ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1969
Second Extraordinary Session, 1968
FOREWORD

This volume contains the Acts of the 1969 Regular Session of the 59th Legislature and the 1968 Second Extraordinary Session of the 58th Legislature, and resolutions of general interest adopted by the Legislature during these sessions.

Regular Session, 1969

The 1969 sixty-day session of the 59th Legislature convened on January 8 and expired at midnight, March 8. However, by proclamation of the Governor, the session was extended for the purpose of completing work on the Budget Bill, and final adjournment came on Tuesday, March 11.

A total of 894 bills were introduced during the session—540 House Bills and 354 Senate Bills. The Legislature passed 166 bills—70 House Bills and 96 Senate Bills. Of the 166 enactments, the Governor approved 162 and vetoed 4. The bills vetoed were H. B. No. 569 (filling vacancies in candidacies for nomination for public offices), H. B. No. 903 (creating a special revolving fund for construction and renovation of mental health facilities), S. B. No. 118 (amending and reenacting the horse racing law), and S. B. No. 139 (surface mine safety inspections and appointment and qualifications, etc., of supervisor and inspectors).

There were 82 concurrent resolutions introduced in the two Houses during the session—48 House Concurrent and 34 Senate Concurrent, of which 16 House and 14 Senate were adopted. Twenty-one House Joint and 16 Senate Joint Resolutions were introduced, all proposing amendments to the State Constitution. Only two were adopted by the Legislature, H. J. R. No. 7 (providing for voting on amendments to the Constitution at special elections) and H. J. R. No. 16 (eligibility to seat in Legislature, time and place of assembly of Legislature, length of sessions, compensation and expenses of members, etc.). The House had 28 House Resolutions and the Senate had 16 Senate Resolutions, of which 19 House and 13 Senate were adopted.

The Senate failed to pass 81 House Bills, passed by the House, and 45 Senate Bills passed by that body, failed to be passed by the House. One Senate Bill (S. B. No. 13), relating to filing deadline in primary elections, died in Conference.
Second Extraordinary Session, 1968

This session was convened by the Governor on September 11, 1968, and adjourned sine die September 14, 1968. The proclamation of the Governor set forth 15 items of business for consideration by the Legislature. By acts and resolutions the Legislature put into effect legislation embracing 11 of the items included in the proclamation.

During the session, a total of 31 bills were introduced—15 House Bills and 16 Senate Bills. The Legislature passed five House Bills and five Senate Bills. All the enactments were approved by the Governor.

There were three House Concurrent and nine House Resolutions offered during the session, of which two concurrent and all the House Resolutions were adopted. The Senate had four Senate Concurrent Resolutions and eight Senate Resolutions, three concurrent and all the Senate Resolutions being adopted.

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

C. A. BLANKENSHIP, Clerk

House of Delegates
# TABLE OF CONTENTS

## ACTS AND RESOLUTIONS

Regular Session, 1969

### GENERAL LAWS

#### AGRICULTURE

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interagency Pesticide Committee Act</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>West Virginia Apiary Law of 1969</td>
<td>4</td>
</tr>
</tbody>
</table>

#### AIR POLLUTION

| 3   | Ohio-West Virginia Interstate Compact on Air Pollution | 12 |

#### AIRPORTS

| 4   | State Financial Assistance for County, Municipal and Regional Airports | 25 |

#### APPEAL AND ERROR

| 5   | Writs of Error to Judgment of Courts of Limited Jurisdiction Quashing Indictments | 26 |

#### APPROPRIATIONS

| 6   | General Appropriations (Budget Bill) | 28 |

#### BANKING INSTITUTIONS

| 7   | West Virginia Banking Code | 91 |

#### BEER

| 8   | Classes of Nonintoxicating Beer Dealers Licenses, License Fees, and Unlawful Acts of Licensees | 190 |
| 9   | Prohibiting Discrimination as to Price, etc., Between Distributors of Beer, Ale or Other Malt Beverages, and Requiring Filing of Dock Price and Other Information With Beer Commissioner | 196 |

#### BENEVOLENT INSTITUTIONS

| 10  | Establishment and Management of Hopemont State Hospital and Patients Eligible for Admission Thereto | 197 |

#### BOARD OF INVESTMENTS

| 11  | Postaudit of West Virginia State Board of Investments | 198 |
| 12  | Revenue Bond Refunding Act | 199 |
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>BUDGET</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>Preparation of Budget Bill, Budget Document, Estimation of Revenue and Other Statements, Reports, etc., and Administration of State Revenue and Appropriations</td>
<td>210</td>
</tr>
</tbody>
</table>

### BUILDING AND LOAN ASSOCIATIONS

| Chapter | Authority of Building and Loan Associations to Accept Savings Accounts and Pay Dividends | 244  |

### BUILDING COMMISSION

| Chapter | Powers of the State Building Commission, Including Acquisition of Real Property by Eminent Domain | 246  |

### CLAIMS AGAINST THE STATE

| Chapter | Finding and Declaring Certain Claims Against the State to Be Moral Obligations and Directing Payment Thereof | 248  |
| Chapter | Payment of Interest by the State When Payments on Public Construction Contracts are Delayed | 252  |

### CLOUD SEEDING

| Chapter | Weather Modification and Control by Artificial Methods | 255  |

### CORPORATIONS

| Chapter | Consolidation or Merger of Domestic Corporations | 263  |
| Chapter | Service of Process on Corporations | 269  |

### CORRECTIONAL INSTITUTIONS

| Chapter | Repealing Statutes Establishing West Virginia Colored Orphans Home, Industrial Home for Colored Boys and Industrial Home for Colored Girls | 272  |
| Chapter | Repealing Statute Relating to Binding Out Girls Committed to the State Industrial Home for Girls as Apprentices and to Minors as Apprentices | 273  |

### COUNTY COURTS AND COUNTY OFFICERS

| Chapter | Rewards for the Apprehension of Persons Charged With a Crime and Expenditure of Funds for Detection of Crime | 274  |
| Chapter | Employment of Counsel for County Courts | 276  |
| Chapter | Group Insurance for County Employees and Officers | 276  |
| Chapter | Appointment and Salaries of Assistants and Stenographers for Prosecuting Attorneys in Certain Counties | 278  |
| Chapter | County Parks and Recreation Commission | 282  |

### COURTS AND THEIR OFFICERS

| Chapter | Salaries of Circuit Judges | 287  |
| Chapter | Mileage and Expenses of Judges | 288  |
| Chapter | Allowances to Circuit Judges for Stationery, Postage and Stenographic Help | 289  |
| Chapter | Terms of Court for the Tenth Judicial Circuit | 290  |
| Chapter | Terms of Court for the Thirtieth Judicial Circuit | 291  |
| Chapter | Transcripts of Official Court Reporters and Fees Therefor | 292  |

### CRIMES AND OFFENSES

| Chapter | Exclusion of Certain Evidence in Prosecutions for Statutory Rape | 293  |
| Chapter | Penalties for Fraudulent Use of Credit Cards or Other Fraudulent Means | 294  |
# Table of Contents

## Crimes and Offenses—(Cont’d)

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>36. Removal, Injury or Destruction of Property, or Monuments Designating Land Boundaries and Penalties Therefor</td>
<td>296</td>
</tr>
<tr>
<td>37. Suppression and Control of Riots and Unlawful Assemblies</td>
<td>297</td>
</tr>
<tr>
<td>38. Penalty for False Reports Concerning Bombs or Other Explosive Devices</td>
<td>301</td>
</tr>
<tr>
<td>39. Unlawful Camping or Construction of Shelter Accommodations Upon Government Grounds or Lawns</td>
<td>302</td>
</tr>
<tr>
<td>40. Maintaining Open Water Wells</td>
<td>303</td>
</tr>
<tr>
<td>41. Venue of Offenses Committed in More Than One County</td>
<td>304</td>
</tr>
</tbody>
</table>

## Dangerous Weapons

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>42. Authority of Sheriffs and Certain Regularly Appointed Officers and Deputies to Carry Dangerous Weapons</td>
<td>305</td>
</tr>
</tbody>
</table>

## Department of Public Safety

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>43. Location of Departmental Headquarters, Maintenance of Criminal Identification Bureau and Procedures in Reporting and Recording Criminal Information</td>
<td>306</td>
</tr>
<tr>
<td>44. Salaries of Members of Department of Public Safety</td>
<td>310</td>
</tr>
<tr>
<td>45. Powers of Superintendent, Officers and Members of Department of Public Safety, Including Authority to Take Acknowledgments to Affidavits on Certain Applications for Permits and Licenses</td>
<td>312</td>
</tr>
<tr>
<td>46. Payment of Counsel Fees in Proceedings for Criminal Charges Brought Against Members of the Department Arising from Actions in Line of Duty</td>
<td>315</td>
</tr>
<tr>
<td>47. Communication Systems for Department of Public Safety</td>
<td>316</td>
</tr>
</tbody>
</table>

## Domestic Relations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>48. Marriage and Licensing Procedures</td>
<td>318</td>
</tr>
<tr>
<td>49. Divorce, Annulment and Separate Maintenance</td>
<td>325</td>
</tr>
<tr>
<td>50. Property, Rights and Liability of Married Women; Procedures for Adoption and Change of Name, and Maintenance of Illegitimate Children</td>
<td>342</td>
</tr>
<tr>
<td>51. Actions and Recovery by Married Women for Loss of Consortium</td>
<td>354</td>
</tr>
</tbody>
</table>

## Elections

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>52. Establishment of Voting Precincts and Providing for Precinct Maps</td>
<td>354</td>
</tr>
<tr>
<td>53. Challenge and Cancellation of Voter’s Registration</td>
<td>355</td>
</tr>
<tr>
<td>54. Mailing Ballots to Absent Voters and Voting in Office of Circuit Clerk</td>
<td>357</td>
</tr>
<tr>
<td>55. Electronic Voting Systems</td>
<td>359</td>
</tr>
</tbody>
</table>

## Estates in Property

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>56. Abolishing Doctrine of Worthier Title and Rule of Law that Grantor Cannot Create a Limitation in Favor of His Own Heirs or Next of Kin</td>
<td>388</td>
</tr>
</tbody>
</table>

## Fiduciaries

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>57. Securities in which Fiduciaries May Invest Trust Funds</td>
<td>389</td>
</tr>
</tbody>
</table>

## Florence Crittenden Home

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>58. Removing Reference to Florence Crittenden Home at Elm Grove from Statute</td>
<td>393</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## FRATERNAL ORGANIZATIONS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>59.</td>
<td>Disposition of Property of Subordinate Lodges of Certain Fraternal Organizations</td>
<td>399</td>
</tr>
</tbody>
</table>

## HEALTH

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.</td>
<td>Establishment and Operation of Family Planning and Child Spacing Clinics</td>
<td>400</td>
</tr>
<tr>
<td>61.</td>
<td>Vital Statistics</td>
<td>401</td>
</tr>
</tbody>
</table>

## HUMAN RIGHTS COMMISSION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62.</td>
<td>Exempting Certain Records Under the West Virginia Human Rights Act</td>
<td>428</td>
</tr>
</tbody>
</table>

## INDUSTRIAL DEVELOPMENT

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.</td>
<td>Industrial Development Bond Act and Industrial Development Authority</td>
<td>429</td>
</tr>
</tbody>
</table>

## INSURANCE

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>64.</td>
<td>Capital and Surplus Requirements of Insurers</td>
<td>434</td>
</tr>
<tr>
<td>65.</td>
<td>Expiration and Renewal of Licenses of Insurers</td>
<td>436</td>
</tr>
<tr>
<td>66.</td>
<td>Principal Place of Business of Domestic Insurers</td>
<td>437</td>
</tr>
<tr>
<td>67.</td>
<td>Reserves for Accident and Sickness Insurance</td>
<td>437</td>
</tr>
<tr>
<td>68.</td>
<td>Expiration of Licenses of Agents, Solicitors, Brokers and Excess Line Brokers</td>
<td>438</td>
</tr>
<tr>
<td>69.</td>
<td>Limitation on Amount of Group Life Insurance</td>
<td>439</td>
</tr>
<tr>
<td>70.</td>
<td>Assignment of Incidents of Ownership in Group Life Policies</td>
<td>440</td>
</tr>
<tr>
<td>71.</td>
<td>Participation by Hospitals, Physicians, Dentists and Chiroprists-Podiatrists in Hospital Service Corporations</td>
<td>441</td>
</tr>
</tbody>
</table>

## INTOXICATING LIQUORS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>72.</td>
<td>Price Increase of Intoxicating Liquors to Provide Funds for Treatment and Rehabilitation of Alcoholics</td>
<td>442</td>
</tr>
</tbody>
</table>

## JAIL IMPROVEMENT FUND

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>73.</td>
<td>Use of Justice and Constable Fees for Establishment of a Jail Improvement Fund</td>
<td>443</td>
</tr>
</tbody>
</table>

## MENTALLY ILL

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>74.</td>
<td>Readmission of Mental Patients to Hospital</td>
<td>445</td>
</tr>
</tbody>
</table>

## MINES AND MINERALS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>75.</td>
<td>Mine Safety and Salaries of Mine Safety Personnel</td>
<td>446</td>
</tr>
<tr>
<td>76.</td>
<td>Regulation of Oil, Gas and Other Wells in Prevention of Water Pollution</td>
<td>480</td>
</tr>
<tr>
<td>77.</td>
<td>Qualifications of Deputy Director of Oil and Gas, Department of Mines</td>
<td>514</td>
</tr>
<tr>
<td>78.</td>
<td>Qualifications, Salary and Expenses of Oil and Gas Inspectors</td>
<td>514</td>
</tr>
</tbody>
</table>

## MONEY AND INTEREST

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>79.</td>
<td>Permissible Interest Charges on Loans Repayable in Installments</td>
<td>518</td>
</tr>
</tbody>
</table>
# Table of Contents

## Motor Vehicles

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>80. Registration Plates for State, County, Municipal and Other Governmental Vehicles</td>
<td>519</td>
</tr>
<tr>
<td>81. Validity of Lien Recorded on Motor Vehicle Titles</td>
<td>521</td>
</tr>
<tr>
<td>82. Special Stickers for Moving House Trailers</td>
<td>522</td>
</tr>
<tr>
<td>83. Revocation of Junior Motor Vehicle License</td>
<td>524</td>
</tr>
<tr>
<td>84. Expiration of Motor Vehicle Operator's License, Including Licenses of Members of the Armed Forces</td>
<td>526</td>
</tr>
<tr>
<td>85. Motor Vehicle Inspection Fees</td>
<td>528</td>
</tr>
</tbody>
</table>

## Municipalities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>86. Municipal Code of West Virginia</td>
<td>530</td>
</tr>
</tbody>
</table>

## Natural Resources

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>87. Black Bear as Game Animal, Game Fish, and Hunting and Fishing Licenses for College and University Students</td>
<td>951</td>
</tr>
<tr>
<td>88. Establishing Wildlife Resources Division of Department of Natural Resources and Declaring Policy as to Wildlife Resources</td>
<td>959</td>
</tr>
<tr>
<td>89. Unlawful Methods of Hunting and Fishing</td>
<td>960</td>
</tr>
<tr>
<td>90. Hunting, Trapping and Fishing on Lands of Another</td>
<td>966</td>
</tr>
<tr>
<td>91. Necessity for Hunting and Fishing Licenses</td>
<td>967</td>
</tr>
<tr>
<td>92. Refusal to Issue or Revocation of Hunting and Fishing Licenses and Permits, and Unlawful Shooting by Persons Hunting</td>
<td>968</td>
</tr>
<tr>
<td>93. Permits to Hold Field Trial, Water Race or Wild Hunt</td>
<td>971</td>
</tr>
<tr>
<td>94. Licenses to Take Fish and Mussels for Commercial Purposes</td>
<td>972</td>
</tr>
<tr>
<td>95. Forest Fire Seasons and Control of Forest Fires</td>
<td>973</td>
</tr>
<tr>
<td>96. Water Pollution Control</td>
<td>977</td>
</tr>
<tr>
<td>97. Natural Streams Preservation Act</td>
<td>1008</td>
</tr>
</tbody>
</table>

## Nursing Homes

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>98. Powers and Duties of Nursing Home Licensing Board, and Registration, Licensing, etc., of Nursing Home Administrators</td>
<td>1022</td>
</tr>
</tbody>
</table>

## Partition Fences

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>99. Land Owners to Share in Cost of Building and Repairing Partition Fences</td>
<td>1034</td>
</tr>
</tbody>
</table>

## Personnel, State Department of

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>100. Repealing Law Creating Department of Personnel</td>
<td>1035</td>
</tr>
</tbody>
</table>

## Pleading and Practice

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>101. Abolishing Civil Actions for Breach of Promise to Marry and Alienation of Affections</td>
<td>1036</td>
</tr>
</tbody>
</table>

## Pool Rooms

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>102. Prohibiting Persons Under 18 Years of Age from Playing at Billiard, Pool, Bagatelle, etc., Tables in Establishments where Intoxicating Liquor or Beer is Sold or to Remain in Room where such Tables are Located</td>
<td>1036</td>
</tr>
</tbody>
</table>

## Professions and Occupations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>103. Regulation of the Practice of Dentistry and Dental Hygiene</td>
<td>1037</td>
</tr>
<tr>
<td>104. Licensing of Foreign Medical School Graduates</td>
<td>1049</td>
</tr>
</tbody>
</table>
## Table of Contents

**PROFESSIONS AND OCCUPATIONS—(Cont’d)**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>105. Pharmacists and Drugstores</td>
<td>1053</td>
</tr>
<tr>
<td>106. Embalmers and Funeral Directors</td>
<td>1056</td>
</tr>
<tr>
<td>107. Creating Board of Land Surveyors and Prescribing its Powers and Duties</td>
<td>1071</td>
</tr>
</tbody>
</table>

**PUBLICATIONS**

108. Changing Notice of Sale Under Judicial Proceeding from Class III-O Legal Advertisement to Class III | 1085 |

**PUBLIC BUILDINGS AND FACILITIES**

109. Public Buildings and Facilities to be Constructed so as to be Accessible and Usable by Physically Handicapped | 1086 |

**PUBLIC EMPLOYEES RETIREMENT SYSTEM**

110. Board of Trustees of Public Employees Retirement System | 1090 |
111. Service Credit of Public Employees | 1091 |
112. Reemployment of Public Employees after Retirement | 1092 |

**PUBLIC LIBRARIES**

113. Cash Grants by the State to Public, School, County and Regional Libraries | 1093 |

**PUBLIC OFFICES**

114. Postaudits of Local Public Officers or Agencies | 1094 |

**PUBLIC SERVICE COMMISSION**

115. Special License Fees Paid by Public Utilities | 1096 |
116. Authority of Public Service Commission to Prescribe and Enforce Safety Standards for Pipeline Facilities | 1098 |

**PURCHASES**

117. Citizens Hearing Committee | 1107 |
118. Bidding on Purchases by the State | 1109 |
119. Powers and Duties Exercised by Director of Purchases Subject to Approval by Commissioner of Finance and Administration | 1110 |

**RELIGIOUS ORGANIZATIONS**

120. Trustees of Property of Churches and Religious Organizations | 1111 |

**ROADS AND HIGHWAYS**

121. Assistance to Persons Dislocated by Highway Construction | 1112 |
122. Erection of Signs Along Interstate Highways | 1115 |
123. Acquisition of West Virginia Turnpike by State Road Commission | 1116 |
124. Interest Rates on $20 Million Road Bond Issue to be Sold During Fiscal Year Ending June 30, 1969 | 1121 |
125. Issuance and Sale of $20 Million Road Bond Issue During Fiscal Year Ending June 30, 1970 | 1122 |
126. Issuance and Sale of $70 Million of Bonds During Fiscal Year Ending June 30, 1970, Under the Authority of the Road Development Amendment | 1130 |
# TABLE OF CONTENTS

## SALARIES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>127. Salaries of Elective State Officers and Superintendent of Free Schools</td>
<td>1137</td>
</tr>
<tr>
<td>128. Appointment, Terms and Salaries of State Officials Appointed by the Governor</td>
<td>1138</td>
</tr>
</tbody>
</table>

## SCHOOLS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>129. Operation of Centers to Provide for Training of Teachers</td>
<td>1140</td>
</tr>
<tr>
<td>130. West Virginia Board of Regents</td>
<td>1142</td>
</tr>
<tr>
<td>131. Compensation of Members of County Boards of Education and Limitation on Annual Meetings</td>
<td>1153</td>
</tr>
<tr>
<td>132. Maintenance of Membership in Teachers Retirement System</td>
<td>1155</td>
</tr>
<tr>
<td>133. Contributions by Members of Teachers Retirement System</td>
<td>1157</td>
</tr>
<tr>
<td>134. Supplemental Benefits for Certain Annuitants Under the Teachers Retirement System</td>
<td>1161</td>
</tr>
<tr>
<td>135. Vocational Rehabilitation</td>
<td>1162</td>
</tr>
<tr>
<td>136. Interstate Compact on Qualifications of Educational Personnel</td>
<td>1170</td>
</tr>
<tr>
<td>137. Special Schools and Teaching Services for Exceptional Children</td>
<td>1176</td>
</tr>
<tr>
<td>138. Special Student Loan Trust Fund Account</td>
<td>1178</td>
</tr>
<tr>
<td>139. Administration and Management of State Institutions of Higher Education</td>
<td>1179</td>
</tr>
<tr>
<td>140. Employment, Training, Certification, Licensing, Salaries, Wages, etc., of School Personnel</td>
<td>1215</td>
</tr>
<tr>
<td>141. Fees and Other Money Collected at State Institutions of Higher Education</td>
<td>1239</td>
</tr>
</tbody>
</table>

## STATE GUARD

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>142. Organization and Maintenance of West Virginia State Guard</td>
<td>1244</td>
</tr>
</tbody>
</table>

## TAXATION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>143. Definitions and Exemptions Under Consumers Sales and Service Tax Law</td>
<td>1245</td>
</tr>
<tr>
<td>144. Definitions and Exemptions Under Use Tax Law</td>
<td>1251</td>
</tr>
<tr>
<td>145. Licensing of Wholesale Cigarette Dealers</td>
<td>1255</td>
</tr>
<tr>
<td>146. Credit Against Personal Income Tax</td>
<td>1256</td>
</tr>
<tr>
<td>147. Meaning of Terms Used in Personal Income Tax Law</td>
<td>1258</td>
</tr>
</tbody>
</table>

## UNFAIR TRADE PRACTICES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>148. Unsolicited Goods</td>
<td>1259</td>
</tr>
</tbody>
</table>

## UNIFORM COMMERCIAL CODE

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>149. Filings to Protect Security Interest</td>
<td>1260</td>
</tr>
</tbody>
</table>

## WHITE CANE LAW

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>150. Protection of Rights and Safety of Blind Persons</td>
<td>1263</td>
</tr>
</tbody>
</table>

## WITNESSES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>151. Power of Legislative Committee or Commission to Compel Witness to give Evidence Against Himself and Grant Immunity from Prosecutions to such Witness</td>
<td>1266</td>
</tr>
</tbody>
</table>

## WORKMEN'S COMPENSATION

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>152. Disability and Death Benefits for Compensable Injuries and Diseases, Including Pneumoconiosis</td>
<td>1267</td>
</tr>
</tbody>
</table>
# Table of Contents

## Local Laws

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>153. Authority of County Court of Berkeley County to Expend Funds for Berkeley County Bicentennial Celebration</td>
<td>1296</td>
</tr>
<tr>
<td>154. Domestic Relations Court of Cabell County</td>
<td>1297</td>
</tr>
<tr>
<td>155. Hancock County Children's Home</td>
<td>1300</td>
</tr>
<tr>
<td>156. Salary of Law Assistant to Judge of the Circuit Court of Kanawha County</td>
<td>1305</td>
</tr>
<tr>
<td>157. Official Court Reporters for Intermediate Court of Kanawha County</td>
<td>1306</td>
</tr>
<tr>
<td>158. Marion County Library</td>
<td>1307</td>
</tr>
<tr>
<td>159. Salary of Secretary to the Judge and Juvenile Probation Officer of the Common Pleas Court of Marshall County</td>
<td>1308</td>
</tr>
<tr>
<td>160. Mason County 4-H and Youth Camp</td>
<td>1309</td>
</tr>
<tr>
<td>161. Raleigh County Public Library</td>
<td>1311</td>
</tr>
<tr>
<td>162. Transfer of Funds by Wyoming County Board of Education</td>
<td>1315</td>
</tr>
</tbody>
</table>

## Resolutions

(Only resolutions of general interest, adopted during the session, are listed.)

