis-
54 bursements of the insurance fund shall be subject to the
55 audit and accounting procedures established under its
56 bylaws. However, all receipts and disbursements of funds
57 handled by the insurance fund shall be audited yearly by
58 a certified or licensed public accountant and a report of
59 the audit shall be included in and become part of the
60 annual report of the insurance fund.

61 (f) The accounts of the insurance fund shall be open at
62 any reasonable time for inspection by duly authorized
63 officers of the party states and by any persons authorized
64 by the insurance fund.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1 (a) This compact shall enter into force when enacted
2 into law by any five or more states. Thereafter, this
3 compact shall become effective as to any other state upon
4 its enactment thereof.

5 (b) Any party state may withdraw from this compact
6 by enacting a statute repealing the same, but no such with-
7 drawal shall take effect until two years after the execu-
8 tive head of the withdrawing state has given notice in
9 writing of the withdrawal to the executive heads of all
10 other party states. No withdrawal shall affect any lia-
11 bility already incurred by or chargeable to a party state
12 prior to the time of such withdrawal.

ARTICLE XI. CONSTRUCTION AND SEVERABILITY.

1 This compact shall be liberally construed so as to effec-
2 tuate the purposes thereof. The provisions of this com-
3 pact shall be severable and if any phrase, clause, sentence
4 or provision of this compact is declared to be contrary

5 to the constitution of any state or of the United States
6 or the applicability thereof to any government, agency,
7 person or circumstance is held invalid, the validity of
8 the remainder of this compact and the applicability
9 thereof to any government, agency, person or circum-
10 stance shall not be affected thereby. If this compact shall
11 be held contrary to the constitution of any state partici-
12 pating herein, the compact shall remain in full force and
13 effect as to the remaining party states and in full force
14 and effect as to the state affected as to all severable
15 matters.

§19-12B-2. Appropriations for insurance fund.

1 Consistent with law and within available appropria-
2 tions, the departments, agencies and officers of this state
3 may cooperate with the insurance fund established by
4 the pest control compact.

§19-12B-3. Filing of bylaws and amendments.

1 Pursuant to Article IV (h) of the compact, copies of
2 bylaws and amendments thereto shall be filed with the
3 commissioner and the department of agriculture.

§19-12B-4. Compact administrator.

1 The compact administrator of this state shall be the
2 commissioner of agriculture. The duties of the compact
3 administrator shall be deemed a regular part of the duties
4 of his office.

§19-12B-5. Request for assistance.

1 Within the meaning of Article VI (b) or VIII (a), a re-
2 quest or application for assistance from the insurance
3 fund may be made by the governor or the commissioner
4 of agriculture whenever in their judgment the conditions
5 qualifying this state for such assistance exist and it would
6 be in the best interest of this state to make such request.

§19-12B-6. Disposition of compact grants and reimbursements.

1 The department, agency, or officer expending or be-
2 coming liable for an expenditure on account of a control
3 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
 2 term "executive head" shall mean the governor.

CHAPTER 4

(House Bill No. 307—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 management 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 authority in the same manner, and to have such vote or votes, as prescribed by law with respect to the original participating 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; appointment and terms of members; vote of members; participation by additional counties or municipalities without state.

1 The management and control of each authority, its
 2 property, operations, business and affairs shall be lodged

3 in a board of 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 partici-
9 pating county court and one member from each partici-
10 pating 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. Following its
16 formation, each authority may permit any additional
17 county or municipality without this state to participate
18 in the affairs of the authority, to appoint members of the
19 authority in the same manner, and to have such vote or
20 votes, as prescribed by law with respect to the original
21 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, relating 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 deter-
2 mination:

3 (a) That the state of West Virginia, being richly
4 endowed with treasures and sites of historic archaeolo-
5 gical importance, should explore by excavation or other-
6 wise, and preserve these historic treasures and sites;

7 (b) That in the past, there has been no systematic
8 and planned development and preservation of treasures
9 and sites of historical and archaeological importance in
10 the state of West Virginia; and

11 (c) That this article contemplates the establishment
12 of a commission which shall be authorized and empowered
13 to recommend the acquisition, development and preser-
14 vation of our state's historic archaeological sites and
15 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 depart-
5 ment of natural resources, one of whom shall be the state
6 historian and archivist, one of whom shall be the director
7 of the state geological and economic survey, one of whom
8 shall be the state archaeologist, one of whom shall be the
9 president of the West Virginia historical society, and
10 one of whom shall be the president of the West Virginia
11 historical association of college and university teachers.
12 The remaining three members of the commission shall
13 be representative of the public at large and shall be ap-
14 pointed by the governor, by and with the advice of the
15 Senate, for terms of one, two and three years respectively.

16 All the members of the commission shall serve without
17 pay, but shall be reimbursed for any and all reasonable
18 and necessary expenses incurred in the performance of
19 their duties hereunder. The members of the commission
20 shall elect from their own membership the officers of the
21 commission.

22 The commission will meet at least twice during the year,
23 in May and in November, at a time and place to be de-
24 termined by the chairman.

25 The commission shall transmit an annual report of its
26 activities to the governor, the president of the Senate,
27 and the speaker of the House of Delegates on or before
28 the opening day of each regular session of the Legislature.

**§5-12-3. Powers and duties of commission; receipt and use
of funds.**

1 The commission shall be authorized and empowered to
2 locate, identify, and recommend for acquisition historic
3 sites and structures worthy of preservation; to direct
4 and supervise the excavation, study, restoration and
5 development of such sites or structures; to conduct a
6 survey and study throughout the state to determine needs
7 and priorities for the preservation, restoration, and
8 development of sites, buildings, and other objects of
9 archaeological or historic interest, and to receive in the
10 name of the state grants, appropriations, gifts, bequests
11 and funds from any public or private source for the pur-
12 pose of carrying out its powers and duties hereunder. All
13 such funds received by the commission shall be deposited
14 in the special fund provided for in section five of this
15 article and shall be used by the commission in carrying
16 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

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

TITLE 1. GENERAL PROVISIONS.

Section

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

Section 1. General Policy.—The purpose of this act is to 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:

- 2 “Board” shall mean the board of public works;
- 3 “Spending unit” shall mean the department, agency or institution to which an appropriation is made;
- 5 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.

9 “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:

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 Funds under any Federal Acts;

10 Unless otherwise specified, appropriations for personal
11 services shall include salaries of heads of spending units;

12 "Current Expenses" shall be expended only for operating
13 cost other than personal services or capital outlay;

14 "Repairs and Alterations" shall include all expenditures
15 for materials, supplies and labor used in repairing and alter-
16 ing buildings, grounds and equipment, other than personal
17 service;

18 "Equipment" shall be expended only for things which
19 have an appreciable and calculable period of usefulness in
20 excess of one year;

21 "Buildings" shall include construction and alteration of
22 structures and the improvements of lands, sewer and water
23 improvements, and shall include shelter, support, storage,
24 protection, or the improvement of a natural condition;

25 "Lands" shall be expended only for the purchase of lands
26 or interest in lands.

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

Sec. 4. Method of Expenditure.—Money appropriated by
2 this act, unless otherwise specifically directed, shall be ap-
3 propriated and expended according to the provisions of chap-
4 ter 12, article 3 of the code of West Virginia, or according to
5 any law detailing a procedure specifically limiting that
6 article.

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State board of education (vocational division)—Acct. No. 701	1396
State board of school finance—Acct. No. 704	1396

PAYABLE FROM MEDICAL FUND

West Virginia university (medical school)—Acct. No. 673	1408
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PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900	1408
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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.
9. Sinking fund deficiencies.
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.
14. General school fund.

Section 1. Appropriations from General Revenue.—From
 2 the state fund, general revenue, there is hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth
 4 in chapter 5, article 4 and chapter 5-A, article 2 of the code of
 5 West Virginia, the following amounts, as itemized, for ex-
 6 penditure during the fiscal year one thousand nine hundred
 7 sixty-nine.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1968-69
1 Salaries of Members	\$ 54,000.00
2 Compensation and per diem of officers and	
3 attaches	145,000.00
4 Mileage of Members	3,000.00
5 Current Expenses and Contingent Fund	100,000.00
6 To pay Clerk of the Senate for compiling	
7 and publishing the West Virginia Blue Book,	
8 the distribution of which shall be made by	
9 the office of the Clerk of the Senate and shall	
10 include seventy-five copies for each member	
11 of the Legislature and two copies to each	
12 classified and approved High and Junior	
13 High School and one to each Elementary	
14 School within the state	10,000.00
15 To pay cost of printing the 1968 edition of the	
16 Blue Book	50,000.00
17 The appropriations for the Senate for the fiscal	
18 year 1967-68 are to remain in full force and	
19 effect, and are hereby reappropriated to	
20 June 30, 1969.	
21 Any balances so reappropriated may be trans-	
22 ferred and credited to the 1968-69 accounts.	
23 Upon the written request of the Clerk of the	
24 Senate the State Auditor shall transfer	
25 amounts between items of the total ap-	
26 propriation in order to protect or increase	
27 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 operation
 36 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-

26 aration for the opening of the session and
27 after adjournment, and for the necessary
28 operation of the House of Delegates
29 offices, the requisition for same to be ac-
30 companied by bills to be filed with the
31 Auditor.

32 For duties imposed by law and by the House
33 of Delegates, including the salary allowed
34 by law as keeper of the rolls, the Clerk
35 of the House of Delegates shall be paid a
36 salary of \$1,200.00 per month, payable from
37 the contingent fund of the House of Dele-
38 gates, and the Clerk may employ a sec-
39 retary and a clerk at a salary to be de-
40 termined by the Speaker of the House of
41 Delegates.

42 The Speaker of the House of Delegates upon
43 recommendation of the Chairman of Tax-
44 ation and Finance Committee shall have
45 the authority to convene the Taxation and
46 Finance Committee at any time within ten
47 (10) days prior to the next Legislative
48 session for the purpose of reviewing the
49 budget requests of the various spending
50 units of this State. Such members of
51 the Committee are to be allowed \$25.00 per
52 diem in lieu of actual and necessary ex-
53 penses and the Clerk of the House is hereby
54 authorized to draw requisitions upon the
55 State Auditor payable out of the appropria-
56 tion for Current Expenses and Contingent
57 Fund for these expenses.

58 The Speaker of the House of Delegates, upon
59 recommendation of the Chairman of the
60 Taxation and Finance Committee, shall
61 have authority to employ such staff per-
62 sonnel during and between sessions of the
63 Legislature as shall be needed, and the
64 Clerk of the House is hereby authorized

65 to draw requisitions upon the State
 66 Auditor, payable out of the appropriation
 67 for Contingent Expenses for such services.

3—*Joint Expenses*

Acct. No. 103

	<i>Fiscal Year</i> 1967-68
1 Joint Committee on Government and Finance \$	150,000.00
	<i>Fiscal Year</i> 1968-69
2 To pay the cost of legislative printing and 3 stationery	\$ 220,000.00
4 Commission on Interstate Cooperation	20,000.00
5 Joint Committee on Government and Finance	780,000.00
6 The appropriation for Joint Expenses for the 7 fiscal year 1967-68 are to remain in full force 8 and effect, and are hereby reappropriated 9 to June 30, 1969.	
10 Any balances so reappropriated may be trans- 11 ferred and credited to the 1968-69 accounts.	
12 Upon written request of the Clerk of the Sen- 13 ate and the Clerk of the House of Delegates 14 the State Auditor shall transfer amounts be- 15 tween items of the total appropriation in 16 order to protect or increase the efficiency of 17 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	\$ 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
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7 This appropriation shall be administered by
 8 the State Auditor who shall draw his re-
 9 quisition for warrants in payment of salaries
 10 in the form of payrolls, making deductions
 11 therefrom as required by law, for taxes and
 12 other items. The appropriation for Judges'
 13 Retirement System is to be transferred to
 14 the Judges' Retirement Fund, in accordance
 15 with the law relating thereto, upon requis-
 16 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
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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

1	Salary of State Auditor	\$	18,000.00
2	Other Personal Services		446,502.00
3	Current Expenses		135,000.00
4	Equipment		10,000.00
5	Microfilm Program		7,500.00
6	Total	\$	617,002.00

11—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer	\$	17,500.00
2	Other Personal Services		151,845.00
3	Current Expenses		26,950.00
4	Equipment		8,000.00
5	Board of Investments		5,000.00
6	Total	\$	209,295.00

12—Sinking Fund Commission

Acct. No. 170

1	Personal Services	\$	30,750.00
2	Current Expenses		1,650.00
3	Equipment		1,500.00
4	Total	\$	33,900.00

13—State Tax Department

Acct. No. 180

1	Personal Services	\$	2,307,675.00
2	Current Expenses		644,465.00
3	Equipment		28,600.00
4	Total	\$	2,980,740.00

14—State Tax Department

Acct. No. 185

1	Property Appraisal	\$	150,000.00
2	Any balances remaining in the Property Ap-		
3	praisal Account previously appropriated,		
4	in 1966-67 and 1967-68 at the close of the		

- 5 fiscal year 1967-68 is hereby reappropriated
 6 for expenditure during the fiscal year
 7 1968-69.

15—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner	\$	13,000.00
2	Salaries of Board Members—Board of Proba-		
3	tion and Parole		27,000.00
4	Other Personal Services		397,781.00
5	Current Expenses		142,320.00
6	Equipment		4,000.00
7	Total	\$	584,101.00

16—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services	\$	761,897.00
2	Current Expenses		400,000.00
3	Repairs and Alterations		125,000.00
4	Equipment		17,000.00
5	Postage		190,000.00
6	Records Management		37,785.00
7	Office of State Emergency Planning		27,000.00
8	Transportation Division—Vehicles		125,000.00
9	State Agency Surplus Property		27,562.00
10	Information Systems Service Division		300,000.00
11	Total	\$	2,011,244.00

- 12 The Workmen's Compensation Commission,
 13 Department of Welfare, Public Service Com-
 14 mission, Department of Natural Resources,
 15 Department of Motor Vehicles, State Road
 16 Commission, State Health Department and
 17 State Tax Department—Income Tax Divi-
 18 sion, shall reimburse the Postage appropria-
 19 tion of the Department of Finance and Ad-
 20 ministration monthly for all meter service.
 21 Any spending unit operating from Special
 22 Revenue or receiving reimbursement for
 23 postage costs from the Federal Government
 24 shall refund to the Postage account of the

25 Department of Finance and Administration
 26 such amounts. Should this appropriation for
 27 Postage be insufficient to meet the mailing
 28 requirements of the State spending units as
 29 set out above, any excess postage meter serv-
 30 ice requirements shall be a proper charge
 31 against the units, and each spending unit
 32 shall refund to the Postage appropriation of
 33 the Department of Finance and Administra-
 34 tion any amounts required for that Depart-
 35 ment for postage in excess of this appropri-
 36 tion.

37 Any unexpended balance remaining in the
 38 "Postage Account" and all "Records Man-
 39 agement Accounts" at the close of the fiscal
 40 year 1967-68 are hereby reappropriated for
 41 expenditure during the fiscal year 1968-69.

42 The State Road Commission shall reimburse
 43 the appropriation of the Department of Fi-
 44 nance and Administration monthly for all
 45 actual expenses incurred pursuant to (the
 46 provision of) chapter 17, article 2-A, sec-
 47 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	\$ 17,220.00
2 Current Expenses	5,760.00
3 Equipment	400.00
4 Fire Insurance Premiums	200,000.00
5 Automobile Insurance Premiums	100,000.00
6 Bond Premiums	30,000.00

7 Total	\$ 353,380.00
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8 The above appropriations on lines 4, 5 and 6
 9 are for the purpose of paying premiums for
 10 the various state agencies. Should these ap-

11 appropriations be insufficient to meet the pre-
 12 mium requirements of the state spending
 13 units, any excess premium requirements
 14 shall be a proper charge against the units
 15 and each spending unit shall transmit to the
 16 Board of Insurance any amounts required
 17 for that department for premiums in excess
 18 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		
6	the State in controversies or legal proceed-		
7	ings affecting same		3,250.00
8	Total	\$	386,920.00

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
 15 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 Commis-		
3	sion 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
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23—Department of Education

Acct. No. 290

1	Comprehensive Educational Program	\$ 1,000,000.00
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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 oper-	
6	ation of regional ETV stations by Marshall	
7	University, Bluefield State College, Concord	
8	College, West Virginia Institute of Tech-	
9	nology, and West Virginia State College,	
10	and may be transferred to special accounts	
11	for matching county federal funds.	
12	Total.....	\$ 300,000.00

25—State Board of Education—Vocational Division

Acct. No. 293

1	To implement Vocational Education Act of	
2	1963 P.L. 88-210	\$ 800,000.00
3	The above appropriation includes \$100,000.00	
4	for Manpower Training.	

- 5 Any unexpended balance remaining in this
 6 appropriation at the close of the fiscal year
 7 1967-68 is hereby reappropriated for expen-
 8 diture during the fiscal year 1968-69.

26—*State Board of Education—Vocational Division*

Acct. No. 294

- 1 Any unexpended balance remaining in the
 2 appropriation "Aid to Counties" at the
 3 close of the fiscal year 1967-68 is hereby
 4 reappropriated for expenditure during the
 5 fiscal year 1968-69.

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

Acct. No. 295

- 1 State Aid to supplement the General School
 2 Fund\$100,239,506.00
 3 In addition to the above appropriation there is
 4 hereby appropriated the sum of \$1,256,000.00
 5 from the 1967-68 appropriation "State Aid
 6 to Schools."
 7 Provided that changes in the basic foundation
 8 support allocations resulting from changes
 9 in local shares as a consequence of certifica-
 10 tion to all counties of the appraisal program
 11 provided for in chapter 18, article 9A, sec-
 12 tion 4 of the code of West Virginia, as
 13 amended, shall be reduced by fifty percent.
 14 To be transferred to the General School Fund
 15 upon the requisition of the Governor.

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

Acct. No. 296

1 Personal Services	\$	32,092.00
2 Current Expenses		7,600.00
3 Out-of-State Instruction		58,000.00
4 Aid to Counties		569,000.00
5 Total	\$	666,692.00

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

29—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teachers	\$ 5,430,000.00
2	Employers' Accumulation Fund—To match	
3	contributions of members	3,525,000.00
4	Expense Fund	35,000.00
5	Total	\$ 8,990,000.00

30—*State Commission on Higher Education*

Acct. No. 299

1	Total Unclassified	\$ 211,070.00
2	Of the above appropriation, \$130,000.00 shall	
3	be used for Title I matching funds under	
4	Higher Education Act, 1965, Public Law	
5	89-329.	
6	From the above appropriation \$25,000.00 is to	
7	be used in accordance with House Bill No.	
8	315, 1968 Regular Session of the Legislature.	
9	From the above appropriation \$25,000.00 is to	
10	be used in accordance with House Bill No.	
11	303, 1968 Regular Session of the Legislature.	

31—*West Virginia University*

Acct. No. 300

1	Personal Services	\$ 16,162,834.00
2	Current Expenses	2,200,000.00
3	Repairs and Alterations	600,000.00
4	Equipment	1,200,000.00
5	Oak Wilt Control Research	10,000.00
6	State aid to students of Veterinary Medicine...	36,000.00
7	Office of Research and Development	175,000.00
8	Bureau for Coal Research	150,000.00

9	National Youth Science Camp	80,000.00
10	Forestry Products	72,000.00
11	Appalachian Center	122,000.00
12	Educational TV Program	180,000.00
13	Regional Research Institute	70,000.00
14	Parkersburg Branch College	56,491.00

15 Total..... \$ 21,114,325.00

16 The above appropriation for "Parkersburg
 17 Branch College" shall be used in reducing
 18 tuition and registration fees in comparison
 19 with those at West Virginia University for
 20 the same program.

21 Out of the above appropriation for Personal
 22 Services, the sum of \$8,500.00 shall be used
 23 only for the employment of a Spray Spe-
 24 cialist who shall be stationed only at West
 25 Virginia University Farm at Kearneysville,
 26 and \$7,200.00 for the employment of a Labor
 27 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
 3 of the West Virginia University Kanawha
 4 Valley Graduate Center. A sufficient
 5 amount of this appropriation shall be
 6 used to reduce the tuition and registration
 7 fees in comparison with those at West
 8 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 Col-	
11	leges" shall be used in reducing tuition and	
12	registration fees in comparison with those at	
13	Marshall University for the same program.	
14	Any unexpended balance remaining in the	
15	appropriation "Educational TV Program" at	
16	the close of the fiscal year 1967-68 is here-	
17	by reappropriated for expenditure during	
18	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 Col-	
9	lege" shall be used in reducing tuition and	
10	registration fees in comparison with those	
11	at West Liberty State College for the same	
12	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	
8	appropriation "Center for Economic Action"	
9	at the close of the fiscal year 1967-68 is	
10	hereby reappropriated for expenditure dur-	
11	the fiscal year 1968-69.	

40—*West Virginia Institute of Technology*

Acct. No. 327

1	Personal Services	\$ 1,993,893.00
2	Current Expenses	145,000.00
3	Repairs and Alterations	75,000.00
4	Equipment	200,000.00
5	Total	\$ 2,413,893.00

41—*West Virginia State College*

Acct. No. 328

1	Personal Services	\$ 2,452,245.00
2	Current Expenses	215,000.00
3	Repairs and Alterations	138,900.00
4	Equipment	100,000.00
5	Total	\$ 2,906,145.00

42—*Bluefield State College*

Acct. No. 329

1	Personal Services	\$ 966,595.00
2	Current Expenses	82,800.00
3	Repairs and Alterations	61,800.00
4	Equipment	135,450.00
5	Total	\$ 1,246,645.00

43—*West Virginia State College 4-H Camp*

Acct. No. 330

1	Personal Services	\$ 19,400.00
2	Current Expenses	5,310.00
3	Repairs and Alterations	6,690.00
4	Equipment	4,500.00
5	Total	\$ 35,900.00

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

Acct. No. 333

1	Personal Services	\$ 845,700.00
2	Current Expenses	178,918.00
3	Repairs and Alterations	40,350.00
4	Equipment	36,500.00
5	Total	\$ 1,101,468.00

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

Acct. No. 336

1	Personal Services	\$	38,750.00
2	Current Expenses		7,900.00
3	Repairs and Alterations		6,650.00
4	Equipment		7,700.00
5	Total	\$	61,000.00

46—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$	58,380.00
2	Current Expenses		12,855.00
3	Equipment		14,000.00
4	Total	\$	85,235.00

47—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$	132,100.00
2	Current Expenses		5,000.00
3	Equipment		5,000.00
4	Books and Periodicals		31,480.00
5	To Match Federal Funds		209,790.00
6	Total	\$	383,370.00

CHARITIES AND CORRECTION

48—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	524,400.00
2	Current Expenses		172,950.00
3	Repairs and Alterations		55,000.00
4	Equipment		30,200.00
5	Total	\$	782,550.00

49—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$	130,430.00
2	Current Expenses		91,500.00

3	Repairs and Alterations	10,500.00
4	Equipment	17,500.00
5	Total	\$ 249,930.00

50—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$ 269,510.00
2	Current Expenses	108,560.00
3	Repairs and Alterations	37,000.00
4	Equipment	11,000.00
5	Vocational Training	5,000.00
6	Total	\$ 431,070.00

51—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$ 65,535.00
2	Current Expenses	44,730.00
3	Repairs and Alterations	10,000.00
4	Equipment	7,350.00
5	Total	\$ 127,615.00

52—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$ 930,884.00
2	Current Expenses	524,980.00
3	Repairs and Alterations	47,500.00
4	Equipment	88,100.00
5	Total	\$ 1,591,464.00

53—*Medium Security Prison*

Acct. No. 376

1	Personal Services	\$ 558,847.00
2	Current Expenses	200,000.00
3	Repairs and Alterations	125,000.00
4	Equipment	35,000.00
5	Total	\$ 918,847.00

54—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	90,540.00
2	Current Expenses		40,700.00
3	Repairs and Alterations		24,000.00
4	Equipment		11,624.00
5	Total	\$	166,864.00

55—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$	312,394.00
2	Current Expenses		193,855.00
3	Repairs and Alterations		33,300.00
4	Equipment		35,820.00
5	Total	\$	575,369.00

HEALTH AND WELFARE

56—*State Health Department*

Acct. No. 400

1	Personal Services	\$	577,500.00
2	Current Expenses		118,273.00
3	Equipment		18,079.00
4	Cancer Control and Treatment		150,000.00
5	Tuberculosis Field Clinic and Nursing Service		10,263.00
6	Out-Patient Pneumothorax Treatment		20,642.00
7	Local Health Services		600,000.00
8	Dental Clinics		45,000.00
9	Heart Disease Control		150,000.00
10	Maternal and Child Health-		
11	mobile Medical Examination Clinic		57,500.00
12	Radiological Health		18,000.00
13	Mobile Chest X-Ray		39,000.00
14	Hospital and Medical Facilities Construction		
15	Program		17,500.00
16	Solid Wastes		24,000.00
17	Total	\$	1,845,757.00

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	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"	
12	at the close of the fiscal year 1967-68 is	
13	hereby reappropriated for expenditure dur-	
14	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

1 **Total**.....\$ 36,500.00

61—*Department of Mental Health*
Acct. No. 410

1	Personal Services	\$ 620,526.00
2	Current Expenses	136,522.00
3	Equipment	16,500.00
4	Research and Training	30,000.00
5	Civil Service Costs	65,000.00
6	Division of Health Education	20,000.00
7	Day Care Center	60,000.00
8	Commission on Mental Retardation	17,197.00
		965,745.00
9	Total	\$ 965,745.00

10 Any unexpended balance remaining in the ap-
11 propriation for "Research and Training" at
12 the close of the fiscal year 1967-68 is hereby
13 reappropriated for expenditure during the
14 fiscal year 1968-69.

62—*Colin Anderson Center*
Acct. No. 419

1	Personal Services	\$ 1,707,554.00
2	Current Expenses	365,100.00
3	Repairs and Alterations	67,700.00
4	Equipment	37,300.00
		2,177,654.00
5	Total	\$ 2,177,654.00

63—*Weston State Hospital*
Acct. No. 420

1	Personal Services	\$ 3,170,184.00
2	Current Expenses	1,034,800.00
3	Repairs and Alterations	165,000.00
4	Equipment	106,546.00
		4,476,530.00
5	Total	\$ 4,476,530.00

64—Spencer State Hospital
Acct. No. 421

1	Personal Services	\$ 1,488,478.00
2	Current Expenses	569,505.00
3	Repairs and Alterations	80,000.00
4	Equipment	83,200.00
5	Total	\$ 2,221,183.00

65—Huntington State Hospital
Acct. No. 422

1	Personal Services	\$ 2,132,120.00
2	Current Expenses	796,130.00
3	Repairs and Alterations	104,750.00
4	Equipment	96,700.00
5	Total	\$ 3,129,700.00

66—Lakin State Hospital
Acct. No. 423

1	Personal Services	\$ 1,031,857.00
2	Current Expenses	300,000.00
3	Repairs and Alterations	98,000.00
4	Equipment	85,000.00
5	Total	\$ 1,514,857.00

67—Barboursville State Hospital
Acct. No. 424

1	Personal Services	\$ 538,310.00
2	Current Expenses	169,800.00
3	Repairs and Alterations	46,600.00
4	Equipment	24,500.00
5	Total	\$ 779,210.00

68—Fairmont Emergency Hospital
Acct. No. 425

1	Personal Services	\$ 249,962.00
2	Current Expenses	106,985.00
3	Repairs and Alterations	15,000.00
4	Equipment	13,100.00
5	Total	\$ 385,047.00

69—*Welch Emergency Hospital*

Acct. No. 426

1	Personal Services	\$ 321,754.00
2	Current Expenses	174,675.00
3	Repairs and Alterations	65,000.00
4	Equipment	22,500.00
5	Total	\$ 583,929.00

70—*Hopemont State Hospital*

Acct. No. 430

1	Personal Services	\$ 1,108,090.00
2	Current Expenses	333,410.00
3	Repairs and Alterations	29,500.00
4	Equipment	29,000.00
5	Total	\$ 1,500,000.00

71—*Pinecrest Sanitarium*

Acct. No. 431

1	Personal Services	\$ 1,063,038.00
2	Current Expenses	497,245.00
3	Repairs and Alterations	30,000.00
4	Equipment	19,000.00
5	Total	\$ 1,609,283.00

72—*Denmar State Hospital*

Acct. No. 432

1	Personal Services	\$ 887,185.00
2	Current Expenses	247,475.00
3	Repairs and Alterations	37,250.00
4	Equipment	28,090.00
5	Total	\$ 1,200,000.00

73—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$ 62,552.00
2	Current Expenses	10,000.00
3	Repairs and Alterations	9,000.00
4	Equipment	3,000.00
5	Total	\$ 84,552.00

74—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$ 463,188.00
2	Current Expenses	91,150.00
3	Rehabilitation Center	367,782.00
4	Case Services	565,145.00
5	Supervisory Services for Vending Stand Pro-	
6	gram for the Blind	21,235.00
7	Training and Special Projects	60,000.00
8	Social Security Matching Fund	31,500.00
9	Total	\$ 1,600,000.00

BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450

1	Personal Services	\$ 503,925.00
2	Current Expenses	145,200.00
3	Equipment	3,500.00
4	Total	\$ 652,625.00

76—*Department of Mines*

Acct. No. 460

1	Personal Services	\$ 943,717.00
2	Current Expenses	217,165.00
3	Equipment	34,500.00
4	Total	\$ 1,195,382.00

77—*Department of Commerce*

Acct. No. 465

1	Personal Services	\$ 571,850.00
2	Current Expenses	447,500.00
3	Equipment	14,100.00
4	Mt. State Forest Festival	15,000.00
5	Alpine Festival	500.00
6	Governor's Conference on Wood Utilization...	3,000.00
7	West Virginia Historical Drama Association...	35,000.00
8	Arts and Humanities Fund	67,100.00
9	Total	\$ 1,154,050.00

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

18 All Federal moneys heretofore or hereafter re-
 19 ceived as reimbursements to the Depart-
 20 ment of Commerce, for moneys expended
 21 from General Revenue funds, are hereby
 22 reappropriated for the purposes as orig-
 23 inally made, including Personal Services,
 24 Current Expenses, Equipment, in-service
 25 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
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80—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac River		
2	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		
2	Valley Water Sanitation Commission	\$	20,657.00

82—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern Re-		
2	gional Education Board _____	\$	79,900.00
3	To be expended upon requisition of the Gov-		
4	ernor.		

83—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services _____	\$	145,570.00
2	Current Expenses _____		30,000.00
3	Equipment _____		10,000.00
4	Total _____	\$	185,570.00

84—*Interstate Education Compact*

Acct. No. 477

1	West Virginia's contribution to Interstate Edu-		
2	cation Compact _____	\$	9,500.00

85—*Antiquities Commission*

Acct. No. 478

1	Commission Expenses _____	\$	4,900.00
2	Historic Preservation Program _____		19,500.00
3	Total _____	\$	24,400.00

86—*Department of Banking*

Acct. No. 480

1	Personal Services _____	\$	143,205.00
2	Current Expenses _____		52,450.00
3	Equipment _____		100.00
4	Total _____	\$	195,755.00

87—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services _____	\$	25,200.00
2	Current Expenses _____		20,500.00
3	Equipment _____		1,000.00
4	Aerial Markers _____		1,000.00
5	Civil Air Patrol Expenses _____		8,000.00
6	Total _____	\$	55,700.00

88—*West Virginia Nonintoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$	155,685.00
2	Current Expenses		60,000.00
3	Equipment		1,200.00
4	Total	\$	216,885.00

89—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$	106,050.00
2	Current Expenses		30,000.00
3	Equipment		1,000.00
4	Total	\$	137,050.00

AGRICULTURE

90—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$	17,000.00
2	Other Personal Services		674,022.00
3	Current Expenses		264,770.00
4	Equipment		25,000.00
5	Interstate Compact on Pest Control		4,700.00
6	Total	\$	985,492.00
7	Out of the above funds a sum may be used to		
8	match federal funds for the eradication and		
9	control of pest and plant diseases.		

91—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$	94,325.00
2	Current Expenses		47,000.00
3	Watershed Program		50,000.00
4	Total	\$	191,325.00

5 Any unexpended balance remaining in the
6 Watershed Program at the end of 1967-68
7 is reappropriated for expenditure during
8 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
<hr/>		
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.

PROTECTION

98—*Department of Public Safety*

Acct. No. 570

1	Personal Services	\$ 2,603,235.00
2	Current Expenses	1,167,864.00
3	Repairs and Alterations	75,000.00
4	Equipment	340,000.00
5	Total	\$ 4,186,099.00

99—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services	\$ 76,001.00
2	Current Expenses	97,720.00
3	Repairs and Alterations	7,000.00
4	Equipment	2,600.00
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances	86,040.00
7	Property Maintenance	51,458.00
8	State Armory Board	795,493.00
9	Total	\$ 1,116,312.00

100—*Department of Civil and Defense Mobilization*

Acct. No. 581

1	Personal Services	\$ 39,655.00
2	Current Expenses	10,000.00
3	Equipment	4,300.00
4	Total	\$ 53,955.00

101—*Auditor's Office—Social Security*

Acct. No. 582

1	To match contributions of state employees for	
2	social security	\$ 2,500,000.00
3	The above appropriation is intended to cover	
4	the state's share of social security costs for	
5	those spending units operating from Gen-	
6	eral Revenue Fund and General School	
7	Fund Appropriations. The State Road	
8	Commission, Department of Motor Vehicles,	

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	1,000.00
3 From Collections	1,000.00

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	\$ 26,000.00
3 From Collections	26,000.00

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	\$ 5,500.00
3 From Collections	5,500.00

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		
2 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2 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		
2	general expenses	\$	800.00
3	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

4 The above appropriation is intended to cover
5 the state's share of the West Virginia Pub-
6 lice 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.

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 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-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

16	Forest Highway	196,000.00
17	General Operations	22,362,600.00
18	Equipment Purchases	1,000,000.00
19	Inventory Purchases	3,000,000.00
20	Debt Service	10,599,000.00
		<hr/>
21	Total	\$244,950,000.00

22 It is the intent to appropriate and make avail-
 23 able for expenditure, the balances and all
 24 revenues and income of the state road fund,
 25 including the proceeds from the sale of
 26 bonds, for the maintenance, construction
 27 and reconstruction of state roads and for
 28 other purposes in accordance with the pro-
 29 visions of chapter 17, code of West Virginia,
 30 one thousand nine hundred thirty-one, as
 31 amended.

32 Funds in excess of amounts herein appropri-
 33 ated may be made available by budget
 34 amendment upon request of the Road Com-
 35 missioner and approval of the Board of
 36 Public Works.

37 The State Road Commissioner shall have the
 38 authority to operate revolving funds within
 39 the state road fund for the operation and
 40 purchase of various types of equipment
 41 used directly and indirectly in the construc-
 42 tion and maintenance of roads and for the
 43 purchase of inventories of materials and
 44 supplies: *Provided, however,* That the op-
 45 eration of such revolving funds shall not
 46 cause expenditures in excess of the fore-
 47 going appropriations.

48 There is hereby appropriated, within the
 49 above line items, sufficient moneys for the
 50 payment of claims, accrued or arising dur-
 51 ing this budgetary period, to be paid in ac-
 52 cordance with chapter 14, article 2, sections
 53 7 and 8, code of West Virginia, one thou-
 54 sand nine hundred thirty-one, as amended.

120—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,036,600.00
2	Current Expenses	542,365.00
3	Equipment	30,000.00
4	Purchase of License Plates	250,000.00
5	Social Security Matching Fund	44,177.00
6	Public Employees Retirement Matching Fund	51,406.00
7	Total	\$ 1,954,548.00

121—State Tax Department—Gasoline Tax Division

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 212,240.00
2	Current Expenses	69,000.00
3	Equipment	4,000.00
4	Social Security Matching Fund	9,500.00
5	Total	\$ 294,740.00

122—State Board of Education

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 110,862.00
2	Current Expenses	18,450.00
3	Equipment	2,600.00
4	Total	\$ 131,912.00

123—State Board of Education—Vocational Division

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 109,943.00
2	Current Expenses	31,550.00
3	Equipment	3,950.00
4	Vocational Aid	410,000.00
5	Aid to Counties	151,250.00
6	Total	\$ 706,693.00

124—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	38,216.00
2	Current Expenses		12,705.00
3	Total	\$	50,921.00
4	Expenditures from this appropriation shall not		
5	exceed the amount to be reimbursed by the		
6	Federal Government.		
7	Federal funds in excess of the amounts hereby		
8	appropriated may be made available by		
9	budget amendment upon request of the		
10	State Superintendent of Schools and ap-		
11	proval of the Board of Public Works for		
12	any emergency which might arise in the		
13	operation of this division during the fiscal		
14	year.		

125—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$	18,000.00
2	Other Personal Services		474,268.00
3	Current Expenses		131,830.00
4	Equipment		9,550.00
5	National Defense Education Act		223,270.00
6	Statewide Testing Program		176,000.00
7	Experimental Projects		18,730.00
8	Total	\$	1,051,648.00
9	Any part or all of the appropriation for		
10	"National Defense Education Act" may be		
11	transferred to a Special Revenue Fund for		
12	the purpose of matching Federal Funds for		
13	this program.		

126—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	30,555.00
2	Current Expenses		8,400.00
3	Equipment		1,250.00
4	Total	\$	40,205.00

127—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	72,843.00
2	Current Expenses		17,975.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		400,000.00
5	Total	\$	490,818.00

128—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$	61,000.00
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129—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home	\$	25,000.00
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130—*Department of Education—Safety Education*

Acct. No. 708

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	12,060.00
2	Current Expenses		2,940.00
3	Aid to Counties		135,000.00
4	Total	\$	150,000.00

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-		
3	one, acts of the Legislature, regular session,		
4	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
 7 paid from Special Revenue Fund out of col-
 8 lections 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
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- 2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.
 6 No expenditures shall be made from this
 7 account except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

135—*Auditor's Office—Land Department Operating Fund*
Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	21,000.00
2	Current Expenses		15,000.00
3	Total	\$	36,000.00

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
11 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

1	Personal Services	\$	130,200.00
2	Current Expenses		13,430.00
3	Equipment		17,000.00
4	Social Security Matching Fund		6,170.00
5	Public Employees Retirement Matching Fund		7,150.00
6	Total	\$	173,950.00

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.