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Commending Mrs. Mary Alice Smith on Beautification and Improvement of the Governor's Mansion</td>
<td>1317</td>
</tr>
<tr>
<td>23. Creating a Citizens Advisory Commission on the Legislature</td>
<td>1319</td>
</tr>
<tr>
<td>33. Expressing Appreciation to Mrs. Ethel Witherspoon Alexander and the Trustees of the Alexander Foundation for Gifts to Concord College</td>
<td>1324</td>
</tr>
<tr>
<td>35. Authorizing the Expenditure of $50,000 for Plans and Cost Estimates of Phase Three and Phase Four in the State Capitol Master Plan</td>
<td>1326</td>
</tr>
<tr>
<td>38. Approving Issuance of Not to Exceed $5 Million in Revenue Bonds by the State Building Commission for Hospital Buildings and Facilities Under Jurisdiction of the Department of Mental Health</td>
<td>1327</td>
</tr>
<tr>
<td>10. Memorializing the President and the Congress to Provide Funds for Reclamation of Orphan Lands Resulting from Unregulated Strip Mining</td>
<td>1338</td>
</tr>
<tr>
<td>28. Appointment of Legislative Members of the Commission on Education Under the Compact for Education</td>
<td>1348</td>
</tr>
<tr>
<td>Authorizing and Continuing Studies by the Joint Committee on Government and Finance</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20. State Aid to Nonpublic Schools and Institutions of Higher Learning</td>
<td>1318</td>
</tr>
<tr>
<td>25. Hospital Costs</td>
<td>1322</td>
</tr>
<tr>
<td>31. Financial Needs of the State and a Program of Taxation</td>
<td>1323</td>
</tr>
<tr>
<td>41. Office of Economic Opportunity, Including Such Programs as VISTA, Headstart, etc.</td>
<td>1328</td>
</tr>
<tr>
<td>42. Real Property Leasing Practices of the State</td>
<td>1329</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Consulting Service Contracts and Honorariums</td>
<td>1336</td>
</tr>
<tr>
<td>9. Management, Organization, Powers, Duties and Responsibilities of the State Road Commission</td>
<td>1337</td>
</tr>
</tbody>
</table>
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SENATE</strong></td>
<td></td>
</tr>
<tr>
<td>17. Relocation of West Virginia University Kanawha Valley Graduate Center</td>
<td>1340</td>
</tr>
<tr>
<td>18. Establishment and Maintenance Standards for Privately Operated Schools</td>
<td>1341</td>
</tr>
<tr>
<td>19. Revenue Bond Financing</td>
<td>1342</td>
</tr>
<tr>
<td>22. Department of Mental Health and Office of Commissioner of Public Institutions, Institutions Thereunder and Programs</td>
<td>1344</td>
</tr>
<tr>
<td>27. Uniform Consumer Credit Code, and Consumer Credit Generally</td>
<td>1347</td>
</tr>
<tr>
<td>29. County Employees and Salaries Thereof</td>
<td>1348</td>
</tr>
<tr>
<td>33. Garbage and Rubbish Disposal</td>
<td>1350</td>
</tr>
</tbody>
</table>

**JOINT**

Proposing Amendments to the State Constitution

**HOUSE**

<table>
<thead>
<tr>
<th>Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Amending Section 2, Article XIV, Providing for Voting on Amendments to the Constitution at Special Elections</td>
<td>1330</td>
</tr>
<tr>
<td>16. Amending Sections 13, 18, 22, 24 and 33, Article VI, and Sections 14 and 15, Article VII, Relating to Eligibility to Seat in Legislature, Time and Place of Assembly of Legislature, Length of Sessions, Compensation and Expenses of Members, Presentation of Bills to Governor and Governor’s Approval or Disapproval of Bills</td>
<td>1331</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

Second Extraordinary Session, 1968

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>GENERAL LAWS</strong></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Supplementary Appropriations of Public Money</td>
<td>1353</td>
</tr>
<tr>
<td>2.</td>
<td>Terms of Court for the Thirty-first Judicial Circuit</td>
<td>1359</td>
</tr>
<tr>
<td>3.</td>
<td>Community Action Agencies</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Establishment and Operation of Work Incentive Program by Department of Employment Security</td>
<td>1361</td>
</tr>
<tr>
<td>5.</td>
<td>West Virginia Housing Development Fund Act</td>
<td>1362</td>
</tr>
<tr>
<td>6.</td>
<td>Legal Rates of Interest</td>
<td>1381</td>
</tr>
<tr>
<td>7.</td>
<td>Usury and the Penalties and Forfeitures Therefor</td>
<td>1382</td>
</tr>
<tr>
<td>8.</td>
<td>West Virginia Turnpike Commission</td>
<td>1383</td>
</tr>
<tr>
<td>9.</td>
<td>Authority of Commissioner of Welfare to Transfer Funds for Participation in Work Incentive Program</td>
<td>1388</td>
</tr>
<tr>
<td>10.</td>
<td>Authority of Workmen's Compensation Commissioner to Establish Schedule of Maximum Amounts to be Paid Out of the Workmen's Compensation Fund for Medical, Surgical, Dental and Hospital Treatment, and for Mechanical Appliances and Devices</td>
<td>1389</td>
</tr>
<tr>
<td></td>
<td><strong>RESOLUTION</strong></td>
<td></td>
</tr>
</tbody>
</table>
# LEGISLATURE OF WEST VIRGINIA
## MEMBERS AND OFFICERS

### SENATE

#### FIFTY-NINTH LEGISLATURE

**OFFICERS**

- **President**—Lloyd G. Jackson, Hamlin
- **President Pro Tempore**—C. H. McKown, Wayne
- **Clerk**—J. Howard Myers, Martinsburg
- **Sergeant at Arms**—John E. Howell, Charleston
- **Doorkeeper**—Brent Monroe, Summersville

<table>
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<tr>
<td>Fifth</td>
<td>C. H. McKown (D)</td>
<td>Wayne</td>
</tr>
<tr>
<td></td>
<td>Lyle A. Smith (D)</td>
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<tr>
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<tr>
<td></td>
<td>Noah E. Floyd (D)</td>
<td>Williamson</td>
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<tr>
<td>Seventh</td>
<td>Lloyd G. Jackson (D)</td>
<td>Hamlin</td>
</tr>
<tr>
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</tr>
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<td>Charleston</td>
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<tr>
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<td>John T. Poffenbarger (R)</td>
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</tr>
<tr>
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<td>Beckley</td>
</tr>
<tr>
<td></td>
<td>Tracy W. Hylton (D)</td>
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</tr>
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<td>Tenth</td>
<td>R. E. Barnett (D)</td>
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</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Eleventh</td>
<td>John H. Bowling, Jr. (D)</td>
<td>White Sul. Springs</td>
</tr>
<tr>
<td></td>
<td>Robert K. Holliday (D)</td>
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</tr>
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<td>Twelfth</td>
<td>Carl E. Gainer (D)</td>
<td>Richwood</td>
</tr>
<tr>
<td></td>
<td>E. Hans McCourt (D)</td>
<td>Webster Springs</td>
</tr>
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<td>Thirteenth</td>
<td>Walter A. Holden (D)</td>
<td>Clarksburg</td>
</tr>
<tr>
<td></td>
<td>Wm. R. Sharpe, Jr. (D)</td>
<td>Weston</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>O. G. Hedrick (D)</td>
<td>Fairmont</td>
</tr>
<tr>
<td></td>
<td>William A. Moreland (D)</td>
<td>Morgantown</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>J. Kenton Lambert (R)</td>
<td>Parsons</td>
</tr>
<tr>
<td></td>
<td>Dallas Wolfe (R)</td>
<td>Rowlesburg</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>Clarence E. Martin, Jr. (D)</td>
<td>Martinsburg</td>
</tr>
<tr>
<td></td>
<td>John I. Rogers (R)</td>
<td>Keyser</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>W. T. Brotherton, Jr. (D)</td>
<td>Charleston</td>
</tr>
<tr>
<td></td>
<td>Neal A. Kinsolving (R)</td>
<td>Charleston</td>
</tr>
</tbody>
</table>

(D) Democrats 22
(R) Republicans 12

Total 34

(*;) Senators elected in 1968.

(1) Appointed February 28, 1969, to fill vacancy caused by the resignation of Jack L. Miller.
# HOUSE OF DELEGATES

## OFFICERS

*Speaker*—Ivor F. Boiarsky, Charleston  
*Clerk*—C. A. Blankenship, Pineville  
*Sergeant at Arms*—Oce W. Smith, Jr., Barrackville  
*Doorkeeper*—Mike Casey, Huntington

<table>
<thead>
<tr>
<th>County or District</th>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barbour</td>
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<tr>
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</tr>
<tr>
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1 Resigned March 8, 1969.  
2 Resigned February 24, 1969.
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(D) Democrats _________ 63
(R) Republicans _________ 37
Total _________ 100
STANDING COMMITTEES OF THE SENATE

AGRICULTURE
Bowling (Chairman), Gainer (Vice Chairman), Crawford, Hedrick, Holden, Holliday, McKown, Smith (of Logan), Burk, Lambert and Rogers.

EDUCATION
McKown (Chairman), Holden (Vice Chairman), Barnett, Crawford, Floyd, Holliday, McCourt, Palumbo, Sharpe, Tompos, Carrigan, Deem, Hubbard, Lambert and Poffenbarger.

ELECTIONS
Floyd (Chairman), Holden (Vice Chairman), Bowling, Fanning, McKown, Palumbo, Sawyers, Tompos, Kinsolving, Knapp and Rogers.

FINANCE
McCourt (Chairman), Smith (of Cabell) (Vice Chairman), Barnett, Bowling, Floyd, Hedrick, Holden, Holliday, Hylton, Moreland, Sharpe, Smith (of Logan), Bowers, Deem, Kinsolving, Lambert, Rogers and Wolfe.

HEALTH
Holden (Chairman), Sharpe (Vice Chairman), Brotherton, Fanning, Holliday, Moreland, Knapp, Burk and Rogers.

INSURANCE AND CORPORATIONS
Smith (of Cabell) (Chairman), McKown (Vice Chairman), Barnett, Crawford, Floyd, Hylton, Martin, Palumbo, Burk, Carrigan, Hubbard and Poffenbarger.

INTERSTATE COOPERATION
Gainer (Chairman), McKown (Vice Chairman), Floyd, Sharpe, Smith (of Cabell), Hubbard and Knapp.

JUDICIARY
Brotherton (Chairman), Martin (Vice Chairman), Barnett, Crawford, Gainer, Fanning, Hedrick, McKown, Moreland, Palumbo, Sawyers, Tompos, Burk, Carrigan, Hubbard, Knapp, Poffenbarger and Sayre.

LABOR
Tompos (Chairman), Hedrick (Vice Chairman), Crawford, Floyd, Sawyers, Sharpe, Bowers, Knapp and Wolfe.

LOCAL GOVERNMENT
Sawyers (Chairman), Holden (Vice Chairman), Fanning, Moreland, Smith (of Logan), Deem, Kinsolving, Poffenbarger and Rogers.

[ xviii ]
MILITARY

Hedrick (Chairman), Sawyers (Vice Chairman), Gainer, Sharpe, Smith (of Cabell), Smith (of Logan), Lambert, Kinsolving and Rogers.

MINES AND MINING

Hedrick (Chairman), Hylton (Vice Chairman), Brotherton, Fanning, Gainer, Holden, Smith (of Logan), Bowers and Deem.

NATURAL RESOURCES

Gainer (Chairman), Fanning (Vice Chairman), Barnett, Bowling, Hedrick, Hylton, McCourt, Moreland, Palumbo, Smith (of Cabell), Smith (of Logan), Deem, Lambert, Poffenbarger and Sayre.

PUBLIC INSTITUTIONS

Sharpe (Chairman), Holliday (Vice Chairman), Barnett, Crawford, Floyd, Hylton, Smith (of Logan), Tompos, Deem, Knapp and Poffenbarger.

RULES

Jackson (Chairman ex officio), Brotherton, Martin, McCourt, McKown, Smith (of Cabell), Carrigan, Hubbard and Wolfe.

TRANSPORTATION

Barnett (Chairman), Crawford (Vice Chairman), Brotherton, Bowling, Gainer, Hedrick, Hylton, Martin, Moreland, Palumbo, Sawyers, Sharpe, Smith (of Cabell), Bowers, Deem, Hubbard Poffenbarger and Wolfe.

JOINT COMMITTEES

ENROLLED BILLS

Tompos (Chairman), Holliday, Palumbo, Kinsolving and Sayre.

GOVERNMENT AND FINANCE

Jackson (President), Barnett, Brotherton, Martin, McCourt, Carrigan and Wolfe.

JOINT RULES

Jackson (President), Martin and Carrigan.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
(As of March 11, 1969)

AGRICULTURE AND NATURAL RESOURCES

Hawse (Chairman), Queen (Vice Chairman), Belknap, Bowman, Brenda, Burke, Edgar, Flanagan, Gibson, Goodwin, Maple, Parker, Perry, Savilla, Withrow, Wooten, Butcher, Davison, Files, Keesecker, Kyle, Mulneix, Ours, Polen and Wilson.

Subcommittee Chairmen
Agriculture—Mr. Edgar
Game & Fish—Mr. Bowman
Natural Resources—Mr. Goodwin

BANKING AND INSURANCE

Hill (Chairman), Hager (of Lincoln) (Vice Chairman), Bowman, Cookman, Frazer, Gibson, Hager (of Logan), Hawse, Hicks, Laulis, Myles, Savilla, Shiflet, Stacy, Wanstreet, Watson, Halbritter, Harman (of Taylor), Nicely, Powell (of Wetzel), Romine, Stamp, Wilson and Zakaib.

Subcommittee Chairmen
Banking—Mr. Bowman
Insurance—Mr. Cookman

CONSTITUTIONAL REVISION

Myles (Chairman), Galperin (Vice Chairman), Auvil, Christian, Dinsmore, Flanagan, Hill, Hoard, Huffman, Laulis, Lister, Matney, Shiflet, Sommerville, Watson, Wooten, Files, Jones (of Kanawha), Jones (of Roane), Mulneix, Poling, Potter, Rogers, Smirl and Stamp.

EDUCATION

Lohr (Chairman), Church (Vice Chairman), Auvil, Ball, Davidson (of Wayne), Davidson (of Wyoming), Goodwin, Hager (of Logan), Hoard, Loop, Maple, Rutledge, Simpkins, Stacy, Thornhill, Toney, Harman (of Mineral), Henderson, Keesecker, Kyle, Powell (of 6th Dist.), Romine, Shaffer and Smirl.

Subcommittee Chairmen
Elementary and Secondary Education—Mr. Church
Higher Education—Mr. Auvil

FINANCE

McManus (Chairman), Sommerville (Vice Chairman), Auvil, Belknap, Burke, D'Aurora, Fantasia, Frazer, Galperin, Griffith, Hager, (of Logan), Hill, Kincaid, Perry, Simpkins, Withrow,
HOUSE COMMITTEES

Bobbitt, Buck, Companion, Grewe, Kopelman, Nicely, Ours, Powell (of 6th Dist.) and Rogerson.

Subcommittee Chairmen
Claims—Mr. Kincaid
Legislative Audits—Mr. Auvil

HEALTH AND WELFARE

Withrow (Chairman), Flanagan (Vice Chairman), Brenda, Burke, Crandall, D'Aurora, Davidson (of Wayne), Galperin, Griffith, Kincaid, Kopp, Lohr, Matney, Rutledge, Stalnaker, Wanstreet, Bobbitt, Daugherty, Files, Jeter, Polen, Powell (of 6th Dist.), Powell (of Wetzel), Romine and Wilson.

Subcommittee Chairmen
Health—Miss Crandall
Humane Institutions—Mr. D'Aurora
Penal and Correctional Institutions—Mr. Griffith

INDUSTRY AND LABOR

Kopp (Chairman), Fantasia (Vice Chairman), Bowman, Cookman, D'Aurora, Frazer, Goodwin, Griffith, Hager (of Lincoln), Hicks, Holt, Howell, Savilla, Simpkins, Varney, Wooten, Butcher, Creel, Harman (of Mineral), Harman (of Taylor), Henderson, Jeter, Kinder, Kopelman and Shaffer.

INTERSTATE COOPERATION

Hager (of Logan) (Chairman), Burke, Church, Edgar, Myles, Buck and Nicely. (Boiarovsky ex officio).

JUDICIARY

Watson (Chairman), Sparacino (Vice Chairman), Christian, Cookman, Dinsmore, Howell, Huffman, Kopp, Loop, Matney, McGraw, Myles, Nelson, Queen, Stalnaker, Varney, Daugherty, Davisson, Halbritter, Jones (of Kanawha), Jones (of Roane), Mulneix, Polen, Potter and Stamp.

POLITICAL SUBDIVISIONS

Hoard (Chairman), Parker (Vice Chairman), Ball, Church, Dinsmore, Huffman, Kincaid, Laulis, Lister, McGraw, Pauley, Rutledge, Simpkins, Stalnaker, Toney, Varney, Creel, Files, Grewe, Polen, Potter, Powell (of Wetzel), Rogerson, Smirl and Zakaib.

Subcommittee Chairman
Redistricting—Mr. Dinsmore

ROADS AND TRANSPORTATION

Nelson (Chairman), Frazer (Vice Chairman), Ball, Bowman, Brenda, Christian, Crandall, Davidson (of Wayne), Davidson (of Wyoming), Gibson, Hager, (of Lincoln), Hawse, Holt, Pau-

Subcommittee Chairman  
Railroads—Mr. Christian

RULES

Boiarsky (ex officio Chairman), Edgar, Kopp, Lohr, McManus, Nelson, Shiflet, Watson, Buck, Ours, Potter and Seibert.

STATE AND FEDERAL AFFAIRS

Edgar (Chairman), Loop (Vice Chairman), Church, Crandall, Fantasia, Howell, Lister, McGraw, Nelson, Parker, Perry, Queen, Sparacino, Thornhill, Toney, Varney, Butcher, Companion, Harman (of Mineral), Henderson, Jeter, Keesecker, Kyle, Poling and Zakaib.

Subcommittee Chairman  
Military and Veterans Affairs—Mr. Howell

JOINT COMMITTEES

ENROLLED BILLS

Davidson (of Wayne) (Chairman), Rutledge (Vice Chairman), Maple, Kinder and Mulneix.

JOINT RULES

Boiarsky (Speaker), Shiflet and Seibert.

GOVERNMENT AND FINANCE

Boiarsky (ex officio), Lohr, McManus, Shiflet, Watson, Ours and Seibert.
ERRATA

Page 582, §8-5-7, subsection (a), lines 1-4, should read as follows:

“(a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor, a recorder and councilmen, who together shall form the governing body of the municipality.”

Page 1036, chapter 102, should be House Bill No. 791 rather than Senate Bill 791.
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-c, relating to the creation of an interagency committee on pesticides to study and to advise in the use of pesticides, and to recommend any needed legislation concerning pesticides.

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-c, to read as follows:

ARTICLE 12C. INTERAGENCY COMMITTEE ON PESTICIDES.

§19-12C-1. Title.
§19-12C-2. Definitions.
§19-12C-3. Committee created; membership; chairman.
§19-12C-4. Compensation.
§19-12C-5. Meetings; quorum.
§19-12C-6. Duties.
§19-12C-7. Reports.
§19-12C-1. Title.
1 This article shall be known by the short title of "The Interagency Pesticide Committee Act."

§19-12C-2. Definitions.
1 The following definitions shall apply in the interpretation of this article:
2 (a) "Pesticides" shall include rodenticides, insecticides, fungicides, nematocides, herbicides, and avicides.
3 (b) "Rodenticides" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any rodent.
4 (c) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insect.
5 (d) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any plant parasitic fungus.
6 (e) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating plant parasitic nematodes.
7 (f) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
8 (g) "Avicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any bird.
9 (h) "Rodent" means any animal of the order Rodentia.
10 (i) "Insect" means any of the invertebrate animals, for the most part belonging to the class Insecta, characterized by more or less obviously segmented bodies, six legs and wings as, for example, beetles, bugs, flies, bees and other allied classes of arthropods whose members are wingless and usually have eight legs as for example mites, ticks, wood lice, spiders and centipedes.
11 (j) "Fungus" means any nonchlorophyll bearing thallophyte, as for example rusts, smuts, mildews, molds,
yeasts bacteria and viruses, which is, or is capable of becoming a plant parasite.

(k) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is unsegmented round worms with elongated, fusiform or sac-like bodies covered with cuticle and inhabiting soil, water, plants or plant parts.

(l) "Weed" is a plant that is growing where it is not wanted.

(m) "Bird" means any member of the phylum Chordata, class Aves, that is animals characterized by being able to fly and being covered with feathers.

§19-12C-3. Committee created; membership; chairman.

There is hereby created an interagency committee on pesticides to consist of the (1) commissioner of the department of agriculture, (2) director of the department of natural resources, (3) director of the department of public health, (4) director of the West Virginia University agricultural experiment station, and (5) director of the air pollution control commission. The commissioner of agriculture shall be chairman of this committee. Each member of the committee may designate some person in his department to serve in his stead on the committee.

§19-12C-4. Compensation.

Members of this committee shall receive no compensation for their services on this committee other than that provided by law for their respective positions with the state of West Virginia. All travel expenses shall be paid out of regular appropriations of their respective departments or agencies.

§19-12C-5. Meetings; quorum.

The committee shall meet at least once each year and may hold additional meetings upon the call of the chairman. Four members shall constitute a quorum.
§19-12C-6. Duties.
1. The committee shall (1) review the current use of pesticides within the state of West Virginia; (2) review pesticide programs to be sponsored or directed by a governmental agency; (3) consider the problems arising from pesticide use with particular emphasis on the possible adverse effects or hazards to human health, livestock, crops, fish and wildlife, or to business, industry, agriculture, or the general public; (4) recommend legislation to the governor, if appropriate, which will prohibit the irresponsible use of pesticides; (5) contact and collate the opinions of the various experts and lay groups to obtain their views and cooperation; and (6) advise on and approve all programs involving the use of pesticides on state-owned property, state-controlled property, or property administered by state agencies. This shall not be construed to include research programs or to the generally accepted and label-approved practices essential to good farm and institutional management on the premises of the various state institutions.

§19-12C-7. Reports.
1. The committee shall prepare and forward detailed reports of its findings and recommendations to the governor prior to the next session of the Legislature, after passage, and prior to each regular session of the Legislature thereafter.

CHAPTER 2

(House Bill No. 793—By Mr. Cookman and Mr. Queen)

[Passed March 4, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the protection of apiaries against contagious or infectious bee diseases by preventing the introduction into and dissemina-
tion within the state of diseased bees or contaminated beekeeping equipment; revising, consolidating and changing the law relating thereto; defining the powers and duties of the commissioner of agriculture relating thereto; and providing penalties thereto.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-1. Title.
This article shall be known by the short title of "The West Virginia Apiary Law of 1969."

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

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

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his duly authorized agent.
(c) "Person" shall include all corporations, partnerships, associations, societies, individuals or group of individuals or any employee, servant or agent acting for or employed by any person as above defined.

(d) "Bees" shall be construed to mean any stage of the common hive or honeybee, (Apis mellifera) or other species of the genus Apis.

(e) "Bee diseases" shall be construed to mean American foulbrood, European foulbrood, sac brood, bee paralysis, or any other disease or abnormal condition of eggs, larval, pupal, or adult stages of bees.

(f) "Colony" means the hive and includes bees, comb, honey and equipment.

(g) "Apiary" means any place where one or more colonies or nuclei of bees are kept.

(h) "Queen apiary" means any apiary or premises in which queen bees are reared or kept for sale or gift.

(i) "Hive" shall be construed to mean frame hive, box hive, box, barrel, log, gum, skep or any other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

(j) "Appliances" means any apparatus, tools, machine or other device, used in the handling and manipulating of bees, honey, wax and hives. It also means any container of honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies.

(k) "Bee equipment" means hives, supers, frames, veils, gloves or any other appliances.

(l) "Abandoned apiary" means any apiary wherein the owner or operator thereof fails to:

1. Inspect each colony in the spring and destroy any colony containing American foulbrood (Bacillus larvae).

2. Provide super room during honey flow.

3. Remove the honey crop at the end of the season and inspect each colony when the crop is removed.
and destroy any colony containing American foulbrood.

4. Provide reasonable and adequate attention to each colony during the year to prevent robbing which might jeopardize the welfare of neighboring colonies through the spread of disease.

5. Properly identify each colony which is not located on owner's or operator's property as provided in this article.

(m) "Packaged bees" means bees shipped in combless packages in which no honey has been used for food in transit or that bears an affidavit that any honey used as food in the package was boiled at a temperature of two hundred twelve degrees Fahrenheit for thirty minutes.

(n) "Honey house" means a building in which honey is extracted and handled.


The commissioner of agriculture is authorized to conduct apiary education in a manner which may advance and promote bee culture in West Virginia.

§19-13-4. Commissioner to enforce article; rules and regulations.

(a) It shall be the duty of the commissioner to exercise the powers and duties imposed upon him by this article for the purpose of protecting apiculture and for this purpose he is hereby authorized and empowered to promulgate such rules and regulations as are necessary to effectively eradicate, suppress or control bee diseases as far as may be practical and to employ such persons as may be appropriate.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies thereof, the state of West Virginia and any agencies or political subdivisions thereof and any other state or commonwealth or agencies thereof, in order to carry out the effective administration of this article.
§19-13-5. Apiary inspection; orders of commissioner as to eradication or control of bee diseases.

(a) The commissioner shall inspect all apiaries and honey houses in West Virginia. If upon such inspection it is found that any bee disease exists in such apiary, the inspector making the inspection shall immediately notify, in writing, the owner or person in charge of such apiary, stating the nature of the disease and whether the same may be successfully treated or not. In cases where the disease is subject to treatment, the inspector shall specify and direct the necessary treatment, which shall be administered by the owner or person in charge within fourteen days thereafter. Otherwise the colony or apiary in which such bee diseases are found shall be destroyed by fire without remuneration to the owner. All bee equipment found in any diseased apiary may be destroyed or sterilized under the direction of the commissioner.

(b) All queen apiaries shall, at least twice each summer season, be inspected. If upon such inspection it shall appear that any bee disease exists in such queen apiary, the inspector making the inspection shall immediately notify, in writing, the owner or person in charge thereof, and thereafter it shall be unlawful for such person to ship, sell or give away any queen bees from such apiary until said disease shall have been eradicated.

(c) All apiaries, bees, bee products, premises, bee equipment and appliances wherein or on which bee diseases are found to exist may be quarantined by the commissioner. Such quarantine shall continue until the commissioner declares the same to be free from any such bee diseases. The commissioner may declare any area surrounding or adjoining those premises wherein the bee diseases are found to exist to be under quarantine as he deems necessary to assist in the control or eradication of bee diseases.

§19-13-6. Right of entry on premises.

To effectuate the purpose of this article, the commissioner is hereby invested with authority, during reasonable working hours, to enter upon any public or private
1 It shall be unlawful for any person knowingly to keep
2 in his possession, without proper treatment, any colony
3 of bees affected with any bee disease or to expose any
4 diseased colony or infected hive or appliance so that
5 flying bees have access to them.

§19-13-8. Transporting diseased bees unlawful.
1 It shall be unlawful for any person to sell, barter,
2 or give away, accept, receive or transport any bees that
3 are known to be affected with any bee disease.

1 All persons owning or operating an apiary which is
2 not located on said owner's or operator's property must
3 post the name and address of the owner or operator in
4 a conspicuous place in the apiary.

§19-13-10. Abandoned apiaries; notice.
1 When any apiary is deemed by the commissioner to
2 be an abandoned apiary, he shall give written notice by
3 registered mail to the owner or operator thereof, if he
4 can be located, that he deems such apiary an abandoned
5 apiary. If he cannot be located, such notice shall be
6 served on the owner of the land on which the apiary is
7 located. If such apiary continues to be abandoned for
8 sixty days thereafter the commissioner may seize the
9 apiary and take such further steps as to the disposal or
10 destruction thereof as its condition warrants.

1 If any abandoned apiary is found, upon inspection, to
2 be diseased, the commissioner may cause it to be destroy-
3 ed by fire.

§19-13-12. Bees brought into state to carry inspection certifi-
cate; commissioner to be notified.
1 (a) It shall be unlawful for any person to transport
2 bees, used hives or used appliances into West Virginia,
3 unless the same be accompanied by a certificate of in-
AGRICULTURE

4 section signed by an authorized inspection official of
5 the state from which such bees are being transported.
6 Such certificate shall certify the actual inspection of the
7 bees made within thirty days preceding the date of ship-
8 ment, and that the bees, hives and appliances contained
9 in the shipment are apparently free from bee diseases.
10 (b) Within ten days after the arrival within the state
11 of West Virginia of any bees, used hives, combs, bee
12 appliances or equipment, notice of such containing the
13 following information shall be given the commissioner
14 by the person receiving such articles:
15 1. Exact location of bees or equipment.
16 2. Name and address of the owner of the prop-
17 erty on which the bees are located.
18 3. The exact number of colonies or amounts of
19 bee equipment.
20 4. A copy of the inspection certificate issued by
21 the inspector of the state of origin.
22 Packaged bees bearing a certificate of inspection will
23 be exempt from the provisions of subsection (b) of this
24 section.

1 It shall be unlawful for any person to import any liv-
2 ing insects belonging to the genus Apis from any foreign
3 country (except Canada) for any purpose without prior
4 written permission from the commissioner of agriculture.

1 All persons keeping bees in this state shall, within
2 ninety days of the effective date of this article, notify
3 the commissioner of agriculture in writing of the number
4 and location of colonies they own or rent, or which they
5 keep for someone else, whether the bees are located on
6 their own property or someone else's property. There-
7 after, such information shall be provided within ten
8 days of the time the bees are acquired.

1 Any person who engages in the shipping of bees in
2 combless packages in this state shall, in the making of
3 candy for mailing cages, use honey that has been boiled
4 at a temperature of two hundred twelve degrees Fahren-
5 heat for thirty minutes or use candy that does not contain
6 honey.

§19-13-16. Unsanitary conditions; rules; standards.
1 The commissioner of agriculture shall have the power
2 to establish rules, regulations and standards relating to
3 the keeping and maintaining of bees, egg equipment,
4 apiaries and appliances.

1 It is unlawful for any person to resist, impede or hinder
2 the commissioner in the performance of his duties under
3 the provisions of this article.

1 It shall be unlawful for any person to spray fruit trees
2 while in full bloom with any material which is deemed
3 by the commissioner to be injurious to bees.

§19-13-19. Penalties for violations of article; rules or regula-
tions.
1 Any person violating any of the provisions of this
2 article, or the rules or regulations adopted thereunder,
3 shall be deemed guilty of a misdemeanor, and, upon con-
4 viction thereof, shall be fined not less than ten dollars
5 nor more 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
9 to prosecute the person charged with such violation.

1 If any provision of this article or the application thereof
2 to any person or circumstances is held invalid, such
3 invalidity shall not affect other provisions or applications
4 of the article which can be given effect without the
5 invalid provision or application and to this end the pro-
6 visions of the article are declared to be severable.
AN ACT to amend and reenact sections two and three, article one-g, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Ohio-West Virginia interstate air pollution control compact.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article one-g, 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 1G. INTERSTATE COMPACT ON AIR POLLUTION.

§29-1G-2. Enactment of compact.

§29-1G-3. Appointment, compensation, etc., of members of commission; governor or his designee, state director of health and director of air pollution commission members ex officio.

§29-1G-2. Enactment of compact.

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

INTERSTATE COMPACT ON AIR POLLUTION

The contracting states solemnly agree that:

Article I

1 The party states to this compact hereby provide for the control of the interstate movement of air pollutants through the establishment of an interstate agency with powers to prevent, abate, and control interstate air pollution, and where appropriate, develop and implement ambient air quality standards in any designated air quality control region common to the party states.
Each of the party states pledges to the other faithful cooperation in the control of air pollution which originates in one state and endangers human health or welfare, animal or plant life, or property, or which interferes with the enjoyment of life or property, in the other state.

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

Article II

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

Article III

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

The commission shall consist of five commissioners from each party state, each of whom shall be a citizen of the state he represents. In addition, the chairman of the commission shall request the President of the United States to designate a federal representative to the commission who shall serve as an ex officio member of the commission, but without vote except as hereinafter provided. The commissioners from each party state shall be chosen by the governor of such state in accordance with the laws of such state, as follows:

Two of the members from each state shall be chosen from appropriate state agencies, one of whom is the officer responsible for air pollution control, and one of whom is the director of health. The governor of each
party state, or his designee, shall be the third member of the commission. Two other members shall be chosen, one of whom is experienced in the field of municipal government and one of whom is experienced in the field of industrial activities. In choosing said two other members, the governor shall provide for adequate representation of appropriate local interests in any air quality control region designated by the secretary of health, education and welfare, pursuant to the provisions of Section 107 (a) (2) of the Air Quality Act of 1967; 81 Stat. 491; Public Law 90-148.

The governor of each state, unless he appoints a designee, shall serve during his term of office, and if the governor of any state appoints a designee, such designee shall serve at the will of the governor appointing him until the expiration of the governor's term. The commissioners who shall be appointed by virtue of the offices which they hold shall serve during their continuance in office. The term of the other two commissioners shall be five years. However, the commissioner appointed by reason of his experience in the field of municipal government and the commissioner appointed by reason of his experience in the field of industrial activities shall be appointed, one for an initial term of one year and the other for an initial term of two years. Upon the expiration of each such initial term, commissioners appointed to fill any vacancy shall be appointed for a term of five years.

Vacancies on the commission shall be filled for the unexpired term in the same manner as appointments to full terms.

Each state shall have but one vote and every decision, authorization or other action shall require the majority vote of the party states. The vote of each state shall be determined by a majority of the commissioners from each party state present at the meeting where such vote is to be cast. In the event of a tie or stalemate, the federal representative to the commission shall cast the deciding vote.

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

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

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

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

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

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

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

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

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

### Article IV

The commission may, whenever it finds air pollution which originates within the area of its jurisdiction in one of the party states and has an adverse effect in the other party state, make a report recommending measures for the prevention, abatement, or control of any such air pollution. Copies of such report shall be furnished to all existing state and local air pollution control agencies with jurisdiction over the source or sources of air pollution identified in the report. In preparing any such
report, the commission may confer with any appropriate national, regional or local planning body, and any governmental agency authorized to deal with matters relating to air pollution problems and may conduct such hearings and investigations as it may deem appropriate. The commission may consult with and advise the states and local governments, corporations, persons, or other entities with regard to the adoption of programs and the installation of equipment and works for the prevention, abatement, or control of air pollution.

Without restricting the generality of the powers and duties of the commission elsewhere herein provided, the commission shall:

(a) Develop and implement ambient air quality standards and, in accordance with such data as are available on the latest technology and economic feasibility of complying therewith, emission standards in order to prevent and control air pollution located within the area over which it has jurisdiction.

(b) Revise and modify such standards to reflect improvements in knowledge of air pollution and its prevention and control and in accordance with such data as are available on the latest technology and economic feasibility of complying with such standards.

(c) Engage in action which would insure the use of the latest technologically and economically feasible and effective techniques or devices for the prevention and control of air pollution in new installations proposed for construction in its area of jurisdiction.

(d) Undertake and carry on air monitoring activities as a continuing activity.

(e) Have authority to enter at reasonable times upon any private or public property (excluding any federal building, installation or other property) for the purpose of investigating the source, type, character and amount of any air pollutant or emission alleged to violate the standards at any time established by the commission pursuant to the provisions of this compact: Provided, however, That no such investigations shall extend to in-
form relating to secret processes or methods of manufacturing or production.

(f) Have authority, upon reasonable evidence of a violation of the standards established by the commission pursuant to the provisions of this compact, which violation presents an imminent and substantial hazard to public health, to issue public notice of such hazard and the cause thereof, by any and all appropriate means, and to issue a cease and desist order or such other reasonable order as may be deemed necessary by the commission to cause such violation to be discontinued, at such time and upon such conditions as the commission may determine, and to enforce such order by appropriate proceedings, including but not limited to injunctive proceedings in any court of competent jurisdiction. And, further, the commission is hereby empowered to institute proceedings in any court of competent jurisdiction to enjoin any air pollution or emission which presents such an imminent and serious hazard to public health as to create an emergency.

Before any report of the commission which specifically identifies a particular industrial or other installation, structure, or facility as a source of air pollution becomes final, the commission shall give the owner or operator of such installation, structure, or facility notice by certified mail of the anticipated adoption of such report and shall afford the owner or operator of the installation, structure, or facility not less than ten days after the mailing of such notice to file with the commission its written objections thereto. If no such objections are filed with the commission within such specified period, the report shall become final. If such objections are filed with the commission within such specified period, the commission shall afford such owner or operator not less than ten days from its receipt of such objections to discuss with the commission the findings, conclusions, and recommendations of the report before it is finally adopted by the commission.

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

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

**Article V**

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

All hearings shall be had before one or more members of the commission, or before an officer or employee of the commission expressly designated to act as a hearing officer.

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

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

The petition for review shall be filed within thirty-five days after receipt of written notice that such order has been issued. Written notice of the filing of a petition for review and a copy of said petition shall be personally served upon the commission. Any party or person filing a petition for review shall, within fifteen days thereafter, secure from the commission a certified copy of the 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
48 the 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
51 review is pending for good cause shown. Inability to
52 obtain 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 review
56 by the court or on petition of any party of record to the
57 original action or proceeding. Where more than one per-
58 son may be aggrieved by the order, only one proceeding
59 for review may be had and the court in which a petition
60 for review is first properly filed shall have jurisdiction.
61 The court may, for good cause shown, admit and con-
62 sider additional evidence bearing upon the issue or issues
63 before it.
64 No review of a commission order shall be had except
65 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, repre-
4 sentatives of industry, labor, commerce, agriculture, civic
5 associations and officials of local, state and federal gov-
6 ernment, as it may determine, and may cooperate with
7 and use the services of any such committee and the
8 organizations which they represent in furthering any
9 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 any party
3 state or any of its subdivisions to enact and enforce laws
4 or ordinances for the prevention, abatement or control of
5 air pollution within their respective borders.
6 (b) Limit or otherwise affect the powers of any party
7 state to enter into a compact or compacts with other states
for the prevention, abatement or control of interstate air pollution.

(c) Prevent or restrict any party state or any political subdivision thereof from adopting standards to achieve a higher level of ambient air quality than those adopted by the commission for the area covered by the commission’s jurisdiction.

(d) Authorize any party state or any political subdivision thereof to adopt standards which will achieve a lower level of ambient air quality than those adopted by the commission for the area covered by the commission’s jurisdiction.

Article VIII

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

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

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

The expenses and any other costs for each member of the commission shall be met by the commission in accordance with such standards and procedures as it may establish in its rules and regulations.
The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules and regulations. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

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

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

Article IX

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

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

Article X

The provisions of this compact shall be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person, or cir-
7 cumstance is held invalid, the validity of the remainder
8 of this compact and the applicability thereof to any gov-
9 ernment, agency, person or circumstance shall not be
10 affected.

Article XI

1 The present party states hereto, namely, West Virginia
2 and Ohio, hereby agree and consent to the commonwealth
3 of Pennsylvania and the state of Kentucky, or either of
4 them, becoming parties to this compact.

§29-1G-3. Appointment, compensation, etc., of members of
commission; governor or his designee, state di-
rector of health and director of 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 Air
3 Pollution Commission” from the state of West Virginia.
4 The governor, by and with the advice and consent of
5 the Senate, shall appoint two persons as two of such
6 commissioners, each of whom shall be a resident and citi-
7 zen of this state. Said two commissioners shall be persons,
8 one of whom is experienced in the field of municipal
9 government, and one of whom is experienced in the field
10 of industrial activities. The term of one of said two com-
11 missioners first appointed shall be one year, of the other
12 two years. The third commissioner shall be the governor
13 or his designee. As the term of each such initial appointee
14 expires the successor to fill the vacancy created by such
15 expired term shall be appointed by the governor, by and
16 with the advice and consent of the Senate, for terms of
17 five years each. Each commissioner shall hold office
18 until his successor shall be appointed and qualified. Va-
19 cancies occurring in the office of any such commissioner
20 from any reason or cause shall be filled by appointment
21 by the governor, by and with the advice and consent of
22 the Senate, for the unexpired term. The fourth commis-
23 sioner from this state shall be the state director of health,
24 ex officio, and the fifth commissioner from this state shall
25 be the director of the air pollution control commission,
26 ex officio, and the term of any such ex officio commis-
27 sioner shall terminate at the time he ceases to hold said
28 office, and his successor as a commissioner shall be his
successor as said state director of health or director of
the air pollution control commission. These five commis-
sioners, acting jointly with like officers from the other
party state, shall promulgate rules and regulations to
carry out more effectively the terms of the compact.
The commissioners shall cooperate with all departments,
agencies, and officers of and in the government of this
state and its subdivisions in facilitating the proper ad-
ministration of the compact and all such departments,
agencies, and officers shall cooperate with the commis-
sioners. The non ex officio members shall be paid fifty
dollars for each day spent in performing their duties
hereunder and shall be reimbursed for all reasonable and
necessary expenses actually incurred in performing their
duties hereunder.

CHAPTER 4
(House Bill No. 690—By Mr. Seibert)

[Passed March 8, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chap-
ter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to state
financial assistance to municipalities, counties and regional
airport authorities for airport purposes.

Be it enacted by the Legislature of West Virginia:

That section six, article two-a, 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 2A. STATE AERONAUTICS COMMISSION.

§29-2A-6. State financial assistance for county, municipal and
regional airports.

1 The commission, out of any appropriation made to it
2 by the Legislature or out of any funds at its disposal,
may make funds available by grant or otherwise to counties, municipalities and regional airport authorities, created under the provisions of chapter eight of this code, for the planning, acquisition, construction, improvement, maintenance, or operation of airports owned or operated or to be owned or operated by such counties, municipalities or regional airport authorities. Acceptance of any moneys so made available to any such county, municipality or regional airport authority, shall constitute consent by the recipient that a reasonable use of such airport may be made, upon request of the commission, by the United States government, the state, or any of their respective agencies, including the state aeronautics commission and the national guard of West Virginia for state purposes related or incidental to aeronautics. Such financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

CHAPTER 5

(Com. Sub. for Senate Bill No. 108—By Mr. Poffenbarger and Mr. Brotherton)

[Passed March 3, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to writs of error to judgment by courts of record of limited jurisdiction quashing indictments.

Be it enacted by the Legislature of West Virginia:

That article four, chapter fifty-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 eighteen-a, to read as follows:
ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED JURISDICTION.

§58-4-18a. Writ of error to judgment quashing indictment.

1 Notwithstanding anything hereinbefore contained in this article, whenever in any criminal case an indictment is held bad or insufficient by the judgment or order of any court of record of limited jurisdiction, the state, on the application of the attorney general or the prosecuting attorney, may obtain a writ of error to secure a review of such judgment or order by the circuit court of the county in which such court of record of limited jurisdiction sits. No such writ of error shall be allowed unless the state presents its petition therefor to the circuit court, or a judge thereof, within thirty days after the entry of such judgment or order. No such judgment or order shall finally discharge, or have the effect of finally discharging, the accused from further proceedings on the indictment unless the state fails, within such period of thirty days, to apply for such writ of error, or fails to obtain such writ of error upon an application made within such period; but after the entry of such judgment or order the accused shall not be kept in custody or required to give bail pending the hearing and determination of the case by the circuit court, or by the supreme court of appeals if a writ of error is thereafter sought with respect to the decision of the circuit court. If, upon the allowance of any such writ of error, process from the circuit court (or the supreme court of appeals in the event of further judicial review as aforesaid) cannot for any reason be served personally upon the accused, service may be had by filing a copy thereof in the clerk's office of the court of record of limited jurisdiction which entered such judgment or order (or the circuit court if further judicial review is had as aforesaid). Every such writ of error shall be heard and determined as speedily as possible. If the judgment is reversed and the indictment is held to be good and sufficient for a trial of the accused thereon, the case shall be remanded to the court of record of limited jurisdiction in which the indictment was found, in order that such trial may be had.
Except as herein otherwise provided, all of the provisions of the other sections of this article shall, so far as appropriate, be applicable to a petition for a writ of error under this section, and to all subsequent proceedings thereon in case such writ of error is allowed or granted.

CHAPTER 6

(Com. Sub. for House Bill No. 501—By Mr. Speaker, Mr. Boiarsky)

[Passed March 11, 1969; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

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

1 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 seventy.

1 Sec. 2. Definitions.—For the purpose of this act:
2 “Governor” shall mean the Governor of the State of West Virginia;
4 “Spending Unit” shall mean the department, agency or institution to which an appropriation is made;
6 The “fiscal year one thousand nine hundred seventy” shall mean the period from July first, one thousand nine
8 hundred sixty-nine through June thirtieth, one thousand nine hundred seventy;

“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-A, Article 2 of the Code of West Virginia.

Sec. 3. Classification of Appropriations.—An appropriation for:

“Personal Services” shall be expended only for the payment of salaries, wages, fees and other compensation for skill, work, or employment, except from the appropriations made to the spending units of state government, there may be transferred upon approval of the Governor, to a special account an amount sufficient to match Federal Funds under any Federal Acts;

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending units;

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

“Repairs and Alterations” shall include all expenditures for materials, supplies and labor used in repairing and altering buildings, grounds and equipment, other than personal services;

“Equipment” shall be expended only for things which have an appreciable and calculable period of usefulness in excess of one year;

“Buildings” shall include construction and alteration of structures and the improvements of lands, sewer and water improvements, and shall include shelter, support, storage, protection, or the improvement of a natural condition;

“Lands” shall be expended only for the purchase of lands or interest in lands.

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

1 Sec. 4. Method of Expenditure.—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Chapter 12, Article 3 of the Code of West Virginia, or according to any law detailing a procedure specifically limiting that article.

**TITLE 2. APPROPRIATIONS.**

§1. Appropriations from general revenue.

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRICULTURE</td>
<td></td>
</tr>
<tr>
<td>Department of agriculture—Acct. No. 510</td>
<td>61</td>
</tr>
<tr>
<td>Department of agriculture (agricultural awards)—Acct. No. 515</td>
<td>62</td>
</tr>
<tr>
<td>Department of agriculture (division of rural resources)—Acct. No. 513</td>
<td>62</td>
</tr>
<tr>
<td>Department of agriculture (meat inspection)—Acct. No. 514</td>
<td>62</td>
</tr>
<tr>
<td>Department of agriculture (soil conservation committee)—Acct. No. 512</td>
<td>61, 65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BUSINESS AND INDUSTRIAL RELATIONS</td>
<td></td>
</tr>
<tr>
<td>Antiquities commission—Acct. No. 478</td>
<td>60</td>
</tr>
<tr>
<td>Bureau of labor and department of weights and measures—Acct. No. 450</td>
<td>58</td>
</tr>
<tr>
<td>Department of banking—Acct. No. 480</td>
<td>60</td>
</tr>
<tr>
<td>Department of commerce—Acct. No. 465</td>
<td>58, 59</td>
</tr>
<tr>
<td>Department of employment security (work incentive program)—Acct. No. 451</td>
<td>58</td>
</tr>
<tr>
<td>Department of mines—Acct. No. 460</td>
<td>58</td>
</tr>
<tr>
<td>Interstate commission on Potomac river basin—Acct. No. 473</td>
<td>59</td>
</tr>
<tr>
<td>Interstate education compact—Acct. No. 477</td>
<td>60</td>
</tr>
<tr>
<td>Ohio river valley water sanitation commission—Acct. No. 474</td>
<td>59</td>
</tr>
<tr>
<td>Southern interstate nuclear board—Acct. No. 471</td>
<td>59</td>
</tr>
<tr>
<td>Southern regional education board—Acct. No. 475</td>
<td>59</td>
</tr>
<tr>
<td>State commission on manpower, technology and training—Acct. No. 470</td>
<td>59</td>
</tr>
<tr>
<td>West Virginia air pollution commission—Acct. No. 476</td>
<td>60</td>
</tr>
<tr>
<td>West Virginia nonintoxicating beer commissioner—Acct. No. 490</td>
<td>60</td>
</tr>
<tr>
<td>West Virginia racing commission—Acct. No. 495</td>
<td>61</td>
</tr>
<tr>
<td>West Virginia state aeronautics commission—Acct. No. 485</td>
<td>60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHARITIES AND CORRECTION</td>
<td></td>
</tr>
<tr>
<td>Andrew S. Rowan memorial home—Acct. No. 384</td>
<td>52</td>
</tr>
<tr>
<td>Forestry camp for boys—Acct. No. 371</td>
<td>51</td>
</tr>
<tr>
<td>Medium security prison—Acct. No. 376</td>
<td>52</td>
</tr>
<tr>
<td>West Virginia children’s home—Acct. No. 380</td>
<td>52</td>
</tr>
<tr>
<td>West Virginia industrial home for girls—Acct. No. 372</td>
<td>51</td>
</tr>
<tr>
<td>West Virginia industrial school for boys—Acct. No. 370</td>
<td>51</td>
</tr>
<tr>
<td>West Virginia penitentiary—Acct. No. 375</td>
<td>52</td>
</tr>
<tr>
<td>West Virginia state prison for women—Acct. No. 374</td>
<td>51</td>
</tr>
</tbody>
</table>
### CONSERVATION AND DEVELOPMENT

<table>
<thead>
<tr>
<th>Department</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of natural resources</td>
<td>565</td>
<td>63, 85</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>564</td>
<td>63</td>
</tr>
<tr>
<td>Geological and economic survey commission</td>
<td>520</td>
<td>62</td>
</tr>
</tbody>
</table>