137—*Department of Agriculture*
 Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	210,140.00
2	Current Expenses		40,590.00
3	Equipment		8,500.00
4	Social Security Matching Fund		9,000.00
5	Public Employees Retirement Matching Fund		8,707.00
6	Total	\$	276,937.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections made by the Department of
 10 Agriculture as provided by law. It is the 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

1	Personal Services	\$	60,780.00
2	Current Expenses		32,000.00
3	Equipment		900.00
4	Social Security Matching Fund		2,720.00
5	Public Employees Retirement Matching Fund		3,183.00
6	Total	\$	99,583.00

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

1	Salaries of Commissioners	\$	42,000.00
2	Other Personal Services		453,199.00
3	Current Expenses		75,875.00
4	Equipment		6,440.00
5	Social Security Matching Fund		16,670.00
6	Public Employees Retirement Matching Fund		25,597.00
7	Total	\$	619,781.00

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

140—Public Service Commission—Motor Carrier Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	256,830.00
2	Current Expenses		69,400.00
3	Equipment		4,860.00
4	Social Security Matching Fund		10,444.00
5	Public Employees Retirement Matching Fund		12,370.00
6	Total	\$	353,904.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 receipts collected for or by the Public Serv-
 10 ice Commission pursuant to and in the exer-
 11 cise of regulatory authority over motor car-
 12 riers as authorized by law.

141—*Department of Natural Resources*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 1,327,120.00
2	Current Expenses	626,300.00
3	Repairs and Alterations	105,100.00
4	Equipment	301,300.00
5	Land Purchase and Buildings	170,000.00

6 Total..... \$ 2,529,820.00

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

142—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 128,302.00
2	Current Expenses	55,980.00
3	Repairs and Alterations	5,000.00
4	Equipment	10,864.00
5	Social Security Matching Fund	865.00

6 Total..... \$ 201,011.00

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.

143—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$	14,000.00
2	Other Personal Services		3,759,250.00
3	Current Expenses		959,200.00
4	Repairs and Alterations		48,000.00
5	Equipment		60,000.00
6	Social Security Matching Fund		181,633.00
7	Public Employees Retirement Matching Fund		204,531.00
8	Total	\$	5,226,614.00

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

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

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

144—*West Virginia Civil Service System*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	172,126.00
2	Current Expenses		41,940.00
3	Social Security Matching Fund		9,612.00
4	Public Employees Retirement Matching Fund		10,515.00
5	Total	\$	234,193.00

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

10 The Board of Public Works is hereby au-
 11 thorized to make available by budget
 12 amendment, upon request of the Civil
 13 Service Commission, funds in excess of the
 14 amounts hereby appropriated.

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

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service	\$ 665,000.00
2 Forestry Building	10,000.00
3 Property Acquisition	500,000.00
4 Misc. Small Projects	600,000.00
5 Utilities, Roads, and Parking	400,000.00
6 Renovating of Existing Building	650,000.00
7 Total	\$ 2,825,000.00

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 1967-68 is hereby reappropriated for ex-
 15 penditure 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

1 West Virginia Board of Education — Debt 2 Service	\$ 1,676,600.00
3 Concord College — Additional Amount for 4 Maintenance Building	27,500.00

5	W. Va. Institute of Technology—Purchase of	
6	Maintenance Bldgs.	77,500.00
7	Glenville State College—Forest Technology	
8	Building	150,000.00
9	Glenville State College—Land Acquisition.....	10,000.00
10	Bluefield State College—Additional Amount	
11	for Tech.-Science Bldg. Addition	150,000.00
12	Bluefield State College—Basic Science Build-	
13	ing	2,100,000.00
14	Bluefield State College—Land Acquisition.....	70,000.00
15	Bluefield State College—Library Addition.....	480,000.00
16	W. Va. Institute of Technology — Library	
17	Building	1,800,000.00
18	W. Va. Institute of Technology—Land Acquisi-	
19	tion	100,000.00
20	W. Va. Institute of Technology—Community-	
21	Technical College Building	1,000,000.00
22	West Liberty State College — Library-Class-	
23	room Building	1,800,000.00
24	West Virginia State College—Classroom-Office	
25	Building	3,000,000.00
26	West Virginia State College—Land Acquisi-	
27	tion	130,000.00
28	Concord College—Health-Phy. Educ. Building	2,170,000.00
29	Concord College—Land Acquisition	125,000.00
30	Fairmont State College—Science Building.....	2,800,000.00
31	Marshall University—Communications Build-	
32	ing	600,000.00
33	Glenville State College—Classroom Building..	2,100,000.00
34	Glenville State College—Land Acquisition.....	100,000.00
35	Shepherd College—Fine Arts Building	1,900,000.00
36	Fairmont State College — Health-Phy. Educ.	
37	Building	1,000,000.00
38	Marshall University — Engineering-Science	
39	Building	4,000,000.00
40	Marshall University—Land Acquisition	400,000.00
41	West Liberty State College — Maintenance	
42	Building	300,000.00
43	West Liberty State College — Renovation,	
44	Main Hall	250,000.00
45	West Liberty State College — Renovation,	

46	Annex II	100,000.00
47	Shepherd College—Maintenance Building.....	200,000.00
48	Shepherd College—Renovation, Social Science	
49	Building	100,000.00

50 As required by law, the above projects are
 51 listed in a stated order of priority.

52 The appropriation on lines 1 through 11 are to
 53 be paid on a cash basis and made available
 54 from date of passage and the cost of projects
 55 on lines 12 through 49 are to be paid from
 56 proceeds of revenue bonds as authorized by
 57 law with projects on lines 13 through 23 be-
 58 ing made available from date of passage. It is
 59 intended that only complete and usable units
 60 or projects be constructed and equipped and
 61 then only in the listed order of priority:
 62 *Provided, however,* That the amounts shown
 63 for each unit or project shall include in said
 64 amount matching-grant funds from govern-
 65 mental or nongovernmental sources, and
 66 further provided, that whenever the amount
 67 in the Capital Improvement Fund including
 68 both cash collections and the proceeds of
 69 bond sale, shall be sufficient to cover all
 70 capital expenditures authorized above, then
 71 the listed projects shall be considered of
 72 equal priority and all of them, or any one or
 73 more, may be constructed as soon as plans
 74 can be prepared and contracts let therefor.

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

79 Any unexpended balance remaining in this
 80 appropriation at the close of the fiscal year
 81 1967-1968 is hereby reappropriated for ex-
 82 penditure during the fiscal year 1968-1969.

83 The appropriation heretofore authorized by
 84 the Legislature for expenditure during the
 85 fiscal year 1967-68, set forth in the Budget

86 Bill, Regular Session 1967, Section 2, Approp-
 87 priations from Other Funds, pages 48 and 49,
 88 State Board of Education—Special Capital
 89 Improvements Funds, Account No. 854, lines
 90 19 through 62 inclusive, is hereby voided and
 91 superseded by the above appropriation.
 92 Out of funds in excess of the above appropria-
 93 tion a sum of \$80,000.00 shall be made avail-
 94 able to Concord College for the development
 95 of a recreation field.

147—*West Virginia University—Medical School*
 Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 6,905,066.00
2	Current Expenses	2,433,334.00
3	Repairs and Alterations	294,600.00
4	Equipment	367,000.00
5	Total	\$ 10,000,000.00
6	Special funds in excess of the amounts hereby	
7	appropriated may be made available by	
8	budget amendment upon request of the	
9	Board of Governors of West Virginia Uni-	
10	versity and approval of the Board of Public	
11	Works.	

148—*Workmen's Compensation Commission*
 Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 953,400.00
2	Current Expenses	277,600.00
3	Equipment	15,600.00
4	Social Security Matching Fund	45,600.00
5	Public Employees Retirement Matching Fund	45,000.00
6	Total	\$ 1,337,200.00
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. This sum
 13 shall be transferred to the Board of In-
 14 surance.

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-eight to supplement the
 6 1967-68 appropriations, and to be available for expenditure
 7 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
 3 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

1	Personal Services	\$	82,985.00
2	Current Expenses		62,053.00
3	Repairs and Alterations		23,100.00
4	Equipment		11,400.00
5	For improvement and repairs of the facilities		
6	at Babcock State Park		100,000.00
7	Total	\$	279,538.00

156—*Human Rights Commission*

Acct. No. 598

1	Personal Services	\$	300.00
2	Current Expenses		2,610.00
3	Total	\$	2,910.00

157—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Current Expenses	\$	36,000.00
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158—*West Virginia Alcohol Beverage Control*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	24,000.00
2	Current Expenses		50,069.00
3	Total	\$	74,069.00

Sec. 4. Awards for Claims Against the State.—From the
 2 funds designated there are hereby appropriated for the re-
 3 mainder of the fiscal year 1967-68, and to remain in effect
 4 until June 30, 1969, for payment of claims against the state,
 5 the following amounts as itemized.

Claims versus the State Road Commission

TO BE PAID FROM STATE ROAD FUND

1	Southern Coals Company	\$	3,099.67
2	Charleston Concrete Floor Co.		14,500.02
3	Roy L. Warner		640.16
4	Buckeye Union Casualty Co. and Melvin		
5	O'Brien		39,775.00

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 Anslin	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.	
19	on behalf of James E. Keene.....	24.81
20	Ott Brown	68.25
21	Emmett Buchanan	102.40
22	John L. Wood	1,450.00
23	Geo. C. and Audra H. Hendershott	350.79
24	Delos Tenney	225.00
25	James D. Clark	70.15
26	Clifford Biller	124.00
27	Henry L. Miller	36.00
28	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 et al	
2	etc.	\$ 23,582.15

Claims versus the Adjutant General

TO BE PAID FROM GENERAL REVENUE FUND

1	Alice and Shual Sargis	\$ 3,277.11
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Claims versus the Department of Health

TO BE PAID FROM GENERAL REVENUE FUND

1	Biggs-Johnston-Withrow	\$ 4,400.00
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Claims versus the Department of Welfare

TO BE PAID FROM GENERAL REVENUE FUND

1	Remington-Rand Office Systems Division	
2	Sperry Rand Corporation	\$ 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

7 Tax Commissioner through the state treasury out of gross
8 collections.

**Sec. 11. Appropriations to Pay Costs of Publication of
2 Delinquent Corporations.**—There is hereby appropriated out
3 of the state fund, general revenue, out of funds not other-
4 wise appropriated to be paid upon requisition of the auditor
5 and/or the Governor, as the case may be, a sum sufficient to
6 pay the cost of publication of delinquent corporations as pro-
7 vided by chapter 11, article 12, sections 75 and 77, of the code
8 of West Virginia.

Sec. 12. Appropriations for Local Governments.—There is
2 hereby appropriated for payment to counties, districts, and
3 municipal corporations such amounts as will be necessary
4 to pay taxes due county, district, and municipal corporations
5 and which have been paid into the treasury:

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

Sec. 13. Total Appropriations.—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital outlay,
4 except as otherwise provided in Title I, Section 3.

Sec. 14. General School Fund.—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with chapter 18, article 9,
5 section 6, of the code of West Virginia.

TITLE 3. ADMINISTRATION.

Section

- 1. Appropriations conditional.
- 2. Constitutionality.

Section 1. Appropriations Conditional.—The expenditure
2 of the appropriations made by this act, except those appro-
3 priations made to the legislative and judicial branches of the
4 state government, are conditioned upon the compliance by
5 the spending unit with the requirements of chapter 5,
6 article 4 and chapter 5-A, article 2, of the code of West
7 Virginia.

8 Where former spending units have been absorbed by or
9 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

8 applicant. The applicant shall, in addition to such other
9 information as may be reasonably required by the com-
10 mittee, furnish evidence that (a) the applicant is pro-
11 fessionally competent and financially responsible, (b)
12 adequate physical facilities will be available for the
13 school, and (c) persons teaching or instructing therein
14 are registered by the committee as duly qualified in-
15 structors. If an applicant desires to own or operate more
16 than one school of barbering or beauty culture, a separate
17 application shall be made and a separate license shall be
18 issued for each.

19 All applicants for a license to own or operate a
20 school of barbering or beauty culture shall permit
21 an inspection of such proposed school by the com-
22 mittee or its designated representative to determine
23 whether it is properly fitted and equipped for in-
24 struction in barbering or beauty culture. The com-
25 mittee shall promulgate reasonable rules and regula-
26 tions to implement and make effective the powers,
27 duties and responsibilities vested in such commit-
28 tee in connection with the licensing and regulation of
29 schools of barbering and beauty culture. If the applicant
30 has met all of the standards and qualifications prescribed
31 herein and by the committee and has complied with the
32 rules and regulations pertaining to the issuance of the li-
33 cense applied for, the committee shall issue such license to
34 the applicant. Thereafter, the committee may suspend, re-
35 voke or refuse to renew the license of a school when-
36 ever it fails to meet the minimum standards and qualifica-
37 tions required for the issuance of an original license.

38 The license fee for each school of barbering and for each
39 school of beauty culture shall be twenty-five dollars an-
40 nually, to be paid in such manner as the committee may
41 prescribe, on or before January first of each year. The
42 license shall be prominently displayed in the school, and
43 a suitable sign shall be kept on the front of the school
44 which shall plainly indicate that a school of barbering or
45 beauty culture is operated therein.

46 The committee shall make reasonable rules and
47 regulations prescribing the standards and require-
48 ments to be met by applicants for registration as

49 duly qualified instructors in schools of barbering or
50 beauty culture. Such rules and regulations may provide
51 for the issuance of certificates for instructors, including
52 temporary certificates, and shall prescribe minimum
53 qualifications as to age, education and training for appli-
54 cants for such certificates. Each registered instructor in
55 barbering or beauty culture shall pay an initial registra-
56 tion fee of five dollars, and shall renew his certificate
57 annually and pay a renewal fee of five dollars on or before
58 the first day of January of each year. An expired certifi-
59 cate may be reinstated only upon the payment of all
60 lapsed renewal fees, unless such instructor shall have
61 notified the committee that he or she desires to be placed
62 on an inactive status during which time he or she shall
63 not be liable for any renewal fees. The applicant for re-
64 instatement shall also be required to meet the qualifica-
65 tions for registration in effect at the time application for
66 reinstatement is made.

67 Recognizing that all of the provisions of chapter twenty-
68 nine-a of this code are fully applicable to any and all
69 administrative procedures, and the right of judicial re-
70 view, in connection with the provisions of this article,
71 but also recognizing that the question has been raised as
72 to whether rules and regulations adopted under the pro-
73 visions of this section must be promulgated in accordance
74 with the provisions of said chapter twenty-nine-a, it is
75 hereby expressly provided that all such rules and regula-
76 tions shall be promulgated in compliance with the pro-
77 visions 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 thou-
sand 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
2 any building and loan association may invest the funds
3 received by it as follows:

4 First: In loans to its shareholders secured by a bond
5 or other obligation and mortgage or deed of trust on real
6 estate. Such loans may be secured by a transfer and
7 pledge to the association of shares having a matured
8 or par value at least equal to the amount of such loans,
9 or may be written on a direct reduction basis. A direct
10 reduction loan shall mean a loan repayable in consecu-
11 tive monthly installments, equal or unequal, beginning
12 not later than thirty days after the date of the advance
13 of the loan, sufficient to retire the debt, interest and
14 principal within thirty years. The direct reduction bor-
15 rower shall be given a membership certificate evidencing
16 his rights in the association, but shall not participate
17 in profits or losses. No building and loan association shall
18 lend upon any one piece of real estate more than ten
19 percent of its paid-in capital stock, contingent or reserve
20 funds, and undivided profits. Personal property may be
21 accepted as additional security where the primary and
22 principal security is a mortgage or deed of trust on real
23 estate.

24 Second: In loans to shareholders upon their obliga-
25 tion secured by the transfer and pledge to the association
26 of shares not previously transferred or pledged to it, the
27 withdrawal or par value of which shall at least equal
28 the amount of such loan.

29 Any such bonds or obligations, mortgages, or deeds
30 of trust taken by any such association from its share-

31 holders shall be deemed conditioned upon the perform-
32 ance of the provisions of this article and the bylaws of
33 the association relating to the payment of loans, premium,
34 interest, dues, fees, and fines, although the same may
35 not be fully expressed therein.

36 Third: In the purchase of direct reduction loans made
37 by others where such loans are secured by bond or other
38 obligation and mortgage or deed of trust on real estate,
39 however, no building and loan association shall purchase
40 a loan made upon any one piece of real estate on which
41 there is owing a sum in excess of ten percent of its paid-in
42 capital stock, contingent or reserve funds, and undivided
43 profits. When a building and loan association purchases
44 loans made by others, the borrowers shall not become
45 shareholders or members of such association.

46 Fourth: A building and loan association may partici-
47 pate with one or more financial institutions in any direct
48 reduction real estate loan to borrowers, provided (a)
49 that the participating interest of such association is not
50 subordinated or inferior to any other participating in-
51 terest, and (b) that the participating interest of such
52 association in any loan on one piece of real estate shall
53 not exceed ten percent of its paid-in capital stock, con-
54 tingent or reserve funds, and undivided profits. When a
55 building and loan association participates with other
56 financial institutions in making real estate loans, the
57 borrowers shall not become shareholders or members of
58 such association. The term "financial institutions," as used
59 herein, shall include a banking institution or trust com-
60 pany, a building and loan association, a mutual savings
61 bank, a cooperative bank, a homestead association, a
62 federal savings association, a federal savings and loan
63 association and any supervised thrift and residential
64 financing institution of a substantially similar nature.

65 Fifth: In real property as follows: (a) A lot of land
66 whereon there is or may be erected a building or build-
67 ings suitable for the convenient transaction of its busi-
68 ness, from portions of which, not required for its own
69 use, a revenue may be derived: *Provided*, That no building
70 and loan association shall so invest more than ten percent

71 of its assets; (b) such as shall be conveyed to it in satis-
72 faction of debts previously contracted in the course of its
73 business; (c) such as it shall purchase at sales under judg-
74 ments, decrees, or mortgages or deeds of trust held by
75 it: *Provided, however,* That any real estate acquired by
76 any building and loan association under classes (b) and
77 (c) shall be disposed of by the association at the earliest
78 practicable date; but the officers thereof shall have a rea-
79 sonable discretion in the matter of the time to dispose
80 of such property in order to save the association from
81 unnecessary losses.

82 If at any time it has funds in excess of the amount
83 needed for loans to its members, and the payment of
84 matured shares and withdrawals, such funds may be
85 invested:

86 (a) In loans to other domestic building and loan asso-
87 ciations;

88 (b) In bonds or interest-bearing obligations of the
89 United States, or the District of Columbia, or of the state
90 of West Virginia, or of any county, district, school dis-
91 trict, or other political subdivision in the state of West
92 Virginia, or of any incorporated municipality in the
93 state of West Virginia; and in such other securities as
94 now are or hereafter may be accepted by the United
95 States to secure government deposits in national banks,
96 or approved by the state commissioner of banking;

97 (c) In loans to students which are insurable under
98 the Higher Education Act of 1965 or the National Voca-
99 tional 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 associations 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 Virginia, 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 regulations permitting state associations to exercise rights, powers, etc., possessed by federal associations; 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-
15 gated by the commissioner in conformity with the pro-
16 visions of chapter twenty-nine-a of this code and shall
17 become effective upon compliance with the procedures
18 therein prescribed, but no such regulation of the com-
19 missioner shall in any event become effective prior to
20 the date on which the federal rule or regulation becomes
21 effective. If such regulation so adopted and so promul-
22 gated by the commissioner is not embodied in a statute
23 enacted prior to the adjournment of the next regular

24 session of the Legislature such regulation shall there-
 25 upon no longer be of any force or effect: *Provided*, That
 26 if the next regular session of the Legislature convening
 27 after the adoption and promulgation of such regulation
 28 shall be the regular thirty-day budget session and the sub-
 29 ject matter of such regulation is not a proper matter for
 30 consideration at such thirty-day budget session such regu-
 31 lation shall remain in full force and effect until the ad-
 32 journment of the next regular sixty-day session of the
 33 Legislature: *Provided, however*, That no such regula-
 34 tion issued by the commissioner shall grant to building
 35 and loan associations permission or authority to install
 36 or maintain any branch or to engage in business at any
 37 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, relating to the powers and duties of the state building commission.

Be it enacted by the Legislature of West Virginia:

That 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, 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; composition, appointment, term and qualification of members; chairman and secretary; compensation and expenses; powers and duties generally.

1 "The State Office Building Commission of West Vir-
2 ginia," heretofore created, shall continue in existence but
3 on and after February nine, one thousand nine hundred
4 sixty-six, shall be known and designated as "The State
5 Building Commission of West Virginia" and shall continue
6 as a body corporate and as an agency of the state of West
7 Virginia. On and after the date aforesaid, the commission
8 shall consist of the governor, and four additional members
9 to be appointed by the governor by and with the advice
10 and consent of the Senate. The terms of office for said
11 members to be appointed by the governor shall be four
12 years, except that the terms of office of the first four mem-
13 bers so appointed by the governor shall be for one, two,
14 three and four years respectively. No more than three
15 of such members so appointed by the governor shall be
16 members of the same political party, nor shall any of
17 said members be members or employees of the executive,
18 legislative or judicial branches of government of West
19 Virginia or any political subdivision thereof. The gov-
20 ernor shall be chairman of the commission. The secretary
21 of state shall be a member of the commission and serve
22 as its secretary, but shall not have the right to vote upon
23 matters before the commission. All members of the com-
24 mission shall be citizens and residents of this state. The
25 members of the commission shall be paid or reimbursed
26 for their necessary expenses incurred under this article,
27 but shall receive no compensation for their services as
28 members or officers of the commission: *Provided, how-*
29 *ever,* That each member of the commission appointed by
30 the governor shall, in addition to such reimbursement for
31 necessary expenses receive a per diem of thirty-five
32 dollars for each day or substantial portion thereof that he
33 is engaged in the work of the commission. Such expenses
34 and per diem shall be paid solely from funds provided
35 under the authority of this article, and the commission
36 shall not proceed to exercise or carry out any authority
37 or power herein given it to bind said commission beyond

38 the extent to which money has been provided under the
39 authority of this article. On or before the fifteenth day
40 of each month, the commission shall prepare and transmit
41 to the president and minority leader of the Senate and the
42 speaker and the minority leader of the House of Delegates,
43 a report covering the activities of the said commission
44 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
5 of the commission or of the state, by purchase or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;
- 9 4. To acquire, hold and dispose of personal property
10 for its corporate purposes;
- 11 5. To make bylaws for the management and regula-
12 tion of its affairs;
- 13 6. With the consent of the attorney general of the state
14 of West Virginia to use the facilities of his office, assistants
15 and employees in all legal matters relating to or per-
16 taining to the commission;
- 17 7. To appoint officers, agents and employees, and fix
18 their compensation;
- 19 8. To make contracts, and to execute all instruments
20 necessary or convenient to effectuate the intent of, and
21 to exercise the powers granted to it by, this article;
- 22 9. To renegotiate all contracts entered into by it when-
23 ever, due to a change in situation, it appears to the com-
24 mission that its interest will be best served;
- 25 10. To construct a building or buildings on real prop-
26 erty, which it may acquire, or which may be owned by
27 the state of West Virginia, in the city of Charleston, as
28 convenient as may be to the capitol building, together
29 with incidental approaches, structures and facilities, sub-
30 ject to such consent and approval of the city of Charleston
31 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-

72 mission may have on hand pending the completion of
73 any project or projects;

74 16. To do all things necessary or convenient to carry
75 out the powers given in this article.

76 The rights and powers set forth in subdivision ten of
77 this section shall not be construed as in derogation of
78 any rights and powers now vested in the West Virginia
79 alcohol beverage control commissioner, the department
80 of mental health or the commissioner of public institu-
81 tions.

**§5-6-4. Deposit and disbursement of funds of commission;
security for deposits; audits.**

1 All moneys of the commission from whatever source
2 derived shall be paid to the treasurer of the state of West
3 Virginia, who shall not commingle said moneys with any
4 other moneys, but shall deposit them in a separate bank ac-
5 count or accounts. The moneys in said accounts shall be im-
6 pressed with and subject to the lien or liens thereon in fa-
7 vor of the bondholders provided in the proceedings for is-
8 suance of bonds pursuant to this article. The moneys in said
9 accounts shall be paid out on check of the treasurer on
10 requisition of the chairman of the commission, or of such
11 other person as the commission may authorize to make
12 such requisition. All deposits of such moneys shall, if
13 required by the treasurer or the commission, be secured
14 by obligations of the United States, of the state of West
15 Virginia, or of the commission, of a market value equal
16 at all times to the amount of the deposit, and all banking
17 institutions are authorized to give such security for such
18 deposits. The state auditor and his legally authorized
19 representatives are hereby authorized and empowered
20 from time to time to examine the accounts and books of
21 the commission, including its receipts, disbursements,
22 contracts, leases, sinking funds, investments, and any
23 other matters relating to its financial standing.

**§5-6-6. Contracts with commission to be secured by bond; com-
petitive bids required for contracts exceeding two
thousand dollars.**

1 The commission shall construct the project pursuant to a
2 contract or contracts. Every such contract shall be secured

3 by a bond meeting the requirements of section thirty-nine,
4 article two, chapter thirty-eight of this code.

5 No contract or contracts for the construction, remodel-
6 ing, renovation or repair of any building or buildings or
7 any approaches, structures or facilities incidental thereto,
8 or for the equipping and furnishing of any building or
9 buildings, when the anticipated expenditure therefor will
10 exceed the sum of two thousand dollars, shall be entered
11 into except upon the basis of competitive sealed bids. Such
12 bids shall be obtained by public notice soliciting such bids
13 published as a Class II legal advertisement in compliance
14 with the provisions of article three, chapter fifty-nine
15 of this code, and the publication area for such publication
16 shall be the county in which any such contract is to be
17 performed. The publication shall be completed at least
18 fourteen days prior to the final date for the submission of
19 bids. The commission may in addition to such publica-
20 tion also solicit sealed bids by sending requests by mail
21 to prospective bidders. The contract shall be awarded
22 to the lowest responsible bidder, unless any and all bids
23 are rejected, in which event new bids shall be sought by
24 again publishing notice as aforesaid. Any bid, with the
25 name of the bidder, shall be entered on a record and each
26 record, with the successful bid indicated thereon, shall,
27 after the award of any contract, be open to public in-
28 spection 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.**

1 The commission is hereby empowered to raise the cost
2 of a project, as defined hereinabove, by the issuance of
3 state building revenue bonds of the state, the principal
4 of and interest on which bonds shall be payable solely
5 from the special fund herein provided for such payment.
6 Subject to the proceedings pursuant to which any bonds
7 outstanding were authorized and issued pursuant to this
8 article, the commission shall pledge the moneys in such
9 special fund, except such part of the proceeds of sale
10 of any bonds to be used to pay the cost of a project, for

11 the payment of the principal of and interest on bonds
12 issued pursuant to this article, such pledge to apply
13 equally and ratably to separate series of bonds or upon
14 such priorities as the commission shall determine. Such
15 bonds shall be authorized by resolution of the commis-
16 sion which shall recite an estimate by the commission
17 of such cost, and shall provide for the issuance of bonds
18 in an amount sufficient, when sold as hereinafter pro-
19 vided, to produce such cost, less the amount of any funds,
20 grant or grants, gift or gifts received, or in the opinion
21 of the commission expected to be received from the
22 United States of America or from any other source. The
23 acceptance by the commission of any and all such funds,
24 grants and gifts, whether in money or in land, labor or
25 materials, is hereby expressly authorized. All such bonds
26 shall have and are hereby declared to have all the quali-
27 ties of negotiable instruments. Such bonds shall bear
28 interest at not more than six percent per annum, payable
29 semiannually, and shall mature in not more than twenty-
30 five years from their date or dates, and may be made re-
31 deemable at the option of the state, to be exercised by the
32 commission, at such price and under such terms and condi-
33 tions as the commission may fix prior to the issuance of
34 such bonds. The commission shall determine the form
35 of such bonds, including coupons to be attached thereto
36 to evidence the right of interest payments, which bonds
37 shall be signed by the chairman and secretary of the
38 commission, under the great seal of the state, attested
39 by the secretary of state, and the coupons attached
40 thereto shall bear the facsimile signature of said chair-
41 man of the commission. In case any of the officers whose
42 signatures appear on the bonds or coupons issued as
43 hereinbefore authorized shall cease to be such officers
44 before the delivery of such bonds, such signatures shall
45 nevertheless be valid and sufficient for all purposes the
46 same as if they had remained in office until such delivery.
47 The commission shall fix the denominations of said bonds,
48 the principal and interest of which shall be payable at
49 the office of the treasurer of the state of West Virginia,
50 at the capitol of said state, or, at option of the holder,
51 at some bank or trust company in the city of New York

52 to be named in the bonds in such medium as may be
53 determined by the commission. The said bonds and
54 interest thereon shall be exempt from taxation by the
55 state of West Virginia, or any county or municipality
56 therein. The commission may provide for the registra-
57 tion of such bonds in the name of the owner as to prin-
58 cipal alone, and as to both principal and interest under
59 such terms and conditions as the commission may de-
60 termine, and shall sell such bonds in such manner as it
61 may determine to be for the best interest of the state,
62 taking into consideration the financial responsibility of
63 the purchaser, and the terms and conditions of the pur-
64 chase, and especially the availability of the proceeds of
65 the bonds when required for payment of the cost of the
66 project, such sale to be made at a price not lower than a
67 price which, computed upon standard tables of bond
68 values, will show a net return of not more than six per-
69 cent per annum to the purchaser upon the amount paid
70 therefor. The proceeds of such bonds shall be used solely
71 for the payment of the cost of the project for which bonds
72 were issued, and shall be deposited and checked out as
73 provided by section four of this article, and under such
74 further restrictions, if any, as the commission may pro-
75 vide. If the proceeds of bonds issued for a project shall
76 exceed the cost thereof, the surplus shall be paid into the
77 fund hereinafter provided for payment of the principal
78 and interest of such bonds. Such fund may be used for
79 the purchase of any of the outstanding bonds payable
80 from such fund at the market price, but at not exceeding
81 the price, if any, at which such bonds shall in the same
82 year be redeemable, and all bonds redeemed or purchased
83 shall forthwith be cancelled, and shall not again be issued.
84 Prior to the preparation of definitive bonds, the commis-
85 sion may, under like restrictions, issue temporary bonds
86 with or without coupons, exchangeable for definitive
87 bonds upon the issuance of the latter. Notwithstanding
88 the provisions of sections nine and ten, article six, chapter
89 twelve of this code, revenue bonds issued under the
90 authority herein granted shall be eligible as investments
91 for the workmen's compensation fund, teachers' retire-
92 ment fund, department of public safety death, disability

93 and retirement fund, West Virginia public employees'
94 retirement system and as security for the deposit of all
95 public funds. Such revenue bonds may be issued without
96 any other proceedings or the happenings of any other
97 conditions or things than those proceedings, conditions
98 and things which are specified and required by this ar-
99 ticle, or by the constitution of the state. The aggregate
100 amount of all issues of bonds outstanding at one time for
101 all projects authorized hereunder shall not exceed twenty-
102 seven million five hundred thousand dollars including the
103 renegotiation, reissuance or refinancing of any such bonds.
104 No bonds or other obligations shall be issued or incurred
105 hereunder, unless and until the Legislature by concurrent
106 resolution has approved the purpose and amount of each
107 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 thousand 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.**Section**

- 8-4D-1. Commissions authorized.
- 8-4D-2. Commissions are public corporations.
- 8-4D-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.
- 8-4D-4. Powers.
- 8-4D-5. Indebtedness of commission.
- 8-4D-6. Disposition of surplus of commission.
- 8-4D-7. Property, bonds and obligations of authority exempt from taxation.
- 8-4D-8. Contributions to the authority; funds and accounts of the authority; reports; audits.
- 8-4D-9. Authority to transfer property to commission.
- 8-4D-10. Sale of property by commission.
- 8-4D-11. Workmen's compensation.
- 8-4D-12. Liberal construction.
- 8-4D-13. Severability.

§8-4D-1. Commissions authorized.

1 Any county or municipality, or any county and one or
2 more municipalities, or any two or more municipalities
3 within any county or counties, or any combination there-
4 of, may create and establish respectively a county build-
5 ing commission, a municipal building commission, or a
6 county-municipal building commission (hereinafter re-
7 ferred to as commission or commissions). Such com-
8 missions may be formed by an order or ordinance, as
9 appropriate, by each governmental body establishing the
10 same.

§8-4D-2. Commissions are public corporations.

1 Each commission, when created, shall be a public
2 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.

1 All property, powers and duties and the management
2 and control of each commission shall be vested in a board
3 consisting of representatives appointed by the govern-
4 mental body or bodies creating and establishing such
5 commission. In the case of a county building commis-
6 sion or a municipal building commission such board shall
7 consist of not less than three nor more than five members
8 and in the case of a county-municipal building commission
9 each participating county shall appoint three members

10 and each participating municipality shall appoint two
11 members. All members of any board shall be appointed
12 for terms of five years. Prior to making the initial
13 appointments to the board, the governmental body or
14 bodies shall make such initial appointments so that ap-
15 proximately one fifth of the total number of members
16 of the board shall be appointed for a term of one year,
17 approximately one fifth of the total number of members
18 of the board shall be appointed for a term of two years,
19 approximately one fifth of the total number of members
20 of the board shall be appointed for a term of three years,
21 approximately one fifth of the total number of members
22 of the board shall be appointed for a term of four years,
23 and approximately one fifth of the total number of mem-
24 bers of the board shall be appointed for a term of five
25 years. As the term of each such initial appointee expires
26 the successor to fill the vacancy created by such expired
27 term shall be appointed for a term of five years.

28 If any member of any board dies, resigns or for any
29 reason ceases to be a member of the board, the govern-
30 mental body which such member represented shall ap-
31 point another person to fill the unexpired portion of the
32 term of such member. No more than two thirds of the
33 total number of members of the board of each commis-
34 sion shall be from the same political party and no mem-
35 ber of any such board shall hold any office or employ-
36 ment under the United States of America, the state of
37 West Virginia, any county or political subdivision there-
38 of, or of any political party. All members of any board
39 shall be residents of the county or municipality appoint-
40 ing them. No member of any board shall receive any
41 compensation for his services as such, but each member
42 shall be reimbursed by the commission for any reason-
43 able and necessary expenses actually incurred in the dis-
44 charge of his duties as a member of the board.

§8-4D-4. Powers.

- 1 Each commission is empowered to:
- 2 (a) Sue and be sued;
- 3 (b) Contract and be contracted with;
- 4 (c) Adopt, use and alter a common seal;

- 5 (d) Make and adopt all necessary, appropriate and
6 lawful bylaws, rules and regulations pertaining to its
7 affairs;
- 8 (e) Elect such officers, appoint such committees and
9 agents and employ and fix the compensation of such em-
10 ployees and contractors as may be necessary for the
11 conduct of the affairs and operations of the commission;
- 12 (f) (1) Acquire, purchase, own and hold any prop-
13 erty, real, personal or mixed, and (2) acquire, equip,
14 construct, maintain and operate public buildings, struc-
15 tures, projects and appurtenant facilities, of any type or
16 types for which the governmental body or bodies creating
17 such commission are permitted by law to expend public
18 funds (all hereinafter referred to as facilities);
- 19 (g) Apply for, receive and use grants-in-aid, dona-
20 tions and contributions from any source or sources, in-
21 cluding but not limited to the United States of America,
22 or any agency thereof, and accept and use bequests,
23 devises, gifts and donations from any source whatso-
24 ever;
- 25 (h) Sell, encumber or dispose of any property, real,
26 personal or mixed;
- 27 (i) Issue negotiable bonds, notes, debentures, or other
28 evidences of indebtedness and provide for the rights
29 of the holders thereof, incur any proper indebtedness
30 and issue any obligations and give any security there-
31 for which it may deem necessary or advisable in con-
32 nection with exercising powers as provided herein;
- 33 (j) Raise funds by the issuance and sale of revenue
34 bonds in the manner provided by the applicable pro-
35 visions of article four-a of this chapter, and each
36 commission is hereby declared to be a "municipal
37 authority" within the definition of that term as used
38 in said article four-a;
- 39 (k) Exercise the power of eminent domain in the
40 manner provided in chapter fifty-four of this code for
41 business corporations, for the purposes set forth in
42 subdivision (f) of this section, which purposes are hereby
43 declared public purposes for which private property
44 may be taken;

45 (l) Lease its property or any part thereof, for public
46 purposes, to such persons and upon such terms as the
47 commission deems proper; and

48 (m) Do all things reasonable and necessary to carry
49 out the foregoing powers.

§8-4D-5. Indebtedness of commission.

1 No statutory limitation with respect to the nature or
2 amount of indebtedness which may be incurred by
3 municipalities or other public or governmental bodies
4 shall apply to the indebtedness of a commission. No in-
5 debtedness of any nature of a commission shall con-
6 stitute an indebtedness of any county or municipality
7 creating and establishing such commission or a charge
8 against any property of said counties or municipalities.
9 No obligation incurred by any commission shall give any
10 right against any member of the county court of said
11 counties or any member of the governing board or body
12 of any municipality or any member of the board of any
13 commission. The rights of creditors of any commission
14 shall be solely against the commission as a corporate
15 body and shall be satisfied only out of property held by
16 it in its corporate capacity.

§8-4D-6. Disposition of surplus of commission.

1 If a commission should realize a surplus over and
2 above the amount required for the maintenance, im-
3 provement and operation of its facilities and for meeting
4 all required payments on its obligations, it shall set
5 aside such a reserve for future operations, improvements
6 and contingencies as it shall deem proper and shall then
7 apply the residue of such surplus, if any, to the payment
8 of any recognized and established obligations not then
9 due; and after all such recognized and established
10 obligations have been paid and discharged in full, each
11 commission shall, at the end of each fiscal year, set
12 aside the reserve for future operations, improvements
13 and contingencies, as aforesaid, and then pay the residue
14 of such surplus, if any, to the governmental bodies
15 creating and establishing such commission in direct
16 proportion to their financial contribution.

§8-4D-7. Property, bonds and obligations of authority exempt from taxation.

1 Each commission shall be exempt from the payment
2 of any taxes or fees to the state or any political sub-
3 divisions thereof and to any municipality therein. The
4 property of each commission shall be exempt from all
5 county and municipal taxes. Bonds, notes, debentures
6 and other evidences of indebtedness of each commission
7 are declared to be issued for a public purpose and to
8 be public instrumentalities, and, together with interest
9 thereon, shall be exempt from taxes.

§8-4D-8. Contributions to the authority; funds and accounts of the authority; reports; audits.