### EDUCATIONAL

<table>
<thead>
<tr>
<th>Institution</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archives and history</td>
<td>340</td>
<td>50</td>
</tr>
<tr>
<td>Bluefield state college</td>
<td>329</td>
<td>49, 84</td>
</tr>
<tr>
<td>Concord college</td>
<td>325</td>
<td>49</td>
</tr>
<tr>
<td>Department of education (aid for exceptional children)</td>
<td>206</td>
<td>45</td>
</tr>
<tr>
<td>Department of education (comprehensive educational program)</td>
<td>290</td>
<td>43</td>
</tr>
<tr>
<td>Educational broadcasting authority</td>
<td>291</td>
<td>43</td>
</tr>
<tr>
<td>Fairmont state college</td>
<td>321</td>
<td>48</td>
</tr>
<tr>
<td>FFA-FHA camp and conference center</td>
<td>336</td>
<td>50</td>
</tr>
<tr>
<td>Glenville state college</td>
<td>322</td>
<td>48, 84</td>
</tr>
<tr>
<td>Marshall university</td>
<td>320</td>
<td>47</td>
</tr>
<tr>
<td>Potomac state college of West Virginia university</td>
<td>315</td>
<td>47</td>
</tr>
<tr>
<td>Shepherd college</td>
<td>324</td>
<td>48</td>
</tr>
<tr>
<td>State board of education (to implement federal vocational education act)</td>
<td>293</td>
<td>44</td>
</tr>
<tr>
<td>State board of education (vocational division)</td>
<td>294</td>
<td>44</td>
</tr>
<tr>
<td>State board of education (vocational division—adult basic education)</td>
<td>295</td>
<td>43</td>
</tr>
<tr>
<td>State board of school finance (state aid to schools)</td>
<td>296</td>
<td>44</td>
</tr>
<tr>
<td>State commission on higher education</td>
<td>299</td>
<td>45</td>
</tr>
<tr>
<td>Teachers retirement board</td>
<td>298</td>
<td>45</td>
</tr>
<tr>
<td>West Liberty state college</td>
<td>323</td>
<td>48</td>
</tr>
<tr>
<td>West Virginia board of regents</td>
<td>280</td>
<td>43</td>
</tr>
<tr>
<td>West Virginia institute of technology</td>
<td>327</td>
<td>49</td>
</tr>
<tr>
<td>West Virginia library commission</td>
<td>350</td>
<td>50</td>
</tr>
<tr>
<td>West Virginia schools for the deaf and blind</td>
<td>333</td>
<td>50, 84</td>
</tr>
<tr>
<td>West Virginia state college</td>
<td>328</td>
<td>49</td>
</tr>
<tr>
<td>West Virginia state college (4-H camp)</td>
<td>330</td>
<td>50</td>
</tr>
<tr>
<td>West Virginia university</td>
<td>300</td>
<td>45, 84</td>
</tr>
<tr>
<td>West Virginia university (Kanawha valley graduate center)</td>
<td>301</td>
<td>46</td>
</tr>
<tr>
<td>West Virginia university (medical school)</td>
<td>285</td>
<td>43</td>
</tr>
<tr>
<td>West Virginia university (Parkersburg branch college)</td>
<td>304</td>
<td>47</td>
</tr>
</tbody>
</table>

### EXECUTIVE

<table>
<thead>
<tr>
<th>Office</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor's office</td>
<td>120</td>
<td>38, 83</td>
</tr>
</tbody>
</table>

### FISCAL

<table>
<thead>
<tr>
<th>Office</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor's office (general administration)</td>
<td>150</td>
<td>39</td>
</tr>
<tr>
<td>Department of finance and administration</td>
<td>210</td>
<td>40, 84</td>
</tr>
<tr>
<td>Sinking fund commission</td>
<td>170</td>
<td>39</td>
</tr>
<tr>
<td>State board of insurance</td>
<td>225</td>
<td>41</td>
</tr>
<tr>
<td>State commissioner of public institutions</td>
<td>190</td>
<td>40, 83</td>
</tr>
<tr>
<td>State tax department</td>
<td>180</td>
<td>39, 83</td>
</tr>
<tr>
<td>State tax department (property appraisal)</td>
<td>185</td>
<td>40</td>
</tr>
<tr>
<td>Treasurer's office</td>
<td>160</td>
<td>39</td>
</tr>
</tbody>
</table>

### INCORPORATING AND RECORDING

<table>
<thead>
<tr>
<th>Office</th>
<th>Acct. No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of state</td>
<td>250</td>
<td>43</td>
</tr>
</tbody>
</table>
## LEGAL

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney general</td>
<td>240</td>
<td>42</td>
</tr>
<tr>
<td>Commission on uniform state laws</td>
<td>245</td>
<td>42</td>
</tr>
</tbody>
</table>

## HEALTH AND WELFARE

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barboursville state hospital</td>
<td>424</td>
<td>56</td>
</tr>
<tr>
<td>Berkeley Springs sanitarium</td>
<td>436</td>
<td>57</td>
</tr>
<tr>
<td>Colin Anderson Center</td>
<td>419</td>
<td>55</td>
</tr>
<tr>
<td>Commission on Postmortem examinations</td>
<td>401</td>
<td>53</td>
</tr>
<tr>
<td>Denmar state hospital</td>
<td>432</td>
<td>53</td>
</tr>
<tr>
<td>Department of mental health</td>
<td>410</td>
<td>54</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>404</td>
<td>53</td>
</tr>
<tr>
<td>Department of welfare</td>
<td>405</td>
<td>54</td>
</tr>
<tr>
<td>Fairmont emergency hospital</td>
<td>425</td>
<td>56</td>
</tr>
<tr>
<td>Hopemont state hospital</td>
<td>430</td>
<td>56</td>
</tr>
<tr>
<td>Huntington state hospital</td>
<td>422</td>
<td>55</td>
</tr>
<tr>
<td>Lakin state hospital</td>
<td>423</td>
<td>55, 84</td>
</tr>
<tr>
<td>Pinecrest sanitarium</td>
<td>431</td>
<td>57</td>
</tr>
<tr>
<td>Spencer state hospital</td>
<td>421</td>
<td>55</td>
</tr>
<tr>
<td>State agency on aging</td>
<td>406</td>
<td>54</td>
</tr>
<tr>
<td>State board of education (rehabilitation division)</td>
<td>440</td>
<td>57</td>
</tr>
<tr>
<td>State health department</td>
<td>400</td>
<td>52</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>426</td>
<td>56</td>
</tr>
<tr>
<td>Weston state hospital</td>
<td>420</td>
<td>55</td>
</tr>
</tbody>
</table>

## JUDICIAL

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor’s office</td>
<td>111</td>
<td>37</td>
</tr>
<tr>
<td>Judicial council</td>
<td>118</td>
<td>38</td>
</tr>
<tr>
<td>State law library</td>
<td>114</td>
<td>38</td>
</tr>
<tr>
<td>Supreme court of appeals</td>
<td>110</td>
<td>37, 83</td>
</tr>
</tbody>
</table>

## LEGISLATIVE

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>House of Delegates</td>
<td>102</td>
<td>35</td>
</tr>
<tr>
<td>Joint expenses</td>
<td>103</td>
<td>37</td>
</tr>
<tr>
<td>Senate</td>
<td>101</td>
<td>34</td>
</tr>
</tbody>
</table>

## MISCELLANEOUS BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of architects</td>
<td>595</td>
<td>66</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>588</td>
<td>65</td>
</tr>
<tr>
<td>Board of dental examiners</td>
<td>589</td>
<td>65</td>
</tr>
<tr>
<td>Board of embalmers and funeral directors</td>
<td>593</td>
<td>66</td>
</tr>
<tr>
<td>Board of examiners for practical nurses</td>
<td>587</td>
<td>65</td>
</tr>
<tr>
<td>Board of law examiners</td>
<td>597</td>
<td>66</td>
</tr>
<tr>
<td>Board of optometry</td>
<td>592</td>
<td>66</td>
</tr>
<tr>
<td>Board of osteopathy</td>
<td>591</td>
<td>66</td>
</tr>
<tr>
<td>Board of pharmacy</td>
<td>590</td>
<td>65</td>
</tr>
<tr>
<td>Board of professional foresters</td>
<td>586</td>
<td>65</td>
</tr>
<tr>
<td>Board of registration for professional engineers</td>
<td>594</td>
<td>66</td>
</tr>
<tr>
<td>Board of sanitarians</td>
<td>599</td>
<td>67</td>
</tr>
<tr>
<td>Human rights commission</td>
<td>598</td>
<td>66</td>
</tr>
<tr>
<td>State board of land surveyors</td>
<td>585</td>
<td>65</td>
</tr>
<tr>
<td>State veterinary board</td>
<td>596</td>
<td>66</td>
</tr>
<tr>
<td>West Virginia public employees retirement board</td>
<td>614</td>
<td>67</td>
</tr>
</tbody>
</table>

## PROTECTION

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjutant general (state militia)</td>
<td>580</td>
<td>64, 85</td>
</tr>
<tr>
<td>Auditor’s office (social security)</td>
<td>582</td>
<td>64</td>
</tr>
<tr>
<td>Department of civil and defense mobilization</td>
<td>581</td>
<td>64</td>
</tr>
<tr>
<td>Department of public safety</td>
<td>570</td>
<td>64</td>
</tr>
<tr>
<td>Insurance commissioner</td>
<td>616</td>
<td>67</td>
</tr>
</tbody>
</table>
2. Appropriations from other funds.

**PAYABLE FROM SPECIAL REVENUE FUND**

- Auditor's office (land department operating fund)—Acct. No. 812
- Department of agriculture—Acct. No. 818
- Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814
- Department of natural resources—Acct. No. 830
- Department of public safety (inspection fees)—Acct. No. 835
- Public service commission—Acct. No. 828
- Public service commission (motor carrier division)
  - Acct. No. 829
- Real estate commission—Acct. No. 801
- State committee of barbers and beauticians—Acct. No. 822
- Treasurer's office—Acct. No. 800
- West Virginia alcohol beverage control—Acct. No. 837
- West Virginia board of regents (special capital improvement fund)—Acct. No. 854
- West Virginia civil service system—Acct. No. 840
- West Virginia racing commission—Acct. No. 808
- West Virginia university (special capital improvement fund)
  - Acct. No. 853

**PAYABLE FROM STATE ROAD FUND**

- Department of motor vehicles—Acct. No. 671
- State road commission (federal-aid construction—Interstate program)—Acct. No. 670
- State tax department (gasoline tax division)—Acct. No. 672

**PAYABLE FROM GENERAL SCHOOL FUND**

- Department of education—Acct. No. 703
- Department of education (safety education)—Acct. No. 708
- Department of education (salaries of county superintendents)
  - Acct. No. 706
- Department of education (school lunch program)—Acct. No. 705
- Department of education (state aid to children's home)
  - Acct. No. 707
- Department of education (textbook aid)—Acct. No. 709
- Department of education (veterans education)—Acct. No. 702
- State board of education—Acct. No. 700
- State board of education (vocational division)—Acct. No. 701
- State board of school finance—Acct. No. 704

**PAYABLE FROM MEDICAL FUND**

- West Virginia university (medical school)—Acct. No. 873

**PAYABLE FROM WORKMEN'S COMPENSATION FUND**

- Workmen's compensation commission—Acct. No. 900

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. Appropriations for refunding erroneous payments.
10. Appropriations from taxes and license fees.
11. Appropriations to pay cost of publication of delinquent corporations.
12. Appropriations for local governments.
13. Total appropriations.

Section 1. Appropriations from General Revenue.—
From the state fund, general revenue, there is hereby ap-
propriated conditionally upon the fulfillment of the provi-
sions set forth in 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 seventy.

LEGISLATIVE
1—Senate
Acct. No. 101

<table>
<thead>
<tr>
<th>Fiscal Year 1969-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members $54,000.00</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and attaches $105,000.00</td>
</tr>
<tr>
<td>4 Mileage of Members $1,500.00</td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund $130,000.00</td>
</tr>
<tr>
<td>6 To pay Clerk of the Senate for compiling and publishing the West Virginia Blue Book, the distribution of which shall be made by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High School and one to each Elementary School within the state $10,000.00</td>
</tr>
<tr>
<td>17 The appropriations for the Senate for the fiscal year 1968-69 are to remain in full force and effect, and are hereby reappropriated to June 30, 1970.</td>
</tr>
<tr>
<td>21 Any balances so reappropriated may be transferred and credited to the 1969-70 accounts.</td>
</tr>
</tbody>
</table>
| 23 Upon the written request of the Clerk of the Senate the State Auditor shall transfer amounts between items of the total appro- }
APPROPRIATIONS

26 appropriation in order to protect or increase the
27 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,
31 for any bills for supplies and services that
32 may have been incurred by the Senate and
33 not included in the appropriation bill, and
34 for bills for supplies and services incurred
35 after adjournment, and for the necessary
36 operation of the Senate offices, the requisition
37 for same to be accompanied by the
38 bill to be filed with the Auditor.

2—House of Delegates
Acct. No. 102

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1968-69</th>
<th>1969-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation and per diem of officers and attaches</td>
<td>$25,000.00</td>
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</tr>
<tr>
<td>Salaries of Members</td>
<td></td>
<td>153,000.00</td>
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<tr>
<td>Compensation and per diem of officers and attaches</td>
<td></td>
<td>125,000.00</td>
</tr>
<tr>
<td>Mileage of Members</td>
<td></td>
<td>5,000.00</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td></td>
<td>161,250.00</td>
</tr>
</tbody>
</table>

8 The appropriations for the House of Delegates for the fiscal year 1968-69 are to remain in full force and effect, and are hereby reappropriated to June 30, 1970.
14 Upon the written request of the Clerk of the House of Delegates, the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.
19 The Clerk of the House of Delegates, with approval of the Speaker, is authorized to
draw his requisitions upon the Auditor, payable out of the contingent fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates, and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the requisition for same to be accompanied by bills to be filed with the Auditor.

For duties imposed by law and by the House of Delegates, including the salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in House Resolution No. 26, adopted March 8, 1969, payable from the contingent fund of the House of Delegates, and the Clerk may employ a secretary and a clerk at the salaries provided in said resolution.

The Speaker of the House of Delegates, upon recommendation of the Chairman of the Finance Committee, shall have the authority to convene the Finance Committee at any time within ten (10) days prior to the next Legislative session for the purpose of reviewing the budget requests of the various spending units of this State. Such members of the Committee are to be allowed $25.00 per diem in lieu of actual and necessary expenses, and the Clerk of the House is hereby authorized to draw requisitions upon the State Auditor payable out of the appropriation for Current Expenses and Contingent Fund for these expenses.

The Speaker of the House of Delegates, upon recommendation of the Chairman of the
Finance Committee, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, and the Clerk of the House is hereby authorized to draw requisitions upon the State Auditor, payable out of the appropriation for Contingent Expenses for such services.

3—Joint Expenses
Acct. No. 103

1. To pay the cost of legislative printing $175,000.00
2. Commission on Interstate Cooperation 20,000.00
3. Joint Committee on Government and Finance 975,900.00
4. The appropriation for Joint Expenses for the fiscal year 1968-69 are to remain in full force and effect, and are hereby reappropriated to June 30, 1970.
5. Any balances so reappropriated may be transferred and credited to the 1969-70 accounts.
6. Upon written request of the Clerk of the Senate and the Clerk of the House of Delegates, the State Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

1. Salaries of Judges $137,500.00
2. Other Personal Services 187,500.00
3. Current Expenses 32,000.00
4. Equipment 3,000.00
5. Total $360,000.00

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

1. Salaries of Judges $599,000.00
2. Other Personal Services 154,600.00
3 Current Expenses ........................................... 25,000.00
4 Judges Retirement System .............................. 150,000.00
5 Criminal Charges ........................................ 355,000.00

6 Total ....................................................... $ 1,283,600.00

This appropriation shall be administered by the State Auditor who shall draw his requisition for warrants in payment of salaries in the form of payrolls, making deductions therefrom as required by law, for taxes and other items. The appropriation for Judges Retirement System is to be transferred to the Judges Retirement Fund, in accordance with the law relating thereto, upon requisition of the State Auditor.

6—State Law Library
Acct. No. 114

1 Personal Services ........................................... $ 39,000.00
2 Current Expenses ........................................... 5,200.00
3 Equipment .................................................... 30,000.00

4 Total ....................................................... $ 74,200.00

7—Judicial Council
Acct. No. 118

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

EXECUTIVE

8—Governor’s Office
Acct. No. 120

1 Salary of Governor ........................................... $ 25,000.00
2 Other Personal Services .................................... 116,980.00
3 Current Expenses ........................................... 35,000.00
4 Equipment .................................................... 5,000.00
5 Custodial Fund ............................................. 75,000.00

6 To be used for current general expenses, including compensation of servants and employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.
12 Federal-State Coordination ........................................ 500,000.00
13 To match and aid Federal Programs, and
14 any part of this appropriation may be
15 transferred to any department for such
16 purposes.

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Total</td>
<td>$756,980.00</td>
</tr>
</tbody>
</table>

**FISCAL**

**9—Auditor’s Office—General Administration**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>$18,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$502,680.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$136,235.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>5 Microfilm Program</td>
<td>$7,500.00</td>
</tr>
<tr>
<td><strong>6 Total</strong></td>
<td>$674,415.00</td>
</tr>
</tbody>
</table>

**10—Treasurer’s Office**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Treasurer</td>
<td>$17,500.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$160,220.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$26,950.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>5 Board of Investments</td>
<td>$1,500.00</td>
</tr>
<tr>
<td><strong>6 Total</strong></td>
<td>$214,170.00</td>
</tr>
</tbody>
</table>

**11—Sinking Fund Commission**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$32,640.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$2,175.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>4 Total</strong></td>
<td>$35,815.00</td>
</tr>
</tbody>
</table>

**12—State Tax Department**

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,432,847.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$644,465.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$28,000.00</td>
</tr>
<tr>
<td><strong>4 Total</strong></td>
<td>$3,105,312.00</td>
</tr>
<tr>
<td>Account No.</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>185</td>
<td>Personal Services</td>
</tr>
<tr>
<td>185</td>
<td>Other Expenses</td>
</tr>
<tr>
<td></td>
<td>Total</td>
</tr>
</tbody>
</table>

Any balances remaining in the Property Appraisal Accounts previously appropriated, in 1966-67; 1967-68 and 1968-69 at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>190</td>
<td>Salary of Commissioner</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>190</td>
<td>Salaries of Board Members—Board of Probation and Parole</td>
<td>$36,000.00</td>
</tr>
<tr>
<td>190</td>
<td>Other Personal Services</td>
<td>$418,500.00</td>
</tr>
<tr>
<td>190</td>
<td>Current Expenses</td>
<td>$129,920.00</td>
</tr>
<tr>
<td>190</td>
<td>Equipment</td>
<td>$2,500.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$602,920.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>210</td>
<td>Personal Services</td>
<td>$826,820.00</td>
</tr>
<tr>
<td>210</td>
<td>Current Expenses</td>
<td>$445,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Repairs and Alterations</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Equipment</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Postage</td>
<td>$230,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Records Management</td>
<td>$49,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Office of State Emergency Planning</td>
<td>$24,900.00</td>
</tr>
<tr>
<td>210</td>
<td>State Agency Surplus Property</td>
<td>$29,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Information Systems Service Division</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>210</td>
<td>Major Building Repairs</td>
<td>$325,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$2,371,720.00</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the “Postage Account” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70. The State Road Commission shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to (the provisions of) Chapter 17, Article 2-A, Section 13 of the Code of West Virginia.

16—State Board of Insurance
Acct. No. 225

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$22,400.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$6,660.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$400.00</td>
</tr>
<tr>
<td>4 Fire Insurance Premiums</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>5 Automobile Insurance Premiums</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>
## Appropriations

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Bond Premiums</td>
<td>30,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Self-Insurance Fund</td>
<td>100,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$509,460.00</td>
</tr>
</tbody>
</table>

The above appropriations on lines 4, 5, and 6 are for the purpose of paying premiums for the various state agencies. Should these appropriations be insufficient to meet the premium requirements of the state spending units, any excess premium requirements shall be a proper charge against the units and each spending unit shall transfer to the Board of Insurance any amounts required for that department for premiums in excess of this appropriation.

## Legal

### 17—Attorney General

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
<td>$18,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>416,860.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>49,250.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>11,500.00</td>
</tr>
<tr>
<td>5</td>
<td>To protect the resources or tax structure of the State in controversies or legal proceedings affecting same</td>
<td>3,250.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$499,360.00</td>
</tr>
</tbody>
</table>

When legal counsel or secretarial help is appointed by the Attorney General, for any state spending unit, this account shall be reimbursed from such unit's appropriated account in an amount agreed upon by the Attorney General and the proper authority of said spending unit.

### 18—Commission on Uniform State Laws

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

To pay expenses of members of the Commission on Uniform State Laws.
### INCORPORATING AND RECORDING

#### 19—Secretary of State
Acct. No. 250

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary of State</td>
<td>$17,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$113,800.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$31,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$176,800.00</td>
</tr>
</tbody>
</table>

#### EDUCATIONAL

#### 20—West Virginia Board of Regents
Acct. No. 280

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>2</td>
<td>To be used in accordance with House Bill No. 783 (Chapter 130, Acts, Regular Session, 1969).</td>
<td></td>
</tr>
</tbody>
</table>

#### 21—West Virginia University—Medical School
Acct. No. 285

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>2</td>
<td>To be transferred to the Medical School Fund upon the requisition of the Governor.</td>
<td></td>
</tr>
</tbody>
</table>

#### 22—State Board of Education—Vocational Division—Adult Basic Education
Acct. No. 289

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$200,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Any unexpended balance remaining in this appropriation at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.</td>
<td></td>
</tr>
</tbody>
</table>

#### 23—Department of Education
Acct. No. 290

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Comprehensive Educational Program</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

#### 24—Educational Broadcasting Authority
Acct. No. 291

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$22,300.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Regional ETV</td>
<td>$350,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$415,300.00</td>
</tr>
</tbody>
</table>
6 For participation in the construction and operation of Regional ETV stations by Marshall University, Concord College, Bluefield State College, West Virginia Institute of Technology and West Virginia State College and may be transferred to special revenue accounts for matching county and/or Federal Funds. Any unexpended balance remaining in the appropriation “Regional ETV” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

25—State Board of Education—Vocational Division Acct. No. 293

1 To implement Vocational Education Act of 1963 P.L. 88-210 $ 1,541,770.00
2 The above appropriation includes $100,000.00 for Manpower Training.
3 Any unexpended balance remaining in this appropriation at the close of the fiscal years 1967-68 and 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

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

1 Total $ 200,000.00
2 Any unexpended balance remaining in the appropriation “Aid to Counties” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

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

1 State Aid to supplement the General School Fund $125,612,845.00
2 To be transferred to the General School Fund upon the requisition of the Governor.
28—Department of Education—Aid for Exceptional Children
Acct. No. 296

1 Personal Services $ 33,360.00
2 Current Expenses 8,200.00
3 Out-of-State Instruction 90,000.00
4 Aid to Counties 1,324,000.00

Total $ 1,455,560.00

The appropriation for "Out-of-State Instruction" may be expended to provide instruction, care and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.

29—Teachers Retirement Board
Acct. No. 298

1 Benefit Fund—Payments to retired Teachers $ 6,752,000.00
2 Employers Accumulation Fund—to match contributions of members 3,525,000.00
3 Expense Fund 35,000.00

Total $ 10,312,000.00

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

1 Operating Expenses $ 28,400.00
2 Title I—Matching Funds 130,000.00
3 Guaranteed Student Loan Program 175,000.00
4 Scholarship Program 175,000.00
5 Awareness Program 50,000.00

Total $ 558,400.00

The appropriation for Guaranteed Student Loan Program and Scholarship Program may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.

31—West Virginia University
Acct. No. 300

1 Personal Services $ 18,097,225.00
2 Current Expenses 2,700,000.00
3 Repairs and Alterations ........................................ 650,000.00
4 Equipment ......................................................... 1,200,000.00
5 Oak Wilt Control Research ..................................... 10,000.00
6 State aid to students of Veterinary Medicine ............... 43,800.00
7 Bureau for Coal Research ...................................... 200,000.00
8 National Youth Science Camp ................................... 80,000.00
9 Forestry Products ............................................... 82,800.00
10 Educational TV Program ........................................ 300,000.00
11 Regional Research Institute ................................... 74,500.00
12 Intensive Agriculture-Demonstration Trial .................. 26,000.00

13 Total ........................................................................ $ 23,464,325.00
14 Out of the above appropriation for Personal Services, the sum of $8,500.00 shall be used only for the employment of a Spray Specialist who shall be stationed only at West Virginia University Farm at Kearneysville, and $7,200.00 for the employment of a Labor Specialist.

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

1 Personal Services .................................................. $ 383,060.00
2 Current Expenses ................................................. 135,075.00
3 Repairs and Alterations ......................................... 2,000.00
4 Equipment .......................................................... 53,200.00

5 Total ........................................................................ $ 573,335.00
6 The above appropriation is for the operation of the West Virginia University Kanawha Valley Graduate Center. A sufficient amount of this appropriation shall be used to reduce the tuition and registration fees in comparison with those at West Virginia University for the same program.
7 The above appropriation shall not be used for land acquisition, renovating, constructing or purchasing physical facilities.
33—West Virginia University
Parkersburg Branch College
Acct. No. 302

1 Total ........................................................................ $ 341,000.00
2 The above appropriation for “Parkersburg
3 Branch College” shall be used in reducing
4 tuition and registration fees in comparison
5 with those at West Virginia University for
6 the same program.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$739,285.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$128,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$49,586.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$976,871.00</td>
</tr>
</tbody>
</table>

35—Marshall University
Acct. No. 320

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$6,425,239.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$465,200.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$249,550.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$250,500.00</td>
</tr>
<tr>
<td>Flood Wall Assessment</td>
<td>$3,200.00</td>
</tr>
<tr>
<td>Experimental Projects in Teacher Education</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>Educational TV Program</td>
<td>$73,000.00</td>
</tr>
<tr>
<td>Branch Colleges</td>
<td>$83,240.00</td>
</tr>
<tr>
<td>Total</td>
<td>$7,589,929.00</td>
</tr>
</tbody>
</table>

10 The above appropriation for “Branch Col-
11 leges” shall be used in reducing tuition and
12 registration fees in comparison with those
13 at Marshall University for the same pro-
14 gram.
15 Any unexpended balance remaining in the
16 appropriation “Educational TV Program”
17 at the close of the fiscal year 1968-69 is
18 hereby reappropriated for expenditure dur-
19 ing the fiscal year 1969-70.
### 36—Fairmont State College
**Acct. No. 321**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,488,688.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$120,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$140,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,938,688.00</strong></td>
</tr>
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</table>

### 37—Glenville State College
**Acct. No. 322**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,377,005.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$112,500.00</td>
</tr>
<tr>
<td>5 Community Development and Research</td>
<td>$15,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,680,005.00</strong></td>
</tr>
</tbody>
</table>

### 38—West Liberty State College
**Acct. No. 323**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,410,000.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$110,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$129,919.00</td>
</tr>
<tr>
<td>5 Branch College</td>
<td>$50,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,889,919.00</strong></td>
</tr>
</tbody>
</table>

7 The above appropriation for “Branch College” shall be used in reducing tuition and registration fees in comparison with those at West Liberty State College for the same program.

### 39—Shepherd College
**Acct. No. 324**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,309,448.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$115,990.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$98,950.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,574,388.00</strong></td>
</tr>
<tr>
<td>Account</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Center for Economic Action</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation "Center for Economic Action" at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

**41—West Virginia Institute of Technology**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,217,785.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$242,000.00</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$88,000.00</td>
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<td>4</td>
<td>Equipment</td>
<td>$181,020.00</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$2,728,805.00</td>
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**42—West Virginia State College**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,569,153.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$240,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$138,900.00</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$120,000.00</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$3,068,053.00</td>
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</table>

**43—Bluefield State College**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,097,843.00</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$132,000.00</td>
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<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$62,000.00</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>$124,000.00</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$1,415,843.00</td>
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</table>
## Appropriations

### 44—West Virginia State 4-H Camp

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$20,380.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,675.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$6,650.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$36,205.00</strong></td>
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</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$921,990.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$185,000.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$55,350.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$39,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,201,840.00</strong></td>
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</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$40,910.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$7,500.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$6,650.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$7,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$62,560.00</strong></td>
</tr>
</tbody>
</table>

### 47—Department of Archives and History

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$63,850.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$17,450.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$14,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$95,300.00</strong></td>
</tr>
</tbody>
</table>

### 48—West Virginia Library Commission

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$138,730.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$4,900.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Books and Periodicals</td>
<td>$31,480.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$179,110.00</strong></td>
</tr>
</tbody>
</table>
To Match Federal Funds: $209,790.00
Library Matching Fund: $500,000.00
Total: $889,900.00

CHARITIES AND CORRECTION

49—West Virginia Industrial School for Boys
Acct. No. 370

1. Personal Services: $553,900.00
2. Current Expenses: $203,450.00
3. Repairs and Alterations: $35,000.00
4. Equipment: $22,700.00

Total: $815,050.00

50—Forestry Camp for Boys
Acct. No. 371

1. Personal Services: $137,690.00
2. Current Expenses: $90,250.00
3. Repairs and Alterations: $10,500.00
4. Equipment: $15,000.00

Total: $253,440.00

51—West Virginia Industrial Home for Girls
Acct. No. 372

1. Personal Services: $280,240.00
2. Current Expenses: $98,960.00
3. Repairs and Alterations: $14,000.00
4. Equipment: $10,500.00
5. Vocational Training: $5,000.00

Total: $408,700.00

52—West Virginia State Prison for Women
Acct. No. 374

1. Personal Services: $68,970.00
2. Current Expenses: $41,480.00
3. Repairs and Alterations: $9,000.00
4. Equipment: $7,850.00

Total: $127,300.00
### 53—West Virginia Penitentiary
**Acct. No. 375**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$979,720.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$517,880.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$45,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$26,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,569,200.00</strong></td>
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</table>

### 54—Medium Security Prison
**Acct. No. 376**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$568,356.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$197,250.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$25,000.00</td>
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<tr>
<td>4 Equipment</td>
<td>$28,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$818,606.00</strong></td>
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</table>

### 55—West Virginia Children’s Home
**Acct. No. 380**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$95,280.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$40,350.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$14,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$11,620.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$161,250.00</strong></td>
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### 56—Andrew S. Rowan Memorial Home
**Acct. No. 384**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$366,560.00</td>
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<td>2 Current Expenses</td>
<td>$191,795.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$33,300.00</td>
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<td>4 Equipment</td>
<td>$10,820.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$602,475.00</strong></td>
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### HEALTH AND WELFARE

### 57—State Health Department
**Acct. No. 400**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$688,320.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$131,140.00</td>
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<tr>
<td>3 Equipment</td>
<td>$39,400.00</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Emergency Medical Services</td>
</tr>
<tr>
<td>5</td>
<td>Cancer Control and Treatment</td>
</tr>
<tr>
<td>6</td>
<td>Local Health Services</td>
</tr>
<tr>
<td>7</td>
<td>Dental Clinics</td>
</tr>
<tr>
<td>8</td>
<td>Heart Disease Control</td>
</tr>
<tr>
<td>9</td>
<td>Maternal and Child Healthmobile Medical Examination Clinic</td>
</tr>
<tr>
<td>10</td>
<td>Home Health Services</td>
</tr>
<tr>
<td>11</td>
<td>Mobile Chest X-Ray &amp; Diagnostic Services</td>
</tr>
<tr>
<td>12</td>
<td>for Tuberculosis Control</td>
</tr>
<tr>
<td>13</td>
<td>Hospital and Medical Facilities Construction</td>
</tr>
<tr>
<td>14</td>
<td>Special Project for Eradication of Tuberculosis</td>
</tr>
<tr>
<td>15</td>
<td>Environmental Health Services</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
</tr>
</tbody>
</table>

58—Commission on Postmortem Examinations
Acct. No. 401

1 Any balance remaining in this account at the close of fiscal 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

59—Department of Veterans Affairs
Acct. No. 404

1 Personal Services                                           $ 237,060.00
2 Current Expenses                                            46,860.00
3 Equipment                                                   2,500.00
4 To provide Educational Opportunities for Children of War Veterans as provided by Chapter thirty-nine, Acts of the Legislature, one thousand nine hundred and forty-three. 15,000.00
5 Total                                                      $ 301,420.00
6 Any unexpended balances remaining in the appropriation “To Provide Educational Opportunities for Children of War Veterans” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.
### 60—Department of Welfare

**Acct. No. 405**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$6,517,380.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,600,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>4 Public Assistance Grants (Classified Aid)</td>
<td>$9,300,000.00</td>
</tr>
<tr>
<td>5 Aid to Crippled Children</td>
<td>$770,000.00</td>
</tr>
<tr>
<td>6 Medical Services</td>
<td>$2,500,000.00</td>
</tr>
<tr>
<td>7 Conservation of Vision and Prevention of Blindness</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>8 Child Welfare Services</td>
<td>$231,000.00</td>
</tr>
<tr>
<td>9 General Relief and Boarding Care</td>
<td>$2,098,000.00</td>
</tr>
<tr>
<td>10 Social Security Matching Fund</td>
<td>$476,700.00</td>
</tr>
<tr>
<td>11 Total</td>
<td>$23,583,080.00</td>
</tr>
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</table>

### 61—State Agency on Aging

**Acct. No. 406**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$34,980.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$7,000.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$41,980.00</td>
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### 62—Department of Mental Health

**Acct. No. 410**

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$714,090.00</td>
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<tr>
<td>2 Current Expenses</td>
<td>$170,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>4 Research and Training</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>5 Civil Service Costs</td>
<td>$75,000.00</td>
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<tr>
<td>6 Alcoholism Information Centers</td>
<td>$350,000.00</td>
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<tr>
<td>7 Division of Health Education</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>8 Community and Mental Health Programs</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>9 Day Care Center</td>
<td>$60,000.00</td>
</tr>
<tr>
<td>10 Roney’s Point Branch Hospital</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>11 Commission on Mental Retarditation</td>
<td>$18,330.00</td>
</tr>
<tr>
<td>12 Total</td>
<td>$1,867,420.00</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Research and Training” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.
<table>
<thead>
<tr>
<th>Ch. 6]</th>
<th>APPROPRIATIONS</th>
<th>55</th>
</tr>
</thead>
<tbody>
<tr>
<td>63—Colin Anderson Center</td>
<td>Acct. No. 419</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$1,819,200.00</td>
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</tr>
<tr>
<td>2 Current Expenses</td>
<td>$335,100.00</td>
<td></td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$57,300.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$31,500.00</td>
<td></td>
</tr>
<tr>
<td>5 Capital Outlay and Improvement</td>
<td>$1,165,000.00</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td>$3,408,100.00</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>64—Weston State Hospital</th>
<th>Acct. No. 420</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,365,700.00</td>
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</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,033,488.00</td>
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</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$101,000.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$76,200.00</td>
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<tr>
<td>5 Boiler Replacement</td>
<td>$565,000.00</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td>$5,141,388.00</td>
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<table>
<thead>
<tr>
<th>65—Spencer State Hospital</th>
<th>Acct. No. 421</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,610,560.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$562,300.00</td>
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</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$74,000.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$57,000.00</td>
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</tr>
<tr>
<td>5 Total</td>
<td>$2,303,860.00</td>
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<table>
<thead>
<tr>
<th>66—Huntington State Hospital</th>
<th>Acct. No. 422</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,265,000.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$801,580.00</td>
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</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$104,750.00</td>
<td></td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$65,000.00</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td>$3,236,330.00</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>67—Lakin State Hospital</th>
<th>Acct. No. 423</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,090,000.00</td>
<td></td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$315,500.00</td>
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</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Repairs and Alterations</td>
<td>70,100.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>60,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,535,700.00</strong></td>
</tr>
</tbody>
</table>

#### 68—Barboursville State Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>569,600.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>171,630.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>42,600.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>20,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 804,330.00</strong></td>
</tr>
</tbody>
</table>

#### 69—Fairmont Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>269,850.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>106,630.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>15,000.00</td>
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<td>4 Equipment</td>
<td>13,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 404,580.00</strong></td>
</tr>
</tbody>
</table>

#### 70—Welch Emergency Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>341,720.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>174,310.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>45,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>22,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 583,530.00</strong></td>
</tr>
</tbody>
</table>

#### 71—Hopemont State Hospital

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>1,171,600.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>309,200.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>29,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>20,650.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,530,950.00</strong></td>
</tr>
</tbody>
</table>
### 72—Pinecrest Sanitarium

**Acct. No. 431**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,121,590.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$441,500.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$18,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,611,090.00</strong></td>
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</tbody>
</table>

### 73—Denmar State Hospital

**Acct. No. 432**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$968,410.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$246,590.00</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$56,850.00</td>
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<td>4 Equipment</td>
<td>$31,900.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,303,750.00</strong></td>
</tr>
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</table>

### 74—Berkeley Springs Sanitarium

**Acct. No. 436**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$65,830.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$9,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,000.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$87,830.00</strong></td>
</tr>
</tbody>
</table>

### 75—State Board of Education—Rehabilitation Division

**Acct. No. 440**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$484,575.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$91,150.00</td>
</tr>
<tr>
<td>3 Rehabilitation Center</td>
<td>$381,703.00</td>
</tr>
<tr>
<td>4 Case Services</td>
<td>$827,694.00</td>
</tr>
<tr>
<td>5 Supervisory Services for Vending Stand Program for the Blind</td>
<td>$21,235.00</td>
</tr>
<tr>
<td>6 Training and Special Projects</td>
<td>$60,792.00</td>
</tr>
<tr>
<td>7 Social Security Matching Fund</td>
<td>$34,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,901,149.00</strong></td>
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</table>
### BUSINESS AND INDUSTRIAL RELATIONS

#### 76—Bureau of Labor and Department of Weights and Measures

**Acct. No. 450**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$542,010.00</td>
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<tr>
<td>Current Expenses</td>
<td>$143,150.00</td>
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<tr>
<td>Equipment</td>
<td>$3,500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$688,660.00</strong></td>
</tr>
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</table>

#### 77—Department of Employment Security

**Work Incentive Program**

**Acct. No. 451**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Unclassified</td>
<td>$600,000.00</td>
</tr>
<tr>
<td>Any unexpended balance remaining in this appropriation at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.</td>
<td></td>
</tr>
</tbody>
</table>

#### 78—Department of Mines

**Acct. No. 460**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$1,276,240.00</td>
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<tr>
<td>Current Expenses</td>
<td>$192,075.00</td>
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<tr>
<td>Equipment</td>
<td>$34,500.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$1,502,815.00</strong></td>
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#### 79—Department of Commerce

**Acct. No. 465**

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>$525,760.00</td>
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<tr>
<td>Current Expenses</td>
<td>$573,900.00</td>
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<tr>
<td>Equipment</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Mt. State Forest Festival</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Alpine Festival</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Mountain State Arts and Crafts Fair</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>National Hydroplane Championship</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>West Virginia Historical Drama Association</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>$82,300.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,262,960.00</strong></td>
</tr>
</tbody>
</table>

11 The above appropriations, Mountain State Forest Festival, Alpine Festival, Mountain State Arts and Crafts Fair, National Hydro-
Ch. 6]  APPROPRIATIONS

14  plane Championship and West Virginia
15  Historical Drama Association shall be ex-
16  pended only upon authorization of the Com-
17  merce Commissioner and in accordance
18  with the provisions of Chapter 5-A of the
19  Code of West Virginia.
20  All Federal moneys heretofore or hereafter
21  received as reimbursements to the Depart-
22  ment of Commerce, for moneys expended
23  from the General Revenue fund, are hereby
24  reappropriated for the purposes as origin-
25  ally made, including Personal Services,
26  Current Expenses, Equipment, in-service
27  training programs.

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

1  Personal Services ____________________________ $ 21,000.00
2  Current Expenses ______________________________ 7,400.00
3  Equipment ________________________________ 450.00

4  Total ____________________________ $ 28,850.00

81—Southern Interstate Nuclear Board
Acct. No. 471

1  Total ____________________________ $ 7,970.00

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

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

83—Ohio River Valley Water Sanitation Commission
Acct. No. 474

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

84—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.
<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>476</td>
<td>West Virginia Air Pollution Commission</td>
<td>$198,812.00</td>
</tr>
<tr>
<td>477</td>
<td>Interstate Education Compact</td>
<td>$9,500.00</td>
</tr>
<tr>
<td>478</td>
<td>Antiquities Commission</td>
<td>$24,400.00</td>
</tr>
<tr>
<td>480</td>
<td>Department of Banking</td>
<td>$202,600.00</td>
</tr>
<tr>
<td>485</td>
<td>West Virginia State Aeronautics Commission</td>
<td>$555,700.00</td>
</tr>
</tbody>
</table>

For each account, the amounts are as follows:

- **85—West Virginia Air Pollution Commission**
  - Personal Services: $153,900.00
  - Current Expenses: $33,232.00
  - Equipment: $11,680.00
  - Total: $198,812.00

- **86—Interstate Education Compact**
  - West Virginia's contribution to Interstate Education Compact: $9,500.00

- **87—Antiquities Commission**
  - Personal Services: $14,640.00
  - Current Expenses: $6,975.00
  - Equipment: $2,785.00
  - Total: $24,400.00

- **88—Department of Banking**
  - Personal Services: $153,340.00
  - Current Expenses: $49,160.00
  - Equipment: $100.00
  - Total: $202,600.00

- **89—West Virginia State Aeronautics Commission**
  - Personal Services: $25,720.00
  - Current Expenses: $19,980.00
  - Equipment: $1,000.00
  - Aerial Markers: $1,000.00
  - Civil Air Patrol Expenses: $8,000.00
  - Airport Matching Fund: $500,000.00
  - Total: $555,700.00

- **90—West Virginia Nonintoxicating Beer Commissioner**
  - Personal Services: $148,940.00
  - Current Expenses: $59,550.00
Ch. 6]  

**APPROPRIATIONS**

3 Equipment ................................................. $ 1,200.00

4 Total ......................................................... $ 209,690.00

91—West Virginia Racing Commission
Acct. No. 495

1 Personal Services ......................................... $ 161,540.00
2 Current Expenses ........................................... 31,480.00
3 Equipment ................................................... 1,000.00

4 Total ......................................................... $ 194,020.00

**AGRICULTURE**

92—Department of Agriculture
Acct. No. 510

1 Salary of Commissioner ..................................... $ 17,000.00
2 Other Personal Services .................................... 782,720.00
3 Current Expenses ........................................... 293,700.00
4 Equipment ................................................... 25,000.00
5 Research-Greenhouse (To Match Federal Funds) ........... 20,000.00

7 Total ......................................................... $ 1,138,420.00

8 Any part or all of the appropriation made to “Research-Greenhouse” may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.

9 Out of the above funds a sum may be used to match federal funds for the eradication and control of pest and plant diseases.

93—Department of Agriculture—Soil Conservation Committee
Acct. No. 512

1 Personal Services ......................................... $ 115,715.00
2 Current Expenses ........................................... 43,000.00
3 Watershed Program .......................................... 50,000.00

4 Total ......................................................... $ 208,715.00

5 Any unexpended balance remaining in the Watershed Program at the end of the fiscal year 1968-69 is reappropriated for expenditure during 1969-70.
94—Department of Agriculture—Division of Rural Resources  
Acct. No. 513

1 Matching Funds .................................................. $ 170,000.00
2 Any part or all of this appropriation may be transferred to Special Revenue Fund for
3 the purpose of matching Federal Funds for
4 the above-named program.

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

1 Unclassified ......................................................... $ 200,000.00
2 Any part or all of this appropriation may be transferred to Special Revenue Fund for
3 the purpose of matching Federal Funds for
4 the above-named program.
5 Any unexpended balance remaining in the appropriation “Meat Inspection” at the
close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the
fiscal year 1969-70.

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 Strawberry Festival .................................................... 3,500.00
6 Total ........................................................................... $ 76,500.00

CONSERVATION AND DEVELOPMENT

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

1 Personal Services .................................................. $ 224,000.00
2 Current Expenses ...................................................... 51,600.00
3 Equipment ................................................................. 8,900.00
4 Cooperative Mapping Program .................................. 60,000.00
5 Total ........................................................................... $ 344,500.00
6 Of the above appropriations for Current Expenses, the sum of $15,000.00 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

98—Department of Veterans Affairs
Acct. No. 564

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

99—Department of Natural Resources
Acct. No. 565

1 Personal Services $2,458,548.00
2 Current Expenses 784,525.00
3 Repairs and Alterations 108,850.00
4 Equipment 229,570.00
5 Clarke-McNary—Fire Prevention 200,000.00
6 ARA-EDA Park Programs 94,940.00
7 Water Resources Board 5,000.00
8 U. S. Geological Survey 40,500.00
9 Rabies Control 30,000.00

10 Total $3,951,933.00

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

19 Any unexpended balance remaining in the appropriation “Clarke-McNary—Fire Prevention” at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.
APPROPRIATIONS

PROTECTION
100—Department of Public Safety
Acct. No. 570

1 Personal Services ........................................  $3,429,646.00
2 Current Expenses ...........................................  1,471,468.00
3 Repairs and Alterations ...................................  79,500.00
4 Equipment ..................................................  340,000.00

5 Total .........................................................  $5,320,614.00

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

1 Personal Services ..........................................  $99,740.00
2 Current Expenses ...........................................  188,710.00
3 Repairs and Alterations ...................................  36,197.00
4 Equipment ..................................................  2,700.00
5 Compensation of Commanding Officers, Cleri-
cal Allowances and Uniform Allowances ..............  90,660.00
6 Property Maintenance .......................................  170,060.00
7 State Armory Board .........................................  879,970.00

9 Total .........................................................  $1,468,037.00

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

1 Personal Services ..........................................  $43,100.00
2 Current Expenses ...........................................  10,870.00
3 Equipment ..................................................  1,180.00

4 Total .........................................................  $55,150.00

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

1 To match contributions of state employees for
2 social security ...............................................  $2,750,000.00
3 The above appropriation is intended to cover
4 the state’s share of social security costs for
5 those spending units operating from General
6 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 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 1968-69 is hereby reappropriated for ex-
18 penditure during the fiscal year 1969-70.

104—West Virginia State Board of Land Surveyors
Acct. No. 585
1 To pay the per diem of members and other
2 general expenses ................................... $ 4,000.00
3 From Collections ................................... 4,000.00

105—State Board of Professional Foresters
Acct. No. 586
1 To pay the per diem of members and other
2 general expenses ................................... $ 500.00
3 From Collections ................................... 500.00

106—West Virginia Board of Examiners for Practical Nurses
Acct. No. 587
1 To pay the per diem of members and other
2 general expenses ................................... $ 27,000.00
3 From Collections ................................... 27,000.00

107—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

108—State Board of Dental Examiners
Acct. No. 589
1 To pay the per diem of members and other
2 general expenses ................................... $ 6,000.00
3 From Collections ................................... 6,000.00

109—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
110—State Board of Osteopathy  
Acct. No. 591  
1 To pay the per diem of members and other general expenses $2,356.00  
3 From Collections $2,356.00

111—State Board of Optometry  
Acct. No. 592  
1 To pay the per diem of members and other general expenses $4,500.00  
3 From Collections $4,500.00

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

113—State Board of Registration for Professional Engineers  
Acct. No. 594  
1 To pay the per diem of members and other general expenses $37,000.00  
3 From Collections $37,000.00

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

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

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

117—Human Rights Commission  
Acct. No. 598  
1 Personal Services $72,700.00  
2 Current Expenses $36,000.00
3 Equipment .................................................. $1,500.00

4 Total .......................................................... $110,200.00

118—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

119—West Virginia Public Employees Retirement Board
Acct. No. 614

1 Employers Accumulation Fund ......................... $1,920,000.00
2 Expense Fund ............................................. 25,000.00

3 Total ................................................................ $1,945,000.00

4 The above appropriation is intended to cover
5 the state's share of the West Virginia Public
6 Employees Retirement cost in accordance with Chapter 5, Article 10 of the Code
7 of West Virginia for those departments
8 operating from General Revenue Fund and
9 General School Fund appropriations. The
10 State Road Commission, Department of Motor Vehicles, State Tax Commissioner—
11 Gasoline Tax Division, Workmen’s Compensation Commission, Public Service Commission, and other departments operating
12 from Special Revenue Funds and/or Federal Funds shall pay their proportionate
13 share of the retirement costs for their respective divisions. When specific appropriations are not made such payments may be
14 made from the balances in the various
15 Special Revenue Funds in excess of specific
16 appropriations.

120—Insurance Commissioner
Acct. No. 616

1 Personal Services ............................................. $350,000.00
2 Current Expenses ............................................. 81,900.00
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repairs and Alterations</td>
<td>3 Repairs and Alterations</td>
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<td>Equipment</td>
<td>4 Equipment</td>
<td>5,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>5 Total</td>
<td>$442,400.00</td>
</tr>
</tbody>
</table>

#### Section 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-A, Article 2, of the Code of West Virginia the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred seventy.

#### State Road Commission

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>670</td>
<td>TO BE PAID FROM STATE ROAD FUND</td>
<td></td>
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<tr>
<td>1</td>
<td>Federal-Aid Construction — Interstate Program</td>
<td>$110,243,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Federal-Aid Construction — ABC Program</td>
<td>24,046,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Appalachian Program</td>
<td>79,226,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Interstate Maintenance</td>
<td>1,890,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Special Maintenance and State Construction — Expressway, Trunkline and Feeder</td>
<td>5,508,400.00</td>
</tr>
<tr>
<td>6</td>
<td>Special Maintenance and State Construction — State Local Service</td>
<td>6,211,600.00</td>
</tr>
<tr>
<td>7</td>
<td>Routine Maintenance — Expressway, Trunkline and Feeder</td>
<td>17,000,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Routine Maintenance — State Local Service</td>
<td>18,794,000.00</td>
</tr>
<tr>
<td>9</td>
<td>Emergency Operations — Snow and Ice Control — Flood and Slides</td>
<td>6,250,000.00</td>
</tr>
<tr>
<td>10</td>
<td>Scenic Highway</td>
<td>1,257,000.00</td>
</tr>
<tr>
<td>11</td>
<td>Forest Highway</td>
<td>100,000.00</td>
</tr>
<tr>
<td>12</td>
<td>General Operations</td>
<td>24,000,000.00</td>
</tr>
<tr>
<td>13</td>
<td>Equipment Purchases</td>
<td>4,000,000.00</td>
</tr>
<tr>
<td>14</td>
<td>Inventory Purchases</td>
<td>1,000,000.00</td>
</tr>
<tr>
<td>15</td>
<td>Debt Service</td>
<td>13,130,000.00</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
<td>$312,656,000.00</td>
</tr>
</tbody>
</table>

It is the intent to appropriate and make available for expenditure, the balances and all revenues and income of the state road fund, including the proceeds from the sale of bonds, for the maintenance, construction
and reconstruction of state roads and for other purposes in accordance with the provisions of Chapter 17, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

Funds in excess of amounts herein appropriated may be made available by budget amendment upon request of the Road Commissioner and approval of the Governor.

The State Road Commissioner shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories of materials and supplies: Provided, however, That the operation of such revolving funds shall not cause expenditures in excess of the foregoing appropriations.