1 Contributions may be made to each commission from
2 time to time by the governing body or bodies creating
3 and establishing it, and any other persons, firms or cor-
4 porations that may desire to do so. All funds received
5 by each commission shall be deposited in such bank or
6 banks as the board may determine and shall be withdrawn
7 therefrom in such manner as the board may direct. Each
8 commission shall keep strict account of all of its receipts
9 and expenditures and shall quarterly report to the
10 counties, municipalities, persons, firms or corporations
11 which have made contributions to it. Such report shall
12 contain an itemized account of the commission's receipts
13 and disbursements during the preceding quarter. Such
14 report shall be made within sixty days after the end
15 of the quarter. Within sixty days after the end of each
16 fiscal year, the board shall make an annual report con-
17 taining an itemized statement of its receipts and dis-
18 bursements for the preceding year and publish the same
19 as a Class II-O legal advertisement in compliance with
20 the provisions of article three, chapter fifty-nine of this
21 code. The publication area for such publication shall
22 be each county in which the commission's facilities are
23 located. The books, records and accounts of each com-
24 mission shall be subject to audit and examination by
25 the state tax department of West Virginia and by other
26 proper public officials or bodies in the manner provided
27 by law.

§8-4D-9. Authority to transfer property to commission.

1 Any county or municipality is hereby authorized
2 and empowered to transfer and convey to a commission
3 which it has created and established either alone or
4 with another governmental body, property of any kind,
5 heretofore acquired by said county or municipality, to
6 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
2 contributing funds to a commission shall so direct in
3 writing and if all indebtedness of said commission has
4 been paid in full, the commission shall sell all or any
5 part of its properties and assets so directed and distribute
6 the proceeds thereof among the governmental bodies
7 creating and establishing it in direct proportion to their
8 financial contributions to the commission.

§8-4D-11. Workmen's compensation.

1 Each commission shall subscribe to the workmen's
2 compensation fund of the state of West Virginia and
3 pay all necessary premiums therein, to the end that all
4 eligible employees of such commission shall be covered
5 by workmen's compensation.

§8-4D-12. Liberal construction.

1 The provisions of this article are hereby declared to
2 be remedial and shall be liberally construed to effect
3 the purposes hereof. The provisions of this article
4 are in addition to and not in derogation of any power
5 granted to or vested in county courts and municipal
6 corporations by any constitutional, statutory or charter
7 provisions which they or either of them may now have,
8 or may hereafter acquire or adopt.

§8-4D-13. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applica-
4 tions of the article, and to this end the provisions of this
5 article are declared to be severable.

CHAPTER 12

(House Bill No. 298—By Mr. Speaker, Mr. White, and Mr. Watson)

[Passed February 8, 1968; in effect from passage. Approved by the Governor.]

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 trans-
2 formed into the temporary rules of the civil service
3 commission and shall continue in effect until the direc-
4 tor of personnel prepares and submits to the civil service
5 commission new rules for the classified service.

6 Such new rules shall be filed and made effective in
7 conformity with the provisions of chapter twenty-
8 nine-a of this code. Amendments thereto may be
9 made in the same manner. The new rules shall
10 provide:

11 (1) For the preparation, maintenance and revision of
12 a position classification plan for all positions in the classi-
13 fied service, based upon similarity of duties performed
14 and responsibilities assumed, so that the same qualifica-
15 tions may reasonably be required for and the same sched-
16 ule of pay may be equitably applied to all positions in

17 the same class. After such classification has been ap-
18 proved by the commission, the director shall allocate the
19 position of every employee in the classified service to
20 one of the classes in the plan. Any employee affected
21 by the allocation of a position to a class shall, after filing
22 with the director of personnel a written request for re-
23 consideration thereof in such manner and form as the
24 director may prescribe, be given a reasonable opportunity
25 to be heard thereon by the director. The interested
26 appointing authority shall be given like opportunity to
27 be heard.

28 (2) For a pay plan for all employees in the classi-
29 fied service, after consultation with appointing authori-
30 ties and the state fiscal officers, and after a public hear-
31 ing held by the commission. Such pay plan shall be-
32 come effective only after it has been approved by the
33 governor after submission to him by the commission.
34 Amendments to the pay plan may be made in the same
35 manner. Each employee shall be paid at one of the rates
36 set forth in the pay plan for the class of position in which
37 he is employed. The principle of equal pay for equal
38 work in the several agencies of the state government
39 shall be followed in the pay plan as established hereby.

40 (3) For open competitive examinations to test the
41 relative fitness of applicants for the respective positions.
42 Such examinations need not be held until after the
43 rules have been adopted, the service classified and a
44 pay plan established, but shall be held not later than one
45 year after this article takes effect. Such examinations
46 shall be announced publicly at least fifteen days in
47 advance of the date fixed for the filing of applications
48 therefor, and may be advertised through the press, radio
49 and other media. The director may, however, in his
50 discretion, continue to receive applications and examine
51 candidates long enough to assure a sufficient number
52 of eligibles to meet the needs of the service; and may
53 add the names of successful candidates to existing eligible
54 lists in accordance with their respective ratings.

55 Veterans who present proof of at least one year's hon-
56 orable service to the United States in either of the world

57 wars, the Korean war or the Vietnam conflict shall be
58 entitled to an additional five points on any examination
59 and disabled veterans shall be entitled to an additional
60 ten points: *Provided, however,* That no such additions
61 shall be made where a veteran fails to pass the exami-
62 nation.

63 (4) For promotions which shall give appropriate
64 consideration to the applicant's qualifications, record of
65 performance and his score on written examination, when
66 such examination is practicable. In filling vacancies an
67 effort should be made to achieve a balance between pro-
68 motion from within the service and the introduction into
69 the service of qualified new employees. An advancement
70 in rank or grade or an increase in salary beyond the
71 maximum fixed for the class shall constitute a promo-
72 tion.

73 (5) For the establishment of eligible lists for appoint-
74 ment and promotion, upon which lists shall be placed
75 the names of successful candidates in the order of their
76 relative excellence in the respective examinations.
77 Eligibility for appointment from any such list shall con-
78 tinue not longer than three years. An appointing
79 authority must make his selection from the top five names
80 on the appropriate list of eligibles.

81 (6) For the rejection of candidates or eligibles who
82 fail to comply with reasonable requirements in regard
83 to such factors as age, physical condition, character, train-
84 ing and experience, who are addicted to alcohol or nar-
85 cotics, or who have attempted any deception or fraud
86 in connection with an examination, or where in the judg-
87 ment of the commission there is reasonable doubt of the
88 loyalty of the candidate or allegiance to the nation.

89 (7) For a period of probation not to exceed one year
90 before appointment or promotion may be made complete.

91 (8) For provisional employment without competitive
92 examination when there is no appropriate eligible list
93 available. No such provisional employment shall con-
94 tinue longer than six months, nor shall successive pro-
95 visional appointments be allowed, except during the first

96 year after the effective date of this article, in order to
97 avoid stoppage of orderly conduct of the business of the
98 state.

99 (9) For keeping records of performance of all em-
100 ployees in the classified service, which service records
101 may be considered in determining salary increases and
102 decreases provided in the pay plan; as a factor in pro-
103 motion tests; as a factor in determining the order of lay-
104 offs because of lack of funds or work and in reinstatement;
105 and as a factor in demotions, discharges and transfers.

106 (10) For layoffs by reason of lack of funds or work,
107 or abolition of a position, or material change in duties
108 or organization, and for reemployment of employees so
109 laid off, giving consideration in both layoffs and re-
110 employment to performance record and seniority in
111 service.

112 (11) For discharge or reduction in rank or grade only
113 for cause of employees in the classified service. Dis-
114 charge or reduction of these employees shall take place
115 only after the person to be discharged or reduced has
116 been presented with the reasons for such discharge or
117 reduction stated in writing, and has been allowed a
118 reasonable time to reply thereto in writing, or upon re-
119 quest to appear personally and reply to the head of the
120 department or his deputy. The statement of reasons and
121 the reply shall be filed as a public record with the direc-
122 tor.

123 (12) For such other rules and administrative regula-
124 tions, not inconsistent with this article, as may be proper
125 and necessary for its enforcement.

126 The commission and the director may include in the
127 rules provided for in this article such provisions as
128 are necessary to conform to regulations and standards
129 of any federal agency governing the receipt and use
130 of federal grants-in-aid by any state agency, anything
131 in this article to the contrary notwithstanding. The
132 commission and the director shall see that rules and
133 practices meeting such standards are in effect continu-
134 ously 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.

1 (a) No person shall be appointed or promoted to, or
2 demoted or dismissed from any position in the classified
3 service or in any way favored or discriminated against
4 with respect to such employment because of his political
5 or religious opinions or affiliations or race; but nothing
6 herein shall be construed as precluding the dismissal of
7 any employee who may be engaged in subversive activi-
8 ties or found disloyal to the nation.

9 (b) No person shall seek or attempt to use any political
10 endorsement in connection with any appointment in the
11 classified service.

12 (c) No person shall use or promise to use, directly or
13 indirectly, any official authority or influence, whether
14 possessed or anticipated, to secure or attempt to secure
15 for any person an appointment or advantage in appoint-
16 ment to a position in the classified service, or an increase
17 in pay or other advantage in employment in any such
18 position, for the purpose of influencing the vote or
19 political action of any person, or for any consideration.

20 (d) No employee in the classified service or member of
21 the commission or the director shall, directly or in-
22 directly, solicit or receive any assessment, subscription
23 or contribution, or perform any service for any political
24 party, or in any manner take part in soliciting any such
25 assessment, subscription, contribution or service of any
26 employee in the classified service.

27 (e) No employee in the classified service shall be a
28 member of any national, state or local committee of a
29 political party, or an officer or member of a committee
30 of a partisan political club, or a candidate for nomination
31 or election to any paid public office, or hold any paid
32 elective public office, or shall take any part in the man-
33 agement or affairs of any political party or in any political
34 campaign, except to exercise his right as a citizen pri-
35 vately to express his opinion and to cast his vote.

36 (f) Any officer or employee in the state service who
37 violates any of the foregoing provisions of this section

38 shall forfeit his office or position, and for one year shall
39 be ineligible for any office or position in the state service.

40 (g) Political participation pertaining to constitutional
41 amendments, referendums, approval of municipal ordi-
42 nances, nonpartisan activities or issues, and other similar
43 questions or activities shall not be deemed to be pro-
44 hibited 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.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the court of claims
3 concerning various claims against the state and agencies
4 thereof, and in respect to each of the following claims the
5 Legislature adopts those findings of fact as its own, and
6 hereby declares it to be the moral obligation of the state
7 to pay each such claim in the amount specified below,
8 and directs the auditor to issue warrants for the payment
9 thereof out of any fund appropriated and available for
10 the purpose.

11 (a) Claims versus the State Road Commission:

12	(1) Southern Coals Corporation	\$ 3,099.67
13	(2) Charleston Concrete Floor Co.	14,500.02

14	(3) Roy L. Warner	640.16
15	(4) Buckeye Union Casualty Co. and Melvin	
16	O'Brien	39,775.00
17	(5) C. J. Langenfelder and Sons	269,116.08
18	(6) John Robbins	759.00
19	(7) Hubert Fowler	859.00
20	(8) Kenton Meadows Company	28,535.00
21	(9) Mountain State Construction Co.	67,288.99
22	(10) Louis Anslin	2,853.37
23	(11) Mary Jane Hurley	75.00
24	(12) Clarence E. Dotson	87.55
25	(13) Russell Collins	453.10
26	(14) Russell Collins	50.00
27	(15) Sam D. Calhoun	30.90
28	(16) Marshall Neely	125.73
29	(17) State Farm Mutual Automobile Insur-	
30	ance Co. on behalf of James E. Keene....	24.81
31	(18) Ott Brown	68.25
32	(19) Emmett Buchanan	102.40
33	(20) John L. Wood	1,450.00
34	(21) Geo. C. and Audra H. Hendershott....	350.79
35	(22) Delos Tenney	225.00
36	(23) James D. Clark	70.15
37	(24) Clifford Biller	124.00
38	(25) Harry L. Miller	36.00
39	(26) Armco Steel Corporation	11,697.34
40	(b) Claims versus the Department of Commerce:	
41	(1) Irving Bowman, etc., and Fred	
42	Wiedersum, et al, etc.	23,582.15
43	(c) Claims versus the Adjutant General:	
44	(1) Alice and Shual Sargis	3,277.11
45	(d) Claims versus the Department of Health:	
46	(1) Biggs-Johnston-Withrow	4,400.00
47	(e) Claims versus the Department of Welfare:	
48	(1) Remington-Rand Office Systems Divi-	
49	sion, Sperry Rand Corporation	13,245.37

50	(f) Claims versus the Department of Welfare:	
51	(1) Charles R. McElwee	2,700.00
52	(g) Claims versus the Department of Welfare:	
53	(1) W. A. Abbitt Company	212,511.35

54 The Legislature finds that the above moral obligations
 55 and the appropriations made in satisfaction thereof shall
 56 be the full compensation for all claimants, and that prior
 57 to the payment to any claimant provided for in this bill,
 58 the court of claims shall receive a release from said
 59 claimant releasing any and all claims for moral obliga-
 60 tions arising from the matters considered by the Legis-
 61 lature in the finding of the moral obligations and the
 62 making of the appropriations for said claimant. The court
 63 of claims shall deliver all releases obtained from claim-
 64 ants to the department against which the claim was
 65 allowed.

66 No claimant shall be paid until all taxes, indebtedness
 67 or other sums due and owing to the state, if any, have
 68 been paid and a release secured therefor: *Provided*, That
 69 in the claim styled "(g) Claims versus the Department
 70 of Welfare: (1) W. A. Abbitt Company" that said claim
 71 shall be paid according to the following schedule:

72	W. A. Abbitt Company	\$ 87,903.78
73	Asbestos and Insulating Co.	11,490.38
74	Worth Sturgeon	11,344.86
75	Harris Brothers Roofing Co.	12,290.65
76	B & N Plumbing & Heating Co.	31,875.38
77	Floor Fashions, Inc.	7,925.61
78	Hunt Electric Co.	34,198.83
79	Bernard O. Meeker	7,458.60
80	E. E. Moore	1,190.12
81	R. W. O'Dell	2,062.14
82	Elbert A. Swain	2,196.00
83	R. B. Wyatt & Sons, Inc.	2,575.00

84 The above firms at the time of payment shall furnish
 85 the state releases for their labor and materials furnished
 86 in the renovation by W. A. Abbitt Company of the Conlon
 87 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

5 employee in the executive branch of state government
6 or an employee or judge in the judicial branch of state
7 government, shall, between January one and January fif-
8 teen in each year file with the clerk of the Senate if a
9 member of that body, with the clerk of the House of
10 Delegates if a member of that body, with the secretary
11 of state if an officer, agent, servant or employee in the
12 executive branch of state government and with the clerk
13 of the supreme court of appeals if an employee or judge
14 of the judicial branch of state government, a written
15 statement under oath of:

16 (1) The name of every corporation, firm, association,
17 partnership or sole proprietorship, in which he, his
18 spouse, or his unemancipated minor child or children
19 own either in his or their own name or beneficially at
20 least ten percent of such business entity, which is then
21 furnishing or which within the previous calendar year has
22 furnished to the state, commodities or printing as those
23 terms are defined in section one, article one, chapter five-a
24 of this code.

25 (2) The name of each person, corporation, firm, part-
26 nership or other business association in, for, or of which
27 he is an officer, director, agent, attorney, representative,
28 employee, partner or employer, and which to his actual
29 knowledge is then furnishing or within the previous
30 calendar year has furnished to the state, commodities or
31 printing as those terms are defined in section one, article
32 one, chapter five-a of this code.

33 (3) Any other interest or relationship which might
34 reasonably be expected to be particularly affected by leg-
35 islative action or in the public interest should be disclosed.

36 Those persons to whom the provisions of subdivisions
37 (1), (2) and (3) above are not applicable shall file a
38 written statement under oath to that effect, such state-
39 ment to be filed within the time and with the appropriate
40 official as above specified.

41 Any person other than a constitutional officer who shall
42 fail or refuse to file a written statement under oath as
43 required under subdivisions (1), (2) or (3) above or the
44 preceding paragraph hereof shall by operation of law be

45 automatically suspended without pay from his office,
46 position or employment, as the case may be, in, with or
47 by the government of this state, until such statement is
48 filed.

49 On or before January thirty-first of each year the clerk
50 of the Senate, the clerk of the House of Delegates, the
51 secretary of state and the clerk of the supreme court
52 of appeals shall prepare a report containing the state-
53 ments for the previous calendar year required to be filed
54 pursuant to this section. Copies of such reports shall be
55 open to public inspection in their respective offices, and
56 shall be retained for a period of five years after the date
57 of the preparation thereof. Each house may adopt rules
58 to implement the provisions of this section, insofar as
59 they relate to members of the Legislature.

60 The clerk of the Senate, the clerk of the House of Dele-
61 gates, the secretary of state and the clerk of the supreme
62 court of appeals shall prepare forms for such written
63 statements and distribute the same to those persons who
64 are required to file such written statements with him:
65 *Provided*, That the provisions of this article shall not
66 apply to persons receiving hourly compensation under the
67 Aid to Dependent Children of Unemployed Parents Pro-
68 gram, to persons receiving compensation under the Foster
69 Grandparents Program and to volunteer fire fighters com-
70 pensated from state funds.

§6B-1-2. Criminal penalty.

1 Any person who shall intentionally file a false statement
2 shall be guilty of a misdemeanor, and, upon conviction,
3 shall be confined in jail not less than six months nor more
4 than one year.

§6B-1-3. Severability.

1 If any provision of this article or its application to any
2 person or circumstance be held invalid, such invalidity
3 shall not affect other provisions or applications of this
4 article, and to this end the provisions of this article are
5 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.
2. Amendment to be known as the "Modern Budget Amendment"; summary 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 **Section 1. Submitting an Amendment to the State Con-**
 2 **stitution.**—That the question of the ratification or rejec-
 3 tion of an amendment to the constitution of West Virginia,
 4 proposed in accordance with the provisions of section two,
 5 article fourteen of said constitution, shall be submitted to
 6 the voters of the state at the next general election, to be
 7 held in the year one thousand nine hundred sixty-eight,
 8 which proposed amendment is as follows:

9 That section fifty-one, article six of the constitution of
 10 the state of West Virginia, be amended to read as follows:

"ARTICLE VI. THE LEGISLATURE.

1 **"Section 51. Budget and Supplementary Appropriation**
 2 **Bills.**—The Legislature shall not appropriate any money
 3 out of the treasury except in accordance with provisions
 4 of this section.

5 **"Subsection A—Appropriation Bills**

6 **"(1) Every appropriation bill shall be either a budget**

7 bill, or a supplementary appropriation bill, as hereinafter
8 provided.

9 **“Subsection B—Budget Bills**

10 “(2) Within ten days after the convening of the regular
11 session of the Legislature in odd-numbered years, unless
12 such time shall be extended by the Legislature, and on
13 the second Wednesday of January in even-numbered
14 years, the governor shall submit to the Legislature a
15 budget for the next ensuing fiscal year. The budget shall
16 contain a complete plan of proposed expenditures and
17 estimated revenues for the fiscal year and shall show
18 the estimated surplus or deficit of revenues at the end
19 of each fiscal year. Accompanying each budget shall
20 be a statement showing: (a) An estimate of the revenues
21 and expenditures for the current fiscal year, including
22 the actual revenues and actual expenditures to the extent
23 available, and the revenues and expenditures for the
24 next preceding fiscal year; (b) the current assets, liabil-
25 ities, reserves and surplus or deficit of the state; (c) the
26 debts and funds of the state; (d) an estimate of the state’s
27 financial condition as of the beginning and end of the fiscal
28 year covered by the budget; (e) any explanation the
29 governor may desire to make as to the important features
30 of the budget and any suggestions as to methods for
31 reduction or increase of the state’s revenue.

32 “(3) Each budget shall embrace an itemized estimate
33 of the appropriations, in such form and detail as the
34 governor shall determine or as may be prescribed by
35 law: (a) For the Legislature as certified to the governor
36 in the manner hereinafter provided; (b) for the executive
37 department; (c) for the judiciary department, as provided
38 by law, certified to the governor by the auditor; (d) for
39 payment and discharge of the principal and interest of
40 any debt of the state created in conformity with the con-
41 stitution, and all laws enacted in pursuance thereof;
42 (e) for the salaries payable by the state under the con-
43 stitution and laws of the state; (f) for such other purposes
44 as are set forth in the constitution and in laws made in
45 pursuance thereof.

46 “(4) The governor shall deliver to the presiding officer

47 of each house the budget and a bill for all the proposed
48 appropriations of the budget clearly itemized and classi-
49 fied, in such form and detail as the governor shall deter-
50 mine or as may be prescribed by law; and the presiding
51 officer of each house shall promptly cause the bill to be
52 introduced therein, and such bill shall be known as the
53 'Budget Bill.' The governor may, with the consent of
54 the Legislature, before final action thereon by the Leg-
55 islatre, amend or supplement the budget to correct an
56 oversight, or to provide funds contingent on passage of
57 pending legislation, and in case of an emergency, he may
58 deliver such an amendment or supplement to the pre-
59 siding officers of both houses; and the amendment or
60 supplement shall thereby become a part of the budget
61 bill as an addition to the items of the bill or as a modifica-
62 tion of or a substitute for any item of the bill the amend-
63 ment or supplement may affect.

64 “(5) The Legislature shall not amend the budget bill
65 so as to create a deficit but may amend the bill by in-
66 creasing or decreasing any item therein: *Provided*, That
67 no item relating to the judiciary shall be decreased, and
68 except as otherwise provided in this constitution, the
69 salary or compensation of any public officer shall not be
70 increased or decreased during his term of office: *Pro-*
71 *vided further*, That the Legislature shall not increase
72 the estimate of revenue submitted in the budget with-
73 out the approval of the governor.

74 “(6) The governor and such representatives of the
75 executive departments, boards, officers and commissions
76 of the state expending or applying for state moneys as
77 have been designated by the governor for this purpose,
78 shall have the right, and when requested by either house
79 of the Legislature it shall be their duty, to appear and be
80 heard with respect to any budget bill, and to answer
81 inquiries relative thereto.

82 **“Subsection C—Supplementary Appropriation Bills**

83 “(7) Neither house shall consider other appropriations
84 until the budget bill has been finally acted upon by both
85 houses, and no such other appropriations shall be valid
86 except in accordance with the provisions following: (a)

87 Every such appropriation shall be embodied in a separate
88 bill limited to some single work, object or purpose there-
89 in stated and called therein a supplementary appropria-
90 tion bill; (b) each supplementary appropriation bill shall
91 provide the revenue necessary to pay the appropriation
92 thereby made by a tax, direct or indirect, to be laid and
93 collected as shall be directed in the bill unless it appears
94 from such budget that there is sufficient revenue avail-
95 able.

96 **“Subsection D—General Provisions**

97 “(8) If the budget bill shall not have been finally acted
98 upon by the Legislature three days before the expiration
99 of its regular session, the governor shall issue a proclama-
100 tion extending the session for such further period as may,
101 in his judgment, be necessary for the passage of the bill;
102 but no matter other than the bill shall be considered
103 during such an extension of a session except a provision
104 for the cost thereof.

105 “(9) For the purpose of making up the budget, the
106 governor shall have the power, and it shall be his duty,
107 to require from the proper state officials, including herein
108 all executive departments, all executive and administra-
109 tive officers, bureaus, boards, commissions and agencies
110 expending or supervising the expenditure of, and all
111 institutions applying for state moneys and appropriations,
112 such itemized estimates and other information, in such
113 form and at such times as he shall direct. The estimates
114 for the legislative department, certified by the presiding
115 officer of each house, and for the judiciary, as provided
116 by law, certified by the auditor, shall be transmitted to
117 the governor in such form and at such times as he shall
118 direct, and shall be included in the budget.

119 “(10) The governor may provide for public hearings
120 on all estimates and may require the attendance at
121 such hearings of representatives of all agencies and all
122 institutions applying for state moneys. After such public
123 hearings he may, in his discretion, revise all estimates
124 except those for the legislative and judiciary depart-
125 ments.

126 “(11) Every budget bill or supplementary appropria-

127 tion bill passed by a majority of the members elected
128 to each house of the Legislature shall, before it becomes
129 a law, be presented to the governor. The governor may
130 veto the bill, or he may disapprove or reduce items or
131 parts of items contained therein. If he approves he shall
132 sign it and thereupon it shall become a law. The bill,
133 items or parts thereof, disapproved or reduced by the
134 governor, shall be returned with his objections to each
135 house of the Legislature.

136 "Each house shall enter the objections at large upon
137 its journal and proceed to reconsider. If, after recon-
138 sideration, two thirds of the members elected to each
139 house agree to pass the bill, or such items or parts thereof,
140 as were disapproved or reduced, the bill, items or parts
141 thereof, approved by two thirds of such members, shall
142 become law, notwithstanding the objections of the gover-
143 nor. In all such cases, the vote of each house shall be
144 determined by yeas and nays to be entered on the
145 journal.

146 "A bill, item or part thereof, which is not returned by
147 the governor within five days (Sundays excepted) after
148 the bill has been presented to him shall become a law in
149 like manner as if he had signed the bill, unless the Leg-
150 islature, by adjournment, prevents such return, in which
151 case it shall be filed in the office of the secretary of
152 state, within five days after such adjournment, and
153 shall become a law; or it shall be so filed within such
154 five days with the objections of the governor, in which
155 case it shall become law to the extent not disapproved
156 by the governor.

157 "(12) The Legislature may, from time to time, enact
158 such laws, not inconsistent with this section, as may be
159 necessary and proper to carry out its provisions.

160 "(13) In the event of any inconsistency between any
161 of the provisions of this section and any of the other
162 provisions of the constitution, the provisions of this sec-
163 tion shall prevail. But nothing herein shall be construed
164 as preventing the governor from calling extraordinary
165 sessions of the Legislature, as provided by section eight
166 of this article, or as preventing the Legislature at such

167 extraordinary sessions from considering any emergency
168 appropriation or appropriations.

169 “(14) If any item of any appropriation bill passed under
170 the provisions of this section shall be held invalid upon
171 any ground, such invalidity shall not affect the legality
172 of the bill or of any other item of such bill or bills.”

1 **Sec. 2. Amendment to Be Known as the “Modern**
2 **Budget Amendment”;** Summary of Purpose.—In accord-
3 ance with the provisions of section thirteen, article six,
4 chapter three of the code of West Virginia, one thousand
5 nine hundred thirty-one, as amended, said proposed
6 amendment is hereby designated as the “Modern Bud-
7 get Amendment,” and the purpose of the proposed amend-
8 ment is summarized as follows: “To improve and sim-
9 plify the budget making process by vesting in one person,
10 the chief executive, the responsibility for preparing the
11 state budget for consideration by the Legislature.”

1 **Sec. 3. Publication of Proposed Amendment by Gover-**
2 **nor.**—The governor shall cause the said proposed amend-
3 ment, with the proper designation and the summary of
4 the purpose for the same as hereinbefore adopted and
5 stated, to be published one time at least three months
6 before such election in some newspaper in every county
7 in which a newspaper is printed, and the cost of such
8 advertising, determined in accordance with the provi-
9 sions of section three, article three, chapter fifty-nine of
10 the code of West Virginia, one thousand nine hundred
11 thirty-one, as amended, shall in the first instance, if
12 found necessary by him, be paid out of the governor’s
13 contingent fund and be afterwards repaid to such fund
14 by appropriation of the Legislature.

1 **Sec. 4. Form of Ballot; Election.**—For the purpose of
2 enabling the voters of the state to vote on the question
3 of this proposed amendment to the constitution and any
4 other proposed amendments to the constitution which
5 may be submitted at the said general election to be held
6 in the year one thousand nine hundred sixty-eight, the
7 board of ballot commissioners of each county is hereby
8 required to place upon, and at the foot of, the official
9 ballot to be voted at that election under the heading

10 reading "Ballot on Constitutional Amendment(s)," in
11 the first position under said heading, the following:

12 No. 1. Modern Budget Amendment

13 For Ratification.

14 Against Ratification.

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

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

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

15 "Amendment No. 1. Modern Budget Amendment

16 "For ratification _____ votes.

17 "Against ratification _____ votes.

18 "Given under our hands this _____ day of _____,
19 one thousand nine hundred sixty-eight."

20 The said two certificates shall correspond with each
21 other in all respects and contain the full and true returns

22 in said election at each place of voting on said question.
23 The said commissioners, or any one of them (or said
24 canvassers or any one of them, as the case may be), shall,
25 within four days, excluding Sunday, after that on which
26 said election was held, deliver one of said certificates to
27 the clerk of the county court of the county, together with
28 the ballots, and the other to the clerk of the circuit court
29 of the county.

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

41 "We, the board of canvassers of the county of _____,
42 having carefully and impartially examined the returns
43 of the election held in said county, in each district thereof,
44 on the _____ day of _____, one thousand nine hun-
45 dred sixty-eight, do certify that the result of the election
46 in said county, on the question of the ratification or re-
47 jection of the proposed amendment is as follows:

48 "Amendment No. 1. Modern Budget Amendment

49 "For ratification _____ votes.

50 "Against ratification _____ votes.

51 "Given under our hands this _____ day of _____,
52 one thousand nine hundred sixty-eight."

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

1 **Sec. 6. Proclamation of Result of Election by Govern-**
2 **nor.**—On the twenty-fifth day after the election is held,
3 or as soon thereafter as practicable, the said certificates

4 shall be laid before the governor, whose duty it shall be
 5 to ascertain therefrom the result of said election in the
 6 state, and declare the same by proclamation published
 7 in one or more newspapers printed at the seat of gov-
 8 ernment. If a majority of the votes cast at said election
 9 upon said question be for ratification of said amendment,
 10 the proposed amendment so ratified shall be in force and
 11 effect from and after the time of such ratification, as part
 12 of the constitution of the state.

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:

8 "The Legislature shall have power to authorize the
9 issuing and selling of state bonds not exceeding in the
10 aggregate three hundred fifty million dollars. The pro-
11 ceeds of said bonds hereby authorized to be issued and
12 sold shall be used and appropriated solely for the building
13 and construction of free state roads and highways pro-
14 vided for by this constitution and the laws enacted there-
15 under. When a bond issue as aforesaid is author-
16 ized, the Legislature shall, at the same time provide for
17 the collection of an annual state tax sufficient to pay as it
18 may accrue the interest on such bonds and the principal
19 thereof within and not exceeding twenty-five years. Such
20 tax shall be levied in any year only to the extent that the
21 moneys in the state road fund irrevocably set aside and
22 appropriated for and applied to the payment of the in-
23 terest on and principal of said bonds becoming due and
24 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,
2 article six, chapter three of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, said pro-
4 posed amendment is hereby designated as the "Roads
5 Development Amendment," and the purpose of the pro-
6 posed amendment is summarized as follows: "To author-
7 ize the Legislature to issue and sell state bonds not ex-
8 ceeding in the aggregate \$350,000,000 for the development
9 of the Appalachian Highway System and a network of
10 modern roads and highways throughout the state of West
11 Virginia."

§3. Publication of proposed amendment by governor.

1 The governor shall cause the said proposed amendment,
2 with the proper designation and the summary of the
3 purpose for the same as hereinbefore adopted and stated,
4 to be published one time at least three months before such
5 election in some newspaper in every county in which a
6 newspaper is printed, and the cost of such advertising,
7 determined in accordance with the provisions of section
8 three, article three, chapter fifty-nine of the code of

9 West Virginia, one thousand nine hundred thirty-one, as
10 amended, shall in the first instance, if found necessary by
11 him, be paid out of the governor's contingent fund and
12 be afterwards repaid to such fund by appropriation of the
13 Legislature.

§4. Form of ballot; election.

1 For the purpose of enabling the voters of the state to
2 vote on the question of this proposed amendment to the
3 constitution and any other proposed amendments to the
4 constitution which may be submitted at the said general
5 election to be held in the year one thousand nine hundred
6 sixty-eight, the board of ballot commissioners of each
7 county is hereby required to place upon, and at the foot
8 of, the official ballot to be voted at that election under the
9 heading reading "Ballot on Constitutional Amend-
10 ment(s)," in the second position under said heading, the
11 following:

12 No. 2. Roads Development Amendment.

13 For the amendment

14 Against the amendment

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

**§5. Certificates of election commissioners; canvass of vote;
certifying result.**

1 As soon as the result is ascertained, the commissioners,
2 or a majority of them, and the canvassers (if there be
3 any), or a majority of them, at each place of voting, shall
4 make out and sign two certificates thereof in the following
5 form or to the following effect:

6 "We, the undersigned, who acted as commissioners
7 (or canvassers, as the case may be) of the election held
8 at Precinct No._____, in the district of_____, in
9 the county of_____, on the_____ day of_____,
10 one thousand nine hundred sixty-eight, upon the ques-
11 tion of the ratification or rejection of the proposed con-
12 stitutional amendment, do hereby certify that the result
13 of said election is as follows:

14 "Amendment No. 2. Roads Development Amendment.

15 "For the amendment _____ votes.

16 "Against the amendment _____ votes.

17 "Given under our hands this_____ day of_____,
18 one thousand nine hundred sixty-eight."

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

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

40 "We, the board of canvassers of the county of_____,
41 having carefully and impartially examined the returns
42 of the election held in said county, in each district there-
43 of, on the_____ day of_____, one thousand nine
44 hundred sixty-eight, do certify that the result of the
45 election in said county, on the question of the ratification

46 or rejection of the proposed amendment is as follows:

47 "Amendment No. 2. Roads Development Amendment.

48 "For the amendment votes.

49 "Against the amendment votes.

50 "Given under our hands this.....day of.....,
51 one thousand nine hundred sixty-eight."

52 One of the certificates shall be filed in the office of the
53 clerk of the county court, and the other forwarded by
54 mail to the secretary of state, who shall file and pre-
55 serve the same until the day on which the result of said
56 election in the state is to be ascertained, as hereinafter
57 stated.

§6. Proclamation of result of election by governor.

1 On the twenty-fifth day after the election is held, or as
2 soon thereafter as practicable, the said certificates shall
3 be laid before the governor, whose duty it shall be to
4 ascertain therefrom the result of said election in the state,
5 and declare the same by proclamation published in one or
6 more newspapers printed at the seat of government, the
7 cost of such publication to be determined in accordance
8 with the provisions of section three, article three, chapter
9 fifty-nine of the code of West Virginia, one thousand nine
10 hundred thirty-one, as amended. If a majority of the
11 votes cast at said election upon said question be for ratifi-
12 cation of said amendment, the proposed amendment so
13 ratified shall be in force and effect from and after the
14 time of such ratification as part of the constitution of the
15 state.

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CHAPTER 17

(Com. Sub. for House Bill No. 307—By Mr. Speaker,
Mr. White, and Mr. Kopp)

[Passed February 8, 1968; in effect July 1, 1968. Approved by the Governor.]

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AN ACT to amend and reenact sections five-(four), (five-(four-
teen), 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 thousand nine hundred thirty-one, as amended; and to amend and reenact 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, 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 thousand 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.**

Section

- 7-7-1(4), etc. Salaries of sheriffs of Braxton, Hampshire, Hancock, Hardy, Logan, Lincoln, Mineral, Ritchie, Taylor, Upshur, Wayne and Wyoming counties.
- 7-7-2(4), etc. Salaries of county clerks of Braxton, Doddridge, Fayette, Hampshire, Hancock, Lincoln, Logan, Mineral, Ritchie, Taylor, Wayne, Wood and Wyoming counties.
- 7-7-3(4), etc. Salaries of circuit clerks of Braxton, Fayette, Hampshire, Hancock, Lincoln, Logan, Mineral, Monongalia, Ritchie, Taylor, Wayne and Wyoming counties.
- 7-7-4. Salaries of joint clerks of county and circuit courts.
- 7-7-5, etc. Salaries of prosecuting attorneys of Braxton, Fayette, Hampshire, Hardy, Lincoln, Logan, Mineral, Ritchie, Taylor, Wayne and Wyoming counties.
- 7-7-6, etc. Assistants, stenographers and clerks for prosecuting attorney—Appointment and salaries; when court may appoint attorney to prosecute—Braxton, Fayette, Hampshire, Hancock, Lincoln, Logan, Putnam, Ritchie, Upshur and Wayne counties.

§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
- 2 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
- 2 dollars.

§7-7-1(22). Same—Logan county.

- 1 For the county of Logan, eight thousand six hundred
- 2 dollars.

§7-7-1(23). Same—Lincoln county.

- 1 For the county of Lincoln, six thousand four hundred
- 2 dollars.

§7-7-1(28). Same—Mineral county.

- 1 For the county of Mineral, not less than six thousand
- 2 nor more than seven thousand dollars.

§7-7-1(43). Same—Ritchie county.

- 1 For the county of Ritchie, not less than four thousand
- 2 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
- 2 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
- 2 dollars.

§7-7-1(50). Same—Wayne county.

- 1 For the county of Wayne, seven thousand two hundred
- 2 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
- 2 dollars.

§7-7-2(9). Same—Doddridge county.

1 For the county of Doddridge, four thousand two hun-
2 dred dollars.

§7-7-2(10). Same—Fayette county.

1 For the county of Fayette, eight thousand five hun-
2 dred dollars.

§7-7-2(13). Same—Hampshire county.

1 For the county of Hampshire, five thousand two hun-
2 dred dollars.

§7-7-2(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.

§7-7-2(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
2 dollars.

§7-7-2(27). Same—Mineral county.

1 For the county of Mineral, not less than six thousand
2 nor more than seven thousand dollars.

§7-7-2(40). Same—Ritchie county.

1 For the county of Ritchie, not less than four thousand
2 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
2 two hundred nor more than four thousand eight hun-
3 dred dollars.

§7-7-2(47). Same—Wayne county.

1 For the county of Wayne, seven thousand two hun-
2 dred dollars.

§7-7-2(51). Same—Wood county.

1 For the county of Wood, seven thousand six hundred
2 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
- 2 dollars.

§7-7-3(10). Same—Fayette county.

- 1 For the county of Fayette, eight thousand five hun-
- 2 dred dollars.

§7-7-3(13). Same—Hampshire county.

- 1 For the county of Hampshire, three thousand six hun-
- 2 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
- 2 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-
- 3 dred dollars.

§7-7-3(47). Same—Wayne county.

- 1 For the county of Wayne, seven thousand two hun-
- 2 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

22 allowance for such attorney for such service, and such
23 sum, when allowed by the county court, shall be paid
24 out of the county treasury. No provision of this sec-
25 tion shall be construed to prohibit the employment by
26 any person of a competent attorney or attorneys to assist
27 in the prosecution of any person or corporation charged
28 with crime.

29 The county courts of the several counties shall com-
30 pensate the assistant prosecuting attorneys, stenographers
31 and clerks of their respective counties in accordance with
32 the following annual salary provisions:

33 (1) In counties for which definite salaries are fixed
34 by provisions of sections six-(one) through six-(fifty-five),
35 inclusive, of this article, such definite salaries shall be
36 paid.