There is hereby appropriated, within the above line items, sufficient moneys for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Chapter 14, Article 2, Sections 7 and 8, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

**122—Department of Motor Vehicles**  
**Acct. No. 671**  
**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,093,970.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>597,000.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>30,000.00</td>
</tr>
<tr>
<td>4 Purchase of License Plates</td>
<td>260,000.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>51,330.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>47,300.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,079,600.00</strong></td>
</tr>
</tbody>
</table>
### 123—State Tax Department—Gasoline Tax Division
**Acct. No. 672**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$250,740.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$69,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching Fund</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$335,740.00</td>
</tr>
</tbody>
</table>

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

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$107,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$32,400.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,750.00</td>
</tr>
<tr>
<td>4</td>
<td>Vocational Aid</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$643,650.00</td>
</tr>
</tbody>
</table>

6 Any unexpended balance remaining in the appropriation—Vocational Aid and Aid to Counties at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

### 125—Department of Education—Veterans Education
**Acct. No. 702**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$57,020.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$69,020.00</td>
</tr>
</tbody>
</table>

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

7 Federal funds in excess of the amounts here-by appropriated may be made available by budget amendment upon request of the State Superintendent of Schools and approval of the Governor for any emergency which might arise in the operation of this division during the fiscal year.
126—Department of Education
Acct. No. 703
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of State Superintendent</td>
<td>$22,500.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$543,448.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$136,550.00</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$6,850.00</td>
</tr>
<tr>
<td>5</td>
<td>National Defense Education Act</td>
<td>$223,270.00</td>
</tr>
<tr>
<td>6</td>
<td>Statewide Testing Program</td>
<td>$176,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Experimental Projects</td>
<td>$18,730.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$1,127,348.00</td>
</tr>
</tbody>
</table>

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

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

127—State Board of School Finance
Acct. No. 704
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$45,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$8,100.00</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$55,600.00</td>
</tr>
</tbody>
</table>

128—Department of Education—School Lunch Program
Acct. No. 705
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$88,980.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$19,960.00</td>
</tr>
<tr>
<td>3</td>
<td>Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$475,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$583,940.00</td>
</tr>
</tbody>
</table>

129—Department of Education
Acct. No. 706
TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salaries of County Superintendents</td>
<td>$61,000.00</td>
</tr>
</tbody>
</table>
130—Department of Education  
Acct. No. 707  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 State Aid to Children's Home $25,000.00

131—Department of Education—Safety Education  
Acct. No. 708  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Personal Services $13,060.00  
2 Current Expenses $2,940.00  
3 Aid to Counties $135,000.00  
4 Total $151,000.00

132—Department of Education—Textbook Aid  
Acct. No. 709  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Unclassified $300,000.00  
2 To be distributed according to Chapter fifty-one, Acts of the Legislature, Regular Session, one thousand nine hundred and thirty-nine.

133—Treasurer's Office  
Acct. No. 800  
TO BE PAID FROM SPECIAL REVENUE FUND  
1 Abandoned and Unclaimed Property $25,000.00

134—Real Estate Commission  
Acct. No. 801  
TO BE PAID FROM SPECIAL REVENUE FUND  
1 Personal Services $34,740.00  
2 Current Expenses $16,730.00  
3 Social Security Matching Fund $1,550.00  
4 Public Employees Retirement Matching Fund $1,600.00  
5 Total $54,620.00  
6 The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees as provided by law.
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 expenditure 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 ............................................. $ 23,100.00
2 Current Expenses ............................................. 15,000.00
3 Total ......................................................... $ 38,100.00
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 Governor.

137—Department of Finance and Administration—
Division of Purchases—Revolving Fund
Acct. No. 814
TO BE PAID FROM SPECIAL REVENUE FUND
1 Personal Services ............................................. $ 136,720.00
2 Current Expenses ............................................. 9,380.00
3 Equipment .................................................... 16,700.00
4 Social Security Matching Fund ......................... 6,600.00
5 Public Employees Retirement Matching Fund ........ 6,300.00
6 Total ......................................................... $ 175,700.00
The total amount of this appropriation shall be paid from Special Revenue Fund as provided by Chapter 5-A, Article 2 of the Code of West Virginia. The above appropriation includes salaries and operating expenses. There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale. Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Finance and Administration and approval of the Governor.

### 138—Department of Agriculture

**Acct. No. 818**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$219,000.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$40,590.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$8,500.00</td>
</tr>
<tr>
<td>Social Security Matching Fund</td>
<td>$9,300.00</td>
</tr>
<tr>
<td>Public Employees Retirement Matching Fund</td>
<td>$9,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$286,390.00</strong></td>
</tr>
</tbody>
</table>

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

### 139—State Committee of Barbers and Beauticians

**Acct. No. 822**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$66,300.00</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$32,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>$900.00</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Social Security Matching Fund</td>
<td>3,000.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>3,000.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$105,200.00</td>
</tr>
</tbody>
</table>

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

#### 140—Public Service Commission

Acct. No. 828

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Commissioners</td>
<td>$42,000.00</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>694,516.00</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>115,975.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>16,265.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>26,316.00</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching Fund</td>
<td>42,066.00</td>
</tr>
<tr>
<td>7 Total</td>
<td>$937,138.00</td>
</tr>
</tbody>
</table>

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

#### 141—Public Service Commission—Motor Carrier Division

Acct. No. 829

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$271,244.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>70,400.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>4,860.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>11,917.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>15,555.00</td>
</tr>
<tr>
<td>6 Total</td>
<td>$373,976.00</td>
</tr>
</tbody>
</table>
7 The total amount of this appropriation shall be paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as authorized by law.

142—Department of Natural Resources
Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,311,055.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$664,445.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$81,500.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$142,500.00</td>
</tr>
<tr>
<td>5 Land Purchase &amp; Building</td>
<td>$117,500.00</td>
</tr>
</tbody>
</table>

Total $2,317,000.00

7 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected at state parks. Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Natural Resources and approval of the Governor.

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

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$156,132.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$57,210.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$4,850.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,850.00</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>$958.00</td>
</tr>
</tbody>
</table>

Total $230,000.00
fees collected for inspection stickers as provided by law.

Special Funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Department of Public Safety and approval of the Governor for the purpose of repairs to, or construction of, police barracks.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>$16,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>4,072,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>951,300.00</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>18,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>62,500.00</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>194,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Retirement Matching Fund</td>
<td>188,000.00</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$5,501,800.00</td>
</tr>
</tbody>
</table>

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

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

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

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$216,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>41,150.00</td>
</tr>
</tbody>
</table>
3 Social Security Matching Fund .................. 9,500.00
4 Public Employees Retirement Matching Fund 10,000.00

5 Total ........................................... $ 276,650.00

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

The Governor is hereby authorized to make
available by budget amendment, upon re-
quest of the Civil Service Commission,

funds in excess of the amounts hereby ap-
propriated.

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 Property Acquisition .......................... 500,000.00
3 Misc. Small Projects .......................... 500,000.00
4 Utilities, Roads and Parking ................ 500,000.00
5 Renovating of Existing Building ............ 335,000.00

6 Total ........................................... $ 2,500,000.00

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

Any unexpended balance remaining in this
appropriation at the close of the fiscal year
1968-69 is hereby reappropriated for ex-
penditure during the fiscal year 1969-70.

147—West Virginia Board of Regents—Special Capital
Improvement Fund
Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 West Virginia Board of Regents Debt Serv-
  ice ........................................ $ 1,725,000.00
3 Glenville State College—Forest Technology
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Building</td>
<td>150,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Glenville State College—Land acquisition</td>
<td>10,000.00</td>
</tr>
<tr>
<td>6</td>
<td>Bluefield State College—Additional amount for Technical Science Building addition</td>
<td>150,000.00</td>
</tr>
<tr>
<td>7</td>
<td>Bluefield State College—Technical Science Building equipment</td>
<td>75,000.00</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia State College—Dormitory furniture and equipment</td>
<td>370,000.00</td>
</tr>
<tr>
<td>9</td>
<td>Shepherd College—Dormitory furniture, equipment and sewers</td>
<td>225,000.00</td>
</tr>
<tr>
<td>10</td>
<td>West Virginia Institute of Technology—Dormitory furniture, equipment and land</td>
<td>277,000.00</td>
</tr>
<tr>
<td>11</td>
<td>West Virginia Board of Regents—Miscellaneous small projects</td>
<td>175,000.00</td>
</tr>
<tr>
<td>12</td>
<td>Bluefield State College—Basic Science Building</td>
<td>$2,300,000.00</td>
</tr>
<tr>
<td>13</td>
<td>Bluefield State College—Land Acquisition</td>
<td>$70,000.00</td>
</tr>
<tr>
<td>14</td>
<td>Bluefield State College—Library Facilities—Alterations and Additions</td>
<td>$530,000.00</td>
</tr>
<tr>
<td>15</td>
<td>W. Va. Institute of Technology—Library Building</td>
<td>$1,800,000.00</td>
</tr>
<tr>
<td>16</td>
<td>Community Technical College Building and Land</td>
<td>$2,800,000.00</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td>$4,600,000.00</td>
</tr>
<tr>
<td>18</td>
<td>West Liberty State College—Library-Classroom Building</td>
<td>$1,800,000.00</td>
</tr>
<tr>
<td>19</td>
<td>Marshall University—Communications Building</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>20</td>
<td>West Virginia State College—Classroom-Office Building</td>
<td>$3,000,000.00</td>
</tr>
<tr>
<td>21</td>
<td>Land Acquisition</td>
<td>$130,000.00</td>
</tr>
<tr>
<td>22</td>
<td>Total</td>
<td>$3,130,000.00</td>
</tr>
<tr>
<td>23</td>
<td>Concord College—Health and Physical Education Building</td>
<td>$2,500,000.00</td>
</tr>
<tr>
<td>24</td>
<td>Land Acquisition</td>
<td>$125,000.00</td>
</tr>
<tr>
<td>25</td>
<td>Total</td>
<td>$2,625,000.00</td>
</tr>
<tr>
<td>26</td>
<td>Fairmont State College—Science Building</td>
<td>$2,940,000.00</td>
</tr>
<tr>
<td>College/Maintenance</td>
<td>Item Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Glenville State College</td>
<td>Classroom Building and Heating Complex</td>
<td>$2,425,000.00</td>
</tr>
<tr>
<td></td>
<td>Land Acquisition</td>
<td>$100,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$2,525,000.00</td>
</tr>
<tr>
<td>Shepherd College</td>
<td>Fine Arts Building</td>
<td>$1,900,000.00</td>
</tr>
<tr>
<td>Fairmont State College</td>
<td>Health and Physical Education Building</td>
<td>$1,500,000.00</td>
</tr>
<tr>
<td>Marshall University</td>
<td>Land Acquisition</td>
<td>$400,000.00</td>
</tr>
<tr>
<td></td>
<td>Science Engineering Building</td>
<td>$4,000,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$4,400,000.00</td>
</tr>
<tr>
<td>West Liberty State College</td>
<td>Maintenance Building</td>
<td>$380,000.00</td>
</tr>
<tr>
<td></td>
<td>Renovation of Main Hall</td>
<td>$280,000.00</td>
</tr>
<tr>
<td></td>
<td>Renovation of Annex II</td>
<td>$100,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$760,000.00</td>
</tr>
<tr>
<td>Shepherd College</td>
<td>Maintenance Building</td>
<td>$200,000.00</td>
</tr>
<tr>
<td></td>
<td>Renovation of Social Science Building</td>
<td>$200,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$400,000.00</td>
</tr>
<tr>
<td>Concord College</td>
<td>Improvement of Intramural Field</td>
<td>$80,000.00</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$33,467,000.00</td>
</tr>
</tbody>
</table>

As required by law, the above projects are listed in a stated order of priority. The appropriations made in lines 1 through 17 are to be paid on a cash basis and made available from date of passage and the cost of projects in lines 18 through 64 are to be paid for from proceeds of revenue bonds as authorized by law with projects in lines 18 through 49 being made available from date of passage. It is intended that only complete and usable units or projects be
constructed and/or equipped, and then only
in the listed order of priority: Provided,
however, That the amounts shown for each
unit or project shall include in said amount
matching-grant funds from governmental
or nongovernmental sources: And provided
further, That whenever the amount in the
Capital Improvement Fund including both
cash collections and the proceeds of bond
sale, shall be sufficient to cover all capital
expenditures authorized above, then the
listed projects shall be considered of equal
priority and all of them, or any one or
more, may be constructed as soon as plans
can be prepared and contracts let therefor.
The total amount of this appropriation shall
be paid from the nonrevolving Capital Im-
provement Fund created by the 1959 Legis-
lature, amended by the 1963 Legislature.
Any unexpended balance remaining in this
appropriation at the close of the fiscal year
1968-69 is hereby reappropriated for
expenditure during the fiscal year 1969-
70.
The appropriations heretofore authorized by
the Legislature for expenditure during
the fiscal year 1968-69, set forth in the Bud-
get Bill, Regular Session, 1968, Section 2,
Appropriations from Other Funds, pages
48-50, inclusive, State Board of Education—
Special Capital Improvement Fund, Ac-
count No. 854, lines 7 thru 49, inclusive, and
Acts of 1968 Second Extraordinary Session
(September 11-September 14, 1968) Chap-
ter 1, pages 4 and 5, inclusive, Item 146,
West Virginia Board of Education-Special
Capital Improvement Fund, Account No.
854, lines 7 through 48, inclusive, is hereby
voided and superseded by the above ap-
propriation.
148—West Virginia University—Medical School
Acct. No. 873

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$9,400,000.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$3,200,000.00</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$200,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$13,100,000.00</td>
</tr>
</tbody>
</table>

The above total appropriation includes an amount of $500,000.00 to be transferred from the General Revenue Fund Acct. No. 285 upon requisition of the Governor.

Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the West Virginia Board of Regents and approval of the Governor.

149—Workmen's Compensation Commission
Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$997,100.00</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$324,950.00</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$15,600.00</td>
</tr>
<tr>
<td>4 Social Security Matching Fund</td>
<td>$44,550.00</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching Fund</td>
<td>$45,100.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,427,300.00</td>
</tr>
</tbody>
</table>

There is hereby authorized to be paid out of the above appropriation for current expenses the amount necessary for the premiums on bonds given by the State Treasurer and bond custodian for the protection of the Workmen's Compensation Fund. This sum shall be transferred to the Board of Insurance.

Sec. 3. Supplemental and Deficiency Appropriations.—From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following
4 amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-nine to supplement the 1968-69 appropriations, and to be available for expenditure upon date of passage.

150—Supreme Court of Appeals

Acct. No. 110

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Judges</td>
<td>$11,492.00</td>
</tr>
<tr>
<td>2 Equipment</td>
<td>$56,000.00</td>
</tr>
<tr>
<td>3 Total</td>
<td>$67,492.00</td>
</tr>
</tbody>
</table>

151—Governor’s Office

Acct. No. 120

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Civil Contingent Fund</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>2 Office of Federal State Relations</td>
<td>$350,000.00</td>
</tr>
<tr>
<td>3 Federal State Coordinating Matching Funds</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>4 Total</td>
<td>$1,350,000.00</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation—Civil Contingent Fund, Office of Federal State Relations, and Federal State Coordination, at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

152—State Tax Department

Acct. No. 180

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Current Expenses</td>
<td>$68,000.00</td>
</tr>
</tbody>
</table>

153—State Commissioner of Public Institutions

Acct. No. 190

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 W. Va. Forestry Camp, Leckie, McDowell</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>2 County</td>
<td></td>
</tr>
<tr>
<td>3 Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.</td>
<td></td>
</tr>
</tbody>
</table>
154—Department of Finance and Administration  
   Acct. No. 210  
1 Information Systems Service Division—To  
   provide sufficient funds for remainder of  
   year ............................................................. $ 150,000.00

155—West Virginia University  
   Acct. No. 300  
1 Current Expenses .............................................. $ 219,200.00

156—Glenville State College  
   Acct. No. 322  
1 Personal Services ............................................. $ 21,988.00

157—Bluefield State College  
   Acct. No. 329  
1 To Repair Damage to College Building ............. $ 25,000.00

158—West Virginia Schools for the Deaf and the Blind  
   Acct. No. 333  
1 Intermediate Classroom Dormitory Unit .......... $ 887,250.00  
2 Any unexpended balance remaining in the  
   above appropriation at the close of the  
   fiscal year 1968-69 is hereby reappropriated  
   for expenditure during the fiscal year  
   1969-70.

159—Lakin State Hospital  
   Acct. No. 423  
1 Construct Recreation Building .................. $ 126,500.00  
2 Renovate Classroom Building ...................... 130,740.00  
3 Construct Ward Building .............................. 75,000.00  
4 Total .......................................................... $ 332,240.00  
5 Any unexpended balance remaining in the  
   appropriation—Construct Recreation Build-  
   ing, Renovate Classroom Building, Con-  
   struct Ward Building, at the close of the  
   fiscal year 1968-69 is hereby reappropriated  
   for expenditure during the fiscal year  
   1969-70.
160—Department of Commerce  
Acct. No. 465  
1 Independence Hall, Wheeling, West Virginia $125,000.00  
Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

161—Department of Agriculture—Soil Conservation Committee  
Acct. No. 512  
1 Personal Services $15,000.00

162—Department of Natural Resources  
Acct. No. 565  
1 Capital Improvements, State Parks $1,865,000.00  
Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1968-69 is hereby reappropriated for expenditure during the fiscal year 1969-70.

163—Adjutant General  
Acct. No. 580  
1 Repairs and Alterations $9,400.00

164—State Board of Education  
Acct. No. 700  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Current Expenses $6,000.00

165—Department of Education  
Acct. No. 703  
TO BE PAID FROM GENERAL SCHOOL FUND  
1 Salary of State Superintendent of Schools $2,057.00
Sec. 4. Awards for Claims Against the State.—From the funds designated there are hereby appropriated for the remainder of the fiscal year 1968-69, and to remain in effect until June 30, 1970, for payment of claims against the state, the following amounts as itemized.

Claims versus the State Road Commission

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Everett Lee Akers</td>
<td>$25.00</td>
</tr>
<tr>
<td>2</td>
<td>Acie W. Albert</td>
<td>$88.07</td>
</tr>
<tr>
<td>3</td>
<td>The Baker &amp; Hickey Company</td>
<td>$11,151.12</td>
</tr>
<tr>
<td>4</td>
<td>Henry A. Beasley</td>
<td>$100.00</td>
</tr>
<tr>
<td>5</td>
<td>Walter L. Blankenship</td>
<td>$68.61</td>
</tr>
<tr>
<td>6</td>
<td>Central Asphalt Paving Company</td>
<td>$16,483.75</td>
</tr>
<tr>
<td>7</td>
<td>Central Asphalt Paving Company</td>
<td>$10,600.00</td>
</tr>
<tr>
<td>8</td>
<td>Warren Chamberlain and Justine Chamberlain</td>
<td>$110.16</td>
</tr>
<tr>
<td>9</td>
<td>Peter Chapman</td>
<td>$73.24</td>
</tr>
<tr>
<td>10</td>
<td>Charleston Concrete Floor Company</td>
<td>$9,713.78</td>
</tr>
<tr>
<td>11</td>
<td>Charleston Construction Inc.</td>
<td>$1,245.95</td>
</tr>
<tr>
<td>12</td>
<td>Katharine Chatfield</td>
<td>$247.07</td>
</tr>
<tr>
<td>13</td>
<td>Chesapeake &amp; Ohio Railway Company</td>
<td>$212.01</td>
</tr>
<tr>
<td>14</td>
<td>William Curry and Mary E. Curry</td>
<td>$2,106.71</td>
</tr>
<tr>
<td>15</td>
<td>Thornton Deskins</td>
<td>$100.00</td>
</tr>
<tr>
<td>16</td>
<td>C. L. Dotson</td>
<td>$23.00</td>
</tr>
<tr>
<td>17</td>
<td>Federal Insurance Company and Raymond T. Dalton</td>
<td>$677.33</td>
</tr>
<tr>
<td>18</td>
<td>Doran Frame, d.b.a.Doran Frame</td>
<td>$3,801.73</td>
</tr>
<tr>
<td>19</td>
<td>Electrical Contractors</td>
<td>$16.48</td>
</tr>
<tr>
<td>20</td>
<td>W. E. Gano, Sr.</td>
<td>$646.77</td>
</tr>
<tr>
<td>21</td>
<td>Richard Gordon</td>
<td>$17,583.06</td>
</tr>
<tr>
<td>22</td>
<td>S. J. Groves &amp; Sons</td>
<td>$23,108.00</td>
</tr>
<tr>
<td>23</td>
<td>J. I. Hass</td>
<td>$144,349.53</td>
</tr>
<tr>
<td>24</td>
<td>Haynes Construction Company</td>
<td>$4,033.76</td>
</tr>
<tr>
<td>25</td>
<td>Kenneth G. Keith</td>
<td>$52.53</td>
</tr>
<tr>
<td>26</td>
<td>Charles J. Kucera and Josephine Ann Kucera</td>
<td>$75.00</td>
</tr>
<tr>
<td>27</td>
<td>Laird Office Equipment Company</td>
<td>$1,026.54</td>
</tr>
<tr>
<td>28</td>
<td>Vincent Lopez</td>
<td>$804.09</td>
</tr>
</tbody>
</table>
33 Shirley McKinney ................................................. 94.35
34 James L. Matheny ............................................. 240.00
35 W. E. Medley .................................................. 2,500.00
36 National Rubber & Leather Company ....................... 1,016.41
37 Martha J. Nickell and
38 Stonewall Casualty Company ................................ 104.31
39 Robert C. Owens ............................................. 681.73
40 James and Norma Robison .................................. 202.62
41 Lois Shinn .................................................... 435.00
42 Raymond R. Smith ........................................... 2,400.00
43 Southern Coals Corporation .................................. 5,401.31
44 George B. Southern, Jr. .................................... 316.08
45 State Construction Company .................................. 87,823.61
46 State Farm Mutual Automobile
47 Insurance Company .......................................... 148.01
48 State Farm Mutual Automobile
49 Insurance Company .......................................... 36.05
50 Robert Vincent ................................................. 181.08
51 C. E. Wetherall, d.b.a
52 C. E. Wetherall Company .................................... 5,506.55
53 Prince A. Williams ........................................... 88.20
54 Donald L. Wisecarver ....................................... 45.00
55 J. E. Greene ................................................... 6,008.45
56 Marilyn Stollings ............................................. 10,000.00

Claims versus the Adjutant General
TO BE PAID FROM GENERAL REVENUE FUND
1 City of Morgantown ...........................................$ 150.00

Claims versus the Department of Welfare
TO BE PAID FROM GENERAL REVENUE FUND
1 Rahall Realty Company .......................................$ 40,500.00

Claims versus the Commissioner of Public Institutions
TO BE PAID FROM GENERAL REVENUE FUND
1 Reliance Electric & Engineering Company .............$ 53.34
2 T & L—Wheeling Plumbing and Industrial Supply Company ........................................ 2,275.22
3 Mr. and Mrs. James P. Lewis .............................. 177.35
4 William L. Wilson ............................................ 31.00
### Claims versus the Department of Education

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lawrence V. Jordan</td>
<td>$272.14</td>
</tr>
<tr>
<td>2</td>
<td>C. A. Robrecht Company</td>
<td>$464.41</td>
</tr>
<tr>
<td>3</td>
<td>C. A. Robrecht Company</td>
<td>$1,687.74</td>
</tr>
<tr>
<td>4</td>
<td>Patrick C. Williams</td>
<td>$24.00</td>
</tr>
</tbody>
</table>

### Claims versus the Department of Natural Resources

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Eureka Pipe Line Company</td>
<td>$6,741.99</td>
</tr>
</tbody>
</table>

### Claims versus the Department of Mental Health

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mary Ann DeBolt</td>
<td>$177.42</td>
</tr>
<tr>
<td>2</td>
<td>C. A. Robrecht Company</td>
<td>$170.78</td>
</tr>
<tr>
<td>3</td>
<td>C. A. Robrecht Company</td>
<td>$83.75</td>
</tr>
<tr>
<td>4</td>
<td>C. A. Robrecht Company</td>
<td>$135.96</td>
</tr>
</tbody>
</table>

### Claims versus the State Aeronautics Commission

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ralph E. Phillips</td>
<td>$1,744.00</td>
</tr>
</tbody>
</table>

### Claims versus Department of Finance and Administration

**TO BE PAID FROM GENERAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Columbia Ribbon &amp; Manufacturing Company, Inc.</td>
<td>$94.94</td>
</tr>
<tr>
<td>2</td>
<td>International Business Machines Corporation</td>
<td>$7,882.03</td>
</tr>
<tr>
<td>3</td>
<td>Otis Elevator Company</td>
<td>$426.61</td>
</tr>
<tr>
<td>4</td>
<td>United Airlines, Inc.</td>
<td>$512.91</td>
</tr>
</tbody>
</table>

### Claims versus Alcohol Beverage Control Commissioner

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Clarence C. Elmore</td>
<td>$803.79</td>
</tr>
</tbody>
</table>

### Claims versus Workmen's Compensation Fund

**TO BE PAID FROM WORKMEN'S COMPENSATION FUND**

<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mountain State Consultants, Inc.</td>
<td>$7,200.00</td>
</tr>
</tbody>
</table>
Sec. 5. Reappropriations.—The unexpended balance, if any, in Item 151, Section 5, of the 1967 Budget Act is hereby reappropriated for expenditure through June 30, 1970.