37 (2) In counties for which minimum and maximum
38 salary limits are fixed by provisions of sections six-(one)
39 through six-(fifty-five), inclusive, of this article, the sal-
40 aries shall be fixed and paid within such limits.

41 (3) In the counties for which salaries are not fixed
42 and limited by provisions of sections six-(one) through
43 six-(fifty-five), inclusive, of this article, reasonable sal-
44 aries shall be fixed and paid by the respective county
45 courts.

46 Such salaries and compensation shall be paid monthly,
47 semimonthly or otherwise as provided by law. In any
48 case wherein provision is not made in this article for
49 payment of the salary of an assistant prosecuting attor-
50 ney, the principal shall pay and compensate such assist-
51 ant for services rendered. The compensation and sal-
52 aries to be paid assistant attorneys as provided in this
53 article shall include compensation provided by law for
54 such assistant's services as attorney for the county board
55 of education and other administrative boards and offi-
56 cers of his county: *Provided*, That no such assistant
57 prosecuting attorney shall serve as attorney for any
58 other political subdivisions of this state for compensa-
59 tion to be paid therefor.

§7-7-6(4). Same—Braxton county.

1 For the county of Braxton, one assistant attorney; one

2 stenographer, not more than three thousand six hundred
3 dollars.

§7-7-6(10). Same—Fayette county.

1 For the county of Fayette, one assistant attorney, eight
2 thousand five hundred dollars; one stenographer at a
3 salary to be fixed by the county court.

§7-7-6(14). Same—Hampshire county.

1 For the county of Hampshire, one assistant attorney,
2 two thousand four hundred dollars; one stenographer,
3 two thousand four hundred dollars.

§7-7-6(15). Same—Hancock county.

1 For the county of Hancock, one assistant attorney,
2 five thousand four hundred dollars; one stenographer,
3 not less than three thousand six hundred nor more than
4 four thousand two hundred dollars.

§7-7-6(22). Same—Lincoln county.

1 For the county of Lincoln, one assistant attorney or
2 one stenographer or one clerk, four thousand dollars;
3 one stenographer or one clerk, not more than four thou-
4 sand two hundred dollars.

§7-7-6(23). Same—Logan county.

1 For the county of Logan, first assistant attorney, at
2 eight thousand dollars; second assistant attorney, at six
3 thousand five hundred dollars; one stenographer, not
4 more than four thousand eight hundred dollars; second
5 stenographer, not more than four thousand eight hundred
6 dollars.

§7-7-6(40). Same—Putnam county.

1 For the county of Putnam, one assistant attorney, not
2 more than three thousand dollars; one stenographer,
3 not less than three thousand six hundred dollars nor more
4 than four thousand dollars.

§7-7-6(43). Same—Ritchie county.

1 For the county of Ritchie, one assistant attorney, not
2 less than one thousand six hundred dollars nor more
3 than three thousand six hundred dollars; one stenogra-
4 pher, not less than one thousand six hundred dollars nor
5 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, Monongalia, Ritchie, Taylor, Wayne, Wood and Wyoming counties.

§11-2-5(4). Annual salary of assessor—Braxton county.

- 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.

§11-2-5(14). Same—Hampshire county.

- 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.

§11-2-5(29). Same—Mineral county.

- 1 For the county of Mineral, not less than six thousand
- 2 nor more than seven thousand dollars.

§11-2-5(31). Same—Monongalia county.

- 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.

§11-2-5(46). Same—Taylor county.

- 1 For the county of Taylor, not less than four thousand
- 2 two hundred nor more than four thousand eight hundred
- 3 dollars.

§11-2-5(50). Same—Wayne county.

- 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.

§11-2-5(55). Same—Wyoming county.

- 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 invalidity shall not affect other sections, provisions, clauses or phrases or applications of the act, and to this end each and every section, 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 housing codes.

1 In addition to all other powers and duties now con-
2 ferred by law upon county courts, county courts of coun-
3 ties having a population of more than two hundred
4 thousand persons as determined by the most recent
5 official census conducted by the United States of Amer-
6 ica are hereby authorized and empowered, by order duly
7 entered of record, to adopt building and housing
8 codes establishing and regulating minimum building and
9 housing standards for the purpose of improving the
10 health, safety and welfare of its citizens. Such codes
11 may be adopted either for the entire county, or for any
12 portion or portions of such county which may constitute
13 an effective area or areas for such purposes, without the
14 necessity of adopting such codes for any other portion
15 of such county. Notwithstanding any other provision
16 of this section to the contrary, no such code shall apply
17 to or affect any territory within the boundaries of any
18 municipal corporation which has adopted and in effect
19 a housing and building code, unless and until such
20 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.]

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 seven, relating to the creation of an information system services division within the department of finance and administration; providing for its personnel, duties, powers and re-

responsibilities; 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
- 2 different meaning, as used in this article:
- 3 (a) "Division" means the information system services
- 4 division established in section two hereof;
- 5 (b) "Director" means the director of the information
- 6 system services division;
- 7 (c) "Commission" means the state information system
- 8 advisory commission;
- 9 (d) "Commissioner" means the commissioner of the
- 10 department of finance and administration;
- 11 (e) "Data-processing equipment" means: (1) Any
- 12 equipment having stored program capabilities; (2) any
- 13 equipment designed to handle punch cards, magnetic tape
- 14 or other electronic input-output devices; or (3) any other
- 15 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
2 division in the department of finance and administration
3 for the purpose of establishing, developing and improving
4 data-processing functions in the various state agencies,
5 for promulgating standards in the utilization of data-
6 processing equipment and for promoting the more effec-
7 tive and efficient operation of all branches of state
8 government. The facilities of the division shall be avail-
9 able, subject to rules and regulations established by the
10 commissioner and approved by the governor, to the
11 legislative, executive and judicial branches of state
12 government. Such rules and regulations shall be promul-
13 gated in accordance with the provisions of article three,
14 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
2 of a director. After selection through open competitive
3 examination and upon recommendation of the civil serv-
4 ice system, the commissioner shall appoint a director of
5 the division. The selection and appointment shall be in
6 conformity with civil service rules. The commissioner
7 may also select, through the civil service system, a deputy
8 director to assist the director in administering and co-
9 ordinating the data-processing systems and functions of
10 the division. The director must have extensive knowledge
11 in the principles and practices of the administration of
12 government, preferably West Virginia government. The
13 deputy director must have extensive knowledge of com-
14 puter and data-processing operations, capabilities and
15 capacity, and of the procedures and techniques used in
16 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
2 system and all appointments of the division shall be a
3 part of the classified service under the civil service
4 system.

§5A-7-5. Advisory commission created; composition; appointment and terms of members; chairman; meetings; powers, duties and responsibilities; compensation and expenses of members.

1 An advisory commission to the division is hereby
2 created and shall be composed of six members, three of
3 whom shall serve ex officio and three of whom shall be
4 appointed as herein provided. The ex officio members
5 shall be the state auditor, state treasurer and the com-
6 missioner. The governor shall appoint the remaining
7 three with the advice and consent of the Senate. The
8 members of the commission appointed by the governor
9 shall be one representative from West Virginia University
10 and two representatives from private industry, shall be
11 citizens and residents of the state, and selected with
12 special reference to their training and experience. The
13 appointed members shall serve at the will and pleasure
14 of the officer making their appointment, except the two
15 members from private industry shall serve four-year
16 overlapping terms.

17 The commissioner shall serve as chairman of the com-
18 mission.

19 Meetings of the commission shall be upon call of the
20 chairman or a majority of the members thereof.

21 The commission shall serve the division in an advisory
22 capacity only and exercise no executive power whatever
23 and shall have the following duties:

24 (1) To advise the director as to all data-processing
25 proposals to be submitted by the director to the governor;

26 (2) At the time of submission of data-processing pro-
27 posals to the governor, to report to the governor its con-
28 clusions concerning such proposal and any additions,
29 modifications, or adjustments it may care to suggest;

30 (3) To advise the director concerning such studies or
31 research as it may consider appropriate; and

32 (4) To advise the director in the preparation of studies
33 designed to provide long-range data-processing plans for
34 state agencies.

35 Members of the commission shall receive no compensa-

36 tion for their services on the commission, but they shall
37 be reimbursed for all reasonable and necessary expenses
38 actually incurred in the discharge of their duties.

§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.

1 The division shall be responsible for the planning of an
2 informational and analytical system for use by all
3 branches of state government. The division shall also
4 evaluate the economic justification, system design and
5 suitability of equipment and systems used in state govern-
6 ment. The director shall report to the commissioner.

7 The governor shall review such findings and recom-
8 mendations, and is hereby authorized to order the trans-
9 fer, in whole or in part, to the division from any other
10 department or agency of state government, except the
11 Legislature, the judiciary and the board of governors of
12 West Virginia University, of all data-processing activities,
13 equipment, and personnel utilized for data-processing
14 purposes: *Provided*, That any such transfer shall not be
15 effective until ninety days following the entry of the
16 transfer order by the governor. The director shall be
17 responsible for the development of a professional staff to
18 supervise and train personnel to carry out the technical
19 work of the division.

§5A-7-7. Special fund created; payments into fund; charges for services; disbursements from fund.

1 For the operation of the division, there is hereby created
2 in the state treasury a special revolving fund to be known
3 and designated as the "Information System Services
4 Fund." This fund shall consist of appropriations made by
5 the Legislature, funds transferred in accordance with the
6 provisions of section six of this article, funds received for
7 data-processing services rendered to other agencies, de-
8 partments and units of state and local government, and
9 funds received from the federal government or any
10 agency or department thereof, which federal funds the
11 division is hereby authorized to receive. Each agency,
12 department or unit of state or local government served

13 by the information system services division is hereby
 14 authorized and directed to transmit to the division for
 15 deposit in said special fund the charges made by the
 16 agency for data-processing services rendered, such charges
 17 to be those fixed in a schedule or schedules prepared by
 18 the director and approved by the governor. Disburse-
 19 ments from the fund shall be made in accordance with
 20 an approved expenditure schedule as provided by article
 21 two, chapter five-a of this code and shall be made under
 22 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-

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
2 court while holding such office, and two persons by him
3 appointed, one from each of the two political parties

4 which cast the largest and second largest number of
5 votes in the state at the last preceding general election,
6 shall constitute a board of ballot commissioners, of which
7 board the said clerk shall be chairman. It shall be the
8 duty of the clerk of said court to notify the chairman
9 of the respective county executive committees of such
10 two parties, at least five days before making such appoint-
11 ments, of the time and place of making the same, and
12 if at any time after such notice is given, and before or
13 on the day so fixed for making such appointments, the
14 chairman of either of said committees shall designate,
15 in writing, a member of such party as ballot commis-
16 sioner having the qualifications of a voter, he shall be
17 appointed. Ballot commissioners shall be appointed be-
18 tween the fifteenth and thirtieth days of January in
19 each year in which a general election is to be held, for
20 a term of two years beginning on the first day of Feb-
21 ruary next ensuing: *Provided*, That in the year one thou-
22 sand nine hundred sixty-eight, such ballot commissioners
23 shall be appointed between the first and the tenth days of
24 February, for a term beginning on the eleventh day of
25 February of said year and ending on the thirty-first day
26 of January, one thousand nine hundred seventy. They
27 shall perform the duties of such commissioners at all
28 general, special and primary elections held in the county
29 or any magisterial district thereof during their term of
30 office. A vacancy shall be filled in the same manner as an
31 original appointment, but immediate notice of a vacancy
32 shall, where necessary, be deemed compliance with the
33 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 to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-23. County court to arrange polling places and equipment; requirements.

1 The county court in each county, before each election,
2 shall secure, in each voting precinct in the county, a
3 suitable room or building in which to hold the election,
4 and shall cause the same to be suitably provided with
5 heat, drinking water and light and a sufficient number of
6 booths or compartments, each containing a table, counter
7 or shelf, and furnished with proper supplies for preparing
8 ballots, at or in which voters may conveniently prepare
9 their ballots, so that in the preparation thereof they
10 may be secure from the observation of others. The num-
11 ber of such booths or compartments shall not be less than
12 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.

1 No person shall be eligible to be appointed as a com-
 2 missioner of election or as a poll clerk in any election
 3 precinct who is not a qualified voter in the magisterial
 4 district in which such precinct is situated; or who has
 5 anything of value bet or wagered on the result; or who
 6 is a candidate to be voted for at the ensuing election;
 7 or who is addicted to drunkenness; or who is not of good
 8 character and standing; or who has served or acted in the
 9 capacity of deputy sheriff within six months prior to the
 10 date of holding any such primary or general election.

11 Whenever a nonpartisan or public question election is
 12 to be conducted separate and apart from a primary or
 13 general election, the provisions of this article relating to
 14 the selection, appointment and qualifications of commis-
 15 sioners of election and poll clerks shall govern and con-
 16 trol, except that persons duly registered as "independent"
 17 or as adherents to a political party or group other than
 18 the two majority political parties then recognized, when
 19 otherwise qualified to be election officials, may be ap-
 20 pointed commissioners of election and poll clerks for
 21 the conduct of such nonpartisan and public question
 22 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
2 established which shall be uniform throughout the state

3 and all of its subdivisions. No voter so registered shall
4 be required to register again for any election while he
5 continues to reside at the same address, or, having moved
6 from such address, is properly transferred according to
7 the provisions of section twenty-seven of this article, un-
8 less his registration is cancelled as provided in this ar-
9 ticle.

10 Within one hundred and twenty days following any
11 election, the clerk of the county court shall, as evidenced
12 by the presence or absence of signatures on the poll
13 books for such election, correct any errors or omissions
14 on the voter registration records appertaining to such
15 election resulting from the poll clerks erroneously
16 checking or failing to check the registration records as
17 required by the provisions of section thirty-four, article
18 one of this chapter; and, within the same time period
19 following each state-wide primary and general election
20 and at the same time that such checkup is made
21 as is by this paragraph required, the clerk shall cancel
22 the registration of each person who has failed to vote
23 at least once during a period covering two state-wide
24 primary and general elections as indicated by his regis-
25 tration record. Any person who has had his registra-
26 tion for that reason cancelled shall, by letter, be given
27 proper notice thereof by the clerk of the county court,
28 to the effect that in order to vote he must register again
29 or execute and file, not later than twenty-nine days before
30 the next primary or general election, with the clerk,
31 an affidavit, the form of which shall be prescribed by
32 the secretary of state, stating that he desires to be
33 reinstated as a qualified voter at the same address and
34 the clerk shall replace the registration card of the voter
35 in the registration records. A blank form of such
36 affidavit shall be included with and accompany the
37 aforesaid notice to the voter.

**§3-2-9. Election rules; powers and duties of secretary of state;
exercise of powers by appointees.**

1 The secretary of state shall be the chief registration
2 official of the state. He shall have authority, upon

3 consultation with the state election commission, of which
4 he is a member, to make, amend and rescind such rules,
5 regulations and orders as may be necessary to carry
6 out the policy of the Legislature, as contained in this
7 article. It shall be the duty of all registration officials
8 to abide by such rules, regulations and orders, which
9 shall include:

10 (a) Uniform rules of procedure for registrars and
11 other registration officials in the performance of their
12 duties, as to time and manner of performance;

13 (b) Uniform rules for the purging of registration
14 records;

15 (c) Uniform rules for challenging registrants; and

16 (d) Any other rules, regulations, or directions neces-
17 sary to standardize and make effective the administration
18 of the provisions of this article.

19 It shall be his further duty to advise with registration
20 officials; to furnish to the registration officials a sufficient
21 number of indexed copies of the current registration
22 laws of West Virginia and the administrative orders
23 and rules and regulations issued or promulgated there-
24 under; to investigate the administration of registration
25 laws, frauds, and irregularities in any registration; to
26 report violations of registration laws to the appro-
27 priate prosecuting officials, and to prepare an annual
28 report of registration.

29 The secretary of state shall also have the power to
30 administer oaths and affirmations, issue subpoenas for
31 the attendance of witnesses, issue subpoena duces tecum
32 to compel the production of books, papers, records,
33 registration records and other evidence, and fix the time
34 and place for hearing any matters relating to the
35 administration and enforcement of this article, or the
36 rules, regulations and directions promulgated or issued
37 hereunder by the secretary of state as the chief regis-
38 tration official of the state. In case of disobedience to
39 a subpoena or subpoena duces tecum, he may invoke the
40 aid of any circuit court in requiring the attendance,
41 evidence and testimony of witnesses and the production

42 of papers, books, records, registration records and other
43 evidence.

44 All powers and duties vested in the secretary of state
45 under this article may be exercised by appointees of the
46 secretary of state at his discretion, but the secretary
47 of state shall be responsible for their acts.

§3-2-11. Appointment of registrars; qualifications and duties.

1 The county court of each county shall, not less than
2 eighteen nor more than twenty weeks prior to the date
3 of a state-wide primary election, appoint two competent
4 persons, for one or more but not to exceed ten voting
5 precincts in the county, to act as registrars for the
6 purpose of making a biennial or quadrennial checkup
7 required by this article. No person shall be eligible
8 to appointment as a registrar, or in any way act as
9 such, if he has been convicted of a felony or if he holds
10 any elective or appointive office, or is a public employee,
11 under the laws of this state or of the United States;
12 or cannot read or write the English language; or is a
13 candidate to be voted for at such election. If any such
14 registrar shall fail or refuse to serve or is properly
15 dismissed, the vacancy shall be filled either by the
16 county court or by the clerk thereof in vacation, in the
17 manner provided for the appointment of registrars.
18 Each registrar, before entering upon the discharge of his
19 duties, shall take an oath that he will perform the
20 duties of the office to the best of his ability, which
21 oath shall be filed in the office of the clerk of the county
22 court.

23 An equal number of such registrars shall be selected
24 from the two political parties which at the last pre-
25 ceding election, cast the highest number and next high-
26 est number of votes in the county in which the election
27 is to be held. The county court shall, at least four weeks
28 prior to making such appointment, request the county
29 executive committee of each of the said two political
30 parties to submit a list of names, equal to one half
31 of the total number to be appointed, of persons qualified
32 to act as registrars; and the county court shall, if such
33 lists are submitted, appoint the respective registrars

34 therefrom, and shall notify each registrar of his appoint-
35 ment. Every such list so presented shall be filed and
36 preserved for one year by the clerk of such court in
37 his office. Any and every act performed by any registrar
38 under the provisions of this article shall be void unless
39 performed in conjunction with a registrar of the
40 opposite political party at the same time and place.

41 Before acting, all such registrars shall attend a
42 session, or sessions, of instruction by the clerk of the
43 county court, or some person designated by him, con-
44 cerning the performance of their duties.

45 Immediately following such instruction the clerk of
46 the county court shall deliver to the registrar a copy
47 of the laws and regulations relating to registration of
48 voters and all necessary forms and other supplies, in-
49 cluding a certified list of all registered voters within
50 the precinct or precincts for which such registrars were
51 appointed, upon such form as may be prescribed by
52 the secretary of state. Such registrars shall there-
53 upon proceed together to make a house-to-house can-
54 vass in their precincts for the purpose of making the
55 biennial or quadrennial checkup required by section
56 twenty-one of this article. Each biennial or quadrennial
57 checkup subsequent to the year one thousand nine
58 hundred sixty-eight shall be completed at least sixty
59 days before the state-wide primary election following
60 the appointment of the registrars. In making such
61 checkup the registrars shall not again register any per-
62 son who is already registered in such precinct, but
63 shall determine whether or not such person is duly
64 registered and qualified to vote therein.

§3-2-16. Custody of registration records; public inspection.

1 The registration records shall not be removed from
2 the custody of the county court except for use in an
3 election or by the order of a court of record or in com-
4 pliance with a subpoena duces tecum issued by the
5 secretary of state under the authority of section nine
6 of this article. The registration records shall be open
7 for public inspection under reasonable regulations pre-
8 scribed by the county court.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons.

1 The clerk of the county court may register any quali-
2 fied person as a voter by having him fill in and complete
3 the prescribed voter registration form and having him
4 sign same under oath or affirmation. The clerk, upon
5 proper proof, may alter, amend, correct, or cancel the
6 registration record of any voter. Such registration or
7 alteration, amendment, correction or cancellation of
8 registration records shall be carried on throughout the
9 year.

10 Within fifteen days following receipt by the clerk
11 from the state registrar of vital statistics or from the
12 local registrar of vital statistics of a certificate of death
13 which has occurred in his county or of a person who
14 last resided prior to death in his county, the clerk of
15 the county court shall cancel the voter registration,
16 if any, of the person shown to be deceased by such cer-
17 tificate.

18 For purposes of making certain that the voter regis-
19 tration records of the various counties do not contain
20 voter registration of persons who are deceased, the
21 clerks of the county courts shall prior to September one,
22 one thousand nine hundred sixty-eight, review each
23 certificate of death received by him from the state regis-
24 trar of vital statistics or from the local registrar of vital
25 statistics since January one, one thousand nine hundred
26 sixty-four, and shall cancel the voter registration,
27 if any, of each person shown to be deceased by any such
28 certificate and whose voter registration has not pre-
29 viously been cancelled. Between September one and
30 September fifteen, one thousand nine hundred and sixty-
31 eight, each clerk of a county court shall certify to the
32 secretary of state, as the chief registration official of the
33 state, that he has performed the duty required by this
34 paragraph.

35 If found necessary, the county court may order and
36 direct the clerk of the county court to maintain addi-
37 tional office hours in the evening or at other proper
38 times and places for accommodation of voter registra-
39 tion.

§3-2-36. Neglect of duty by registration officers; penalties.

1 Any registrar or clerk of the county court or their
2 authorized deputies or any other persons upon whom a
3 duty is laid by the Permanent Registration Law, or the
4 rules, regulations or directions promulgated or issued
5 by the secretary of state as the chief registration official
6 of the state, who shall wilfully delay, neglect, or refuse
7 to perform such duty, shall be guilty of a misdemeanor,
8 and, upon conviction, shall be fined not more than one
9 thousand dollars or confined in the county jail for not
10 more than one year, or both, at the discretion of the
11 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
2 officio a board of canvassers, and, as such, shall keep
3 in a well-bound book, marked "election record," a com-
4 plete record of all their proceedings in ascertaining and
5 declaring the result of every election in their respec-
6 tive counties. They shall convene as such canvassing
7 board at the courthouse on the fifth day (Sundays ex-
8 cepted) after every election held in their county, or
9 in any district thereof, and the officers in whose custody
10 the ballots, poll books, registration records, tally sheets
11 and certificates have been placed shall lay the same
12 before them for examination. They may, if deemed
13 necessary, require the attendance of any of the com-
14 missioners, poll clerks or other persons present at the
15 election, to appear and testify respecting the same, and
16 make such other orders as shall seem proper, to
17 procure correct returns and ascertain the true result
18 of the election in their county; but in such case all the
19 questions to the witnesses and all the answers thereto,
20 and evidence, shall be taken down in writing and filed
21 and preserved. All orders made shall be entered upon
22 the record. They may adjourn from time to time, but
23 no longer than absolutely necessary, and, when a ma-
24 jority of the commissioners are not present, their meeting
25 shall stand adjourned until the next day, and so from

26 day to day, until a quorum be present. The board shall
27 proceed to open each sealed package of ballots so laid
28 before them, and, without unfolding them, count the
29 number in each package and enter the same upon their
30 record. The ballots shall then be again sealed up care-
31 fully in a new envelope, and each member of the board
32 shall write his name across the place where such
33 envelope is sealed. After canvassing the returns of the
34 election, the board shall, upon the demand of any can-
35 didate voted for at such election, open and examine
36 any one or more of the sealed packages of ballots, and
37 recount the same; but in such case they shall seal the
38 same again, along with the envelope above named, and
39 the clerk of the county court and each member of the
40 board shall write his name across the place or places
41 where it is sealed, and endorse in ink, on the outside:
42 "Ballots of the election held at precinct No. ,
43 in the district of, and county of, on
44 the..... day of....." Every candidate who demands
45 such recount shall be required to furnish bond in a
46 reasonable amount with good sufficient surety to guar-
47 antee payment of the costs and the expenses of such
48 recount in the event the result of the election be not
49 changed by such recount; but the amount of such bond
50 shall in no case exceed three hundred dollars. When
51 they have made their certificates and declared the re-
52 sults as hereinafter provided, they shall deposit the
53 sealed packages of ballots, absent voter ballots, regis-
54 tration records, poll books, tally sheets, and precinct
55 certificates with the clerks of the county and circuit
56 courts for whom they were received, who shall care-
57 fully preserve the same for sixty days, and if there be
58 no contest pending as to any such election, and their
59 further preservation be not required by any order of a
60 court, such ballots, poll books, tally sheets and certifi-
61 cates shall be destroyed by fire or otherwise, without
62 opening the sealed packages of ballots; and if there be
63 such contest pending, then they shall be so destroyed as
64 soon as the contest is ended: *Provided*, That the poll
65 books shall be preserved until such time as the clerk

66 of the county court has completed the duties imposed
67 upon him by section three, article two of this chapter.
68 If the result of the election be not changed by such re-
69 count, the costs and expenses thereof shall be paid by
70 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-
2 tered or his voter registration has been altered, amended
3 or corrected within a period of twenty-nine days next
4 preceding such election, but this inhibition shall not
5 prevent, during such period of twenty-nine days, addi-
6 tional registrations and changes in voter registrations with
7 reference to future elections. If, during such period of
8 twenty-nine days preceding an election, a voter is regis-
9 tered or his voter registration is altered, amended or
10 corrected, he shall not be permitted or qualified to vote
11 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 deliv-
- 2 ered to the election board of any precinct, the election
- 3 commissioners shall as time permits proceed to determine
- 4 the legality of such ballots as prescribed in article six
- 5 of this chapter. Without unfolding the absent voters'
- 6 ballots determined to be legal, the election commissioners
- 7 shall shuffle and intermingle the same so as to preserve
- 8 the secrecy of the ballots to the fullest extent practicable,
- 9 and prior to the close of the polls and before sealing the
- 10 operating lever and unlocking the counter compartment,
- 11 shall record such ballots on the voting machine. Such
- 12 recording of absent voters' ballots shall be done by one
- 13 of the election commissioners and the act of casting such
- 14 votes shall be performed in the presence, and under the
- 15 careful observation and full view, of all members of the
- 16 precinct election board, and the votes as indicated by the
- 17 voting pointers shall not be registered until each member
- 18 of such board is satisfied that the arrangement of such
- 19 voting pointers fully carries out the intent of the voter
- 20 as shown by the cross marks on the paper ballot.
- 21 After completion of the count, absentee ballots shall

22 be enclosed in a sealed package, properly endorsed, and
23 returned and filed with the statement of returns.

CHAPTER 27

(Senate Bill No. 99—By Mr. Carson, Mr. President, and Mr. McCourt)

[Passed February 7, 1968; in effect July 1, 1968. Approved by the Governor.]

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 follows:

ARTICLE 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.

Section

- 5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.
 - 5A-4A-2. Office of governor's mansion director created; duties and responsibilities.
 - 5A-4A-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.
- §5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.**

1 There is hereby created the governor's mansion ad-
2 visory committee. The commissioner of finance and ad-
3 ministration, the director of archives and history and the
4 wife of any governor during his term of office or the
5 designated representative of such governor shall be ex
6 officio members of the committee. In addition, the gov-
7 ernor shall appoint three additional members of the com-
8 mittee, one to be a curator in the field of fine arts, one to

9 be an interior decorator who is a member of the American
10 Institute of Decorators, and one to be a building con-
11 tractor. The appointive members of the committee shall
12 serve for a term of four years: *Provided*, That the initial
13 term of such members shall commence July first, one
14 thousand nine hundred sixty-seven, and end June thir-
15 tieth, one thousand nine hundred seventy. The members
16 of the committee shall serve without compensation but
17 shall be reimbursed for reasonable and necessary ex-
18 penses actually incurred in the performance of their
19 duties. The governor shall designate from the committee
20 a chairman to serve for a term of one year. The commis-
21 sioner of finance and administration shall serve as secre-
22 tary. The committee shall meet upon the call of the
23 chairman annually and may meet at such other times as
24 may be necessary for the performance of its functions.

25 The committee shall be charged with the following re-
26 sponsibilities:

27 (1) To make recommendations to the governor for the
28 maintaining, preserving and replenishing of all articles of
29 furniture, fixtures, decorative objects, linens, silver, china,
30 crystal and objects of art used or displayed in the state
31 rooms of the governor's mansion, which state rooms shall
32 consist of the front hall, the reception room, the ballroom
33 and its sitting room, the state dining room, the front up-
34 stairs hall and the music room;

35 (2) To make recommendations to the governor as to the
36 decor and arrangements best suited to enhance the historic
37 and artistic values of the mansion in keeping with the
38 architecture thereof and of such articles of furniture, fix-
39 tures, decorative objects, linens, silver, china, crystal and
40 objects of art, which recommendations shall be considered
41 by the governor in decorating said mansion; and

42 (3) To invite interested persons to attend its meetings
43 or otherwise to assist in carrying out its functions.

44 All departments, boards, agencies, commissions, officials
45 and employees of the state are hereby authorized to co-
46 operate with and assist the committee in the performance
47 of its functions and duties whenever possible. As soon
48 after the close of each fiscal year as possible, the com-

49 mittee shall make an annual report to the governor and
50 the Legislature with respect to its activities and responsi-
51 bilities.

§5A-4A-2. Office of governor's mansion director created; duties and responsibilities.

1 There is hereby created the office of governor's mansion
2 director, who shall be qualified by background and ex-
3 perience for such a position and shall be appointed by the
4 governor to serve at the will and pleasure of the governor.
5 The mansion director shall be charged with the following
6 duties and responsibilities: To protect and preserve all
7 articles of furniture, fixtures, table linens, silver, china,
8 crystal and objects of art displayed in the state rooms in
9 the mansion. The mansion director shall assist the first
10 lady in the scheduling of state government functions and
11 entertainment at the mansion.

§5A-4A-3. Official use of state rooms in governor's mansion; vacating private rooms of mansion.

1 The state rooms of the mansion shall be used for
2 official state government functions and entertainment:
3 *Provided*, That tours of the state rooms of the mansion
4 shall be permitted, and the mansion director shall assist
5 in the scheduling of said tours and prescribe rules and
6 regulations governing same.

7 The outgoing governor and his family shall vacate the
8 private rooms of the mansion at least seven days prior to
9 the inauguration of a new governor so that the mansion
10 may be made suitable for the change in occupancy.

CHAPTER 28

(House Bill No. 243—By Mr. Speaker, Mr. White, and Mr. Hager,
of Logan)

[Passed January 27, 1968; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article one, chapter sixteen of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section nine-a, relating to 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 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 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.

3

CHAPTER 29

(House Bill No. 274—By Mr. Kincaid and Mr. Ranson)

[Passed February 2, 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 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.

1 Any county of this state or any municipality thereof
2 or any two or more counties or municipalities, or
3 any combination thereof, may cooperate with political
4 subdivisions of other states bordering on West Virginia
5 for the purpose of creating by an agreement, an inter-
6 state regional planning commission, whenever such politi-
7 cal subdivisions comprise a region which would benefit
8 from cooperative planning. The agreement entered into
9 by the several political subdivisions shall specify the
10 extent of the region included within the jurisdiction of
11 the interstate planning commission, fix the membership
12 comprising the commission; the terms of office and method
13 of appointment of the members thereof, the duration of
14 the commission, the method for terminating the com-
15 mission, the method of disposal of all property belonging
16 to the commission, and the distribution of the proceeds;

17 and the apportionment of the costs of maintaining the
18 planning commission to be borne respectively by the
19 various political subdivisions included within the agree-
20 ment, such apportionment to be based on the population
21 of the various participating political subdivisions. Any
22 such agreement shall be executed on behalf of a county
23 by the county court or tribunal in lieu thereof, as the
24 case may be, and on behalf of any municipality by the
25 governing body thereof.

26 The state of West Virginia may be an ex officio member
27 of any such interstate regional planning commission
28 formed under the provisions of this article. The commis-
29 sioner of commerce or a representative designated by him
30 shall represent the state in the deliberations of any inter-
31 state regional planning commission or its agencies or in-
32 strumentalities but the state of West Virginia shall not
33 be a voting member of any interstate regional planning
34 commission or any agency or instrumentality thereof.

§8-4C-2. Definition of region.

1 The term "region," as used in this article, shall mean a
2 specific metropolitan interstate area designated by the
3 proper federal agency pursuant to the Demonstration
4 Cities and Metropolitan Development Act of 1966 and
5 any amendments thereto, as well as all other interstate
6 areas which would benefit from cooperative planning.
7 Before any area in this state is included within an inter-
8 state region for interstate planning, it shall be approved
9 by the commissioner of the department of commerce:
10 *Provided*, That no territory within any municipality or
11 county not having a planning commission shall be in-
12 cluded in the interstate area.

§8-4C-3. Membership and organization of commission; reports and audits.

1 Any member of an interstate regional planning com-
2 mission may hold any other public office, appointive or
3 elective, if not prohibited by some other statute or con-
4 stitutional provision, and a member thereof may also
5 serve as a member of a county, municipal or regional plan-
6 ning commission. The members of the commission shall
7 serve without compensation but may be reimbursed

8 for all reasonable and necessary expenses actually in-
9 curred in the discharge of their duties on the commis-
10 sion. The commission shall elect its own chairman or
11 other officers from among its members and shall establish
12 its own rules and bylaws, schedule of meetings and such
13 committees with such powers as it may deem necessary
14 to carry on its work.

15 Any such commission shall make a quarterly report to
16 the county court or tribunal in lieu thereof of each
17 county and to the governing body of each municipality
18 contributing to the financial support of such commission
19 containing an itemized account of its receipts and dis-
20 bursements during the preceding quarter. Such report
21 shall be made within thirty days after the end of each
22 quarter. At the end of each fiscal year, any such com-
23 mission shall arrange for an independent audit of its
24 financial affairs and within thirty days after the end
25 of such fiscal year, such commission shall furnish a copy
26 of the report of such audit to any such county court,
27 tribunal or governing body and shall cause a copy
28 thereof to be published as a Class I legal advertisement
29 in compliance with the provisions of article three, chapter
30 fifty-nine of this code, and the publication area for such
31 publication shall be each county and municipality which
32 contributed to the financial support of such commission.

§8-4C-4. Powers and duties of an interstate regional planning commission.

- 1 (a) An interstate regional planning commission may
2 make studies, maps, plans and reports relative to the
3 region and shall recommend procedures and policies to
4 the appropriate authorities, based on physical, social,
5 economic, and governmental conditions and trends, to pro-
6 mote the coordinated development of the region and the
7 general health, welfare, convenience, and prosperity of
8 the people of the region. Such planning and coordination
9 may reflect the following planning criteria:
- 10 (1) Goals, objectives, standards, and principles for the
11 development of the region;
 - 12 (2) The distribution and intensity of general land use
13 and open space;

14 (3) The general circulation pattern for the region,
15 including land, water and air transportation and com-
16 munication facilities, and continuing comprehensive trans-
17 portation planning;

18 (4) The general location, character, and extent of
19 public and private works and facilities which are of area-
20 wide or regional, as distinguished from purely local, con-
21 cern;

22 (5) Long-range programming and financing of capital
23 projects and facilities.

24 (b) The commission shall:

25 (1) Review plans and proposals for projects and
26 programs of interstate or regional significance which may
27 be proposed by others;

28 (2) Review and make recommendations concerning
29 administrative and regulatory measures to implement
30 area-wide or regional plans;

31 (3) Review and make recommendations concerning
32 effective utilization of such federal and state assistance
33 as may be available on a regional basis or as may have a
34 regional impact;

35 (4) Collect, analyze, and report on statistics and
36 other information concerning traffic, housing, population,
37 and social, economic, and physical conditions of the
38 region;

39 (5) Make recommendations to governmental bodies
40 within such region for such actions as are necessary and
41 proper to further the coordinated development of the
42 region;

43 (6) Conduct necessary investigations and research
44 and cooperate with other public and private agencies
45 or persons to conduct such investigations or research on
46 planning problems affecting the region.

§8-4C-5. Appropriations, receipts and expense.

1 (a) Any political subdivision which becomes a mem-
2 ber of any interstate regional planning commission may
3 contract annually with said interstate regional planning
4 commission to pay a proportionate part of the expense

5 which is properly chargeable to the planning services
6 rendered to such political subdivision, and any funds
7 budgeted for interstate planning may be paid over by
8 the local political subdivision to the interstate regional
9 planning commission.

10 (b) An interstate regional planning commission may
11 accept and use funds, grants, and services from the fed-
12 eral government or its agencies, from departments, agen-
13 cies, and instrumentalities of any adjoining state, and
14 from any county, municipal corporation, or other political
15 subdivision of this or any adjoining state, including
16 county, regional, municipal, or other planning commis-
17 sions of this or any adjoining state, or from private
18 sources, or services from departments, agencies, or in-
19 strumentalities of this state, and may contract with re-
20 spect thereto and provide such information and reports
21 as may be necessary to secure such financial or other aid.
22 Within the amounts thus agreed upon and appropriated
23 or otherwise received, any commission may employ such
24 engineers, planners, consultants, and other employees as
25 are necessary and may rent or own such space and make
26 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
2 each fund placed with it for investment in any bonds,
3 notes or debentures of any one corporation meeting the
4 requirements of subdivision (e) of section nine of this arti-
5 cle; nor shall the board invest more than fifty percent of
6 each separate fund placed with it for investment in bonds,
7 notes or debentures of corporations meeting the require-
8 ments of subdivision (e) of section nine of this article.

9 Securities purchased or held under the provisions of
10 this article may be sold or exchanged for other secur-
11 ities: *Provided*, That (1) no security shall be purchased,
12 sold or exchanged without the concurrence of a majority
13 of all members of the board, (2) no security shall be
14 purchased at a price above, nor sold or exchanged at
15 a price below, its prevailing fair market value, (3) no
16 security shall be purchased, sold, or exchanged for the
17 purpose of aiding any individual, firm or corporation
18 by the payment of brokerage commissions or fees thereto,
19 (4) no security shall be received in exchange which does
20 not comply with the requirements of section nine or
21 ten of this article, and (5) the board shall not engage
22 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.