Sec. 6. Special Revenue Appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred seventy appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of Chapter 12, Article 2, Section 2, of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, Chapter 5-A, Article 2, of the Code of West Virginia, unless the spending unit has filed with the state director of the budget and the state auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;
(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 7. Specific Funds and Collection Accounts.—A fund or collection account, which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of Chapter 12, Article 3, of the Code of West Virginia.

Sec. 8. Appropriation for Refunding Erroneous Payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid for refund to the proper person. When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 9. Sinking Fund Deficiencies.—There is hereby appropriated to the Governor a sufficient amount to meet
a deficiency that may arise in the funds of the State Sinking Fund Commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the State Sinking Fund Commission as may be necessary for this purpose. The State Sinking Fund Commission shall reimburse the State of West Virginia through the Governor from the first remittance collected from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 10. Appropriations from Taxes and License Fees.—There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one half percent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the Tax Commissioner through the state treasury out of gross collections.

Sec. 11. Appropriations to Pay Costs of Publication of Delinquent Corporations.—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the auditor and/or the Governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by Chapter 11, Article 12, Sections 75 and 77, of the Code of West Virginia.

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

(a) For the redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.
1 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 out- 4 lay, except as otherwise provided in Title I, Section 3.

1 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 appropri- 4 ated for expenditure in accordance with Chapter 18, Article 5 9, Section 6, of the Code of West Virginia.

TITLE 3. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

1 Section 1. Appropriations Conditional.—The expendi- 2 ture of the appropriations made by this act, except those 3 appropriations made to the legislative and judicial 4 branches of the state government, are conditioned upon 5 the compliance by the spending unit with the require- 6 ments of Chapter 5-A, Article 2, of the Code of West Vir- 7 ginia.
8 Where former spending units have been absorbed by or 9 combined with other spending units by acts of this Legis- 10 lature, it is the intent of this act that reappropriation shall 11 be to the succeeding or later spending unit created unless 12 otherwise indicated.

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

CHAPTER 7
(Senate Bill No. 176—By Mr. Carrigan and Mr. Smith, of Cabell)

(Passed February 26, 1969; in effect July 1, 1969. Approved by the Governor.)

AN ACT to repeal articles four, four-b, four-c, four-e and eight, chapter thirty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; to repeal chapters fifteen, sixteen, seventeen and one hundred thirteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five; to repeal chapter four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven; to repeal chapter thirty-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one; to repeal chapter fourteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-a, relating to banks and banking; relating to financial institutions; relating to certain powers and authorities of fiduciaries and others; providing a short title, definitions, a statement of purpose, a separability clause and for the repeal of inconsistent laws; providing for the establishment, continuance and administration of a department of banking and the office of the commissioner of banking in the state government, for the organization, powers, duties, functions and services of the commissioner of banking and the vesting of the powers, duties, rights and privileges of said department in the commissioner of banking; establishing the West Virginia board of banking and financial institutions; providing the powers, duties, procedures and functions thereof; providing for the creation, organization, powers, functions and services of banks, and other financial institutions; and for the powers, jurisdiction and responsibilities of the board and the commissioner of banking in their supervision and control over and regulation of all such financial institutions; establishing administrative procedures and providing for hearings and judicial review; prohibiting certain activities and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That articles four, four-b, four-c, four-e and eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapters fifteen, sixteen, seventeen and one hundred thirteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-five, be repealed; that chapter four,
acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-seven, be repealed; that chapter thirty-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, be repealed; that chapter fourteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-a, to read as follows:

CHAPTER 31A. BANKS AND BANKING.

Article
2. Department of Banking.
3. Board of Banking and Financial Institutions.
4. Banking Institutions and Services Generally.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-1. Short title; objects and purposes.
This chapter shall constitute and may be cited as the state banking code of West Virginia. It is the intention of the Legislature in enacting this chapter to foster and promote sound and dynamic financial institutions and particularly banking institutions in the state in order to provide services to the public which are necessary and desirable for the economic, social, and industrial health and development of the state. Therefore the provisions of this chapter shall be interpreted, construed and administered liberally to accomplish these purposes.

As used in this chapter, unless the context in which used plainly requires a different meaning:
(a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent
jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words “bank” and “banking institution” mean a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia or an association heretofore or hereafter authorized to conduct a banking business in West Virginia under the laws of the United States and having its principal office in this state and shall embrace and include a trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(c) The term “banking business” means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen of article four of this chapter and as elsewhere defined by law;

(d) The word “board” means the West Virginia board of banking and financial institutions;

(e) The words “commissioner” or “commissioner of banking” mean the commissioner of banking of West Virginia;

(f) The word “community” means a city, town or other incorporated area, or, where not so incorporated, a trading area;

(g) The word “department” means the department of banking of West Virginia;

(h) The words “deputy commissioner” or “deputy commissioner of banking” mean the deputy commissioner of banking of West Virginia;

(i) The word “fiduciary” means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust or responsibility;

(j) The words “financial institutions” mean banks, building and loan associations, industrial loan companies, small loan companies, credit unions and all other similar
institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

(k) The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

(l) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county court, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(m) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(n) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and
(o) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen of article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business."

§31A-1-3. Application and construction of chapter.

(a) The provisions of this chapter shall apply to all financial institutions whether formed, organized or created before or after the enactment hereof. All such corporate institutions heretofore formed, organized or created shall amend their certificates of incorporation in all respects necessary to comply with this chapter.

(b) Every person, business or activity under the jurisdiction, supervision and control of the commissioner, whether existing or operating as an individual, association, firm, corporation or otherwise, shall be subject to and be controlled by provisions of this chapter regardless of any word or phrase referring to a particular entity, or form of organization. Wherever in this chapter the word corporation is used or wherever reference is made to stockholders, directors, officers, or other personnel normally applicable only to corporate organizations, such reference, unless the context in which used clearly indicates otherwise, shall be construed to apply to and embrace associations, firms, individuals and any other entity or form of organization by which any business or operations under the jurisdiction, supervision and control of the commissioner may be conducted.

§31A-1-4. Separability; repealer.

If any provision, clause or phrase of this chapter or the application thereof to any person or situation be held invalid, such invalidity shall not affect other provisions, clauses, phrases or applications of the chapter which can be given effect without the invalid provision, clause, phrase or application, and to this end the provisions hereof are declared to be separable.

All laws or parts of laws plainly inconsistent with the provisions hereof are hereby repealed. No provision of this chapter shall be deemed to be repealed by subsequent
11 legislation not specifically repealing it if such construc-
12 tion can be avoided.

§31A-1-5. Lending and investing powers and authority of
fiduciaries, financial institutions, governmental
entities and other persons.

1 The state of West Virginia, counties, municipalities,
2 political subdivisions and agencies and instrumentalities
3 of any of them, fiduciaries, building and loan associations,
4 industrial loan companies, insurance companies, fraternal
5 benefit societies, and other persons lawfully engaging in
6 the lending and investing business and services shall have
7 and are hereby authorized and empowered to exercise
8 the same lawful rights and privileges as are banking insti-
9 tutions under provisions of sections twenty-seven, twenty-
10 eight and twenty-nine of article four of this chapter.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-1. Department of banking of West Virginia, offices of commis-
11 sioner and deputy commissioner of banking continued.

§31A-2-2. Commissioner's appointment, term, qualifications, salary,
oath and bond.

§31A-2-3. Deputy commissioner's appointment, tenure, salary, qualifi-
cations, oath and bond; exercise of commissioner's powers
by deputy.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department
transferred to commissioner; powers and duties of com-
missioner.

§31A-2-5. Certificate or license to engage in business required; appli-
cation for and issuance of license; filing of amendments to
charter and bylaws and to foreign statutes; who may
engage in banking business in state.

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

§31A-2-7. Duties of officers, employees, etc., of financial institution in
connection with examination; examination under oath;
offenses and penalties.

§31A-2-8. Fees, costs and expenses of examinations; collection.

§31A-2-9. Corrections of violations of law, irregularities and unsound
practices; disposition of doubtful assets and past-due
obligations; stockholders' meetings.

§31A-2-10. Reports by financial institutions other than banks; circula-
tion; publication.

§31A-2-11. No reports from or supervision over nonresident banks; laws
applicable thereto.

§31A-2-12. Commissioner's annual report; contents; affidavit.
§31A-2-13. Enforcement of orders of commissioner against financial institution other than state bank.

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

§31A-2-1. Department of banking of West Virginia, offices of commissioner and deputy commissioner of banking continued.

1 The department of banking of West Virginia, the office of commissioner of banking of West Virginia, and the office of deputy commissioner of banking of West Virginia, heretofore created and existing in the state government, are continued.

2 The commissioner of banking in office when this chapter becomes effective shall continue in office until the expiration of his term, and until his successor is appointed and qualified, unless earlier removed from office as provided by law.

§31A-2-2. Commissioner's appointment, term, qualifications, salary, oath and bond.

1 The commissioner of banking shall be appointed by the governor, by and with the advice and consent of the Senate. He shall serve at the will and pleasure of the governor for the term for which the governor was elected and until his successor is appointed and qualified, unless earlier removed from office for cause as provided by law.

2 Any person appointed as commissioner shall have had within the fifteen years next preceding his first appointment at least five years' experience as an active executive officer of a bank in this state or a minimum of ten years' experience in a bank examining or supervisory capacity for this state, for other states, or for the federal government, or a combination thereof, or a minimum of ten years' combined experience as such active bank executive officer and in such examining or supervisory capacity.

3 The commissioner shall be paid a salary of fifteen thousand dollars per year, payable in installments as provided by law.

4 Before entering upon the discharge of his duties as commissioner, he shall take and subscribe to the oath of office prescribed in section five of article four of the
constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars, with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of his office. The premium on such bond shall be payable from the state treasury out of funds allocated to the department of banking. The executed oath and bond shall be filed in the office of the secretary of state.


The deputy commissioner of banking shall be appointed by and be under the supervision and direction of the commissioner of banking. The deputy commissioner's tenure in office shall be at the will and pleasure of the commissioner. The deputy commissioner's salary shall be fixed annually by the commissioner and shall be payable in installments as provided by law.

Any person appointed as deputy commissioner shall have had at least five years' experience as an active executive officer of a bank in this state or a minimum of eight years' experience in a bank examining or supervisory capacity for this state, for other states, or for the federal government, or a combination thereof, or a minimum of eight years' combined experience as such active bank executive officer and in such examining or supervisory capacity.

Before entering upon the discharge of the duties of his office, the deputy commissioner shall comply with the same oath and bond requirements prescribed for the commissioner in section two of this article.

In the event of a vacancy in the office of commissioner or in the event of the disability or absence from the state of the commissioner, the deputy commissioner shall have and may exercise all of the authority and powers of the commissioner and shall be responsible for the performance of all duties, functions and services of the commissioner.
§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks (other than those banks excepted by the provisions of section eleven of this article), industrial loan companies, building and loan associations, small loan companies, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He shall be the chief executive officer of the department of banking and shall be responsible for the department’s organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the department or the commissioner.

(b) The commissioner shall:

(1) Maintain the office for the department at the state capitol, and there keep a complete record of all the department’s transactions, of the financial conditions of all financial institutions and such records of the activities of other persons as the commissioner may deem important. Notwithstanding any other provision of the code of West Virginia, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained therein shall be confidential for the use of the commissioner and authorized personnel of the department of banking. No person shall divulge any information contained in any such records except in response to a valid subpoena or subpoena duces tecum issued pursuant to law. The commissioner shall have and may exercise reasonable discretion as to the time, manner and extent the other records in his office and the information contained therein shall be available for public examination.

(2) Require all financial institutions to comply with
all the provisions of this chapter and other applicable laws, or any rule and regulation promulgated or order issued thereunder.

(3) Investigate all alleged violations of this chapter and all other laws which he is required to enforce and of any rule and regulation promulgated or order issued thereunder.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

(1) To provide for the organization of the department and the procedures and practices thereof and implement the same by the promulgation of rules and regulations and forms as appropriate, which rules and regulations shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his
duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organization, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he may deem and determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

(K) Verify any or all asset or liability accounts.

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution
and to act thereupon in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him;

(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(13) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used
by financial institutions, and such other forms and printed
materials as may be found by him to be helpful to finan-
cial institutions, their stockholders, depositors and pa-
trons, and to make reasonable charges therefor;

(14) To delegate the powers and duties of his office,
other than the powers and duties in this subsection here-
inafter excepted, to qualified department personnel, who
shall act under the direction and supervision of the com-
missioner and for whose acts he shall be responsible, but
the commissioner may delegate to the deputy commis-
sioner of banking and to no other department personnel
the following powers, duties and responsibilities, all of
which are hereby granted to and vested in the commis-
sioner and for all of which the commissioner shall like-
wise be responsible:

(A) To order any person to cease violating any pro-
vision or provisions of this chapter or other applicable
law or any rule and regulation promulgated or order
issued thereunder;

(B) To order any person to cease engaging in any un-
sound practice or procedure which may detrimentally
affect any financial institution or depositor thereof; and

(C) To revoke the certificate of authority, permit or
license of any financial institution except a banking insti-
tution in accordance with the provisions of section thir-
teen of this article; and

(15) To take such other action as he may deem neces-
sary to enforce and administer the provisions of this
chapter (except the provisions of article three) and all
other laws which he is empowered to administer and
enforce, and to apply to any court of competent jurisdic-
tion for appropriate orders, writs, processes and remedies.

§31A-2-5. Certificate or license to engage in business required;
application for and issuance of license; filing of
amendments to charter and bylaws and to foreign
statutes; who may engage in banking business in
state.

(a) No person shall engage or continue in the business
of a financial institution in this state without a license or
certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) Application for such license or certificate shall be upon such forms and contain such information as the commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(c) If the application be that of a banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and statements submitted, and, if he finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and displayed in the place of business of such banking or other financial institution.
(d) In addition to the requirements of subsection (b) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state shall file with the commissioner of banking a copy of the laws of the jurisdiction under which it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation. The fee for the original and each additional license or certificate issued to a foreign corporation shall be one hundred dollars, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and displayed in the place of business of such corporation.

(e) No amendment of the charter or bylaws of any domestic or foreign corporation engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by the commissioner of banking; but, if the commissioner does not disapprove such proposed change within twenty days after it is received by him, it shall be deemed to have been approved. A certified copy
of the amendment of any statute of another state govern-
ing such a foreign corporation shall be filed with the
commissioner of banking by such foreign corporation
within thirty days after such amendment becomes effec-
tive in such other state.

(f) Nothing contained in this code shall authorize any
person to engage in the banking business in this state
except corporations chartered to conduct a banking busi-
ness under the laws of West Virginia and which hold a li-
cense or certificate to do so issued under this section or as-
associations authorized to conduct a banking business in
West Virginia under the laws of the United States and
having their principal place of business in this state.

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

1 The commissioner of banking shall make, at least once
2 each calendar year, a thorough examination of all the
3 books, accounts, records and papers of every financial
4 institution. He shall carefully examine all of the assets
5 of each such institution, including its notes, drafts, checks,
6 mortgages, securities deposited to assure the payment
7 of debts unto it, and all papers, documents and records
8 showing, or in any manner relating to, its business affairs,
9 and shall ascertain the full amount and the nature in
detail of all of its assets and liabilities. The commissioner
may also make such examination of any subsidiaries or
affiliates of a financial institution as he may deem neces-
sary to ascertain the financial condition of such financial
institution, the relations between such financial institution
and its subsidiaries and affiliates and the effect of such re-
lations upon the affairs of such financial institution. A full
report of every such examination shall be made and filed
and preserved in the office of the commissioner and a copy
thereof forthwith mailed to the institution examined.
Every such institution shall retain all of its records of final
entry for such period of time as required in section
thirty-five of article four of this chapter for banking
institutions.
Every official communication from the commissioner to any such institution, or to any officer thereof, relating to an examination or an investigation of the affairs of such institution conducted by the commissioner or containing suggestions or recommendations as to the manner of conducting the business of the institution, shall be read to the board of directors at the next meeting after the receipt thereof, and the president, or other executive officer, of the institution shall forthwith notify the commissioner in writing of the presentation and reading of such communication and of any action taken thereon by the institution.

The commissioner of banking, in his discretion, may accept a copy of a reasonably current examination of any banking institution made by the federal deposit insurance corporation or the federal reserve system in lieu of an examination of such banking institution required or authorized to be made by the laws of this state, and the commissioner may furnish to the federal deposit insurance corporation or the federal reserve system, or to any official or examiner thereof, any copy or copies of the commissioner's examinations of and reports on such banking institutions, but nothing herein shall be construed to limit the duty and responsibility of banking institutions to comply with all provisions of law relating to examinations and reports, nor to limit the powers and authority of the commissioner of banking with reference to examinations and reports under existing laws.

§31A-2-7. Duties of officers, employees, etc., of financial institution in connection with examination; examination under oath; offenses and penalties.

All officers, directors, employees and other persons connected with any financial institution, upon request of the commissioner of banking, or his duly authorized representative, shall furnish and give full access to all of the books, papers, notes, bills, and other evidences of debts due to the institution; produce and furnish all documents, records, writings and papers relating to the business of the institution which the commissioner is
required to examine; disclose fully, accurately and in
detail all of the debts and liabilities of the institution;
and furnish such clerical aid and assistance as may be
required in the performance of the commissioner's duties
as provided by law. The commissioner or his repre-
sentative, as the case may be, shall have the right and
authority to administer oaths and to examine under
oath each officer, director, employee or other person
connected with the institution concerning any matter and
thing pertaining to the business and condition of such
institution.

Any officer, director, employee or other person con-
nected with any such institution who wilfully fails or
refuses to so furnish the documents, papers, materials
or information as herein required or who wilfully fails
to discharge any other duty or obligation as herein pro-
vided shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be subject to the penalties pro-
vided in section fifteen of article eight of this chapter.

§31A-2-8. Fees, costs and expenses of examinations; collection.

(a) For making an examination within the state of
any state banking institution, the commissioner of bank-
ing shall charge and collect from such institution and
pay into the state treasury a fee of fifty dollars upon
the first twenty-five thousand dollars of the assets as
shown by the books of the bank on the date of examina-
tion and six cents for each additional one thousand
dollars of such assets.

(b) For making such an examination within the state
of any other financial institution, the commissioner of
banking shall charge and collect from such other finan-
cial institution and pay into the state treasury the actual
and necessary costs and expenses incurred in connection
therewith, as fixed and determined by the commissioner.

(c) If any such examination be made at a place out-
side of this state, the fees, costs and expenses shall be as
above provided, except that there shall be an additional
charge for mileage and travel expense as provided and
allowed by law for state agencies and employees.
(d) The commissioner of banking may maintain an action for the recovery of all such fees, costs and expenses in any court of competent jurisdiction.

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

Whenever it appears that any law, rule and regulation or order applicable to any financial institution is being violated, or that any irregularities exist or unsound practices or procedures are being engaged in, it shall be the duty of the commissioner of banking to promptly call the same to the attention of the officers and directors of the financial institution offending and to demand that the same be promptly corrected; and he may require a sworn statement from the said officers and directors covering the matter of all such violations and of all such irregularities, unsound practices or procedures to be furnished to him as often as he may deem necessary, until he is satisfied that such violations have ceased and that the irregularities, unsound practices or procedures complained of have been corrected. Such reports shall not be made public.

If any such institution owns any asset, the value of which, in the judgment of the commissioner of banking, is questionable, or owns past-due obligations, the commissioner of banking may require the assets of doubtful value to be at once converted into money or charged off of the books of the financial institution at the expiration of three months from the date of such order; or require legal proceedings to be at once instituted for the collection of any past-due obligations to the financial institution or that they be charged off.

Upon the written notice of the commissioner of banking, the directors of any financial institution shall call a general meeting of the stockholders thereof to consider such matters as the commissioner may prescribe. Notice of such meeting shall be given in accordance with applicable statutes and the bylaws of the financial institution. The expense of such meeting and notice thereof shall be borne by the financial institution whose stockholders are so required to convene.
§31A-2-10. Reports by financial institutions other than banks; circulation; publication.

Every financial institution other than banking institutions shall furnish to the commissioner of banking, at least twice each year and within fifteen days after his request therefor, a statement, verified by its president or secretary, and approved by three of its directors, in such form as may be prescribed by the commissioner of banking, showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution, and shall furnish such other information as to its business and affairs as the commissioner of banking may require, which reports, in the same form in which they are transmitted to the commissioner of banking, shall be printed and circulated among all of the stockholders of the financial institution and published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the financial institution is located.

§31A-2-11. No reports from or supervision over nonresident banks; laws applicable thereto.

Any state banking institution, all of whose business is conducted entirely outside of the state of West Virginia, shall not be subject to supervision by the department of banking or the commissioner of banking, and shall not be required to make any reports to it or him, or to publish such reports, and no consent or authority of the commissioner shall be necessary or required as to any of the acts and practices of such nonresident banks in and about the conduct of their business outside of the state of West Virginia, and the commissioner of banking shall not be responsible for any acts or practices of such nonresident banks. The officers and directors of such nonresident banking institutions may all be nonresidents of the state of West Virginia and such nonresident banking institutions may conduct the banking business at such place or places outside of the state of West Virginia as they may be permitted under the laws of the jurisdiction in which such place or places are situated. The restric-
tions in the banking laws of this state contained as to
establishment and maintenance of branch banks shall not
applicable to said nonresident banks, but no non-
resident bank shall operate or maintain any branch bank
in this state. The provisions, requirements, restrictions
and limitations in the banking laws contained relative
to the capital stock, either authorized or issued, and to the
increase thereof, to the acquisition and holding of real
estate, to the oath and qualifications of directors, to loans
and the property, real or personal, upon the security of
which loans may be made, to the borrowing of money
by banking institutions and the hypothecation of securi-
ties or other property for the same, to reserves, and to
dividends and all other restrictions and limitations of the
banking laws of this state, shall not apply to said non-
resident banks.

No provision of this section shall be construed as re-
lieving such nonresident banks from compliance with
the laws of the jurisdiction in which they may conduct
business. The provisions of this section shall not be ap-
plicable to any banking institution any part of whose
actual business is conducted within the state of West
Virginia, and nothing in this section contained shall be
interpreted as rendering any laws now in force or here-
after enacted inapplicable to banking institutions doing
actual business in the state of West Virginia. Subse-
sequently enacted legislation shall be construed as appli-
cable only to banking institutions having a place of busi-
ness in this state, unless a contrary intent specifically or
by necessary implication appears therein.

§31A-2-12. Commissioner’s annual report; contents; affidavit.

1 Annually on or before the first day of December, the
2 commissioner of banking shall prepare and submit to the
3 governor a careful and complete report, detailing the
4 work, services and functions performed by him during
5 the preceding fiscal year. The report shall show the total
6 resources and liabilities of all financial institutions, the
7 increase or decrease for the year in the aggregate of such
8 resources and liabilities, carefully noting any failures
9 that may have occurred, stating the causes thereof, and
making such remarks, suggestions and recommendations as he may deem pertinent, including recommendations on policy, administration and legislation pertaining to all financial institutions.

Such report shall be verified by the affidavit of said commissioner, who shall swear that, in making the examination of each financial institution he, or a qualified person in his department appointed by him, has personally and carefully inspected the books, papers and affairs of the institution, or in the case of any banking institution, that he has accepted a reasonably current examination made by the federal deposit insurance corporation or the federal reserve system in lieu of conducting such an examination, and that he has not, and, so far as he knows or is informed, no person in his department has, in any case received or agreed to receive directly or indirectly any reward, gift, or promise thereof, from any officer or other person connected with any financial institution.

§31A-2-13. Enforcement of orders of commissioner against financial institution other than state bank.

If any financial institution other than a state bank shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (14), subsection (c), section four of this article, the commissioner may make and enter an order revoking the certificate of authority, permit or license of such institution to engage in the business of a financial institution in this state, or, at his election, may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order.

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

No officer or employee of the department of banking shall be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial institution. Nor shall any officer or employee of the department receive, directly or indirectly, any payment or gratuity
from any financial institution, or be engaged in any manner in the negotiation of loans for others therewith.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

§31A-3-2. General powers and duties.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

§31A-3-4. Judicial review; appeals to supreme court of appeals.

31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

(a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than ten million dollars, one shall be truly representative of such state banking institutions having total assets greater than ten million dollars but not greater than twenty-five million dollars, and one shall be truly representative of such banking institutions having total assets greater than twenty-five million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original
appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties each member shall take and subscribe to the oath required by section 5, article IV, of the constitution of the state of West Virginia. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available
necessary office space and secretarial and other assistance as the board may reasonably require.

§31A-3-2. General powers and duties.