1 In any proceeding under the provisions of this article,
2 the child shall have the right to be represented by counsel,
3 and the child and his parents, his guardian, his custodian,
4 or any other person standing in loco parentis to him,
5 or the person named in the petition, must be informed
6 at the outset of the child's right to be represented by
7 counsel, and if neither the child nor any other of the
8 aforementioned persons can pay for the services of
9 counsel, that counsel will be appointed to represent the
10 child. Upon the presentation to the court or judge thereof
11 of a written request for the appointment of counsel and
12 an affidavit by the child, or by his parents, the guardian
13 of his person, his custodian, or any other person standing
14 in loco parentis to him, or by the person named in the
15 petition, showing that neither the child nor any other
16 of the aforementioned persons can pay for the services
17 of counsel, the court or judge, upon being satisfied as to
18 the truth of the information set forth in the affidavit,
19 shall, by order entered of record, appoint an attorney at
20 law to represent the child in any proceeding under the
21 provisions of this article, and may, in the exercise of
22 discretion, by order entered of record, allow any attorney
23 so appointed a fee in an amount not to exceed fifty dollars.
24 Any such fee shall be paid by the state auditor in the
25 same manner as fees for appointed counsel are paid in
26 felony cases.

CHAPTER 32

(Senate Bill No. 74—By Mr. Moreland and Mr. McCourt)

[Passed February 7, 1968; in effect from passage. Approved by the Governor.]

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.

CHAPTER 33

(House Bill No. 208—By Mr. Anderson and Mr. Edgar)

[Passed January 27, 1968; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from 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 polit-
2 ical subdivision thereof, shall be exempted from the
3 payment of any fee on account of registration of any
4 vehicle owned or operated by the United States govern-
5 ment, the state, or any political subdivision thereof, as
6 the case may be. The proper representative of the
7 federal government, the state, or any such political
8 subdivision thereof, shall make, or cause to be made,
9 on the form provided for that purpose, an application
10 for registration of such vehicle so owned and operated,
11 and the registration plate or plates issued for such
12 vehicle shall be displayed or caused to be displayed as
13 provided in this chapter. Fire apparatus owned by the
14 United States government, the state, or any political
15 subdivision thereof, or by an incorporated volunteer
16 fire department organized for protection of community
17 property shall be exempt from all the provisions of this
18 article, pertaining to the payment of registration fees.
19 Any ambulance used exclusively for charitable purposes,
20 for which use there is no charge, shall be exempt from
21 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.

9 (b) The department may require any driver of a
10 vehicle involved in an accident of which report must be
11 made as provided in this section to file supplemental
12 reports whenever the original report is insufficient in
13 the opinion of the department and may require witnesses
14 of accidents to render reports to the department.

15 (c) Every law-enforcement officer who, in the reg-
16 ular course of duty, investigates a motor vehicle accident
17 of which report must be made as required in this section,
18 either at the time of and at the scene of the accident
19 or thereafter by interviewing participants or witnesses
20 shall, within twenty-four hours after completing such
21 investigation, forward a written report of such accident
22 to the department. The department shall prepare a form
23 for such accident report and, after approval of such form
24 by the commissioner, the superintendent of the depart-
25 ment of public safety and the state road commissioner,
26 shall supply copies of such form to police departments,
27 sheriffs and other appropriate law-enforcement agencies.
28 Every accident report required under the provisions of
29 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
- 2 streets or highways of this state shall be deemed to have
- 3 given his consent by the operation thereof, subject to the
- 4 provisions of this article, to a chemical test of either his
- 5 blood, breath or urine for the purpose of determining the

6 alcoholic content of his blood whenever he shall be law-
7 fully arrested by a law-enforcement officer as hereinafter
8 defined for the offense of driving a motor vehicle upon
9 the public streets or highways of this state while under
10 the influence of intoxicating liquor. The test shall be
11 incidental to a lawful arrest and shall be administered at
12 the direction of the arresting law-enforcement officer
13 having reasonable grounds to believe the person to have
14 been driving a motor vehicle upon the public streets or
15 highways while under the influence of intoxicating liquor.
16 The law-enforcement agency by which such law-enforce-
17 ment officer is employed shall designate which one of the
18 aforesaid tests shall be administered: *Provided*, That if
19 the test so designated is a blood test and the person so
20 arrested refuses to submit to such blood test, then the law-
21 enforcement officer making such arrest shall designate in
22 lieu thereof, either a breath or urine test be administered,
23 and notwithstanding the provisions of section three of
24 this article, such refusal to submit to a blood test only
25 shall not result in the suspension of the arrested person's
26 operator's or chauffeur's license, or junior or probationary
27 operator's license, or nonresident privilege to drive. The
28 person arrested shall be told that his refusal to submit
29 to the test finally designated as provided in this section,
30 will result in the suspension of his operator's or chauffeur's
31 license, or junior or probationary operator's license, or
32 nonresident privilege to drive for a period of six months.

33 For the purposes of this article the term "law-enforce-
34 ment officer" shall mean and be limited to (1) any mem-
35 ber of the department of public safety of this state, (2)
36 any sheriff and any deputy sheriff of any county, and (3)
37 any member of a municipal police department under civil
38 service in accordance with the provisions of article five-a,
39 chapter eight of this code.

**§17C-5A-2. How blood test administered; additional test at
option of person tested; use of test results; cer-
tain immunity from liability incident to admin-
istering test.**

1 Only a doctor of medicine or osteopathy, or registered
2 nurse, or trained medical technician at the place of his

3 employment, acting at the request and direction of the
4 law-enforcement officer, may withdraw blood for the pur-
5 pose of determining the alcoholic content thereof. These
6 limitations shall not apply to the taking of a breath test
7 or a urine specimen. In withdrawing blood for the pur-
8 pose of determining the alcoholic content thereof, only
9 a previously unused and sterile needle and sterile vessel
10 may be utilized and the withdrawal shall otherwise be
11 in strict accord with accepted medical practices. A non-
12 alcoholic antiseptic shall be used for cleansing the skin
13 prior to venapuncture. The person tested may, at his
14 own expense, have a doctor of medicine or osteopathy,
15 or registered nurse, or trained medical technician at the
16 place of his employment, of his own choosing, administer
17 a chemical test in addition to the test administered at
18 the direction of the law-enforcement officer. The failure
19 or inability of the person arrested to obtain an additional
20 test shall not preclude the admission into evidence at any
21 administrative or judicial proceeding of the results of the
22 test taken at the direction of the law-enforcement officer.
23 Upon the request of the person who is tested, full infor-
24 mation concerning the test taken at the direction of the
25 law-enforcement officer shall be made available to him.
26 No person who administers any such test upon the request
27 of a law-enforcement officer as herein defined, no hospital
28 in or with which such person is employed or is otherwise
29 associated or in which such test is administered, and no
30 other person, firm or corporation by whom or with which
31 such person is employed or is in any way associated, shall
32 be in anywise criminally liable for the administration of
33 such test, or civilly liable in damages to the person tested
34 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.**

1 If any person under arrest as specified in section one of
2 this article refuses to submit to the test finally designated
3 in the manner provided in section one hereof, no test shall
4 be given, but the commissioner of motor vehicles, upon
5 receipt of a sworn statement of the law-enforcement

6 officer that (1) he had reasonable grounds to believe such
7 person had been driving a motor vehicle upon the public
8 streets or highways of this state while under the influence
9 of intoxicating liquor, (2) such person was lawfully placed
10 under arrest for the offense of driving a motor vehicle
11 upon the public streets or highways of this state while
12 under the influence of intoxicating liquor, (3) such per-
13 son refused to submit to the test finally designated in
14 the manner provided in section one of this article,
15 and (4) such person was told that his operator's or
16 chauffeur's license, or junior or probationary operator's
17 license, or nonresident privilege to drive would be sus-
18 pended for a period of six months if he refused to sub-
19 mit to the test finally designated in the manner provided
20 in section one of this article, shall make and enter an
21 order suspending such person's operator's or chauffeur's
22 license, or junior or probationary operator's license, or
23 nonresident privilege to drive for a period of six months.
24 A copy of such order shall be forwarded to such person
25 by registered or certified mail, return receipt requested.
26 No such suspension shall become effective until ten days
27 after receipt of the copy of such order. Any person who
28 is unconscious or who is otherwise in a condition render-
29 ing him incapable of refusal, shall be deemed not to have
30 withdrawn his consent for a test of his blood, breath or
31 urine as provided in section one of this article and the test
32 may be administered although such person is not told
33 that his failure to submit to the test will result in the
34 suspension of his operator's or chauffeur's license, or
35 junior or probationary operator's license, or nonresident
36 privilege to operate a motor vehicle for a period of six
37 months.

38 A suspension hereunder shall run concurrently with
39 the period of any suspension or revocation imposed in
40 accordance with other provisions of this code and grow-
41 ing out of the same incident which gave rise to the arrest
42 for driving a motor vehicle while under the influence of
43 intoxicating liquor and the subsequent refusal to undergo
44 the test finally designated in accordance with the provi-
45 sions of section one of this article.

§17C-5A-4. Hearing procedures; judicial review.

1 Upon the written request of a person whose operator's
2 or chauffeur's license, or junior or probationary operator's
3 license, or nonresident privilege to drive has been so
4 suspended, the commissioner of motor vehicles shall afford
5 the person an opportunity to be heard. Such written re-
6 quest must be filed with the commissioner in person or
7 by registered or certified mail, return receipt requested,
8 within ten days after receipt of a copy of the order of
9 suspension. The hearing shall be before said commis-
10 sioner or authorized deputy or agent of said commissioner,
11 and all of the pertinent provisions of article five, chapter
12 twenty-nine-a of this code shall apply to and govern the
13 hearing and the administrative procedures in connection
14 with and following such hearing, with like effect as if the
15 provisions of said article five were set forth in extenso
16 in this section, except that in the case of a resident of
17 this state the hearing shall be held in the county where-
18 in the person resides unless the commissioner or his
19 authorized deputy or agent and such person agree that
20 the hearing may be held in some other county. Any such
21 hearing shall be held within twenty days after the date
22 upon which the commissioner received the timely writ-
23 ten request therefor, unless there is a postponement or
24 continuance. The commissioner may postpone or continue
25 any hearing on his own motion, or upon application of
26 such person for good cause shown. For the purpose of
27 conducting such hearing, the commissioner shall have the
28 power and authority to issue subpoenas and subpoenas
29 duces tecum in accordance with the provisions of section
30 one, article five, chapter twenty-nine-a of this code. All
31 subpoenas and subpoenas duces tecum shall be issued
32 and served within the time and for the fees and shall be
33 enforced, as specified in section one, article five of said
34 chapter twenty-nine-a, and all of the said section one
35 provisions dealing with subpoenas and subpoenas duces
36 tecum shall apply to subpoenas and subpoenas duces
37 tecum issued for the purpose of a hearing hereunder.

38 The scope of such hearing shall be (1) whether the
39 arresting law-enforcement officer had reasonable grounds
40 to believe such person had been driving a motor vehicle

41 upon the public streets or highways of this state while
42 under the influence of intoxicating liquor, (2) whether
43 such person was lawfully placed under arrest for the
44 offense of driving a motor vehicle upon the public streets
45 or highways of this state while under the influence of
46 intoxicating liquor, (3) whether such person refused to
47 submit to the test finally designated in the manner pro-
48 vided in section one of this article, and (4) whether such
49 person had been told that his operator's or chauffeur's
50 license, or junior or probationary operator's license, or
51 nonresident privilege to drive would be suspended for a
52 period of six months if he refused to submit to the test
53 finally designated in the manner provided in section one
54 of this article.

55 After such hearing and consideration of all of the testi-
56 mony, evidence and record in the case, the commissioner
57 shall make and enter an order affirming or rescinding
58 his earlier order of suspension. The commissioner shall
59 affirm his earlier order of suspension if he finds that (1)
60 the arresting law-enforcement officer had reasonable
61 grounds to believe such person had been driving a motor
62 vehicle upon the public streets or highways of this state
63 while under the influence of intoxicating liquor, (2) such
64 person was lawfully placed under arrest for the offense
65 of driving a motor vehicle upon the public streets or high-
66 ways of this state while under the influence of intoxicat-
67 ing liquor, (3) such person refused to submit to the test
68 finally designated in the manner provided in section one
69 of this article, and (4) such person had been told that his
70 operator's or chauffeur's license, or junior or probatio-
71 nary operator's license, or nonresident privilege to drive
72 would be suspended for a period of six months if he re-
73 fused to submit to the test finally designated in the man-
74 ner provided in section one of this article. If the com-
75 missioner finds to the contrary with respect to any one
76 of the above issues, he shall rescind his earlier order of
77 suspension.

78 A copy of the commissioner's order made and entered
79 following the hearing shall be served upon such person
80 by registered or certified mail, return receipt requested.
81 During the pendency of any such hearing, the suspension

82 of the operator's or chauffeur's license, or junior or pro-
83 bationary operator's license, or nonresident privilege to
84 drive of such person shall be stayed, and if the commis-
85 sioner has possession of such person's operator's or chauf-
86 feur's license, or junior or probationary operator's license,
87 the same shall be forthwith returned to him pending the
88 outcome of such hearing or any judicial review thereafter,
89 as hereinafter provided.

90 If the commissioner shall after hearing make and enter
91 an order affirming his earlier order of suspension, such
92 person shall be entitled to judicial review thereof. All
93 of the pertinent provisions of section four, article five,
94 chapter twenty-nine-a of this code shall apply to and
95 govern such review with like effect as if the provisions
96 of said section four were set forth in extenso in this
97 section. The judgment of the circuit court shall be final
98 unless reversed on appeal to the supreme court of appeals,
99 in accordance with the provisions of section one, article
100 six, chapter twenty-nine-a of this code, except that not-
101 withstanding the provisions of said section one, the
102 petition seeking such review must be filed with said
103 supreme court of appeals within thirty days from the date
104 of entry of the judgment of the circuit court. Notwith-
105 standing any provisions in said chapter twenty-nine-a
106 to the contrary, during the pendency of any appeal to
107 the circuit court or supreme court of appeals, the suspen-
108 sion of the operator's or chauffeur's license, or junior or
109 probationary operator's license, or nonresident privilege
110 to drive of such person shall be stayed, pending the out-
111 come of such judicial review.

§17C-5A-5. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle
2 on the public streets or highways of this state while
3 under the influence of intoxicating liquor, or upon the
4 trial of any civil or criminal action or proceeding arising
5 out of acts alleged to have been committed by any person
6 while driving a motor vehicle while under the influence
7 of intoxicating liquor, evidence of the amount of alcohol
8 in the person's blood at the time of the arrest or of the
9 acts alleged, as shown by a chemical analysis of his blood,

10 breath or urine, is admissible, if the sample or specimen
11 was taken within two hours from and after the time of
12 arrest or of the acts alleged, and shall give rise to the
13 following presumptions or have the following effect:

14 (a) Evidence that there was, at that time, five hun-
15 dredths of one percent or less, by weight, of alcohol in
16 his blood, shall be prima facie evidence that the person
17 was not under the influence of intoxicating liquor;

18 (b) Evidence that there was, at that time, more than
19 five hundredths of one percent and less than ten hun-
20 dredths of one percent, by weight, of alcohol in the per-
21 son's blood shall be relevant evidence, but it is not to be
22 given prima facie effect in indicating whether the person
23 was under the influence of intoxicating liquor;

24 (c) Evidence that there was, at that time, ten hun-
25 dredths of one percent or more, by weight, of alcohol in his
26 blood, shall be admitted as prima facie evidence that the
27 person was under the influence of intoxicating liquor.

28 Percent by weight of alcohol in the blood shall be based
29 upon milligrams of alcohol per one hundred cubic centi-
30 meters of blood.

31 A chemical analysis of a person's blood, breath or urine,
32 in order to give rise to the presumptions or to have the
33 effect provided for in subdivisions (a), (b) and (c) of
34 this section, must be performed in accordance with meth-
35 ods and standards approved by the state department of
36 health. A chemical analysis of blood or urine to determine
37 the alcoholic content of blood shall be conducted by a
38 qualified laboratory or by the state police scientific lab-
39 oratory, of the criminal identification bureau of the de-
40 partment of public safety.

41 The provisions of this article shall not limit the intro-
42 duction in any administrative or judicial proceeding of
43 any other competent evidence bearing on the question of
44 whether the person was under the influence of intoxicat-
45 ing liquor.

§17C-5A-6. Right to demand test.

1 Any person lawfully arrested for driving a motor ve-
2 hicle on the public streets or highways of this state while

3 under the influence of intoxicating liquor and who is not
4 tested at the direction of the arresting law-enforcement
5 officer under the provisions of this article, or who is law-
6 fully arrested as aforesaid by any other police officer,
7 shall have the right to demand that a sample or specimen
8 of his blood, breath or urine be taken within two hours
9 from and after the time of arrest, and that a chemical test
10 thereof be made. The analysis disclosed by such chemical
11 test shall be made available to such arrested person forth-
12 with upon demand.

**§17C-5A-7. Fee for withdrawing blood sample and making
urine test; payment of fees.**

1 A fee not exceeding five dollars shall be allowed to
2 the person withdrawing a blood sample or administering
3 a urine test at the request and direction of a law-enforce-
4 ment officer in accordance with the provisions of this
5 article. If the person whose blood sample was withdrawn
6 or whose urine was tested was arrested and charged with
7 a violation of subsection (a) of section two, article five
8 of this chapter, the county having venue of such charge
9 shall pay said fee, and if said person is subsequently con-
10 victed of such charge, such fee shall be taxed as a part
11 of the costs of the criminal proceeding and shall be paid,
12 notwithstanding any other provision of this code to the
13 contrary, into the general fund of said county. If the
14 person whose blood sample was withdrawn or whose
15 urine was tested was arrested and charged with a vio-
16 lation of a similar ordinance of any municipality, said
17 municipality shall pay said fee, and if said person is sub-
18 sequently convicted of such charge, such fee shall be
19 taxed as a part of the costs of the criminal proceeding
20 and shall be paid, notwithstanding any other provision of
21 this code to the contrary, into the general fund of said
22 municipality.

§17C-5A-8. Severability.

1 If any provision of this article or its application to any
2 person or circumstance be held invalid, such invalidity
3 shall not affect other provisions or applications of this

4 article, and to this end the provisions of this article are
5 declared to be severable.

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
2 to the contrary, the governing board of any Class II
3 city, as defined in section four, article one, chapter eight-a
4 of this code, shall have the authority to fix the salary
5 of certain of its officers within the following limita-
6 tions:

7 (1) The salary of the mayor shall not exceed seven
8 thousand five hundred dollars.

9 (2) The salaries of the city manager, and the mem-
10 bers of the council or governing body whose duties as
11 prescribed by such existing charter include the super-
12 vision and administration of one or more departments
13 of such Class II city, shall not exceed seven thousand
14 dollars.

15 (3) The salaries of the members of the council or
16 governing body whose duties as prescribed by such

17 existing charter do not include the supervision and
18 administration of one or more departments of such Class
19 II city, shall not exceed two thousand four hundred
20 dollars.

21 The authority granted by this section shall in no case
22 be construed to deprive any Class II city of any authority
23 under its existing charter to fix the salary of the officers
24 named above at a salary in excess of the limits imposed
25 by this section.

26 This section shall not be construed to prohibit a Class
27 II city from paying salaries to its mayor and city man-
28 ager in excess of the maximum salaries hereinabove
29 provided, if such city adopts a charter under the provi-
30 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 accommo-
dations.**

1 The council or similar governing body of any municipi-
2 pality (however created, whether operating under a
3 legislative charter, home rule charter or general law
4 only, and notwithstanding any statutory or municipal
5 charter provisions to the contrary) shall have the power
6 and authority, by ordinance, to prohibit discrimination
7 on the basis of race, creed, color or national origin in
8 the sale, purchase, lease or rental of housing accommo-
9 dations within the corporate limits of such municipality,
10 and to impose fines for the violation of the provisions
11 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.****6A. Paid Fire Departments.****ARTICLE 5A. CIVIL SERVICE FOR POLICE DEPARTMENTS.****§8-5A-7. Character and notice of examinations; qualifications of applicants; press representatives; posting eligible list.**

1 All examinations for positions or promotions shall be
2 practical in their character, and shall relate to such mat-
3 ters, and include such inquiries, as will fairly and fully
4 test the comparative merit and fitness of the person or
5 persons examined to discharge the duties of the employ-
6 ment sought by him or them. All examinations shall be
7 open to all applicants who have fulfilled the preliminary
8 requirements, stated in other sections of this article. All
9 applicants for any position in the police department shall,
10 as hereinafter stated, subject to regulations adopted by
11 the civil service commission, be required to submit to a
12 physical examination before being admitted to the regu-
13 lar examinations held by the commission. Said appli-
14 cant shall have been a resident for one year next preced-
15 ing the date of his application, of the city or municipality
16 in which he seeks to obtain employment in the police de-
17 partment: *Provided*, That if the commission deems it
18 necessary it may consider applicants who are not resi-
19 dents of the city or municipality but who have been
20 residents of the county in which the city or municipal-
21 ity is situated for the same period of time. Adequate
22 public notice of the time and place of every examination
23 held under the provisions of this article, together with
24 information as to the kind of position or place to be filled,
25 shall be given at least one week prior to such examina-
26 tion. The said commission shall adopt reasonable regu-
27 lations for permitting the presence of representatives of
28 the press at the examinations. The commission shall post,
29 in a public place at its office, the eligible list, containing
30 the names and grades of those who have passed exami-
31 nations for positions in police departments, under this
32 article, and shall indicate thereon such appointments as
33 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.**

1 All examinations for positions or promotions shall be
2 practical in their character, and shall relate to such mat-
3 ters, and include such inquiries, as will fairly and fully
4 test the comparative merit and fitness of the persons
5 examined to discharge the duties of the employment
6 sought by them. All examinations shall be open to all
7 applicants who have fulfilled the preliminary require-
8 ments, stated in other sections of this article. All appli-
9 cants for any position in the fire department shall, as
10 hereinafter stated, subject to regulations adopted by the
11 civil service commission, be required to submit to a
12 physical examination before being admitted to the regu-
13 lar examination held by the commission. Said appli-
14 cant shall have been a resident for one year next pre-
15 ceding the date of his application, of the city or munici-
16 pality in which he seeks to obtain employment on the fire
17 department: *Provided*, That if the commission deems it
18 necessary it may consider applicants who are not resi-
19 dents of the city or municipality but who have been
20 residents of the county in which the city or municipal-
21 ity is situated for a period of at least one year. Adequate
22 public notice of the time and place of every examination
23 held under the provisions of this article, together with
24 information as to the kind of position or place to be
25 filled, shall be given at least one week prior to such
26 examinations. The said commission shall adopt reason-
27 able regulations for permitting the presence of repre-
28 sentatives of the press at the examinations. The com-
29 mission shall post, in a public place at its office, the
30 eligible list, containing the names and grades of those
31 who have passed examinations for positions in fire de-
32 partments, under this article, and shall indicate thereon
33 such appointments as may be made from said list.

CHAPTER 39

(House Bill No. 324—By Mr. Grewe)

[Passed February 8, 1968; in effect ninety days from passage. Approved by the Governor.]

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.

Section

- 8-15-2. Definitions.
- 8-15-5. Prior, earned and total service credits; service breaks.
- 8-15-6. Retirement age and benefits.
- 8-15-7. Disability retirement payments.
- 8-15-8. Death benefits.
- 8-15-9. Contributions by the municipality.
- 8-15-10. Investment of funds.
- 8-15-14. Action by city required before new provisions are applicable.

§8-15-2. Definitions.

- 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.

9 (c) "Total service credit" shall mean a total of all
10 prior service credit and all earned service credit.

11 (d) "Fund" shall mean the employees' retirement and
12 benefit fund.

13 (e) "Board" shall mean the board of trustees of the
14 employees' retirement and benefit fund.

15 (f) "Member" shall mean an eligible employee of the
16 city, who is a member of the employees' retirement and
17 benefit fund.

18 (g) "Total disability in line of duty" shall mean
19 total and permanent disablement from performing any
20 work for pay, whether for the municipality or other
21 employer, that shall be caused by injury sustained in
22 the course of the operations usual to his employment,
23 and shall include all operations necessary, incident or
24 appurtenant thereto, or connected therewith, whether
25 such operations are conducted at the usual place of
26 employment or elsewhere in connection with or in
27 relation to his usual and customary employment.

28 (h) The pronoun "he" shall mean both masculine and
29 feminine.

30 (i) "Mayor" shall mean the chief executive officer of
31 the city.

32 (j) The term "actuarial equivalent" shall mean an
33 annuity of equal value to the accumulated contributions,
34 annuity or benefit when computed upon the basis of
35 the actuarial tables in use by the fund.

36 (k) "Salary" shall mean the amount earned by a
37 member as an employee of a municipality: *Provided*, That
38 to and including June thirty, one thousand nine hundred
39 sixty-seven, the maximum amount of salary to be con-
40 sidered hereunder for purposes of contributions and in
41 the computation of benefits, shall be four hundred dol-
42 lars per month.

43 (l) "Average salary" shall mean the highest annual
44 average rate of salary earnable by a member during a
45 period of five consecutive years within the total service
46 of the member subject to a maximum amount of four
47 hundred dollars per month to and including June

48 thirty, one thousand nine hundred sixty-seven, and no
49 such maximum rate after such date.

§8-15-5. Prior, earned and total service credits; service breaks.

1 (1) For prior service, each participating employee,
2 on the effective date, shall be credited, as of such date,
3 with a prior service credit equal to the period or periods
4 of service that the member has rendered to the city
5 prior to the effective date of the fund.

6 (2) Until June thirty, one thousand nine hundred
7 sixty-seven, each member shall pay into the fund, six
8 percent of his salary up to four hundred dollars a month.
9 After June thirty, one thousand nine hundred sixty-
10 seven, each member shall contribute six percent of his
11 actual salary without limitations.

12 These contributions shall continue until such time as
13 the member has thirty-five years of earned service
14 credit; he shall continue to contribute to the fund until
15 he retires or until he has contributed to the fund for
16 a period of thirty-five years, that is, has thirty-five years
17 of earned service credit.

18 A member who has prior service credit shall be en-
19 titled to full retirement payment when his prior service
20 credit and his earned service credit totals thirty-five
21 years of total service credit, if he has reached com-
22 pulsory retirement age, or if he prior thereto becomes
23 so physically or mentally disabled as to render him unfit
24 for the performance of the duties of the position he
25 occupies.

26 (3) In order to participate one hundred percent in
27 the retirement fund the member must have a total
28 service credit of thirty-five years which may consist of
29 prior service credit or earned service credit, or both.
30 At retirement, because of having reached the compulsory
31 retirement age, the member shall participate in the fund
32 only to the extent of his total service.

33 A person who is employed by the municipality at the
34 time of the effective date of the fund and becomes a
35 member of the fund shall be entitled to prior service
36 credit even though such prior service was not continu-
37 ous.

38 A person who is not employed by the municipality
39 at the time of the effective date of the fund, but who
40 has been employed in the past shall be entitled to prior
41 service credit if he returns to the service within two
42 years from the date of his termination of service and
43 becomes a member of the fund within such two-year
44 period.

45 A member upon separation from the service shall be
46 entitled to withdraw his contributions without interest
47 in lieu of any benefits to which he may be entitled. If
48 such employee returns to the service of the municipality
49 within two years and becomes a member of the fund,
50 he shall be considered as a new employee and shall have
51 forfeited all prior service credits unless he shall repay
52 to the fund in cash at the time of reemployment the
53 amount of money which he has withdrawn plus four
54 percent interest compounded annually on said amount
55 during the time he was separated from the service.

56 If however, the break in service of such member is
57 more than two years, he shall not be entitled to any
58 prior service credits nor shall he be entitled to redeposit
59 withdrawals but he shall reenter the fund as a new
60 member.

§8-15-6. Retirement age and benefits.

1 After the effective date of the fund any member of
2 the fund who has at least ten years of total service
3 credit shall receive a vested right in a retirement pay-
4 ment which he may exercise upon or after attainment
5 of age sixty. When he has reached the age of sixty years
6 he may, at his option, apply for a retirement payment
7 as hereinafter provided.

8 Retirement for all members of the fund shall be com-
9 pulsory at the age of sixty-five, subject to the following
10 conditions:

11 The employee may be permitted to continue in the
12 service if he so desires; if his services are still valuable
13 to the municipality.

14 Whether an employee's services are valuable at the
15 age of sixty-five shall be determined by the appointing
16 officer of the municipality. If he determines that such

17 services are valuable, his determination must be certi-
18 fied to the board for approval. If the board approves,
19 the employee may continue in the service of the munici-
20 pality. The appointing officer shall annually certify
21 to the board relative to the ability and competency of
22 all employees over age sixty-five. A member of the
23 fund, upon retirement, shall be entitled to the following
24 retirement payment:

25 For thirty-five years of total service credits to and
26 including twenty-four years of total service credits,
27 fifty percent of average salary plus one and two thirds
28 percent of average salary per year of service for each
29 year above twenty-three years.

30 Twenty-three years of total service credits, fifty
31 percent of average salary: *Provided*, That if a mem-
32 ber has twenty-three years of total service credits he
33 shall be entitled to a minimum retirement payment
34 of one hundred dollars per month.

35 Twenty-two years of total service credits, forty-nine
36 percent of average salary.

37 Twenty-one years of total service credits, forty-eight
38 percent of average salary.

39 Twenty years of total service credits, forty-seven per-
40 cent of average salary.

41 Nineteen years of total service credits, forty-five per-
42 cent of average salary.

43 Eighteen years of total service credits, forty-three per-
44 cent of average salary.

45 Seventeen years of total service credits, forty-one per-
46 cent of average salary.

47 Sixteen years of total service credits, thirty-nine per-
48 cent of average salary.

49 Fifteen years of total service credits, thirty-six per-
50 cent of average salary.

51 Fourteen years of total service credits, thirty-three
52 percent of average salary.

53 Thirteen years of total service credits, thirty-one per-
54 cent of average salary.

55 Twelve years of total service credits, twenty-nine per-
56 cent of average salary.

57 Eleven years of total service credits, twenty-seven
58 percent of average salary.

59 Ten years of total service credits, twenty-five percent
60 of average salary.

61 With the condition that no optional benefit shall
62 be effective if a member dies within thirty days
63 after the filing of an application for retirement pay-
64 ment, a member may elect at least one year prior to
65 retirement to receive a lesser retirement payment, on
66 a joint and last survivor basis, in order to provide, on
67 an actuarial equivalent basis, an annuity to a designated
68 beneficiary under any of the following two options:

69 Option 1. Upon his death while on retirement, his
70 lesser retirement payment shall be continued through-
71 out the life of and paid to such person having an insur-
72 able interest in his life, as he shall have named in a
73 written designation duly acknowledged and filed with
74 the board.

75 Option 2. Upon his death while on retirement, one
76 half of his lesser retirement payment shall be continued
77 throughout the life of and paid to such person having
78 an insurable interest in his life as he shall have named in
79 a written designation duly acknowledged and filed with
80 the board.

81 The rate of retirement payment shall be prorated for
82 any fractional part of the total service credit of an
83 employee of less than a full year.

§8-15-7. Disability retirement payments.

1 (1) If a member becomes disabled by bodily injury
2 effected independently of all other causes and directly
3 through accidental means while engaged in the course
4 of his employment with the city and while in line of
5 duty, and is totally and permanently disabled from per-
6 forming any work for pay, whether for the municipality
7 by which employed at date of disability or any other
8 employer, he shall be entitled during the time of his
9 disability to a retirement payment equal to fifty per-

10 cent of the rate of salary of the member at date of
11 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.

§8-15-8. Death benefits.

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

15 the member, or the estate of the member, shall be en-
16 titled to a return of his total contributions to the fund,
17 without interest.

18 (2) Death benefits after retirement shall be the same
19 as death benefits before retirement except a widow shall
20 not be entitled to benefits unless she was married to the
21 member before the date of his retirement. Payment shall
22 be made for the remaining period of ten years dating from
23 the date of the member's retirement. If a widow of a
24 member remarries, her retirement payments shall be
25 terminated and shall not be resumed upon subsequent
26 change in her marital status.

27 (3) If a member dies as a result of personal injury
28 or disease arising out of and in the course of his employ-
29 ment with the city, or as the result of total disability
30 in line of duty, the surviving widow shall be entitled
31 during her widowhood to a benefit equal to thirty-three
32 and one third percent of the final rate of salary of the
33 member, subject to the maximum rate herein prescribed,
34 but not to exceed one hundred and twenty-five dollars
35 per month. In the event there be no widow, or if re-
36 marriage occurs before the youngest child attains age
37 eighteen, each child shall be entitled to twenty percent of
38 the member's final rate of salary, subject to a total pay-
39 ment to all children of fifty percent of salary, or one
40 hundred twenty-five dollars per month, whichever is
41 the lesser. If there be no widow or minor children, the
42 dependent father and/or mother, as the board shall de-
43 termine, shall each be entitled to one sixth of the de-
44 ceased employee's final salary, but the payment to either
45 parent shall not exceed fifty dollars per month.

§8-15-9. Contributions by the municipality.

1 The council or other governing body shall annually
2 provide sufficient funds in the budget, on an actuarially
3 funded basis, to provide for the funded requirements of
4 the employees' retirement and benefit fund for current
5 service of the employees over and above the amount
6 contributed by the members, plus an amount to pay the
7 cost of administration of the fund.

8 The municipality shall also contribute an amount re-
9 quired, at three and one half percent interest per annum,
10 to amortize, over a period not to exceed forty years from
11 July one, one thousand nine hundred sixty-seven, any
12 unfunded accrued liability at that date.

§8-15-10. Investment of funds.

1 The board shall keep as an available sum for the pur-
2 pose of making payments for retirement and other
3 benefits and administration expense an amount estimated
4 to meet such payments for a period not to exceed ninety
5 days. It shall have full power in its sole discretion to
6 invest and reinvest any moneys received by it in the
7 following types of securities: (a) Direct obligations of
8 the United States government or of the state of West
9 Virginia; (b) direct obligations of any county, school
10 district, or any municipality in the state of West Vir-
11 ginia; (c) bonds or debentures of any utility corpora-
12 tion, industrial corporation or railroad corporation or-
13 ganized under the laws of any state of the United States,
14 rated "A" or better by any two security rating concerns
15 provided interest shall have been paid by the corpora-
16 tion on its indebtedness for at least the ten years last
17 past; and (d) federally insured mortgages under sections
18 two hundred three and two hundred seven of the national
19 housing act.

§8-15-14. Action by city required before new provisions are applicable.

1 Notwithstanding any other provision in this article
2 to the contrary, the provisions of this article as amended
3 and reenacted at the regular session of the Legislature
4 in the year one thousand nine hundred sixty-eight shall
5 not be applicable to any fund established by any city
6 prior to the effective date of this section, unless and
7 until such city shall by ordinance provide for the appli-
8 cation thereof. In the absence of any such ordinance,
9 any such fund shall be governed and controlled by and
10 administered in accordance with the provisions of this
11 article as they existed prior to the effective date of this
12 section.

CHAPTER 40

(Senate Bill No. 126—By Mr. Moreland)

[Passed February 6, 1968; in effect from passage. Approved by the Governor.]

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 dol-
2 lars for an original nursing home license shall be paid
3 at the time application is made for such license. The
4 license fee for renewal of license shall be four dollars
5 per bed. The bed capacity for the holder of each
6 license shall be determined by the board. All such license
7 fees shall be due and payable to the board on or before
8 June thirtieth of each year. Such fee and application shall
9 be submitted to the secretary of the board who shall
10 retain both the application and fee pending final action
11 on the application. Thereafter, upon order of the auditor
12 of the state, all such fees shall be transmitted to the state
13 treasurer to be deposited to the credit of the general
14 revenue fund: *Provided*, That the authorized expenses of
15 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.]

AN ACT to amend article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as

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 Virginia, 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.

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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, chapter 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
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 legal
6 advertisement in compliance with the provisions of article
7 three, chapter fifty-nine of this code, and the publica-
8 tion area for such publication shall be the county where
9 the property is located. If, in the opinion of the trustee,
10 the property be of less value than three hundred dollars,
11 such notice of sale shall be posted at least twenty days
12 prior thereto at the front door of the courthouse of the
13 county in which the property to be sold is, and three
14 other public places at least in the county, one of which
15 shall be as near as the premises to be sold (in case the
16 sale be of real estate) as practicable; and in all cases
17 whether the notice be published or not, a copy of such
18 notice shall be served on the grantor in such trust deed,
19 or his agent or personal representative, if he or they be
20 within the county, at least twenty days prior to the sale.
21 Every notice of sale by a trustee under a trust deed shall
22 show the following particulars: (a) The time and place
23 of sale; (b) the names of the parties to the deed under
24 which it will be made; (c) the date of the deed; (d) the
25 office and book in which it is recorded; (e) the quantity
26 and description of the land or other property, or both,
27 conveyed thereby; and (f) the terms of sale.

CHAPTER 43

(Com. Sub. for Senate Bill No. 55—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed February 7, 1968; in effect from passage. Approved by the Governor.]

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.

Section

- 5-10-2. Definitions.
- 5-10-15. Military service credit.
- 5-10-21. Deferred retirement and early retirement.
- 5-10-22. Retirement annuity.
- 5-10-25. Disability retirement.
- 5-10-27. Nonduty death annuities.
- 5-10-29. Members' deposit fund; members' contributions.
- 5-10-31. Employers' accumulation fund; employers' contributions.

§5-10-2. Definitions.

1 The following words and phrases as used in this article,
2 unless a different meaning is clearly indicated by the con-
3 text, shall have the following meanings:

- 4 (1) "State" means the state of West Virginia;
- 5 (2) "Retirement system" or "system" means the West
6 Virginia public employees' retirement system created and
7 established by this article;
- 8 (3) "Board of trustees" or "board" means the board of
9 trustees of the West Virginia public employees' retire-
10 ment system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school cor-
13 poration or corporate unit; any separate corporation or
14 instrumentality established by one or more counties,
15 cities, or towns, as permitted by law; any corporation or
16 instrumentality supported in most part by counties, cities,
17 or towns; any public corporation charged by law with the
18 performance of a governmental function and whose juris-
19 diction is coextensive with one or more counties, cities
20 or towns;

21 (5) "Participating public employer" means the state
22 of West Virginia, any board, commission, department,
23 institution or spending unit, and shall include any agency
24 created by rule of the supreme court of appeals having
25 full-time employees, which for the purposes of this article
26 shall be deemed a department of state government; and
27 any political subdivision in the state which has elected to
28 cover its employees, as defined in this article, under the
29 West Virginia public employees' retirement system;

30 (6) "Employee" means any person who serves regu-
31 larly as an officer or employee, full time, on a salary basis,
32 whose tenure is not restricted as to temporary or pro-
33 visional appointment, in the service of, and whose com-
34 pensation is payable in whole or in part by any political
35 subdivision, or an officer or employee whose compensation
36 is calculated on a daily basis and paid monthly or on com-
37 pletion of assignment, including technicians and other
38 personnel employed by the West Virginia national guard
39 whose compensation in whole or in part is paid by the
40 federal government: *Provided*, That members of the state
41 Legislature, the clerk of the House of Delegates, the clerk
42 of the state Senate, members of the legislative body of
43 any political subdivision and judges of the state court of
44 claims shall be considered to be employees, anything con-
45 tained herein to the contrary notwithstanding. In any
46 case of doubt as to who is an employee within the mean-
47 ing of this article the board of trustees shall decide the
48 question;

49 (7) "Member" means any person who is included in
50 the membership of the retirement system;

51 (8) "Retirant" means any member who retires with
52 an annuity payable by the retirement system;

53 (9) "Beneficiary" means any person, except a retirant,
54 who is entitled to, or will be entitled to, an annuity or
55 other benefit payable by the retirement system;

56 (10) "Service" means personal service rendered to a
57 participating public employer by an employee, as defined
58 in this article, of a participating public employer;

59 (11) "Prior service" means service rendered prior to
60 July one, one thousand nine hundred sixty-one, to the
61 extent credited a member as provided in this article;

62 (12) "Contributing service" means service rendered by
63 a member from and after the date of his entrance in the
64 retirement system, to the extent credited him as provided
65 in this article;

66 (13) "Credited service" means the sum of a member's
67 prior service credit and contributing service credit stand-
68 ing to his credit as provided in this article;

69 (14) "Compensation" means the remuneration paid a
70 member by a participating public employer for personal
71 services rendered by him to the participating public em-
72 ployer. In the event a member's remuneration is not all
73 paid in money, his participating public employer shall
74 fix the value of the portion of his remuneration which is
75 not paid in money;

76 (15) "Final average salary" means the average of the
77 highest annual compensation received by a member dur-
78 ing any period of five consecutive years of his credited
79 service contained within his ten years of credited service
80 immediately preceding the date his employment with a
81 participating public employer last terminated. If he has
82 less than five years of credited service, his final average
83 salary shall be the average of the annual rate of compen-
84 sation received by him during his total years of credited
85 service. Final average salary for members of the Legisla-
86 ture means their actual compensation serving as a mem-
87 ber of the Legislature multiplied by eight;

88 (16) "Accumulated contributions" means the sum of
89 all amounts deducted from the compensations of a mem-

90 ber and credited to his individual account in the members'
91 deposit fund, together with regular interest thereon;

92 (17) "Regular interest" means such rate or rates of
93 interest per annum, compounded annually, as the board
94 of trustees shall from time to time adopt;

95 (18) "Annuity" means an annual amount payable by
96 the retirement system throughout the life of a person. All
97 annuities shall be paid in equal monthly installments,
98 using the upper cent for any fraction of a cent;

99 (19) "Annuity reserve" means the present value of all
100 payments to be made to a retirant or beneficiary of a re-
101 tirant on account of any annuity, computed upon the basis
102 of such mortality and other tables of experience, and
103 regular interest, as the board of trustees shall from time
104 to time adopt;

105 (20) "Retirement" means a member's withdrawal from
106 the employ of a participating public employer with an
107 annuity payable by the retirement system;

108 (21) "Actuarial equivalent" means a benefit of equal
109 value computed upon the basis of such mortality table
110 and regular interest as the board of trustees shall from
111 time to time adopt;

112 (22) The masculine gender shall include the feminine
113 gender, and words of the singular number with respect to
114 persons shall include the plural number, and vice versa.

§5-10-15. Military service credit.

1 Any member of the retirement system who entered
2 or enters the active service of the armed forces of the
3 United States during any period of compulsory military
4 service shall receive credited service for said time spent
5 in the armed forces of the United States, not to exceed
6 five years if such member pays to the members' deposit
7 fund the amount he may have withdrawn therefrom,
8 together with regular interest from the date of with-
9 drawal to the date of repayment. In any case of doubt
10 as to the period of service to be so credited a member,
11 the board of trustees shall have final power to determine
12 such period. During the period of such armed service
13 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.

1 Upon a member's retirement, as provided in this article,
2 he shall receive a straight life annuity equal to one per
3 cent of his final average salary multiplied by the number
4 of years, and fraction of a year, of his credited service in
5 force at the time of his retirement: *Provided*, That after
6 March one, one thousand nine hundred sixty-eight, all
7 members retired and all members retiring shall receive
8 a straight life annuity equal to one and five tenths per
9 cent of his final average salary multiplied by the number
10 of years, and fraction of a year, of his credited service
11 in force at the time of his retirement. In either event,
12 upon his retirement he shall have the right to elect an
13 option provided for in section twenty-four hereof. All
14 annuity payments shall commence effective the first of
15 the month following the month in which a member retires
16 or a member dies leaving a beneficiary entitled to bene-
17 fits and shall continue to the end of the month in which
18 said retirant or beneficiary dies, and said annuity pay-
19 ments shall not be prorated for any portion of a month
20 in which a member retires or retirant or beneficiary dies.

§5-10-25. Disability retirement.

1 (a) Upon the application of a member, or his employ-
2 ing authority, a member who (1) is in the employ of a
3 participating public employer, (2) has ten or more years
4 of credited service, and (3) becomes totally and per-
5 manently incapacitated for duty in the employ of a
6 participating public employer, by reason of a personal
7 injury or disease, may be retired by the board of trustees
8 if after a medical examination of the said member, made
9 by or under the direction of a medical committee consist-
10 ing of two physicians, one of whom shall be named by
11 the board, and one by the said member, the said medical
12 committee reports, in writing, to the board that (1) the
13 said member is physically or mentally totally inca-
14 pacitated for duty in the employ of a participating public
15 employer, (2) that such incapacity will probably be per-
16 manent, and (3) that the said member should be retired.
17 In the event the two above-mentioned physicians do not
18 agree in their findings, then the board of trustees may,

19 at its discretion, appoint a third physician to examine
20 said member and, based upon the third physician's report
21 in writing, the board may retire said member.

22 (b) A member with less than ten years of credited
23 service shall have the service requirement provided for
24 in subsection (a) above waived in the event (1) the board
25 of trustees finds his total and permanent disability to be
26 the natural and proximate result of a personal injury or
27 disease arising out of and in the course of his actual per-
28 formance of duty in the employ of a participating public
29 employer, and (2) he is in receipt of workmen's compen-
30 sation on account of such physical or mental disability.

31 (c) For those members retiring and those members
32 retired, as of March one, nineteen hundred and sixty-
33 eight, he shall receive a straight life annuity computed
34 according to section twenty-two hereof and he shall have
35 the right to elect an option provided for in section twenty-
36 four hereof: *Provided, however,* That his straight life
37 annuity payable to his attainment of age sixty-five years
38 shall not be less than thirty-seven and five tenths percent
39 of his final average salary; and his said straight life an-
40 nuity payable from and after his attainment of age sixty-
41 five years shall not be less than fifteen percent of his final
42 average salary: *Provided further,* That his said annuity
43 shall be subject to section twenty-six hereof.

§5-10-27. Nonduty death annuities.

1 (a) In the event any member who has ten or more
2 years of credited service, or any former member with
3 ten or more years of credited service and who is entitled
4 to a deferred annuity, pursuant to section twenty-one
5 hereof, may at any time prior to the effective date of his
6 retirement, by written declaration duly executed and filed
7 with the board of trustees, in the same manner as if he
8 were then retiring from the employ of a participating
9 public employer, elect option A provided for in section
10 twenty-four hereof, and nominate a beneficiary whom the
11 board finds to have had an insurable interest in the life
12 of said member. Prior to the effective date of his retire-
13 ment a member may revoke his said election of option A
14 and nomination of beneficiary and he may again prior to

15 his retirement elect the said option A and nominate a bene-
16 ficiary as provided in this subsection. Upon the death of a
17 member who has an option A election in force, his benefici-
18 ary, if living, shall immediately receive an annuity com-
19 puted in the same manner in all respects as if the same
20 member had retired the day preceding the date of his
21 death, notwithstanding that he might not have attained
22 age sixty years, and elected the said option A. If at the
23 time of his retirement a member has an option A election
24 in force, his said election of option A and nomination of
25 beneficiary shall thereafter continue in force.

26 (b) In the event any member who has ten or more
27 years of credited service, or any former member with ten
28 or more years of credited service and who is entitled to
29 a deferred annuity, pursuant to section twenty-one hereof,
30 (1) dies, and (2) leaves a widow, or in the case of a female
31 member leaves a widower, the said widow or widower,
32 as the case may be, shall immediately receive an annuity
33 computed in the same manner in all respects as if the said
34 member had (1) retired the day preceding the date of his
35 death, notwithstanding that he might not have attained
36 age sixty or sixty-two years, as the case may be, (2)
37 elected option A provided for in section twenty-four
38 hereof, and (3) nominated his said widow or widower, as
39 the case may be, as beneficiary.

40 (c) In the event any member who has ten or more
41 years of credited service, or any former member with
42 ten or more years of credited service and who is entitled
43 to a deferred annuity, pursuant to section twenty-one
44 hereof (1) dies without leaving surviving him a spouse,
45 but (2) leaves surviving him an infant child or children,
46 and (3) does not have a beneficiary nominated as pro-
47 vided in subsection (a) of this section, said infant child
48 or children shall be entitled to an annuity to be calculated
49 as follows: The annuity reserve shall be calculated as
50 though said member had retired as of the date of his
51 decease and elected a straight life annuity, and the
52 amount of said annuity reserve shall be paid in equal
53 monthly installments to said member's infant child or
54 children until said child or children attain age twenty-
55 one or sooner marry or become emancipated; however,

56 in no event shall any child or children receive more than
57 two hundred fifty dollars per month each. The said an-
58 nuity payments shall be computed as of the date of the
59 death of the said member and the amount of said annuity
60 shall remain constant during the period of payment. The
61 annual amount of the annuities payable by this section
62 shall not exceed sixty percent of said deceased member's
63 final average salary.

§5-10-29. Members' deposit fund; members' contributions.

1 (a) The members' deposit fund is hereby created. It
2 shall be the fund in which shall be accumulated, at regu-
3 lar interest, the contributions deducted from the compen-
4 sations of members, and from which refunds of accu-
5 mulated contributions shall be paid and transfers made
6 as provided in this section.

7 (b) The contributions of a member to the retirement
8 system shall be a sum of not less than three and five tenths
9 percent of his annual compensations but not more than
10 four and five tenths percent of his annual compensations,
11 as determined by the board of trustees. The said con-
12 tributions shall be made notwithstanding that the mini-
13 mum salary or wages provided by law for any member
14 shall be thereby changed. Each member shall be deemed
15 to consent and agree to the deductions made and pro-
16 vided for herein. Payment of a member's compensation
17 less said deductions shall be a full and complete discharge
18 and acquittance of all claims and demands whatsoever
19 for services rendered by him to a participating public
20 employer, except as to benefits provided by this article.

21 (c) The officer or officers responsible for making up
22 the payrolls for payroll units of the state government
23 and for each of the other participating public employers
24 shall cause the contributions, provided for in subsection
25 (b) above, to be deducted from the compensations of
26 each member in the employ of the participating public
27 employer, on each and every payroll, for each and every
28 payroll period, from the date the member enters the retire-
29 ment system to the date his membership terminates. When
30 deducted, each of said amounts shall be paid by the par-

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,
67 pursuant to other sections of this article, shall contribute
68 to the retirement system thirty-six percent of their annual
69 compensation for serving as a member of the Legislature.

§5-10-31. Employers' accumulation fund; employers' contributions.

1 (a) The employers' accumulation fund is hereby
2 created. It shall be the fund in which shall be ac-
3 cumulated the contributions made by the participating
4 public employers to the retirement system, and from
5 which transfers shall be made as provided in this section.

6 (b) Based upon the provisions of section thirteen of
7 this article, the participating public employers' contribu-
8 tions to the retirement system shall be determined, ac-
9 cording to paragraphs one, two, three and four below, for
10 the state as the state division, and for the other participat-
11 ing public employers as the public employer division.

12 (1) The participating public employers' contributions
13 for members' current service shall be a percent of the
14 members' annual compensation which will equal an
15 amount which if paid annually by the participating public
16 employers during the members' future service will be
17 sufficient to provide, at the time annuities will become
18 payable on their account, the difference between the an-
19 nuity reserves for the future service portions of the an-
20 nuities to be paid and the present value of the members'
21 future net contributions.

22 (2) The participating public employers' contributions
23 for members' accrued service shall be a percent of the
24 members' annual compensation which will equal an
25 amount which if paid annually by the participating public
26 employers over a period of years, to be determined by the
27 board of trustees, will amortize, at regular interest, the
28 unfunded annuity reserves for the accrued portions of
29 the annuities to be paid on account of members.

30 (3) The participating public employers' contributions
31 for annuities being paid retirants and beneficiaries shall
32 be a percent of the members' annual compensations which
33 will equal an amount which if paid annually by the par-
34 ticipating public employers over a period of years, to be
35 determined by the board of trustees, will amortize, at
36 regular interest, the unfunded annuity reserves for an-
37 nuities being paid retirants and beneficiaries.

38 (4) In no year shall the total of the contributions,
39 provided for in paragraphs one, two and three above, to
40 be paid by any participating public employer exceed
41 seven and five tenths percent of the total payroll for the
42 members in the employ of such participating public em-
43 ployer for the preceding fiscal year.

CHAPTER 44

(Senate Bill No. 115—By Mr. McKown)

[Passed February 5, 1968; in effect from passage. Approved by the Governor.]

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
2 the public system and within five years thereafter be-
3 comes employed in a position covered by the teacher
4 system, or a member leaves the position covered by the
5 teacher system and within five years thereafter be-
6 comes employed in a position covered by the public
7 system, in either case, the following provisions shall
8 apply, together with such rules and regulations as the
9 board of trustees of the public system and the retire-
10 ment board of the teacher system shall from time to time
11 mutually agree upon.

12 (a) A member's reciprocal service credit in force shall
13 be used to satisfy the service requirements for retirement
14 under the state system from which he retires.

15 (b) If a member, who has reciprocal service credit
16 in force, retires under the public system, he shall receive
17 an annuity payable by the public system and an annuity
18 payable by the teacher system. His public system annuity
19 shall be based upon (1) the portion of his reciprocal
20 service credit acquired as a member of the public system,
21 and (2) his public final average salary. His teacher system
22 annuity shall be based upon (1) the portion of his re-
23 ciprocal service credit acquired as a member of the
24 teacher system, and (2) his teachers' retirement allow-
25 ance as provided by the teachers' retirement act. His
26 teacher system annuity shall begin as of the date he retires
27 under the public system, but in no case prior to the
28 date he would have been eligible to retire under the
29 teacher system if all his reciprocal service credit had
30 been acquired as a member of the teacher system.

31 (c) If a member, who has reciprocal service credit
32 in force, retires under the teacher system, he shall re-
33 ceive an annuity payable by the teacher system and
34 an annuity payable by the public system. His teacher
35 system annuity shall be based upon (1) the portion of
36 his reciprocal service credit acquired as a member of
37 the teacher system, and (2) his teachers' retirement
38 allowance as provided by the teachers' retirement act.
39 His public system annuity shall be based upon (1) the
40 portion of his reciprocal service credit acquired as a
41 member of the public system, and (2) his public final
42 average salary. His public system annuity shall begin
43 as of the date he retired under the teacher system, but
44 in no case prior to the date he would have been eligible
45 to retire under the public system if all his reciprocal
46 service credit had been acquired as a member of the
47 public system.

48 The provisions of this section, as amended, shall be retro-
49 active to June eleventh, one thousand nine hundred sixty-
50 five.

CHAPTER 45

(House Bill No. 271—By Mr. Speaker, Mr. White, and Mr. Burke)

[Passed February 1, 1968; in effect from passage. Approved by the Governor.]

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
2 Virginia, one thousand nine hundred thirty-one, as
3 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.**

1 The commission shall have general supervision of all
2 public utilities having authority under any charter or
3 franchise of any city, town or municipality, county
4 court, or tribunal in lieu thereof, or otherwise, to lay
5 down and maintain wires, pipes, conduits, ducts or other
6 fixtures in, over or under streets, highways or public
7 places for the purpose of furnishing and distributing
8 gas, or for furnishing and transmitting electricity for
9 light, heat or power, or maintaining underground con-
10 duits, or ducts for electrical conductors, or for telegraph
11 or telephone purposes, and for the purpose of furnishing
12 water, either for domestic or power purposes, and shall
13 have general supervision of oil and gas pipelines, and
14 shall have general supervision over any utility engaged
15 in the transportation of coal and its derivatives and
16 all mixtures and combinations thereof with any substance
17 by pipelines.

18 The commission may ascertain the quality and quan-
19 tity of water, or the quality and quantity of gas or
20 electricity supplied by such utilities and examine the
21 methods employed, and shall have power to order such
22 improvements as will best promote the public interests.
23 In ascertaining and regulating the quality of water, the
24 commission shall use the quality standards established by
25 the state board of health by regulations governing public
26 water supplies.

27 The commission shall have power, through its mem-
28 bers, inspectors, or employees to enter in, upon and to
29 inspect the property, buildings, plants, fixtures, power-
30 houses and offices of any such utilities or municipalities,
31 and shall have power to examine the books and affairs
32 to be investigated by it. The commission shall, when
33 and as necessary, appoint inspectors of gas, electric and
34 water meters. And, when such inspectors are required
35 to act, it shall be their duty to inspect, examine, prove
36 and ascertain the accuracy of any gas, electric, or water

37 meters used or intended to be used for measuring or
38 ascertaining the quantity of gas, electricity or water
39 furnished to, by or for the use of any person, firm or
40 corporation, and, when found to be correct, or made
41 correct, the inspector shall stamp or mark each of such
42 meters with some suitable device, which device shall
43 be recorded in the office of the commission. No public
44 utility shall furnish or put in use any gas, electric or
45 water meter which shall not have been inspected, proved
46 and stamped or marked by an inspector of the com-
47 mission: *Provided*, That in cases of emergency, gas,
48 electric or water meters may be installed and used before
49 being inspected, but notice thereof shall be immediately
50 given to the public service commission by the public
51 utility installing the same, and such meters shall be
52 inspected, proved and stamped or marked, as soon there-
53 after as practicable. Every gas, electric and water utility
54 shall provide and keep in and upon its premises suitable
55 and proper apparatus, to be approved and stamped or
56 marked by the commission, for testing and proving the
57 accuracy of gas, electric and water meters furnished for
58 use by it and by which apparatus every meter may and
59 shall be tested on the written request of the consumer
60 to whom the same shall be furnished, and in his pres-
61 ence if he so desires.

62 If any person, firm or corporation to or by whom a
63 meter has been furnished shall request the commission
64 in writing to inspect such meter, the commission shall
65 have the same inspected and tested. If the same on
66 being tested shall be found to be two percent from
67 being correct, or shall be found to be to the prejudice
68 of the user, the inspector shall order the owner of such
69 meter forthwith to remove the same and to place instead
70 thereof a correct meter. The expense of such inspecting
71 and testing shall be borne by the owner if such meter
72 be found to be incorrect by two percent or more. If the
73 meter, on being so tested, shall be found to be correct
74 or within two percent of being correct, the expense of
75 such inspection and testing shall be borne by the user.
76 A uniform charge and rule shall be fixed by the com-
77 mission for this service: *Provided*, That nothing in this

78 chapter shall prevent the commission from changing and
79 modifying the method of inspecting meters and adopting
80 such rules and regulations therefor as to the commission
81 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

13 be paid into the state treasury and kept as a special fund,
14 designated "Public Service Commission Fund," to be
15 appropriated as provided by law for the purpose of
16 paying the salaries of the commission, as fixed by this
17 chapter, its expenses and salaries, compensations, costs
18 and expenses of its employees.

19 (b) All public utilities subject to the provisions of
20 this chapter shall pay a special license fee in addition
21 to any and all fees now required by law. The amount
22 of such fees shall be fixed by the auditor and levied
23 by him upon each of such public utilities, in the pro-
24 portion which the total gross revenue derived from in-
25 trastate business done by each of such public utilities
26 in the calendar year next preceding bears to the total
27 gross revenue derived from intrastate business done in
28 such year by all public utilities subject to regulation by
29 the public service commission, so as to produce a revenue
30 of four hundred thousand dollars per annum, in addition
31 to such fees as may be fixed by the auditor under the
32 provisions of subsection (a) hereof and which fees shall
33 be paid on or before the first day of July in each year.
34 Such sum of four hundred thousand dollars shall be
35 paid into the state treasury and be kept, appropriated
36 and used as provided in subsection (a) hereof.

37 (c) Any balance remaining in said fund at the end
38 of any fiscal year shall not revert to the treasury but
39 shall remain in said fund and may be appropriated and
40 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.]

AN ACT to amend chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five,

authorizing 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.

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.
- 1-5-2. Scope of article; public body defined.
- 1-5-3. Acquisition and disposition of real property; approval by board of public works; conveyances.
- 1-5-4. Repeal.
- 1-5-5. Severability.

§1-5-1. Legislative findings and purpose.

1 This article is enacted to facilitate and expedite the
 2 acquisition and disposition of real property by and be-
 3 tween the state and its political subdivisions and county
 4 boards of education and by and between such political
 5 subdivisions and county boards of education, it being de-
 6 termined by the Legislature that through the evolution
 7 and growth of governmental processes, the duties, re-
 8 sponsibilities and functions of various units of govern-
 9 ment have become intermingled and that such govern-
 10 mental units should be permitted to deal with one
 11 another on a direct and mutually beneficial basis with
 12 respect to such acquisition and disposition.

§1-5-2. Scope of article; public body defined.

1 The provisions of this article shall apply to the state of
 2 West Virginia, its agencies, departments, boards and com-
 3 missions of whatever description, county courts or tri-
 4 bunals in lieu thereof, county boards of education, in-
 5 corporated municipalities or any other political subdivi-
 6 sions.

7 For the purpose of this article, the term "public body"
 8 shall mean the state of West Virginia, or any agency,

9 department, board or commission thereof of whatever
10 description, or any county court or tribunal in lieu there-
11 of, or any county board of education, or any incorporated
12 municipality, or any other political subdivision.

**§1-5-3. Acquisition and disposition of real property; approval
by board of public works; conveyances.**

1 Any public body is hereby authorized and empowered
2 to acquire by purchase, transfer or exchange any real
3 property owned by any other public body, and any public
4 body is hereby authorized and empowered to dispose of
5 by sale, transfer or exchange to or with any other public
6 body any real property owned by it, any such acquisition
7 or disposition to be upon such terms and conditions as
8 may be agreed upon by and between the public bodies,
9 taking into consideration (1) the lack of need for such
10 property by the public body holding title thereto; (2) the
11 need for such property by the public body desiring to
12 acquire title thereto; and (3) the benefits to be derived
13 by the public as a result of such acquisition or disposi-
14 tion: *Provided*, That any acquisition or disposition
15 by the state, or any agency, department, board or com-
16 mission thereof, must first be approved in writing by the
17 board of public works. All conveyances of any such real
18 property shall be by deed or deeds, as the case may be, in
19 the manner provided by law for the conveyance of real
20 property.

§1-5-4. Repeal.

1 All acts or parts of acts which are inconsistent with the
2 provisions of this article are hereby repealed to the ex-
3 tent of such inconsistency.

§1-5-5. Severability.

1 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 other provisions or applications
4 of this article, and to this end the provisions of this
5 article are declared to be severable.

CHAPTER 49

(House Bill No. 320—By Mr. Speaker, Mr. White, and Mr. Seibert)

[Passed February 3, 1968; in effect from passage. Approved by the Governor.]

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
2 government and finance shall cause an annual audit to
3 be made by a resident independent certified public ac-
4 countant of all books, accounts and records relating to
5 all receipts and expenditures of the state road commis-
6 sion which are not audited by the United States bureau
7 of public roads or the United States general accounting
8 office. The state road commissioner shall make available
9 to such independent auditor or auditors performing such
10 audit all of the commission's books, accounts and records
11 pertaining to all funds received and expended. The
12 auditor or auditors performing such audit shall make
13 available annually the audit report with copies thereof
14 to the members of the Legislature, the governor, the
15 state road commissioner, the secretary of state, the state
16 treasurer, the attorney general and the state auditor; and
17 the audit report shall be available to the public in the
18 office of the secretary of state.

19 The Legislature acting through the joint committee on
20 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. Boiarsky)

[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 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.

1 Bonds of the state of West Virginia of the par value
 2 not to exceed twenty million dollars during the fiscal
 3 year ending June thirtieth, one thousand nine hundred
 4 sixty-nine, are hereby authorized to be issued and sold
 5 for the sole purpose of raising funds for the building
 6 and construction of free state roads and highways as
 7 provided for by the constitution and the laws enacted
 8 thereunder. Such bonds may be issued by the governor
 9 in such amounts, in coupon or registered form, in such
 10 denominations, at such time and bearing such date or
 11 dates as the governor may determine, based upon an
 12 examination of the state road commission's yearly pro-
 13 gram which justifies the issuance by the governor of
 14 said bonds, and shall become due and payable serially
 15 in equal amounts beginning one year and ending twenty-
 16 five years from the date thereof.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1 The auditor and the treasurer are hereby authorized
 2 to arrange for the transfer of registered bonds and for
 3 each such transfer a fee of fifty cents shall be charged

4 by and paid to the state of West Virginia, to the credit
 5 of the state road sinking fund. Bonds taken in exchange
 6 shall be cancelled by the auditor and treasurer and be
 7 carefully preserved by the treasurer. The treasurer
 8 shall make provisions for registering "payable to bearer"
 9 bonds, and for each bond registered a fee of fifty cents
 10 shall likewise be charged by and paid to the state of
 11 West Virginia, to the credit of the state road sinking
 12 fund. All such bonds shall be payable at the office of
 13 the treasurer of the state of West Virginia, or, at the
 14 option of the holder, at some bank in the city of New
 15 York to be designated by the governor. The bonds shall
 16 bear interest at a rate not exceeding four and one half
 17 percent per annum, payable semiannually, to bearer, at
 18 the office of the treasurer of the state of West Virginia,
 19 at the capitol of the state, or at the bank designated by
 20 the governor, upon presentation and surrender of inter-
 21 est coupons, then due, in the case of coupon bonds. For
 22 the payment of interest on registered bonds, the treas-
 23 urer of the state of West Virginia shall requisition a
 24 warrant from the auditor of the state to be drawn on
 25 the state treasurer, and shall mail such warrant to the
 26 registered owner at the address as shown by the record
 27 of registration. Both the principal and interest of the
 28 bonds shall be payable in lawful money of the United
 29 States of America and the bonds shall be exempt from
 30 taxation by the state of West Virginia, or by any county,
 31 district, or municipality thereof, which facts shall appear
 32 on the face of the bonds as part of the contract with the
 33 holder thereof.

§3. Form of bond.

1 The bonds shall be signed on behalf of the state of
 2 West Virginia, by the treasurer thereof, under the great
 3 seal of the state, and countersigned by the auditor of
 4 the state, and shall be in the following form or to the
 5 following effect, as nearly as may be, namely:

6 CUPON ROAD BOND

7 (Or registered road bond, as the case may be)

8 OF THE

9 STATE OF WEST VIRGINIA

10 \$..... 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

52 for and applied to the payment of the interest on and
53 principal of this bond becoming due and payable in such
54 year are insufficient therefor.

55 This bond is hereby made exempt from any taxation
56 by the state of West Virginia, or by any county, district,
57 or municipal corporation thereof.

58 In testimony whereof, witness the signature of the
59 treasurer of the state of West Virginia, and the counter-
60 signature of the auditor of the state, hereto affixed
61 according to law, dated the _____ day of _____,
62 one thousand nine hundred _____, and the
63 seal of the state of West Virginia.

64 (SEAL)

65 _____
66 Treasurer of the State of West Virginia

67 Countersigned:

68 _____
69 Auditor of the State of West Virginia

§4. Form of coupon.

1 The form of coupon shall be substantially as follows,
2 to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. _____ Coupon No. _____

5 On the first day of _____, 19____, the state
6 of West Virginia will pay to the bearer, in lawful money
7 of the United States of America, at the office of the
8 treasurer of the state, or at the option of the holder at
9 _____ bank in the city of New York, the
10 sum of _____ dollars, the same being semi-
11 annual interest on Road Bond No. _____

12 _____
13 Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be
15 by his facsimile signature and the coupons shall be num-
16 bered in the order of their maturity, from number one
17 consecutively. The bonds and coupons may be signed
18 by the present treasurer and auditor, or by any of their
19 respective successors in office, and the bonds signed by
20 the persons now in the office may be sold by the governor

21 or his successor in office without being signed by the
22 successor in office of the present treasurer or auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this
2 bill shall be separately listed by the auditor of the state
3 in books provided for the purpose, in each case giving
4 the date, number, character and amount of obligations
5 issued, and in case of registered bonds, the name and
6 post-office address of the person, firm or corporation
7 registered as the owner thereof.

**§6. State road sinking fund sources used to pay bonds and
interest; investment of remainder.**

1 Into the state road sinking fund there shall be paid
2 all money from any and all appropriations made by the
3 state from the state road fund for the purpose of paying
4 the interest on such bonds or paying off and retiring the
5 bonds, from transfer and registration fees as herein
6 provided, and from any other source whatsoever which
7 is made liable by law for the payment of the principal
8 of such bonds or the interest thereon.

9 All such funds shall be kept by the treasurer in a
10 separate account, under the designation aforesaid, and
11 all money belonging to the fund shall be deposited in
12 the state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the
14 state first to the payment of the semiannual interest on
15 such bonds as it shall become due as herein provided.
16 The remainder of the fund shall be turned over by the
17 state treasurer to the state sinking fund commission,
18 whose duty it shall be to invest the same in obligations
19 of the government of the United States, bonds of the
20 state of West Virginia, or any political subdivision
21 thereof: *Provided*, That bonds or other obligations so
22 purchased by the state sinking fund commission shall
23 mature so as to provide sufficient money to pay off all
24 bonds herein provided to be issued as they become due;
25 and the money so paid into the state road sinking fund
26 under the provisions of this act shall be expended for the
27 purpose of paying the interest and principal of the bonds

28 hereby provided for as they severally become due and
29 payable and for no other purpose except that the fund
30 may be invested until needed, as herein provided.

§7. Covenants of state.

1 The state of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as
3 follows: (1) That such bonds shall constitute direct and
4 general obligation of the state of West Virginia; (2)
5 that the full faith and credit of the state is hereby
6 pledged to secure the payment of the principal and
7 interest of such bonds; (3) that an annual state tax
8 shall be collected in an amount sufficient to pay as it
9 may accrue the interest on such bonds and the principal
10 thereof; and (4) that such tax shall be levied in any
11 year only to the extent that the moneys in the state road
12 fund irrevocably set aside and appropriated for and
13 applied to the payment of the interest on and principal
14 of said bonds becoming due and payable in such year
15 are insufficient therefor.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized
2 at such time or times as he may determine necessary
3 to provide funds for the building and construction of
4 free state roads and highways, as herein provided, upon
5 the recommendation of the state road commissioner, and
6 after reviewing the program of the state road commission
7 and subject to the limitations contained in section one
8 hereof. All sales shall be at not less than par and accrued
9 interest. All interest coupons becoming payable prior to
10 the sale date shall be cancelled by the treasurer and
11 rendered ineffective, before the delivery of the bonds so
12 sold.

**§9. Proceeds paid into separate account in state road fund;
expenditures.**

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account in the
3 state road fund, and shall be used and appropriated
4 solely for the building and construction of free state
5 roads and highways provided for by the state constitu-

6 tion and the laws enacted thereunder. Except for such
7 sums necessary for current operating balances, such
8 account shall be invested and reinvested in short-term
9 obligations of the United States treasury: *Provided*, That
10 no such investment or reinvestment shall adversely affect
11 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, chap-
ter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to salaries for teachers.

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.

1 For the purpose of this section, assistant superintend-
2 ents, directors and supervisors of instruction, and ele-
3 mentary and secondary principals shall be defined as
4 teachers. Salaries shall be defined as: (a) "Basic sal-
5 aries" which shall mean the salaries paid to teachers
6 with zero years of experience and in accordance with
7 the classification of certification and of training of said
8 teachers; and (b) "advanced salaries" which shall mean
9 the basic salary plus an experience increment based on
10 the allowable years of experience of the respective teach-
11 ers in accordance with the schedule established herein
12 for the applicable classification of certification and of
13 training of said teachers. "Classification of certification"
14 means the class or type of certificates issued by the state
15 superintendent of schools under the statutory provisions
16 of this chapter. "Classification of training" means the
17 number of collegiate or graduate hours necessary to
18 meet the requirements stipulated in the definitions set
19 forth in the next paragraph in items (2) to (10), in-
20 clusive.

21 The column heads of the state minimum salary sched-
22 ule, set forth below, are defined as follows:

23 (1) "Years experience" means the number of years
24 taught by the teacher and allowed under each classifi-
25 cation of the said state minimum salary schedule.

26 (2) "Fourth class" means all certificates previously
27 identified as (a) "certificates secured by examination,"
28 (b) "other first grade certificates," and (c) "short course
29 certificates."

30 (3) "Third class" means all certificates previously
31 identified as (a) "standard normal certificates" and (b)
32 "third class temporary (sixty-four semester hours) cer-
33 tificates."

34 (4) "Second class" means all certificates previously
35 identified as "second class temporary certificates based
36 upon the required ninety-six hours of college work."

37 (5) "B. A." means a bachelor's degree, from an accred-
38 ited institution of higher education, which has been issued
39 to, or for which the requirements for such have been
40 met by, a person who qualifies for and holds a profes-
41 sional certificate or its equivalent.

42 (6) "B. A. + 15" means a bachelor's degree as de-
43 fined above plus fifteen hours of graduate work, from an
44 accredited institution of higher education certified to do
45 graduate work, in an approved planned program at the
46 graduate level which requirements have been met by a
47 person who qualifies for and holds a professional cer-
48 tificate or its equivalent under the above-defined bache-
49 lor's degree.

50 (7) "M.A." means a master's degree, earned in an
51 institution of higher education approved to do graduate
52 work, which has been issued to or the requirements
53 for such have been met by a person who qualifies for and
54 holds a professional certificate under the above-defined
55 bachelor's degree.

56 (8) "M. A. + 15" means the above-defined master's de-
57 gree plus fifteen hours of graduate work, earned in an
58 institution of higher education approved to do graduate
59 work, if the person is qualified and holds a professional
60 certificate or its equivalent.

61 (9) "M. A. +30" means the above-defined master's
62 degree plus thirty graduate hours, earned in an institu-
63 tion approved to do graduate work, if the person holds
64 or is qualified to hold a professional certificate or its
65 equivalent.

66 (10) "Doctorate" means a doctor's degree, which is
67 of the type normally associated with the educational
68 system, from a university qualified and approved to con-

69 fer such a degree, if the person who holds or is qualified
 70 to hold such a degree meets the requirements for a pro-
 71 fessional certificate or its equivalent.

72 **State Minimum Salary Schedule**

73	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
74	Years	4th	3rd	2nd	B. A.	B. A.	M. A.	M. A.	M. A.	Doctor-
75	Exp.	Class	Class	Class		+15		+15	+30	ate
76	0	\$2670	\$3170	\$3370	\$4320	\$4570	\$4820	\$5070	\$5320	\$5570
77	1	2790	3290	3490	4440	4690	4940	5190	5440	5690
78	2	2910	3410	3610	4560	4810	5060	5310	5560	5810
79	3	3030	3530	3730	4680	4930	5180	5430	5680	5930
80	4	3150	3650	3850	4800	5050	5300	5550	5800	6050
81	5	3270	3770	3970	4920	5170	5420	5670	5920	6170
82	6	3390	3890	4090	5040	5290	5540	5790	6040	6290
83	7		4010	4210	5160	5410	5660	5910	6160	6410
84	8		4130	4330	5280	5530	5780	6030	6280	6530
85	9			4450	5400	5650	5900	6150	6400	6650
86	10			4570	5520	5770	6020	6270	6520	6770
87	11				5640	5890	6140	6390	6640	6890
88	12				5760	6010	6260	6510	6760	7010
89	13				5880	6130	6380	6630	6880	7130
90	14						6500	6750	7000	7250
91	15						6620	6870	7120	7370
92	16						6740	6990	7240	7490
93	17								7360	7610
94	18								7480	7730
95	19								7600	7850

96 The state board of education shall establish the mini-
 97 mum salary schedule for teachers where specialized
 98 training may be required for vocational, technical and
 99 adult education and such other permits as may be author-
 100 ized by said board.

101 No teacher holding a valid professional certificate shall
 102 have his salary reduced as a result of being assigned out
 103 of his teaching field by the superintendent, with the ap-
 104 proval of the county board, pursuant to any authorization
 105 or regulation of the state board.

106 County boards of education in fixing the salaries of
 107 teachers shall use as a minimum the salaries in the

108 schedule set forth above as to classification of certification
109 and of training and as to the years of experience, said
110 schedule being based upon a ten-month employment term.
111 For teachers employed for a longer or shorter term, or
112 on a part-time basis, said minimum salary shall be in
113 ratio to said schedule in accordance with the classifica-
114 tion and experience of such teachers. Salaries under said
115 schedule shall be uniform throughout the state as to certi-
116 fication classification, as to training, and as to experi-
117 ence.

118 County boards of education may establish for teachers
119 local salary schedules which shall be in excess of the
120 minimums scheduled by this section. Such county
121 schedules shall be uniform throughout the county as to
122 classification of certification, of training, and as to the
123 experience of the teachers.

124 In addition thereto, said boards may fix higher sal-
125 aries for teachers placed in special instructional assign-
126 ments, or for those assigned to or employed for duties
127 other than regular instructional duties, for teachers of
128 one-teacher schools, for principals, and for other super-
129 visory and administrative personnel; and may provide
130 additional compensation for any teacher assigned duties
131 in addition to his regular instructional duties wherein
132 such noninstructional duties are not a part of the sched-
133 uled hours of the regular school day, as may be defined
134 by the state board. Such additional salary increments or
135 compensation shall conform to the regulations of the
136 state board of education and such shall be uniform for
137 all persons performing like duties within said county.

138 Upon the change of the certification or training classi-
139 fication of any teacher, his salary shall be made to comply
140 with requirements of state schedules and of any county
141 schedule, where such exist, based upon his new classi-
142 fication and allowable years of experience thereunder.

143 In determining the number of regular terms of school a
144 teacher has taught, county boards of education shall
145 credit as teaching experience: (1) Active work in edu-
146 cational positions other than teaching and (2) service in
147 the armed forces of the United States provided the teacher

148 was under contract to teach at the time of his induction.
149 No teacher shall be given credit for more than one year
150 of experience for any school year.
151 Any board of education failing to comply with the
152 provisions of this section may be compelled to do so by
153 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 main-
2 tain in its annual general current expense-fund budget for
3 fixed charges a separate item or items to be known as
4 "public school employees' sick leave." In allocating money
5 to this item or items, the board shall budget for the first
6 year of the sick-leave plan, hereinafter established, an
7 amount to be estimated by the board of school finance as
8 sufficient to pay full sick-leave benefits during such year;
9 for the second year and each year thereafter, an amount
10 which shall be not less than the amount required to pay
11 full sick-leave benefits for the immediate preceding year.

12 If in any fiscal year funds, including transfers, are in-
13 sufficient to pay the full amount of sick leave hereinafter
14 provided, the unpaid claims shall be paid on or before the
15 thirty-first day of August from the budget of the following
16 fiscal year.

17 At the beginning of his employment term, any full-time
18 employee of a county board of education shall be entitled
19 annually to at least one and one half days sick leave for
20 each employment month or major fraction thereof in the
21 employee's employment term. Unused leave shall be
22 accumulative to a total of sixty days and shall be trans-
23 ferable within the state.

24 A regular full-time employee who is absent from as-
25 signed duties due to accident, sickness, death in the im-
26 mediate family, or other cause authorized or approved by
27 the board, shall be paid his full salary during the period
28 which he is absent, but not to exceed the total amount of
29 sick leave to which he is entitled. Where the cause for
30 sick leave had its origin prior to the beginning of the
31 employment term, the employee shall be paid for time
32 lost after the start of the employment term.

33 The board may establish reasonable regulations for re-
34 porting and verification of absence for causes; and if any
35 error in reporting absences should occur it shall have
36 authority to make necessary salary adjustments in the
37 next pay after the employee has returned to duty or in
38 the final pay if the absence should occur during the last
39 month of his employment term. When such allowable
40 absence does not directly affect the instruction of the
41 pupils or when a substitute employee may not be required
42 because of the nature of the work and the duration of the
43 cause for the allowable absence of the regular employee,
44 the administration, subject to board approval, may use
45 its discretion as to the need for a substitute where limited
46 absence may prevail. Any board of education shall have
47 authority to supplement such leave provisions in any
48 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 allow-
- 2 ances provided, each annuitant whose annuity was ap-
- 3 proved by the retirement board prior to January one, one
- 4 thousand nine hundred sixty-seven, shall receive a
- 5 monthly amount equal to twenty-five cents multiplied by
- 6 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-2. Definitions.
- 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-4. Powers and duties of the commission.
- 18-22A-5. Title to property.
- 18-22A-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.
- 18-22A-7. Terms of acquisitions.
- 18-22A-8. Trust fund established; limitations on the use of the fund; duties of the treasurer in connection therewith.
- 18-22A-9. Construction of article.
- 18-22A-10. Severability.
- 18-22A-11. Purpose.

§18-22A-1. Title of article.

- 1 This article may be known and cited as the "Guaranteed
- 2 Student Loan Act of West Virginia."

§18-22A-2. Definitions.

- 1 As used in this article, the following words and terms
- 2 shall have the following meanings, unless the context
- 3 shall indicate another or different meaning or intent:
- 4 (a) The words "act" or "undertaking" shall mean
- 5 the official act of the commission in connection with
- 6 the acquisition or disposition of all or any part of obliga-
- 7 tions or interest therein which the commission is author-
- 8 ized to buy or sell hereunder.
- 9 (b) The word "commission" shall mean the state
- 10 commission on higher education created by article
- 11 twenty-two of this chapter.
- 12 (c) The word "obligations" shall mean those evi-
- 13 dences of debt which the commission may buy, sell, en-
- 14 dorse 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.

1 In order to facilitate the education of residents in
2 this state and promote the industrial and economic
3 development of the state, the commission is hereby
4 authorized and empowered to buy and sell obligations
5 of students who are residents of West Virginia, who have
6 been residents of this state for at least one year and who
7 are students at state supported or private institutions of
8 higher education or vocational schools accredited by a
9 nationally recognized accrediting agency or by a state
10 agency designated by the governor and representing loans
11 made to such students who have met the requirements
12 of financial need as determined by the commission, such
13 loans having been made for the purpose of an education.

14 No act or undertaking of the commission shall be
15 deemed to constitute a debt of the state or of any
16 political subdivision thereof or a pledge of the faith
17 and credit of the state or of any such political subdivi-
18 sion, but shall be payable solely from the funds of the
19 commission. All such acts and undertakings shall con-
20 tain on the face thereof a statement to the effect that
21 neither the state nor the commission shall be obligated
22 to pay the same or the interest thereon except from
23 revenues of the commission and that neither the faith
24 and credit nor the taxing power of the state or of any
25 political subdivision thereof is pledged to the payment
26 of the principal of or the interest on such act and under-
27 takings.

28 All expenses incurred in carrying out the provisions
29 of this article shall be payable solely from funds pro-
30 vided for the purpose and no liability or obligation shall
31 be incurred by the commission hereunder beyond the
32 extent to which money shall have been provided under
33 the provisions of this article.

§18-22A-4. Powers and duties of the commission.

1 The commission is hereby authorized and empowered:
2 (1) To fix and revise from time to time and charge
3 and collect fees for its acts and undertakings;

4 (2) To establish rules and regulations concerning its
5 acts and undertakings;

6 (3) To acquire, hold and dispose of personal prop-
7 erty in the exercise of its powers and the performance
8 of its duties;

9 (4) To make and enter into all contracts and agree-
10 ments necessary or incidental to the performance of its
11 duties and the execution of its powers under this
12 article;

13 (5) To employ in its discretion such employees as
14 it may deem necessary to carry out its powers and duties
15 as enumerated in this article;

16 (6) To receive and accept from any federal or private
17 agency, corporation, association or person, grants to be
18 expended in accomplishing the objectives of this article
19 and to receive and accept from the state, from any
20 municipality, county or other political subdivision thereof
21 and from any other source, aid or contributions of either
22 money, property, or other things of value to be held,
23 used and applied only for the purposes for which such
24 grants and contributions may be made;

25 (7) To sue and be sued as provided by law;

26 (8) To do all other acts and things necessary or
27 convenient to carry out the powers expressly granted in
28 this article. Nothing in this article shall be construed
29 to empower the commission to engage in the business
30 of banking or insurance.

§18-22A-5. Title to property.

1 Title to any property acquired under the provisions
2 of this article by the commission shall be taken and held
3 in the name of the commission.

**§18-22A-6. Acquisition of contingent interests in obligations
from lending institutions; collection of delinquent
obligations.**

1 With funds available to the commission for purposes
2 other than the payment of compensation to personnel
3 and the lease or rental of offices or equipment, the
4 commission may acquire from any bank or other lending
5 institution of this state a contingent interest in student

6 obligations; the total contingent interest of the com-
7 mission on all such obligations shall not exceed at any
8 one time a sum of twelve and one-half times the total
9 funds which the commission can employ to acquire such
10 contingent interests. When the commission acquires
11 any such contingent interest, it may require the pay-
12 ment to it of a portion of the interest payable upon
13 any such obligation. In each such acquisition, the com-
14 mission shall provide that at such time as the obliga-
15 tion becomes delinquent, the bank or other lending
16 institution shall notify the commission forthwith and
17 shall transfer forthwith to the commission, by assign-
18 ment or otherwise, an interest in such obligation equal
19 to the contingent interest of the commission therein.
20 The bank or other lending institution and the commis-
21 sion shall forthwith take such steps as may be necessary
22 to recover the balance due upon any such obligation,
23 and such recovery shall be apportioned between the
24 commission and the bank or other lending institution
25 as their respective interests may appear.

§18-22A-7. Terms of acquisitions.

1 The commission shall prescribe the terms, conditions
2 and limitations upon which it will acquire a contingent
3 or direct interest in any obligation and such terms, con-
4 ditions and limitations shall include, but without limiting
5 the generality hereof, the interest rate payable upon
6 such obligations, the maturities thereof, the terms for
7 payment of principal and interest, applicable life or
8 other insurance which may be required in connection
9 with any such obligation and who shall pay the premiums
10 thereon, the safekeeping of assets pledged to secure
11 any such undertaking, and any and all matters in con-
12 nection with the foregoing as will protect the assets of
13 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
2 article shall be used exclusively for the purpose of ac-
3 quiring contingent or vested rights in obligations which

4 it may acquire under this article, and such appropria-
5 tion, payments, revenue and interest, as well as other
6 income received in connection with such obligations,
7 is hereby established as a trust fund. Such fund shall
8 be used for the purposes of the commission other than
9 maintenance and operation.

10 The maintenance and operating expenses of the com-
11 mission shall be paid from funds specifically appropriated
12 for such purposes. No part of the trust fund estab-
13 lished under this section shall be expended for such
14 purposes.

15 The commission shall be the trustee of the trust fund
16 hereby created and all investments to be made from
17 the assets of such trust shall be made by the state
18 treasurer in the manner provided by law. The state
19 treasurer shall be the custodian of the assets of the
20 commission. All payments from the accounts thereof
21 shall be made by him upon warrants issued by the auditor
22 upon vouchers signed by such persons as are designated
23 by the commission. A duly attested copy of a resolution
24 of the commission designating such persons and bearing
25 on its face the specimen signatures of such persons shall
26 be filed with the state treasurer as his authority for
27 issuing warrants upon such vouchers.

§18-22A-9. Construction of article.

1 The provisions of this article shall be liberally con-
2 strued to the end that its beneficial purposes may be
3 effectuated.

§18-22A-10. Severability.

1 If any provision hereof or the application thereof to
2 any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of this article which can be given effect without the
5 invalid provision or application, and to this end the pro-
6 visions of this article are declared to be severable.

§18-22A-11. Purpose.

1 The Legislature enacts this article to continue and en-
2 courage education of citizens of this state who are in need
3 of financial assistance, such assistance and education be-

4 ing for the welfare of this state, and the Legislature
5 hereby declares such to be a public purpose.

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CHAPTER 55

(House Bill No. 315—By Mr. Speaker, Mr. White, and Mr. Boiarsky)

[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-2. Definitions.
- 18-22B-3. Scholarship program to be administered by state commission on higher education.
- 18-22B-4. Powers and duties of commission.
- 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.

1 The Legislature declares that although enrollments
2 in institutions of higher education in this state and
3 throughout the nation continue to increase at a rapid pace,
4 and although the state now provides a limited scholar-
5 ship program for students attending an institution

6 of higher education in West Virginia, there continues
7 to exist an underdevelopment of the state's human
8 talent and resources because of the inability of many
9 able but needy students to finance a higher educational
10 program.

11 The Legislature further declares that the state can
12 achieve its full economic and social potential only if
13 every individual has the opportunity to contribute to
14 the full extent of his capabilities and only if the state
15 assists in removing such financial barriers to his edu-
16 cational goals as may remain after the individual has
17 utilized all resources and work opportunities available
18 to him.

19 It is therefore the policy of the Legislature and the
20 purpose of this article to establish, within the limits
21 of appropriations made therefor from time to time
22 by the Legislature, a broad-scale state scholarship pro-
23 gram designed to guarantee that the most able and
24 needy students from all sectors of the state are given
25 the opportunity to continue their program of self-
26 improvement in an approved institution of higher edu-
27 cation of their choice located in this state.

§18-22B-2. Definitions.

1 Notwithstanding the provisions of section one, article
2 one of this chapter, the following words when used
3 in this article shall have the meaning hereafter ascribed
4 to them unless the context clearly indicates a different
5 meaning:

6 (a) The term "commission" shall mean the state
7 commission on higher education.

8 (b) The term "approved institution of higher edu-
9 cation" shall mean Bluefield State College, Concord Col-
10 lege, Fairmont State College, Glenville State College,
11 Marshall University, Shepherd College, West Liberty
12 State College, West Virginia Institute of Technology,
13 West Virginia State College, West Virginia University,
14 including Potomac State College thereof, Alderson-
15 Broaddus College, Beckley College, Bethany College,
16 Davis and Elkins College, Greenbrier College for Women,
17 Morris Harvey College, Ohio Valley College, Salem Col-

18 lege, 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 equiv-
30 alent 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.

§18-22B-4. Powers and duties of commission.

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

16 administration of the scholarship program; (9) make
17 the final decision pertaining to residency of an applicant
18 for scholarship or renewal of scholarship; (10) employ
19 or engage such professional, administrative, clerical and
20 other employees as may be necessary to assist the com-
21 mission in the performance of its duties and re-
22 sponsibilities; (11) prescribe the duties and fix the
23 compensation of all such employees (which employ-
24 ees shall serve at the will and pleasure and under the
25 direction and control of the commission or its designated
26 representative); and (12) promulgate reasonable rules
27 and regulations not inconsistent with the provisions of
28 this article relating to the administration of the scholar-
29 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.

13 These may not necessarily be consecutive years and the
14 scholarship will be terminated if the student receives
15 his degree in a shorter period of time. Qualifications
16 for renewal will include maintaining satisfactory aca-
17 demic standing, making normal progress toward com-
18 pletion of the course of study and continued eligibility,
19 as determined by the commission.

20 Scholarship awards shall be made without regard to
21 the applicant's race, creed, color, sex, national origin
22 or ancestry; and in making scholarship awards, the
23 commission shall provide a fair and equitable geograph-
24 ical distribution of the awards and shall treat all approved
25 institutions of higher education in a fair and equitable
26 manner.

27 The minimum scholarship award shall be one hundred
28 dollars per academic year and the maximum scholarship
29 award shall be six hundred dollars per academic year.

30 Payments of scholarships shall be made directly to
31 the institution and may be used only for payment of
32 tuition and fees charged generally by the institution to
33 all students.

34 In the event that a scholarship recipient transfers from
35 one approved institution of higher education to an-
36 other, his scholarship shall be transferable only with the
37 approval of the commission.

38 Should the recipient terminate his enrollment for any
39 reason during the academic year, the unused portion of
40 the scholarship shall be returned to the commission by
41 the institution according to the institution's own policy
42 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
2 in this section the same shall mean a student union
3 building or a combination student union building and
4 dining hall building; and wherever the term "building
5 fund" is used in this section the same shall mean the
6 respective special student union building funds created
7 as provided in section one of this article for each state
8 educational institution which has imposed student union
9 fees pursuant to section one of this article, to be
10 expended by the board of governors of West Virginia
11 University for the benefit of West Virginia University
12 and Potomac State College of West Virginia University,
13 and by the West Virginia board of education for the
14 benefit of the state educational institutions under its
15 control.

16 The respective boards may make expenditures from
17 such building funds at the various state educational
18 institutions under their control to finance in whole or
19 in part, together with any federal, state or other grants
20 or contributions, any one or more of the following
21 purposes: (1) The construction and acquisition of new
22 student union buildings. (2) The acquisition, renova-
23 tion and improvement of existing buildings to be used
24 as student union buildings. (3) The construction of
25 additions, extensions and improvements to existing
26 student union buildings. (4) The acquisition of furnish-
27 ings and equipment for any existing student union
28 buildings or student union buildings to be constructed

29 or acquired, or the construction of any roads, utilities
30 or other properties, real or personal, or for any other
31 purposes necessary, appurtenant or incidental to the
32 construction, acquisition, financing and placing in oper-
33 ation of such student union buildings. (5) The pay-
34 ment of the cost of the operation and maintenance of
35 such student union buildings, subject however to any
36 covenants or agreements made with the holders of
37 revenue bonds heretofore or hereafter issued pursuant
38 to this section or pursuant to section one of this
39 article.

40 The respective boards, at their discretion, may use
41 the moneys in such building funds to finance the costs
42 of the above purposes on a cash basis, or may from time
43 to time issue revenue bonds of the state as provided
44 in this section to finance all or part of such purposes
45 and pledge all or any part of the moneys in such building
46 funds for the payment of the principal of and interest
47 on such revenue bonds, and for reserves therefor. Any
48 pledge of such building funds for such revenue bonds
49 shall be a prior and superior charge on such special
50 funds over the use of any of the moneys in such funds
51 to pay for the cost of any of such purposes on a cash
52 basis, or for the payment of the cost of operation and
53 maintenance, or any part thereof, of such student union
54 buildings, under such terms and conditions as shall be
55 provided in the proceedings which authorized the issu-
56 ance of such revenue bonds.

57 Such revenue bonds may be authorized and issued
58 from time to time by the respective boards to finance
59 in whole or in part the purposes at any state educational
60 institution under their control provided for in this
61 section in an aggregate principal amount not exceeding
62 the amount which the respective boards shall determine
63 can be paid as to both principal and interest and reason-
64 able margins for a reserve therefor from the moneys in
65 such building funds.

66 The issuance of such revenue bonds shall be authorized
67 by a resolution adopted by the respective board, and
68 such revenue bonds shall bear such date or dates, mature
69 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

111 respective board in the best interests of the state
112 and to enhance the marketability of such revenue
113 bonds.

114 Any revenues or income derived from the operation
115 of such student union buildings may, in the discretion
116 of the respective boards, be used to pay the cost of
117 the operation and maintenance of such student union
118 buildings, or for the debt service on any bonds
119 issued pursuant to this section or pursuant to any other
120 law.

121 After the issuance of any of such revenue bonds, the
122 student union fees at the state educational institution
123 for which such revenue bonds were issued shall not be
124 reduced as long as any of such revenue bonds are out-
125 standing and unpaid except under such terms, provi-
126 sions and conditions as shall be contained in the reso-
127 lution, trust agreement or other proceedings under which
128 such revenue bonds were issued.

129 Such revenue bonds shall be and constitute negotiable
130 instruments under the law merchant and the negotiable
131 instruments law of the state, shall, together with the
132 interest thereon, be exempt from all taxation by the
133 state of West Virginia, or by any county, school district,
134 municipality or political subdivision thereof; and such
135 revenue bonds shall not be deemed to be obligations or
136 debts of the state, and the credit or taxing power of the
137 state shall not be pledged therefor, but such revenue
138 bonds shall be payable only from the student union
139 fees pledged therefor as provided in this section.

140 The provisions of this section shall constitute an addi-
141 tional, alternative and complete authority for the exer-
142 cise of the powers and the issuance of the bonds provided
143 for in this section, but shall not prevent said respective
144 boards from exercising similar or related powers or
145 issuing bonds therefor under any other law or laws,
146 but such respective boards, in exercising the powers
147 and issuing the bonds provided for in this section, shall
148 only be required to comply with the provisions of this
149 section and shall not be required to comply with or be
150 subject to the provisions of any other law or laws.

CHAPTER 57

(House Bill No. 224—By Mr. Speaker, Mr. White)

[Passed February 7, 1968; in effect ninety days from passage. Approved by the Governor.]

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.

§16-18-5. Powers of an authority.

1 An authority shall constitute a public body corporate
2 and politic, exercising public and essential governmental
3 functions, and having all the powers necessary or con-
4 venient to carry out and effectuate the purposes and pro-
5 visions of this article, including the following powers in
6 addition to others herein granted:

7 (a) To sue and to be sued; to have a seal and to alter
8 the same at pleasure; to have perpetual succession; to
9 make and execute contracts and other instruments neces-
10 sary or convenient to the exercise of the powers of the
11 authority; and to make and from time to time amend and
12 repeal bylaws, rules and regulations, not inconsistent
13 with this article, to carry out the provisions of this
14 article.

15 (b) To prepare or cause to be prepared and recom-
16 mend redevelopment plans to the governing body of the
17 community or communities within its area of operation

18 and to undertake and carry out redevelopment projects
19 within its area of operation.

20 (c) To arrange or contract for the furnishing or re-
21 pair, by any person or agency, public or private, of serv-
22 ices, privileges, works, streets, roads, public utilities or
23 other facilities for or in connection with a redevelop-
24 ment project; and (notwithstanding anything to the con-
25 trary contained in this article or any other provision of
26 law), to agree to any conditions that it may deem reason-
27 able and appropriate attached to federal financial assist-
28 ance and imposed pursuant to federal law relating to the
29 determination of prevailing salaries or wages or compli-
30 ance with labor standards, in the undertaking or carrying
31 out of a redevelopment project, and to include in any
32 contract let in connection with such a project, pro-
33 visions to fulfill such of said conditions as it may deem
34 reasonable and appropriate.

35 (d) Within its area of operation, to purchase, lease,
36 obtain options upon, acquire by gift, grant, bequest, de-
37 vise, eminent domain or otherwise, any real or personal
38 property or any interest therein, together with any im-
39 provements thereon, necessary or incidental to a re-
40 development project; to hold, improve, clear or prepare
41 for redevelopment any such property; to sell, lease, ex-
42 change, transfer, assign, subdivide, retain for its own use,
43 mortgage, pledge, hypothecate or otherwise encumber or
44 dispose of any real or personal property or any interest
45 therein; to enter into contracts with redevelopers of prop-
46 erty containing covenants, restrictions and conditions re-
47 garding the use of such property for residential, commer-
48 cial, industrial, recreational purposes or for public pur-
49 poses in accordance with the redevelopment plan and
50 such other covenants, restrictions and conditions as the
51 authority may deem necessary to prevent a recurrence of
52 slum or blighted areas or to effectuate the purposes of this
53 article; to make any of the covenants, restrictions or con-
54 ditions of the foregoing contracts covenants running with
55 the land, and to provide appropriate remedies for any
56 breach of any such covenants or conditions, including the
57 right in the authority to terminate such contracts and
58 any interest in the property created pursuant thereto; to

59 borrow money and issue bonds and provide security for
60 loans or bonds; to insure or provide for the insurance of
61 any real or personal property or operations of the
62 authority against any risks or hazards, including the
63 power to pay premiums on any such insurance; and to
64 enter into any contracts necessary to effectuate the pur-
65 poses of this article. No statutory provision with re-
66 spect to the acquisition, clearance or disposition of prop-
67 erty by other public bodies shall restrict an authority
68 or other public body exercising powers hereunder, in
69 such functions, unless the Legislature shall specifically
70 so state.

71 (e) To invest any funds held in reserves or sinking
72 funds or any funds not required for immediate disburse-
73 ment, in property or securities in which savings banks
74 may legally invest funds subject to their control; to re-
75 deem its bonds at the redemption price established therein
76 or to purchase its bonds at less than redemption price, all
77 bonds so redeemed or purchased to be cancelled.

78 (f) To acquire real property in an urban renewal
79 area prior to approval of an urban renewal plan, or
80 approval of any modifications of the plan, demolish and
81 remove any structure on the property, and pay all costs
82 related to the acquisition, demolition or removal, in-
83 cluding any administrative or relocation expense, pro-
84 vided it shall be deemed necessary by an authority, and
85 with the approval of the local governing body which shall
86 assume the responsibility to bear any loss that may arise
87 as the result of the exercise of the authority under this
88 section, in the event that the real property is not made part
89 of the urban renewal project.

90 (g) To borrow money and to apply for and accept
91 advances, loans, grants, contributions and any other form
92 of financial assistance from the federal government, the
93 state, county, municipality or other public body or from
94 any sources, public or private, for the purposes of this
95 article, to give such security as may be required and to
96 enter into and carry out contracts in connection therewith;
97 an authority, notwithstanding the provisions of any other
98 law, may include in any contract for financial assistance
99 with the federal government for a redevelopment project

100 such conditions imposed pursuant to federal law as the
101 authority may deem reasonable and appropriate and
102 which are not inconsistent with the purposes of this ar-
103 ticle.

104 (h) Acting through one or more commissioners or
105 other persons designated by the authority, to conduct ex-
106 aminations and investigations and to hear testimony and
107 take proof under oath at public or private hearings on any
108 matter material for its information; to administer oaths,
109 and to issue commissions for the examination of witnesses
110 who are outside of the state or unable to attend before
111 the authority, or excused from attendance; to make avail-
112 able to appropriate agencies or public officials (including
113 those charged with the duty of abating or requiring the
114 correction of nuisances or like conditions or of demolish-
115 ing unsafe or insanitary structures or eliminating slums
116 or conditions of blight within its area of operation) its
117 findings and recommendations with regard to any build-
118 ing or property where conditions exist which are danger-
119 ous to the public health, safety, morals or welfare.

120 (i) Within its area of operation, to make or have made
121 all surveys, appraisals, studies and plans (but not includ-
122 ing the preparation of a general plan for the community)
123 necessary to the carrying out of the purposes of this article
124 and to contract or cooperate with any and all persons or
125 agencies, public or private, in the making and carrying out
126 of such surveys, appraisals, studies and plans.

127 (j) To prepare plans and provide reasonable assist-
128 ance for the relocation of families displaced from a re-
129 development project area to permit the carrying out of
130 the redevelopment project, to the extent essential for
131 acquiring possession of and clearing such area or parts
132 thereof.

133 (k) To make such expenditures as may be necessary
134 to carry out the purposes of this article; and to make
135 expenditures from funds obtained from the federal gov-
136 ernment without regard to any other laws pertaining to
137 the making and approval of appropriations and expendi-
138 tures.

139 (l) To exercise all or any part or combination of
140 powers herein granted.

CHAPTER 58

(Senate Bill No. 120—By Mr. Brotherton)

[Passed February 8, 1968; in effect from passage. Approved by the Governor.]

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 depositories.
- 12-1-14. When treasurer may invest temporary surplus and sell such investments; depositories without the state.

§12-1-1. Designation of depositories; period of designation.

1 The state board of public works shall designate the state
2 and national banks in West Virginia which shall serve
3 as depositories for the deposit of state funds. Any such
4 state or national bank desiring to be designated as a state
5 depository shall, upon request to such board, be designated
6 as a state depository, if such bank meets the requirements
7 set forth in this chapter. Any such designation shall be
8 for a period of one year.

§12-1-2. Bonds to be given by depositories; surety accepted thereon.

1 Before allowing any money to be deposited with any
2 depository the board of public works shall require such
3 depository to give bond with good security to be approved
4 by said board, in the penalty of not less than ten thousand
5 dollars, payable to the state of West Virginia, conditioned
6 for the prompt payment, whenever lawfully required, of
7 any state money, or part thereof, that may be deposited
8 with such depository, or of any accrued interest on de-
9 posits, which bond shall expire on the thirtieth day of
10 April next ensuing: *Provided*, That a surety bond ac-
11 cepted by the board of public works pursuant to subdivi-
12 sion (a) of this section, shall not expire, if, prior to April
13 first of each year, such depository shall file with the board
14 of public works, a certificate issued by the surety on such
15 bond, certifying that such bond will remain in full force
16 and effect for the period of one year subsequent to April
17 thirtieth of the year in question.

18 The board of public works may accept as surety on, or
19 for the faithful performance of the conditions of such
20 bonds, the following:

21 (a) A surety, fidelity or indemnity company author-
22 ized to do business in this state and having a combined
23 capital and surplus of not less than one million dollars,
24 and all bonds so secured are here designated as surety
25 bonds;

26 (b) Persons or corporations which are duly authorized
27 to become surety for another, who are owners of property
28 situate in this state of an aggregate assessed valuation as
29 shown on the current assessment books equal to the
30 penalty of the bond plus all liens or charges against such
31 property, and all bonds so secured are here designated as
32 personal bonds. Any person or any officer of any corpora-
33 tion becoming or offering to become surety on a personal
34 bond may be required by the board of public works or the
35 state treasurer to furnish to said board under oath in
36 writing such data and documentary evidence as to the
37 financial status of such surety as such board may request.
38 Any person who shall knowingly make a false statement
39 in the matter of supplying the information so requested
40 as aforesaid shall be guilty of a misdemeanor, and, upon
41 conviction thereof, shall be fined not less than twenty-five
42 dollars nor more than five hundred dollars, and may,
43 at the discretion of the court, be confined in the county
44 jail for not exceeding one year;

45 (c) Collateral security consisting of bonds of the
46 United States, and its possessions, of the federal land
47 banks, of the home owners' loan corporation, of the state
48 of West Virginia or of any county, district or municipality
49 of this state or other bonds or securities approved by the
50 said board of public works. All bonds so secured are here
51 designated as collaterally secured bonds. Withdrawal or
52 substitution of any collateral pledged as security for the
53 performance of the conditions of such bond may be per-
54 mitted with the approval in writing of the treasurer of the
55 state of West Virginia and three other members of the
56 board of public works who shall report such withdrawal
57 or substitution at the next meeting of the board. All de-
58 pository bonds shall be recorded by the secretary of state
59 in a book kept in his office for the purpose, and a copy of
60 such record, certified by him, shall be prima facie evidence

61 of the execution and contents of such bond in any suit or
62 legal proceeding. All collateral securities shall be de-
63 livered to or deposited for the account of the treasurer
64 of the state of West Virginia, and in the event actual
65 possession of said securities shall be delivered to the
66 treasurer, then he shall receipt therefor to the owner
67 thereof. The said treasurer and his bondsmen shall be
68 liable to any person for any loss by reason of the em-
69 bezzlement or misapplication of said securities by said
70 treasurer or any of his official employees, and for the loss
71 thereof due to his negligence or the negligence of any of
72 his official employees; and such securities shall be de-
73 livered to the owner thereof when liability under the
74 bond which they are pledged to secure has terminated.
75 The treasurer may permit the deposit under proper re-
76 ceipt of such securities with one or more banking institu-
77 tions within or without the state of West Virginia and
78 may contract with any such institution for safekeeping
79 and exchange of any such collateral securities, and may
80 prescribe the rules and regulations for handling and pro-
81 tecting the same, subject to the approval of the board of
82 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 opera-
2 tional purposes of the state government, as determined by
3 the state treasurer, shall be maintained at all times in the
4 state treasury in cash or in demand deposits with banks
5 designated as depositories in accordance with the pro-
6 visions of section one of this article. The state treasurer
7 shall apportion such demand deposits among such de-
8 positories, giving due consideration to: (1) The activity of
9 the various accounts maintained therein, (2) the reason-
10 able value of the banking services rendered or to be
11 rendered the state by such depositories, and (3) the value
12 and importance of such deposits to the economy of the

13 communities and the various areas of the state affected
14 thereby.

15 The state treasurer shall place in time deposits such
16 state funds as are not needed for current operational pur-
17 poses within a ninety-day period and as are not invested
18 in accordance with the provisions of section fourteen of
19 this article. For the purposes of this article, the term
20 "time deposits" shall mean either (1) time deposits, open
21 account, or (2) certificates of deposit. Notwithstanding
22 the foregoing provisions of this paragraph, certificates of
23 deposit may be purchased by the state treasurer only
24 with the approval of the board of public works. A de-
25 pository shall not be required to accept demand deposits
26 in order to receive time deposits, nor shall a depository
27 be required to accept time deposits in order to receive de-
28 mand deposits.

29 The board of public works shall require the payment of
30 interest by all state depositories on all state funds de-
31 posited therein in time deposits. The annual rate of
32 interest on funds placed in time deposits, open account,
33 and the annual rate of interest on funds placed in certifi-
34 cates of deposit shall be determined by the treasurer and
35 may be adjusted by him from time to time according to
36 the then prevailing rate of interest but shall be applied
37 uniformly to all time deposits made on any given date,
38 but any such rate shall not exceed the maximum per-
39 mitted by applicable banking regulations or state law.
40 The interest on time deposits, open account, shall be paid
41 at such intervals as may be agreed upon by and between
42 the state depository and the state treasurer. The state
43 treasurer is authorized to execute contracts with the
44 state depositories covering time deposits, open account.
45 Subject to applicable banking regulations or state law,
46 in the event of an emergency, the state treasurer is au-
47 thorized to withdraw all or any portion of the funds
48 placed on time deposit, open account on shorter notice
49 than the contract provides and to forfeit such amount of
50 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.

1 The board of finance is hereby abolished. On and after
2 the effective date of this section, the board of public
3 works shall have the authority to establish any rules and
4 regulations that it may deem necessary or expedient to
5 protect the interests of the state, its depositories and tax-
6 payers.

7 The board shall also have the authority to enter into
8 any depositors' agreements for the purpose of reorganizing
9 or rehabilitating any state or national bank in which state
10 funds are deposited, and for the purpose of transferring
11 the assets, in whole or in part, of any such state or na-
12 tional bank to any other banking institution existing or
13 to be formed, when, in the judgment of the board, the
14 interests of the state will be promoted thereby, and upon
15 condition that no right of the state to preferred payment
16 be waived, and that the sureties on the depository bond,
17 or so many thereof as in the opinion of the board are
18 sufficient therefor, in writing consent to such participation
19 on behalf of the state of West Virginia and agree that
20 their liability as surety shall not in any way be affected
21 thereby. The treasurer shall furnish said board of public
22 works, and the president and minority leader of the
23 Senate and the speaker and minority leader of the House
24 of Delegates, not later than the tenth of each month, a
25 statement showing the balances on the last day of the
26 preceding month in each state depository.

§12-1-7. Apportionment of time deposits.

1 It shall be the duty of the treasurer to keep at all times
2 in the state depositories in each county an equitable share
3 of all of the state funds placed in time deposits. The total
4 assessment of all property in each county for the pre-
5 ceding fiscal year shall be taken as the basis for such ap-
6 portionment. If at any time the depositories of any county
7 or counties in any senatorial district do not have sufficient
8 bonds to cover their share of such time deposits, the
9 treasurer shall prorate the surplus among all the other
10 counties in said district having sufficient bonds. Nothing

11 in this section shall be construed as requiring the sink-
12 ing funds and interest mentioned in section eight, article
13 three, chapter thirteen of this code to be apportioned
14 under the provisions of this section, but the same shall be
15 deposited as provided in said section eight.

**§12-1-9. Transfer of funds for emergency purposes; checks for
disbursement of certain tax moneys.**

1 Subject to applicable banking regulations or state law,
2 the treasurer may transfer funds for emergency purposes
3 whenever actually needed to pay the warrants drawn by
4 the auditor upon the treasury or to equalize deposits, and
5 he may draw checks upon any state depository for dis-
6 bursement of the tax moneys collected by the state from
7 the public utility companies for the counties, districts
8 and municipalities. All checks drawn for transfer of
9 funds shall have printed or stamped on the face of same
10 "for transfer of funds only."

§12-1-10. Treasurer to keep accounts with depositories.

1 The treasurer shall keep in his office a record showing
2 the account of each depository, under which account
3 entry shall be made showing the amount and date of each
4 deposit, the amount and date of each withdrawal, and the
5 balance on deposit.

**§12-1-14. When treasurer may invest temporary surplus and
sell such investments; depositories without the
state.**

1 Whenever the receipts of the treasury shall exceed the
2 funds needed for current operational purposes and shall
3 create a temporary surplus, and it appears that such sur-
4 plus will continue for as much as one month, the state
5 treasurer, with the approval in writing of the board of
6 public works, may invest such surplus in bonds or obliga-
7 tions of the United States or for which both principal and
8 interest are guaranteed by the United States, or general
9 obligation bonds of the state of West Virginia or any
10 political subdivision thereof; and the state treasurer may
11 thereafter, with like approval of the board of public
12 works, sell such investments in whole or in part, when-
13 ever it appears that a present need for such funds exists.

14 Whenever the funds in the treasury exceed the amount
15 for which depositories within the state have qualified, or
16 the depositories within the state which have qualified are
17 unwilling to receive larger deposits, the board of public
18 works may designate depositories without the state, and
19 when such depositories without the state shall have quali-
20 fied by giving bond of the character provided by sub-
21 division (a) (surety company) or subdivision (c) (col-
22 lateral) as prescribed in section two of this article, the
23 state treasurer may deposit funds therein in like manner
24 as funds are deposited in depositories within the state
25 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.

1 For the purpose of providing revenues for the general
2 revenue fund of the state an excise tax is hereby levied
3 and imposed on sales of cigarettes on and after midnight
4 of the last day of March, one thousand nine hundred
5 sixty-eight, at the rate of one and one half cents on
6 each ten cigarettes or fractional part thereof. Only one
7 sale of the same article shall be used in computing the
8 amount of tax due hereunder.

CHAPTER 60

(House Bill No. 238—By Mr. Speaker, Mr. White, and Mr. Boiarsky)

[Passed February 3, 1968; in effect from passage. Approved by the Governor.]

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

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws
3 of the United States relating to income taxes, unless
4 a different meaning is clearly required. Any reference
5 in this article to the laws of the United States shall
6 mean the provisions of the Internal Revenue Code of
7 1954, as amended, and such other provisions of the laws
8 of the United States as relate to the determination of
9 income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 sixty-eight, shall be given effect in determining the taxes
13 imposed by this article for the tax period beginning the
14 first day of January, one thousand nine hundred sixty-
15 eight, and thereafter, but no amendment to the laws of
16 the United States made on or after the first day of Janu-
17 ary, one thousand nine hundred sixty-eight, shall be
18 given effect.

CHAPTER 61

(Senate Bill No. 116—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 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
2 tax imposed by this article to the extent provided in this
3 section:

4 (a) Corporations which by reason of their purposes or
5 activities are exempt from federal income tax: *Provided,*
6 That this exemption shall not apply to the unrelated busi-
7 ness income, as defined in the Internal Revenue Code, of
8 any such corporation if such income is subject to federal
9 income tax.

10 (b) Banks, banking associations, trust companies,
11 building and loan associations, and savings and loan asso-
12 ciations.

13 (c) Insurance companies which pay this state a tax
14 upon premiums.

15 (d) Production credit associations organized under the
16 provisions of the federal "Farm Credit Act of 1933":
17 *Provided,* That this exemption shall not apply to corpora-
18 tions or associations organized under the provisions of
19 article four, chapter nineteen of this code.

20 (e) Corporations electing to be taxed under subchapter
21 S of the Internal Revenue Code of one thousand nine
22 hundred fifty-four, as amended.

23 (f) Trusts established pursuant to section one hundred
24 eighty-six, chapter seven, title twenty-nine of the code of
25 the laws of the United States (enacted as section three
26 hundred two (c) of the labor management relations act,
27 one thousand nine hundred forty-seven), as amended
28 prior to the first day of January, one thousand nine hun-
29 dred 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.
- 8-18-3. Definitions.
- 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.
- 8-18-9. Budget.
- 8-18-10. Powers and duties of authorities generally.
- 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.
- 8-18-14. Revenue and refunding bonds generally.
- 8-18-15. Trust indenture generally.
- 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.
- 8-18-20. Exemption from taxation.
- 8-18-21. Protection of employees of existing transportation systems.
- 8-18-22. Conflict of interest.
- 8-18-23. Competitive bids; publication of solicitations for sealed bids.
- 8-18-24. Bonds made legal investments.
- 8-18-25. Article constitutes complete authority; liberal construction.
- 8-18-26. Severability.

§8-18-1. Short title.

1 This article may be cited as the "Urban Mass Transpor-
2 tation Authority Act of 1968."

§8-18-2. Legislative findings and declaration of policy.

1 The Legislature hereby finds and declares:

2 (a) That a significant part of the population of this
3 state is located in expanding urban areas;

4 (b) That in certain of these areas there are no urban
5 mass transportation systems and in others there are urban
6 mass transportation systems which are inadequate or in
7 imminent danger of becoming inadequate or in imminent
8 danger of discontinuing such service;

9 (c) That the establishment and maintenance of ade-
10 quate urban mass transportation systems in such areas is
11 essential for preserving viable urban areas and further
12 promoting the healthful, safe, orderly and economical de-
13 velopment and expansion of such urban areas;

14 (d) That the creation of urban mass transportation
15 authorities to establish and maintain urban mass trans-
16 portation systems in such areas is for the welfare of the
17 people of this state in general and of the participating
18 governments in particular, and is a public purpose for
19 which public money may be spent and private property
20 acquired; and

21 (e) This article is enacted in view of these findings and
22 shall be liberally construed in the light thereof.

§8-18-3. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:

3 (a) "Authority" means any urban mass transportation
4 authority created pursuant to the provisions of this
5 article;

6 (b) "Board" means the board of any urban mass trans-
7 portation authority;

8 (c) "Contiguous counties" means two or more counties
9 which constitute a compact territorial unit within an un-
10 broken boundary wherein one county touches at least

11 one other county, but does not require that each county
12 touch all of the other counties so combining;

13 (d) "Facilities and equipment" means all real and
14 personal property of every kind and character owned or
15 held by any urban mass transportation system for the
16 purpose of providing transportation by bus or rail or other
17 conveyance serving the public;

18 (e) "Governing body" means, as the case may be, either
19 (1) the council or other body exercising the powers com-
20 monly exercised by the council of a municipality or (2)
21 the county court created by article eight, section twenty-
22 two of the West Virginia constitution or a tribunal in
23 lieu of a county court;

24 (f) "Municipality" means a city, town or village
25 incorporated under the laws of West Virginia;

26 (g) "Participating government" means any county or
27 municipality establishing or participating in an urban
28 mass transportation authority;

29 (h) "Person" means any individual, firm, partnership,
30 corporation, company, association, or joint-stock associa-
31 tion, or the legal successor or successors thereof;

32 (i) "Project" means any undertaking of an authority;

33 (j) "Revenues" means the gross receipts derived di-
34 rectly or indirectly from or in connection with the opera-
35 tion by an authority of any urban mass transportation
36 system or systems and shall include, without limitation,
37 all fees, rates, fares, rentals or other income actually
38 received or receivable by or for the account of an author-
39 ity from the operation of the system, and any other
40 receipts from whatever source derived;

41 (k) "Service area of the authority" means and includes
42 an area commensurate with the area served by an exist-
43 ing system or systems acquired or to be acquired by an
44 authority, or if there be no existing system, the area
45 shall extend to and include an area to be defined in the
46 certificate of convenience and necessity issued by the
47 public service commission of West Virginia under the
48 applicable provisions of chapter twenty-four and chapter
49 twenty-four-a of this code;

50 (l) "System" means any urban mass transportation
51 system;

52 (m) "Trust indenture" means a security instrument
53 entered into by an authority pursuant to which bonds or
54 notes are issued;

55 (n) "Urban area" means any area that includes a
56 municipality or other built-up place which is appropriate
57 for a system to serve commuters or others in the locality
58 taking into consideration the local patterns and trends of
59 growth;

60 (o) "Urban mass transportation system" means any
61 common carrier of passengers for hire which operates
62 equipment over regular routes within the service area of
63 the authority; and

64 (p) The singular shall include the plural and the
65 plural shall include the singular.

**§8-18-4. Urban mass transportation authorities authorized;
authorities to be public corporations.**

1 Any county or municipality, or both, or any two or more
2 contiguous counties, or any two or more municipalities
3 within any county or contiguous counties, or any combina-
4 tion thereof, may create an urban mass transportation
5 authority. Such authority shall be created upon the adop-
6 tion, by the governing body of each participating govern-
7 ment, acting individually, of an appropriate order or
8 ordinance. Each authority shall constitute a public
9 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.**

1 The management and control of any authority, its
2 operations, business and affairs shall be lodged in a
3 board of not less than five nor more than fifteen indi-
4 viduals who shall be known as members of the board and
5 who shall be appointed for terms of three years each by
6 the governing bodies of the participating governments.
7 Prior to making the initial appointments to the board, the
8 governing bodies of the participating governments shall
9 agree to make such initial appointments so that approxi-

10 mately one third of the total number of the members to
11 be so appointed shall be appointed for a term of one
12 year, approximately one third of such total number of the
13 members shall be appointed for a term of two years and
14 approximately one third of such total number of the mem-
15 bers shall be appointed for a term of three years. As
16 the term of each such initial appointee expires, the suc-
17 cessor to fill the vacancy created by such expired term
18 shall be appointed for a term of three years. The number
19 of members representing each participating government
20 shall be as agreed upon from time to time by the govern-
21 ing bodies of the said participating governments. Each
22 member of the board shall have one vote on all matters
23 coming before it. Any individual who is a resident of, or
24 member of the governing body of, any participating gov-
25 ernment is eligible to serve as a member of the board. The
26 governing body of each participating government shall in-
27 form the authority of its appointments or reappointments
28 to the board by delivering to the authority a certified copy
29 of the order or ordinance making the appointment or
30 reappointment. If any member of the board dies, resigns,
31 or for any other reason ceases to be a member of the
32 board, the governing body of the participating govern-
33 ment which such member represented shall appoint
34 another individual to fill the unexpired portion of the
35 term of such member.

§8-18-6. Compensation of members; expenses.

1 As compensation for his services on the board each
2 member shall receive from the authority the sum of
3 fifty dollars for each meeting actually attended. The
4 total compensation paid to any member by the authority
5 for any fiscal year shall not exceed in the aggregate the
6 sum of six hundred dollars. Each member shall also
7 be reimbursed by the authority for any reasonable and
8 necessary expenses actually incurred in the discharge
9 of his duties as a member of the board.

§8-18-7. Meetings of authority; officers; employees; official bonds; records of authority public records.

1 At its first meeting, to be held no later than sixty
2 days from the creation of the authority as provided in

3 section four of this article, the board shall elect from
4 its membership a president to act during the next
5 ensuing fiscal year, or until his successor is elected and
6 qualified. At that time, the board shall also elect a vice
7 president, a secretary and a treasurer and such other
8 officers as may be required, who need not be members
9 of the board, whose duties shall be defined and whose
10 compensation shall be fixed by the board and paid out
11 of the funds of the authority. The treasurer, and such
12 other officers and employees as the board shall direct,
13 shall furnish bond for the use and benefit of the authority
14 in such penal sum as may be fixed by the board and
15 conditioned upon the faithful discharge by such treasurer
16 and such other officers and employees so directed by the
17 board of the duties of their respective offices or em-
18 ployment, and upon accounting for and paying over all
19 moneys which may come into their possession by virtue
20 of such office or employment. At its first meeting the
21 board shall also fix the time and place for holding regu-
22 lar meetings, but it shall meet at least once in the
23 months of January, April, July and October. Special
24 meetings of the board may be called by the president
25 or by two members upon written request to the secretary.
26 The secretary shall send to all the members, at least
27 two days in advance of a special meeting, a written notice
28 setting forth the time and place of the meeting and the
29 matters to be considered at such meeting. Written
30 notice of a special meeting is not required if the time
31 of the special meeting has been fixed in a regular meet-
32 ing, or if all the members are present at the special
33 meeting. All regular meetings shall be general meetings
34 for the consideration of any and all matters which may
35 properly come before an authority. All proceedings of
36 the authority shall be entered in a permanently bound
37 record book, properly indexed, and the same shall be care-
38 fully preserved by the secretary of the authority. All
39 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 ma-
2 jority 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.

§8-18-9. Budget.

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.

§8-18-10. Powers and duties of authorities generally.

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

17 and personal property of every kind and nature whatso-
18 ever, licenses, franchises, rights and interests necessary
19 for the full exercise of its powers pursuant to the pro-
20 visions of this article, or which may be convenient or
21 useful for the carrying out of such powers;

22 (f) To acquire, construct, reconstruct, complete, de-
23 velop, improve, own, equip, operate and maintain any sys-
24 tem or systems, or any part thereof, including, without
25 limitation, the power to acquire by purchase, lease, or
26 gift all or any part of any licenses, franchises, rights,
27 interests, engineering and technical studies, data or
28 reports owned or held by any person and determined
29 by its board to be necessary, convenient or useful to the
30 authority in connection with the acquisition, construction,
31 reconstruction, completion, development, improvement,
32 ownership, equipping, operation or maintenance of any
33 system or systems and to reimburse public utilities for
34 relocation of any utility line or facility made necessary by
35 the construction, reconstruction, completion, develop-
36 ment, improvement, equipping, operation or maintenance
37 of any system or systems;

38 (g) To acquire any land, rights or easements deemed
39 necessary or incidental for the purposes of the authority
40 by eminent domain to the same extent and to be exercised
41 in the same manner as now or hereafter provided by law
42 for such right of eminent domain by business corpora-
43 tions;

44 (h) To enter into contracts and agreements which
45 are necessary, convenient or useful to carry out the
46 purposes of this article with any person, public corpora-
47 tion, state or any agency or political subdivision thereof
48 and the federal government and any department or
49 agency thereof, including, without limitation, contracts
50 and agreements for the joint use of any property and
51 rights by the authority and any person or authority oper-
52 ating any system, whether within or without the service
53 area of the authority and contracts and agreements with
54 any person or authority for the maintenance, servicing,
55 storage, operation or use of any system or part thereof,

56 facility or equipment on such basis as shall seem proper
57 to its board;

58 (i) To enter into contracts and agreements for super-
59 intendence and management services with any person,
60 who has executive personnel with experience and skill
61 applicable to the superintendence and management of any
62 system, for the furnishing of its services and the services
63 of experienced and qualified personnel for the superin-
64 tendence and management of any system or any part
65 thereof, including, without limitation, superintendence
66 over personnel, purchases, properties and operations and
67 all matters relating thereto, and any revenue bond trust
68 indenture may require such contract. The personnel
69 whose services are to be so furnished under such
70 contract shall not include any member of the board,
71 any member of the immediate family of a member
72 of the board or any agents or employees of the author-
73 ity. No contract shall extend beyond a term of ten
74 years or such longer time as there are outstanding
75 any revenue bonds under a trust indenture which requires
76 such contract;

77 (j) To assume any lien indebtedness of any system
78 or part thereof acquired by it under the provisions of this
79 article;

80 (k) To execute security agreements, contracts, leases,
81 equipment trust certificates and any other forms of con-
82 tracts or agreements, granting or creating a lien, security
83 interest, encumbrance or other security in, on or to
84 facilities and equipment, containing such terms and
85 provisions as the board deems necessary;

86 (l) To apply for, receive and use grants, grants-
87 in-aid, donations and contributions from any source or
88 sources, including, but not limited to, the federal gov-
89 ernment and any agency or department thereof, and
90 a state government whose constitution does not pro-
91 hibit such grants, grants-in-aid, donations and contri-
92 butions, and any agency or department thereof, and
93 to accept and use bequests, devises, gifts and donations
94 from any person;

95 (m) To lease any system or any part thereof to, or

96 contract for the use of any system or any part thereof by,
97 any person. A trust indenture may prohibit, limit or re-
98 strict the exercise of such power;

99 (n) To acquire for cash or in exchange for its bonds
100 all or any part of any publicly or privately owned system
101 or systems;

102 (o) To make or cause to be made either by itself
103 or in cooperation with other persons or organizations,
104 whether public or private, traffic surveys, population
105 surveys and such other surveys and studies as it shall
106 consider useful in the performance of its duties or the
107 exercise of its powers under the provisions of this article
108 and in connection therewith the authority may con-
109 tract with any person or organization for such planning
110 services;

111 (p) To enter into contracts and agreements with any
112 public or private system either within or contiguous to
113 its boundaries for the transfer of passengers between it
114 and the system operating in territory contiguous to its
115 boundaries;

116 (q) To fix and establish from time to time subject to
117 the approval of the public service commission such fees,
118 rates or other charges and routes, time schedules and
119 standards of service as will provide revenues in
120 each year at least sufficient to pay the principal of and
121 interest on all bonds issued by the authority, and reason-
122 able reserves therefor, as the same shall become due, to-
123 gether with the cost of operation, administration, mainte-
124 nance and repair of such system or systems in each year,
125 together with all other payments required in each such
126 year by the resolution which authorized the issuance of
127 such bonds, or the trust indenture securing the same, in-
128 cluding, without limitation, reasonable reserves or mar-
129 gins for any of such purposes. Every authority shall file
130 and keep on file the information specified in section two,
131 article six, chapter twenty-four-a of this code in the
132 manner and form as therein provided;

133 (r) To issue revenue bonds of the authority for any of
134 its purposes or projects and to refund its bonds, all as
135 provided in this article;

136 (s) To encumber or mortgage all or any part of its
137 facilities and equipment;

138 (t) To prepare plans for and assist in the relocation of
139 persons displaced by the authority and to make relocation
140 payments to or with respect to such persons for moving
141 expenses and losses of property for which reimbursement
142 or compensation is not otherwise made, including the
143 making of such payments financed by the federal govern-
144 ment; and

145 (u) To do any and all things necessary or convenient
146 to carry out the powers given in this article unless other-
147 wise forbidden by law.

148 The exercise of any of the powers herein granted is
149 expressly made subject to the provisions of section
150 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.**

1 Contributions may be made to authorities from time
2 to time by the participating governments and by any
3 other municipalities, counties, persons, firms or corpora-
4 tions that shall desire to do so. All such funds and all
5 of the other funds received by any authority shall be de-
6 posited in a separate account in such bank or banks as
7 its board may direct and shall be withdrawn therefrom
8 only in such manner as its board may direct. Each
9 authority shall keep strict account of all its receipts and
10 expenditures and shall make a quarterly report to the
11 participating governments which have made contribu-
12 tions to it and such report shall contain an itemized ac-
13 count of its receipts and disbursements, during the pre-
14 ceding quarter. Such report shall be made within sixty
15 days after the termination of the quarter. Within ninety
16 days after the end of each fiscal year, each authority shall
17 make an annual report containing an itemized statement
18 of its receipts and disbursements for the preceding fiscal
19 year, and any and all other information which the board
20 may deem pertinent, to all of the participating govern-
21 ments. The books, records and accounts of each authority
22 shall be subject to audit and examination by the state
23 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,
2 shall prepare a comprehensive plan with respect to a pro-
3 gram for a unified or officially coordinated system as a
4 part of a comprehensively planned development of the
5 urban area within its service area. Said program, to the
6 maximum extent feasible, shall provide for the participa-
7 tion of privately owned systems.

8 In the preparation of a comprehensive plan, an author-
9 ity shall make careful and comprehensive surveys and
10 studies of the existing conditions and probable future
11 changes of such conditions within its service area. The
12 comprehensive plan shall be made for the general purpose
13 of guiding and accomplishing a coordinated, adjusted and
14 harmonious development of systems within the service
15 area which, in accordance with present and future needs
16 and resources, will best promote the health, safety and
17 general welfare of the inhabitants of the service area, as
18 well as the orderly and economical development and ex-
19 pansion of the service area.

20 Prior to the adoption of a comprehensive plan, the
21 authority shall submit its tentative plan to the govern-
22 ing bodies of the participating governments and hold a
23 public hearing in the service area on the plan. At least
24 thirty days prior to the date set for hearing, the authority
25 shall publish a notice of the time and place of the hearing
26 as a Class II legal advertisement in compliance with the
27 provisions of article three, chapter fifty-nine of this code,
28 and the publication area for such publication shall be the
29 service area of the authority. After a public hearing has
30 been held, the authority may by resolution adopt the com-
31 prehensive plan and may from time to time amend, sup-
32 plement or change the comprehensive plan in the same
33 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
2 system, the authority shall adopt a proper resolution
3 which shall include:

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.

§8-18-14. Revenue and refunding bonds generally.

1 The authority is hereby authorized to provide by reso-
2 lution, from time to time, for the issuance of revenue

3 bonds of the authority for the purpose of paying all or
4 any part of the cost of acquiring, constructing or im-
5 proving a system or systems, or any part thereof, or
6 the facilities and equipment therefor, as the case may
7 be, or for any other purpose or project authorized by
8 the provisions of this article. The purposes for which
9 revenue bonds may be issued may include the payment
10 of all costs and estimated costs incidental to or connected
11 with the accomplishment of such purpose or project in-
12 cluding, without limitation, engineering, inspection, legal,
13 fiscal agents, financial consultants and other fees, bond
14 and other reserve funds, working capital, bond interest
15 estimated to accrue during the construction period and
16 for a period not to exceed two years thereafter, and
17 expenses of all proceedings for the authorization, issuance
18 and sale of the bonds.

19 The bonds of each issue shall be dated, shall bear in-
20 terest at such rate or rates not exceeding six per centum
21 per annum, payable semiannually, shall mature at such
22 time or times not exceeding thirty years from their date
23 or dates, as may be determined by the authority, and
24 may be made redeemable before maturity, at the option
25 of the authority, at such price or prices and under such
26 terms and conditions as may be fixed by the authority
27 prior to the issuance of the bonds. The authority shall
28 determine the form of the bonds, including any interest
29 coupons to be attached thereto, and shall fix the denomi-
30 nation or denominations of the bonds and the place or
31 places of payment of the principal and interest, which may
32 be at any bank or trust company within or without the
33 state. The bonds shall be signed by the president of the
34 authority or shall bear his facsimile signature, and the
35 official seal of the authority, or a facsimile thereof, shall
36 be impressed or imprinted thereupon and attested by
37 the secretary of the authority, and any coupons attached
38 to the bonds shall bear the facsimile signature of the
39 president of the authority. All such signatures, counter-
40 signatures and seal may be printed, lithographed or
41 mechanically reproduced, except that one of such sig-
42 natures or countersignatures on the bonds shall be manu-
43 ally affixed, unless the resolution authorizing the issuance

44 of such bonds shall otherwise provide. If any officer
45 whose signature or countersignature or a facsimile of
46 whose signature or countersignature appears on bonds or
47 coupons ceases to be such officer before the delivery of
48 the bonds, his signature shall be as effective as if he had
49 remained in office until such delivery. The bonds may be
50 issued in coupon or in registered form, or both, as each
51 authority may determine and provision may be made
52 for the registration of any coupon bonds as to principal
53 alone, and also as to both principal and interest, for the
54 reconversion into coupon bonds of any bonds registered
55 as to both principal and interest, and for the interchange
56 of registered and coupon bonds. Notwithstanding the
57 form or tenor thereof, and in the absence of any express
58 recital on the face thereof that the bond is nonnego-
59 tiable, all such bonds shall be, and shall be treated as,
60 negotiable instruments for all purposes except when
61 registered in the name of a registered owner.

62 The authority may exchange its bonds, in whole or
63 in part, for any system or systems, or any parts thereof,
64 or facilities and equipment therefor, or may sell its
65 bonds, in whole or in part, in such manner either at
66 public or private sale and for such price as it may deter-
67 mine will best effect the purposes of this article and
68 be for the best interest of the authority.

69 Prior to the preparation of definitive bonds, the au-
70 thority may, under like restrictions, issue interim receipts
71 or temporary bonds with or without coupons, exchange-
72 able for definitive bonds when such bonds shall have
73 been executed and are available for delivery. The au-
74 thority may also provide for the replacement of any
75 bonds which shall become mutilated or shall be destroyed
76 or lost.

77 The authority is hereby authorized to provide by reso-
78 lution, from time to time, for the issuance, sale or exchange
79 of revenue refunding bonds of such authority for the
80 purpose of refunding any bonds then outstanding which
81 shall have been issued under the provisions of this article,
82 including the payment of any redemption premium
83 thereon and any interest accrued or to accrue to the
84 date of redemption of such bonds, and the payment of

85 all expenses incidental thereto. The authority is further
86 authorized to provide by resolution, from time to time,
87 for the issuance, sale or exchange of revenue bonds of
88 such authority for the combined purpose of refunding
89 any bonds then outstanding, as herein provided, and
90 paying all or any part of the cost of any additional project
91 or projects. All provisions of this article applicable to
92 the issuance of revenue bonds are applicable to the
93 issuance of refunding bonds and to the sale or exchange
94 thereof.

§8-18-15. Trust indenture generally.

1 In the discretion of the authority any bonds issued
2 under the provision of this article may be secured by a
3 trust indenture by and between such authority and a
4 corporate trustee, which may be any trust company or
5 bank having the powers of a trust company, within or
6 without the state, or any person in the United States hav-
7 ing power to enter into the same, including any federal
8 agency.

9 Any resolution authorizing the issuance of such bonds
10 or any trust indenture securing the same may contain
11 such provisions for protecting and enforcing the rights
12 and remedies of the bondholders and of the trustee as
13 the authority may deem necessary and proper and not in
14 violation of law, including provisions pledging all or any
15 part of the revenues of such authority or encumbering
16 all or any part of the facilities and equipment of such
17 authority to secure the payment of the bonds subject to
18 such agreements with bondholders as may then exist;
19 limiting the purpose to which the proceeds of sale of any
20 bonds then or thereafter to be issued may be applied;
21 defining the duties of such authority in relation to the ac-
22 quisition, construction, improvement, maintenance, repair,
23 operation and insurance of any project or projects in
24 connection with which such bonds shall have been author-
25 ized; providing for the custody, safeguarding and applica-
26 tion of all moneys; limiting the issuance of additional
27 bonds; prescribing a procedure by which the provisions
28 of any trust indenture or contract with bondholders may
29 be amended or modified; requiring such authority to fix

30 and establish fees, rates or other charges and routes, time
31 schedules and standards of service as will provide
32 revenues in each year at least sufficient to pay the princi-
33 pal of and interest on all bonds issued by such authority
34 and reasonable reserves therefor as the same shall become
35 due, together with the cost of operation, administration,
36 maintenance and repair of such system or systems in
37 each year, including, without limitation, reasonable re-
38 serves or margins or sinking funds for any of such pur-
39 poses, subject to the provisions of section eighteen of this
40 article; defining the acts or omissions to act which shall
41 constitute a default in the duties of such authority to the
42 holders of its bonds and providing the rights and remedies
43 of such holders and of the trustee in event of default and
44 the manner and terms upon which such default may be
45 declared cured; vesting in a trustee such property rights,
46 powers and duties, in trust, as such authority may de-
47 termine; and such other additional provisions as such au-
48 thority may deem necessary or desirable for the security
49 of the holders of bonds issued under the provisions of this
50 article, notwithstanding that such other provisions are not
51 expressly enumerated in this section, it being the inten-
52 tion to grant the authority the power to make any and all
53 covenants or agreements necessary in order to secure
54 greater marketability for bonds issued under the pro-
55 visions of this article as fully and to the same extent as
56 such covenants or agreements could be made by a private
57 corporation rendering similar services and to grant such
58 authorities full and complete power to enter into any con-
59 tract, covenant or agreement with holders of bonds issued
60 under the provisions of this article not inconsistent with
61 this article or the constitution of the state of West Vir-
62 ginia.

**§8-18-16. Sinking fund; sinking fund commission; purchase of
outstanding bonds.**

1 At or before the issuance of any bonds under the pro-
2 visions of this article, the authority shall, by resolution,
3 provide for a sinking fund for the payment of the bonds
4 and the interest thereon, and the payment of the charges
5 of banks or trust companies for making payment of such

6 bonds, and interest, out of the net revenues of said system,
7 and, in this event, shall set aside and pledge a sufficient
8 amount of the next revenues of the system, hereby de-
9 fined to mean the revenues of the system remaining after
10 the payment of the reasonable expense of operation, ad-
11 ministration, maintenance and repair, such amount to be
12 paid by such authority into the sinking fund at intervals,
13 to be determined by resolution adopted prior to the issu-
14 ance of the bonds, for (a) the interest upon such bonds as
15 such interest shall fall due; (b) the necessary fiscal agency
16 charges for paying bonds and interest; (c) the payment
17 of the bonds as they fall due, or, if all bonds mature at one
18 time, the proper maintenance of a sinking fund sufficient
19 for the payment thereof at such time; and (d) a margin
20 for safety and for the payment of premium upon bonds
21 retired by call or purchase as provided in this article.
22 Such required payments shall constitute a first charge
23 upon all the net revenues of such authority. Prior to the
24 issuance of any bonds, the authority may, by resolution,
25 be given the right to use or direct the state sinking fund
26 commission to use such sinking fund, or any part thereof,
27 in the purchase of any of the outstanding bonds payable
28 therefrom, at the market prices thereof, but not exceeding
29 the price, if any, at which the same shall in the same year
30 be payable or redeemable, and all bonds redeemed or pur-
31 chased shall forthwith be cancelled, and shall not again
32 be issued. In addition to the payments into the sinking
33 fund as herein set forth, the authority may at any time in
34 its discretion, transfer all or any part of the balance of
35 the net revenues, after reserving an amount deemed by
36 such authority sufficient for operation, repair and mainte-
37 nance for an ensuing period of not less than twelve
38 months and for depreciation, into the sinking fund.

39 The amounts of the balance of the net revenues as and
40 when so set apart shall be remitted to the state sinking
41 fund commission at such periods as shall be designated in
42 the resolution, but in any event at least thirty days previ-
43 ous to the time interest or principal payments become
44 due, to be retained and paid out by said commission con-
45 sistent with the provisions of this article and the resolution

46 pursuant to which such bonds have been issued. The
47 state sinking fund commission is hereby authorized to act
48 as fiscal agent for the administration of such sinking fund
49 under any resolution adopted pursuant to the provisions
50 of this article and shall invest all sinking funds as pro-
51 vided by general law.

§8-18-17. Remedies of bondholders.

1 Any holder of bonds issued under the provisions of this
2 article or any of the coupons appertaining thereto, and
3 the trustee under any trust indenture securing the same,
4 except to the extent the rights herein given may be re-
5 stricted by such trust indenture, may, by civil action,
6 mandamus or other proceeding, protect and enforce any
7 and all rights under the laws of this state or granted
8 under the provisions of this article or under the resolu-
9 tion authorizing the issuance of such bonds, or the trust
10 indenture securing same, and may enforce and compel
11 the performance of all duties required by this article or by
12 such resolution or trust indenture to be performed by any
13 authority or by any officer thereof.

§8-18-18. Authority and duty of public service commission.

1 Each authority which undertakes to engage in trans-
2 porting passengers for hire by motor vehicles or other
3 conveyances over regular routes shall be deemed a com-
4 mon carrier of passengers for hire and shall be subject
5 to the jurisdiction and authority of the public service
6 commission of West Virginia as provided in chapter
7 twenty-four and chapter twenty-four-a of this code, to the
8 same extent as any other common carrier of passengers
9 for hire: *Provided*, That it shall be the mandatory duty
10 of the public service commission to fix and establish, from
11 time to time, such fees, rates or other charges and routes,
12 time schedules and standards of service for each au-
13 thority as will provide revenues in each year at least
14 sufficient to pay the principal of and interest on all bonds
15 issued by that authority, and reasonable reserves therefor,
16 as the same shall become due in each year, together with
17 the cost of operation, administration, maintenance and
18 repair of such system or systems in each year, together
19 with all other payments required in each year by the

20 resolution which authorized the issuance of such bonds
21 or the trust indenture securing the same, including reason-
22 able reserves, margins or sinking funds for any of such
23 purposes.

§8-18-19. Indebtedness of authorities.

1 Each authority may issue bonds, borrow money and
2 incur any proper indebtedness and issue any other obliga-
3 tions as authorized by law or provided in this article. No
4 such indebtedness or obligation incurred by any authority
5 may give any right against any member of the governing
6 body of any participating government, or any member
7 of the board of any authority. No obligation or indebted-
8 ness of any nature of any authority shall constitute an
9 indebtedness of any participating government or the
10 governing body of any participating government, within
11 the meaning of any constitutional provision or statutory
12 limitation and shall never constitute or give rise to a
13 pecuniary liability of any participating government or
14 the governing body of any participating government, or
15 be a charge against the general credit or taxing power
16 of any participating government or the governing body
17 of any participating government, and such fact shall be
18 plainly stated on the face of any bonds issued by any
19 authority. The rights of creditors of any authority shall
20 be solely against the authority as a corporate body and
21 shall be satisfied only out of revenues, moneys or property
22 received or held by it in its corporate capacity.

§8-18-20. Exemption from taxation.

1 It is hereby found, determined and declared that the
2 creation of any authority and the carrying out of its
3 purposes is in all respects for the benefit of the people
4 of this state in general, and of the participating govern-
5 ments in particular, and is a public purpose, and that
6 the authority will be performing an essential govern-
7 mental function in the exercise of the powers conferred
8 upon it by the provisions of this article. Accordingly,
9 each authority and, without limitation, its revenues, prop-
10 erty, operations and activities, shall be exempt from the
11 payment of any taxes or fees to the state or any of its

12 political subdivisions or to any officer or employee of
13 the state or any of its political subdivisions, except the
14 special assessment provided for in section six, article
15 six, chapter twenty-four-a of this code. The revenue
16 bonds and other evidence of indebtedness issued pursuant
17 to the provisions of this article, and the interest thereon,
18 shall be exempt from taxation, except inheritance and
19 transfer taxes.

§8-18-21. Protection of employees of existing transportation systems.

1 Whenever any authority acquires any existing system
2 pursuant to the provisions of this article, the employees
3 of such system shall be protected in the following
4 manner:

5 (a) The employees of such system shall be retained
6 to the fullest extent possible consistent with sound man-
7 agement, and if terminated or laid off shall be assured
8 priority of reemployment;

9 (b) The individual employees who are retained shall
10 be retained in positions the same as, or no worse than,
11 their positions prior to the acquisition of such system;

12 (c) The rights, privileges and benefits of the employees
13 under existing collective bargaining agreements shall not
14 be affected and the owning authority shall assume the
15 duties and obligations of the acquired system under any
16 such agreement;

17 (d) Collective bargaining rights shall be continued
18 with respect to employees of any acquired system;

19 (e) The rights, privileges and benefits of the em-
20 ployees under any existing pension or retirement plan
21 or plans shall not be affected and the owning authority
22 shall assume the duties and obligations of the acquired
23 system under any such plan or plans;

24 (f) The owning authority shall provide paid training
25 or retraining programs when necessary; and

26 (g) The authority owning a system, or any of the
27 employees of any system owned by the authority, shall,
28 in the case of any labor dispute relating to the terms

29 and conditions of employment which is not settled through
30 any established grievance procedure, have the right to
31 submit the dispute to final and binding arbitration by a
32 board of arbitration consisting of three arbitrators, one
33 arbitrator to be chosen by the authority, one by the em-
34 ployee and the third to be chosen by the two arbitrators
35 selected by the authority and the employee. A decision
36 of a majority of the members of the board of arbitration
37 shall be final and binding on the parties. The parties shall
38 each pay the arbitrator of its own selection, and they shall
39 jointly pay the third arbitrator and any other expenses
40 connected with submitting such labor dispute to the board
41 of arbitration.

42 In the event any authority acquires a system and (1)
43 leases such acquired system or (2) enters into a man-
44 agement contract for superintendence and management
45 services for the operation of such acquired system pur-
46 suant to any provision of this article, the lease or con-
47 tract shall include terms and provisions insuring the pro-
48 tection specified in this section.

§8-18-22. Conflict of interest.

1 No member of any authority, nor any of its officers,
2 employees, agents or consultants, shall have any interest
3 in any firm, partnership, corporation, company, associa-
4 tion or joint-stock association engaged in the business of
5 providing public transportation in the area encompassed
6 by the authority, or in the manufacture, sale or lease of
7 passenger transportation equipment or facilities. No
8 member of any authority nor any of its officers, employees,
9 agents or consultants shall contract with the authority
10 or be interested in, either directly or indirectly, any con-
11 tract with such authority or in the sale of property,
12 either real or personal, to such authority. The term
13 "agents" as used in this section shall not be deemed for
14 the purposes of this section to include any persons or
15 authorities which lease from or contract for superintend-
16 ence and management services with any authority for the
17 operation, administration, maintenance or repair of any
18 system.

§8-18-23. Competitive bids; publication of solicitations for sealed bids.

1 A purchase of or contract for all supplies, equipment
2 and materials and the construction of facilities by any
3 authority, when the expenditure required exceeds the
4 sum of one thousand dollars, shall be based on competi-
5 tive sealed bids. Such bids shall be obtained by public
6 notice published as Class II legal advertisement in com-
7 pliance with the provisions of article three, chapter fifty-
8 nine of this code and the publication area for such pub-
9 lication shall be the service area of such authority. The
10 last of such notices shall be published at least fourteen
11 days next preceding the final date of submitting bids.
12 The notice may also be published by any other advertising
13 medium such authority may deem advisable. Such au-
14 thority may also solicit sealed bids by sending requests
15 by mail to prospective suppliers and by posting notice on
16 a bulletin board in the office of such authority.

§8-18-24. Bonds made legal investments.

1 Bonds issued under the provisions of this article shall
2 be legal investments for banking institutions, building
3 and loan associations, and insurance companies organized
4 under the laws of this state of their own funds.

§8-18-25. Article constitutes complete authority; liberal construction.

1 This article shall constitute full and complete authority
2 for the creation of any authority and for carrying out the
3 powers and duties of any such authority and for the issu-
4 ance, sale or exchange of revenue bonds by such authority
5 as provided in this article. The provisions of this article
6 shall be liberally construed to accomplish its purpose and
7 no procedure or proceedings, notices, consents or ap-
8 provals shall be required in connection therewith except
9 as may be presented by this article: *Provided*, That all
10 applicable functions, powers, authorities and duties of the
11 public service commission of West Virginia shall remain
12 unaffected except as provided by this article.

§8-18-26. Severability.

1 If any provision of this article or the application thereof

2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the article, and
5 to this end the provisions of this article are declared to
6 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.

1 (a) The Legislature hereby finds that in Gilmer
2 county there is an urgent need for the building, furnish-
3 ing and maintaining of medical facilities and for the
4 attraction of medical personnel; that because of the
5 lack of medical facilities and medical personnel, the
6 students and faculty at Glenville State College, located
7 at Glenville, Gilmer county, are without medical care;
8 that by virtue of the concentration of persons at said
9 Glenville State College, the need for medical facilities
10 and medical personnel is special, individual, unusual
11 and peculiar to Gilmer county; that a nonstock, non-
12 profit corporation, "The Gilmer County Medical Center,
13 Inc.," has been established for the purpose of building,
14 furnishing and maintaining medical facilities and for
15 the purpose of attracting medical personnel to Gilmer

16 county; that said corporation has by contributions from
17 private persons, firms and corporations, acquired land
18 for the erection of medical facilities; that the county
19 court of Gilmer county desires to make contributions
20 to such nonstock, nonprofit corporation so that the land
21 may be used for the building, furnishing and main-
22 taining of medical facilities and for the attraction of
23 medical personnel; and that the support of such non-
24 stock, nonprofit corporation for the general public is
25 for the general welfare of the people of Gilmer county
26 and is a public purpose. This act is enacted in view
27 of these findings and shall be liberally construed in the
28 light thereof.

29 (b) The county court of Gilmer county is hereby
30 authorized and empowered, subject to the provisions
31 and limitations set forth in subsections (c) and (d)
32 of this act, to appropriate funds to the said "The Gilmer
33 County Medical Center, Inc.," for such public purpose,
34 if and only if such corporation (1) remains organized
35 under the laws of this state as a nonstock, nonprofit
36 corporation for the building, furnishing and maintaining
37 of medical facilities and for the attraction of medical
38 personnel, and contains in its charter a provision to
39 the effect that its buildings, furnishings and facilities
40 shall be devoted to the furnishing of medical services
41 to the public, (2) contains in its charter a provision to
42 the effect that no member, trustee or member of the
43 board of directors (by whatever name the same may
44 be called) of the corporation shall receive any com-
45 pensation, gain or profit from such corporation, and
46 (3) is operated in compliance with such charter pro-
47 visions as aforesaid: *Provided*, That such funds may
48 be expended and otherwise utilized only within Gilmer
49 county. In any such case, the county court of Gilmer
50 county and such corporation may agree for the appoint-
51 ment of additional members of the board of directors
52 of such corporation (by whatever name the same may
53 be called) by such county court, either as regular mem-
54 bers or in an ex officio capacity.

55 (c) No funds appropriated by the county court of
56 Gilmer county under the authority of this act shall

57 be disbursed by such nonstock, nonprofit corporation un-
58 less and until the expenditure thereof has been approved
59 by such county court, and such corporation shall upon
60 demand at any time make a full and complete accounting
61 of all such funds to such county court, and shall in every
62 event without demand make to such county court an
63 annual accounting thereof.

64 (d) Under no circumstances whatever shall any action
65 taken by the county court of Gilmer county under the
66 authority of this act give rise to or create any indebted-
67 ness on the part of the county, such county court, any
68 member of the county court or any county official or
69 employee.

70 (e) If any provision of this act or the application
71 thereof to any person or circumstance is held unconstitu-
72 tional or invalid, such unconstitutionality or invalidity
73 shall not affect other provisions or applications of this
74 act, and to this end the provisions of this act are declared
75 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
- 2 his services the sum of sixteen thousand five hundred
- 3 dollars per annum to be paid out of the county treasury
- 4 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
- 2 the sum of fourteen thousand four hundred dollars per
- 3 annum, payable monthly in installments, beginning on
- 4 the first day of July, one thousand nine hundred sixty-

5 nine, which amount shall be provided for and paid by
6 the county court, out of the treasury of Wood county,
7 which provision as to salary shall not repeal the existing
8 provision until the said first day of July, one thousand
9 nine hundred sixty-nine. The county court shall an-
10 nually make provision by appropriate levy and appro-
11 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.

HOUSE CONCURRENT RESOLUTION NO. 18

(By Mrs. Withrow and Mr. Casey)

[Adopted January 31, 1968]

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 Resolution No. 20, adopted regular session, 1967, relating to institutions of higher education;
4. Senate Concurrent Resolution No. 4, adopted regular session, 1965, and continued by Senate Concurrent Resolution No. 20, adopted regular session, 1967, relating to municipal corporation 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 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. Boiarsky 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 established for the prevention of water pollution and for the protection of our streams; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct 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, underground 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 pollution; and, be it

Resolved further, That the Joint Committee on Government and Finance make available for study by members of the Legislature, 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, 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. 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 Correction.

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 Commission of West Virginia in an amount not to exceed eighteen million 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 engineers, 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 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 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

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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column the chapter of acts assigned to it.

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