1. In addition to other powers conferred by this chapter, the board shall have the power to:

2. (1) Regulate its own procedure and practice;

3. (2) Promulgate reasonable rules and regulations to implement any provision of this article, such rules and regulations to be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

4. (3) Advise the commissioner in all matters within his jurisdiction;

5. (4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions, and to report and recommend to the governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as may be by it deemed proper; and

6. (5) Grant permission and authority to a financial institution:

7. (A) To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein, and to comply with all lawful requirements and conditions imposed upon such participants;

8. (B) To engage in any financial institution activity, services, procedures and practices in which financial institutions of the same type subject to the jurisdiction of the federal government may hereafter be authorized by federal laws, rules or regulations to engage, notwithstanding any contrary provision of this code: Provided, however, That no such permission or authority shall be granted to any banking institution to install or maintain any branch bank or engage in business at any place other than its principal office in this state in contravention of the provisions of section twelve, article eight of this chapter;
(C) To pay interest on demand deposits of the United States or any agency thereof, if the payment of such interest shall be permitted under any applicable federal law, rule or regulation.

Any permission and authority granted by the board pursuant to this subdivision (5) shall cease and terminate upon the adjournment of the next regular session of the Legislature, unless the Legislature shall at such session enact legislation authorizing the financial institution participation, activity, services and procedures or payment of interest with respect to which such permission and authority was granted, in which event such permission and authority shall continue in effect until the effective date of such legislation.

(b) The board shall further have the power, by entering appropriate orders, to:

1. Restrict the withdrawal of deposits from any financial institution when in the judgment of the board extraordinary circumstances make such restrictions necessary for the protection of creditors of and depositors in the affected institution;

2. Compel the holder of shares in any corporate financial institution to refrain from voting said shares on any matter when in the judgment of the board such order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution, or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

3. Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven of article four of this chapter;

4. Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if such institution shall
fail or refuse to comply with any order of the commissioner entered pursuant to the provisions of paragraphs (A) or (B), subdivision (14), subsection (c), section four of article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order; and

(5) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold such position under any provision of law or rule and regulation or order, or who wilfully disregards or fails to comply with any order of the board or commissioner made and entered in accordance with the provisions of this chapter or who is dishonest or grossly incompetent in the conduct of financial institution business.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsection (e) of this section, notice and hearing shall be provided in advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven of chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten nor more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

(2) At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and
enter an order deciding the matters with respect to which
such hearing was conducted, which order shall be accom-
panied by findings of fact and conclusions of law as
specified in section three, article five, chapter twenty-
ine-a of this code, and a copy of such order and accom-
panying findings and conclusions shall be served upon
all parties to such hearing, and their attorneys of record,
if any.

(c) In the case of an application for the board's ap-
approval to incorporate and organize a banking institution
in this state, as provided in subdivision (3), subsection
(b), section two of this article, the board shall, upon
receipt of any such application, provide notice to all
banking institutions, which in the manner hereinafter
provided, have requested notice of any such action. The re-
quest by any such banking institution to receive such
notice shall be in writing and shall request the board
to notify it of the receipt by the board of any appli-
cation to incorporate and organize a banking institution
in this state. A banking institution may, within ten days
after receipt of such notice, file a petition to intervene
and shall, if it so files such petition, thereupon become
a party to any hearing relating thereto before the board.

(d) The board shall have the power and authority
to issue subpoenas and subpoenas duces tecum, ad-
minister oaths and examine any person under oath in
connection with any subject relating to duties imposed
upon or powers vested in the board.

(e) Whenever the board shall find that extraordinary
circumstances exist which require immediate action, it
may forthwith without notice or hearing enter an order
taking any action permitted by subdivisions (1), (2),
(4) and (5) of subsection (b), section two of this article.
Immediately upon the entry of such order, certified copies
thereof shall be served upon all persons affected thereby
and upon demand such persons shall be entitled to a
hearing thereon at the earliest practicable time.

§31A-3-4. Judicial review; appeals to supreme court of appeals.

(a) Any party to a hearing before the board adversely
affected by any order of the board made and entered after
a hearing as provided in section three, article three of this chapter shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code.

(b) Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in subsection (a) of this section may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-1. General corporation laws applicable; charter applications to be approved by board.

§31A-4-2. Use of terms “bank,” “banking,” “trust company,” etc.; unlawfully engaging in banking business; penalties; enforcement.

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

§31A-4-4. Stock to be paid in full before engaging in business; exception as to unissued stock; organizational expense fund; affidavit of incorporators; penalties; stockholders' preemptive rights.

§31A-4-5. Requirements and procedure for incorporation of state bank.

§31A-4-6. Examination and investigation of proposed bank by board.

§31A-4-7. Time for completion of investigation; notice and hearing; approval or disapproval of application for incorporation; completion of corporate organization.

§31A-4-8. Directors, their qualifications and oaths.

§31A-4-9. Fidelity bonds and insurance.

§31A-4-10. List of stockholders.

§31A-4-11. Liability of stockholders.

§31A-4-12. Impairment of capital forbidden; remedies; assessments; sale of stock.

§31A-4-13. Powers of state banking institutions generally; investment limitations.

§31A-4-14. Trust powers of banking institutions.

§31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.

§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

§31A-4-17. Oath as fiduciary.

§31A-4-18. Capital as fiduciary security; additional security.

§31A-4-19. Reports; publication.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of examining committee; employment of accountants; examiners may require presence of executive or examining committee.

§31A-4-21. Federal deposit insurance; membership in federal reserve system.
§31A-4-22. Reserves required of banking institutions; reports; penalties.
§31A-4-23. Borrowing by banking institutions; records thereof; penalties.
§31A-4-24. Capital notes and debentures; retirement; not subject to assessment.
§31A-4-25. Dividends; limitations; penal provisions.
§31A-4-26. Limitation on loans and investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.
§31A-4-27. Loans eligible for federal insurance or guaranty.
§31A-4-28. Investments in obligations secured by mortgates or deeds of trust insured or guaranteed by United States; securities of federal agencies; use of such obligations and securities as collateral, etc.
§31A-4-29. Application of other laws to loans and investments under §§31A-4-27 and 31A-4-28.
§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.
§31A-4-31. Uniform and continuing depository bonds authorized; review of such bonds; correction of inadequacy; security for federally insured deposits not required.
§31A-4-32. Adverse claims to deposits and property held in safe deposit.
§31A-4-33. Deposits in trust; deposits in more than one name.
§31A-4-34. Payment of deposits to minors.
§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals.
§31A-4-36. Statement of account to customers; duties of customers; limitations.
§31A-4-37. Sale of machine operations and services.
§31A-4-38. Direct leasing of personal property.
§31A-4-39. Transactions on legal holidays and Sundays.
§31A-4-40. Permissive closing on fixed weekday or portions of weekdays; emergency closings; procedures.
§31A-4-41. Additional authority of board as to limited operations and cessation of business by state banks.
§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.

§31A-4-1. General corporation laws applicable; charter applications to be approved by board.

1 The general corporation laws of the state, including the provisions of chapter thirty-one of the code of West Virginia, shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter.
2 No charter shall issue in this state for any banking institution, unless the application therefor shall have been submitted to and approved by the board.
§31A-4-2. Use of terms "bank," "banking," "trust company," etc.; unlawfully engaging in banking business; penalties; enforcement.

1 No person doing business in this state, except a banking institution, shall use or advertise in connection with such business, or as a designation or title thereof, the term "bank," "banker," "banking," "banking company," "industrial bank," "savings bank," or "trust company," or engage in the banking or trust business in this state.

2 It shall be unlawful for any such person other than banking institutions as herein excepted, to advertise or hold himself, itself, or themselves, as the case may be, out to the public in any manner indicating, directly, indirectly or by implication, that any of them is engaged in the banking or trust business or is authorized and approved to engage therein in this state.

3 Any violation of the provisions of this section shall constitute a misdemeanor offense, punishable as provided in section fifteen of article eight of this chapter.

4 The commissioner of banking or any one or more banking institutions, acting individually or jointly, may petition the circuit court of the county in which any violation of the provisions of this section occur or are threatened to occur for injunction or other appropriate judicial remedies for enforcement of the provisions hereof and the prevention of further or continued violations thereof.

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

1 (a) No banking institution shall hereafter be incorporated unless it shall have a bona fide subscribed capital stock of:

2 (1) At least fifty thousand dollars, if the population of the community in which the bank is to be located be not more than three thousand;

3 (2) At least seventy-five thousand dollars, if the population of the community in which the bank is to be located be more than three thousand, but not more than six thousand;
(3) At least one hundred thousand dollars, if the population of the community in which the bank is to be located be more than six thousand but not more than twenty-five thousand;

(4) At least one hundred twenty-five thousand dollars, if the population of the community in which the bank is to be located be more than twenty-five thousand but not more than fifty thousand; and

(5) At least one hundred fifty thousand dollars, if the population of the community in which the bank is to be located be more than fifty thousand.

The population figures as herein specified shall be ascertainable from and be based upon the latest available United States census.

(b) Notwithstanding any provision of subsection (a), no banking institution proposing to engage in the trust business shall be incorporated unless it shall have a bona fide subscribed capital stock of at least one hundred thousand dollars.

(c) Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than five dollars nor more than one hundred dollars each, and as to each banking institution each share shall be equal in all respects with any other share.

(d) Any banking institution may capitalize its surplus and undivided profits by issuing shares of stock against the same at par and distributing such shares among its stockholders, or change the par value of its shares, when and to the extent that any such action may be authorized in writing by the commissioner.

§31A-4-4. Stock to be paid in full before engaging in business; exception as to unissued stock; organizational expense fund; affidavit of incorporators; penalties; stockholders’ preemptive rights.

All of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash before it shall be authorized to engage in business, except such business as is incidental and necessarily preliminary to its organization, except that with the ap-
proval of the commissioner, the charter of any state bank, now or hereafter organized, may provide that not to exceed five percent of the bank’s authorized capital stock may be unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank.

Each subscriber at the time he subscribes to the stock of a proposed banking institution shall pay in cash a sum at least equal to five percent of the par value of such stock into a fund to be used to defray the expenses of organization of said institution. No organizational expenses shall be paid out of any other funds of the bank. No part of said organizational expense fund shall be used for the payment of any fee, compensation or commission for promotion in connection with the institution’s organization or for obtaining subscriptions, selling shares or other services in connection with its organization, except legal fees and other usual and ordinary expenses necessary for its organization. Upon the grant of a charter to the institution any unexpended balance in the organizational expense fund shall be transferred to undivided profits of the institution. If the charter application is finally denied, any unexpended balance in said fund shall be distributed among the contributors in proportion to their respective payments.

A majority of the incorporators shall file with the board at the time of filing of the charter application an affidavit: (1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense.
punishable as prescribed in section fifteen, article eight of this chapter.

Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the stock shall not be offered for sale to others at a lower price without the stockholders again being accorded a preemptive right to subscribe. No banking institution shall sell its shares of stock at less than par, but may sell its shares at such price above par as may be set by the board of directors. The preemptive rights of the stockholders, as provided in this paragraph, shall not apply to any stock issued by a banking institution, to another bank or financial institution or the stockholders thereof, pursuant to a merger or consolidation with such other bank or financial institution, or to authorized but unissued stock authorized by the charter of the banking institution.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the state of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, “bank,” “banking company,” “banking association,” “trust company,” “banking and trust company” or “bank and trust company.”

2 The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the secretary of state for chartering corporations under provisions of article one of chapter thirty-one of this code. The information set forth in the agreement shall include the following:

(1) The name of the proposed bank;
(2) The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;

(3) Whether such bank proposes also to engage in the trust business;

(4) The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;

(5) The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and

(6) The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the board, shall be accompanied by the statutory corporation charter fees, and an examination and investigation fee of five hundred dollars payable to the board. When transmitting the agreement to the board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the board may communicate, on whom the board may call for further information, and to whom the board may officially report as to action on the agreement so filed with him. The agreement shall constitute and may be considered and treated by the board as an application for the board's approval to incorporate and organize a banking institution in this state.

§31A-4-6. Examination and investigation of proposed bank by board.

(a) When an agreement of incorporation, fully complying with the requirements of this article, has been filed with the board, it shall promptly make or cause to be made a careful examination and investigation relative to the following:

(1) The character, reputation, financial standing and motives of the organizers, incorporators and subscribers in organizing the proposed bank;

(2) The need for the facilities and services which the
proposed bank will offer in the community where it is
to be located, giving particular consideration to the
adequacy of existing banking and trust facilities and
services;
(3) The present and future ability of the community
to support the proposed bank and all other existing
banking and trust facilities and services in the com-
munity;
(4) The character, financial responsibility, banking
experience and business qualifications of the proposed
officers; and
(5) The character, financial responsibility, business
experience and standing of the proposed stockholders
and directors.
(b) The board shall approve or disapprove the appli-
cation, in the exercise of its reasonable discretion, but
shall not approve such application unless it finds:
(1) Public convenience and advantage will be pro-
moted by the establishment of the proposed bank;
(2) Local conditions assure reasonable promise of
successful operation for the proposed bank and those
banks already established in the community;
(3) The proposed capital structure is adequate;
(4) The proposed officers and directors have sufficient
banking experience and trust experience (if the bank
proposes to engage in the trust business), ability, charac-
ter and standing to assure reasonable promise of suc-
cessful operation;
(5) The name of the proposed bank or trust company
is not so similar as to cause confusion with the name of
an existing bank; and
(6) Provision has been made for suitable banking
house quarters in the community specified in the appli-
cation.
(c) In the course of its examination and investigation,
the board may call upon the attorney, agent or other re-
sponsible person representing the incorporators and upon
the incorporators for additional information and disclos-
ures it deems necessary in taking appropriate action on
and making proper disposition of the application.
§31A-4-7. Time for completion of investigation; notice and hearing; approval or disapproval of application for incorporation; completion of corporate organization.

The board shall complete its examination and investigation within ninety days from and after the date on which the agreement of incorporation is filed with it, unless it requests in writing additional information and disclosures concerning the proposed banking institution from the incorporators, in which event the period of ninety days shall be extended for an additional period of thirty days.

Upon completion of such examination, the board shall forthwith make and proceed to give notice, hold a hearing and enter an order approving or disapproving the application in the manner provided in section three, article three of this chapter. Such order shall be accompanied by findings of fact and conclusions of law on which such approval or disapproval is based. If no judicial review of such order is sought in the time provided therefor and (1) such order disapproves the application, the agreement of incorporation, the corporation chartering fees, and any other papers filed therewith shall thereupon be promptly returned to the attorney, agent or other responsible person representing the incorporators in the application or (2) if such order approves such application, the agreement of incorporation with a certified copy of the board's order and the accompanying corporation charter fees shall thereupon be transmitted to the secretary of state for processing as in the case of any other corporate charter application. Upon issuance of the charter to a banking institution, the incorporators shall promptly comply with the provisions of section five of article two of this chapter, preliminary to the commissioner's issuance of a permit or license to engage in business in this state, and shall likewise comply with other provisions of this chapter relating to completion of its corporate organization, and the corporation's readiness to commence business as a banking institution.
§31A-4-8. Directors, their qualifications and oaths.

1 For every state banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking institution; and a majority of whom shall at all times be residents of this state. Every such director shall own in his own right shares of the aggregate par value of not less than five hundred dollars, of the capital stock of the banking institution of which he is a director, and, before entering on the discharge of his duties as such director, he shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the banking institution, and that he will not knowingly or willingly permit to be violated any of the provisions of the laws of this state relative to banking and banking institutions, and that the stock standing in his name upon the books of the banking institution is not hypothecated or pledged in any way as security for loans obtained from or debts owing to the banking institution of which he is a director, and that the number of shares necessary to qualify a stockholder to be a director are not now, and shall not at any time while he serves as a director be pledged or hypothecated in any manner for any debt or obligation of the director, or any other person; which oath subscribed by him and certified by the officer before whom it was taken shall be filed and preserved in the office of the commissioner of banking. Should a director fail to subscribe to the oath herein provided for within sixty days after notice of his election, or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his qualification, thereupon the remaining directors shall elect another director in his stead. No person shall serve as a director of any banking institution who has evidenced personal dishonesty and unfitness to serve as such director by his conduct or practice with
another financial institution which resulted in a substantial financial loss or damage thereto or who has been convicted of any crime involving personal dishonesty.

§31A-4-9. Fidelity bonds and insurance.

(a) The directors of a state bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the bank.

(b) The directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(c) The directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the commissioner of banking.

§31A-4-10. List of stockholders.

The president, cashier, or other executive officer of every state banking institution shall cause to be kept at all times a full and correct list of the names and post-office addresses of all of the stockholders of the banking institution, and the number of shares owned by each, in the office where its business is transacted. Such list shall be open to inspection by all of the stockholders of the banking institution, and the officers authorized by law to assess taxes, during business hours of each day, except Sundays and holidays. A copy of such list shall be made
on the first Monday in July of each year and verified by
the oath of the president, cashier, or other executive
officer and immediately transmitted by mail to the com-
missioner of banking at his office.

§31A-4-11. Liability of stockholders.

Each stockholder of any state banking institution, in
addition to the liability imposed upon him as a stock-
holder of a corporation under the provisions of article
one of chapter thirty-one of this code, shall be liable to
the creditors of the banking institution, on obligations
accruing while he is a shareholder, to an amount equal
to the par value of the shares of stock held by him; and
no sale or transfer of the shares of stock made by any
such stockholder, after the liability of the banking insti-
tution originated or accrued, shall relieve the stockholder
from the liability imposed by this section. Any proceed-
ing to enforce the liability of stockholders imposed by
this section may be prosecuted severally against any one
stockholder or jointly against any number of stockholders.
But the additional liability imposed upon such stock-
holders by provisions of this section shall not apply with
respect to any such institution so long as such institution,
pursuant to law, has its deposits insured by the federal
deposit insurance corporation or by any other similar
federal instrumentality or agency hereafter created and
in existence for that purpose. Nor shall such additional
liability apply with respect to any banking institution
from and after the time it shall obtain from the commis-
sioner of banking a certificate setting forth that such
institution has, as ascertained by him, an unimpaired sur-
plus equal to at least fifty percent of the authorized
capital of such institution. Upon application by any state
banking institution to the commissioner of banking for
such certificate, the commissioner shall ascertain whether
such institution has in fact such unimpaired surplus, and
if such unimpaired surplus be found by him to exist, then
he shall issue such certificate. If impairment of such
surplus shall thereafter occur, such impairment shall not
impose further or additional liability upon the stock-
holders of such institution.
Nothing in this section shall affect or impair the authority of the officers and directors of a banking institution to cause to be made good any impairment of the capital of such institution, under the provisions of the next succeeding section of this article.

§31A-4-12. Impairment of capital forbidden; remedies; assessments; sale of stock.

The officers and directors of a state banking institution shall not pay out, disburse or withdraw, or permit to be paid out, disbursed or withdrawn, in any manner whatever, any part of the capital of the corporation except in case of merger or consolidation, as hereinafter provided. Whenever, from any cause, the capital of such banking institution shall become impaired, it shall be the duty of the officers and directors of such institution, forthwith, to cause any such impairment to be made good, by assessing the amount of the deficiency pro rata on the shares of the capital stock outstanding, which assessments shall be paid within thirty days after notice thereof. If any stockholder shall neglect or refuse to pay the assessment on his shares after thirty days' notice, it shall be the duty of the board of directors to cause a sufficient number of his shares of stock to be sold for cash, at public sale at the banking room of the banking institution. Notice of such sale shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the banking institution is located. The first publication shall be made at least ten days before the date of such sale.

Any surplus from the sale of any share shall be paid to the defaulting stockholder. A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificate, or certificates, evidencing the stock so sold, and shall make such certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock.
§31A-4-13. Powers of state banking institutions generally; investment limitations.

1 Any state banking institution shall have and exercise all of the powers necessary for, or incidental to, the business of banking, and, without limiting or restricting such general powers, it shall have the right to buy or discount promissory notes and bonds, negotiate drafts, bills of exchange and other evidences of indebtedness, borrow money, receive deposits on such terms and conditions as its officers may prescribe, buy and sell exchange, bank notes, bullion or coin, loan money on personal or other security, rent safe-deposit boxes and receive on deposit, for safekeeping, jewelry, plate, stocks, bonds and personal property of whatsoever description and provide customer services incidental to the business of banking, including but not limited to the issuance and servicing of and lending money by means of credit cards as letters of credit or otherwise. Any banking institution may accept, for payment at a future date, drafts drawn upon it by its customers, and issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents, at sight or on time, not exceeding one year. Any such banking institution may organize, acquire, own, operate, dispose of, and otherwise manage wholly owned subsidiary corporations for purposes incident to the banking powers and services authorized by this chapter.

2 Any such banking institution may hereafter invest in the capital stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the “Small Business Investment Act of 1958,” as amended. But in no event shall any such bank hold shares in small business investment companies in any amount aggregating more than two percent of the combined capital and surplus of such banking institution.

3 Any such banking institution may acquire, own, hold, use and dispose of, real estate, which shall in no case be carried on its books at a value greater than the actual cost, subject to the following limitations and for the following purposes:
§31A-4-13. Real estate of banking institutions.

(a) Such as shall be necessary for the convenient transaction of its business, including in any buildings, office space or other facilities to rent as a source of income; such investment hereafter made shall not exceed sixty-five percent of the amount of its capital stock and surplus, unless the consent in writing of the commissioner of banking is first secured;

(b) Such as shall be mortgaged to it in good faith as security for debts in its favor;

(c) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business dealings;

(d) Such as it shall purchase at sales under judgments, decrees, trust deeds or mortgages in its favor, or shall purchase at private sale, to secure and effectuate the payment of debts due to it; and

(e) The value at which any real estate is held shall not be increased by the addition thereto of taxes, insurance, interest, ordinary repairs, or other charges which do not materially enhance the value of the property.

Any real estate acquired by any such banking institution under subdivisions (c) and (d) shall be disposed of by the banking institution at the earliest practicable date, but the officers thereof shall have a reasonable discretion in the matter of the time to dispose of such property in order to save the banking institution from unnecessary losses. In every case such property shall be disposed of within five years from the time it is acquired by the banking institution, unless an extension of time is given in writing by the commissioner of banking.

No such banking institution shall hereafter invest more than twenty percent of the amount of its capital and surplus in furniture and fixtures, whether the same be installed in a building owned by such banking institution, or in quarters leased by it, unless the consent in writing of the commissioner of banking is first secured.

§31A-4-14. Trust powers of banking institutions.

Every state banking institution which files the certificates required in the following section and which is
otherwise authorized to do so, shall have and exercise the following powers:
(a) All the powers, rights and privileges of any state banking institution;
(b) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator, or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;
(c) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;
(d) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;
(e) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;
(f) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including without limitation notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time and
42 upon such terms as the trustee shall deem reasonable; 
43 and
44 (g) To do and perform any act or thing requisite or 
45 necessary in, or incidental to, the exercise of the general 
46 powers herein set forth.
47 All national banks having their principal offices in this 
48 state which have been, or hereafter may be, authorized 
49 under the laws of the United States to act as trustee and 
50 in other fiduciary capacities in the state of West Virginia 
51 shall have all the rights, powers, privileges and immuni-
52 ties conferred hereunder, provided they have a capital of 
53 at least one hundred thousand dollars and comply with 
54 the requirements hereof.

§31A-4-15. Certificate showing unimpaired capital to be filed 
before exercising trust powers; penalties; 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 and the commissio-
4 ner of banking a duly authenticated certificate, showing 
5 the unimpaired capital of such institution to be at least 
6 one hundred thousand dollars and a like duly authenti-
7 cated certificate shall be filed with the secretary of state 
8 and the commissioner of banking in the month of January 
9 of each year thereafter. If any such banking institution 
10 shall exercise, or attempt to exercise, any such powers or 
11 rights without having complied with the requirements 
12 of this section as to the filing of such certificate, it shall 
13 be guilty of a misdemeanor, and, upon conviction there-
14 of, shall be fined not more than five hundred dollars; and 
15 in every such case, whether or not there shall have been 
16 a prosecution or conviction of the company so offending, 
17 the commissioner of banking, being satisfied of the facts, 
18 may publish a notice of the fact that it has failed to com-
19 ply with the requirements of this section and is therefore 
20 not entitled to exercise the trust powers and rights men-
21 tioned in the preceding section. In the event a notice is 
22 published as aforesaid, it shall be published as a Class II 
23 legal advertisement in compliance with the provisions of 
24 article three, chapter fifty-nine of this code, and the
§31A-4-16. Trust funds to be kept separate; bookkeeping and management.

1. Every banking institution, authorized to engage in the trust business, shall keep all trust funds and investments separate and distinct from the assets owned by the corporation; and shall keep a separate set of books and records showing in proper detail all transactions so engaged in; and all investments made by such institution as fiduciary shall be so designated that the trust to which such investments shall appertain or belong shall be clearly and distinctly shown on the books of the institution; and such funds shall be held for the uses of the trust designated and for the beneficiaries thereof, and shall not be liable for any other obligations of the institution.

§31A-4-17. Oath as fiduciary.

1. Whenever any court, or the clerk thereof, shall appoint any banking institution exercising trust powers, as trustee, receiver, assignee, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity to perform any duty or execute any trust, the chairman of the board, the president, vice president, secretary, treasurer, trust officer or assistant trust officer of such institution shall take the oath and make the affirmation required by law of any such fiduciary, before the court or the clerk thereof, or before any other officer authorized to administer oaths.

§31A-4-18. Capital as fiduciary security; additional security.

1. Whenever any banking institution authorized to exercise trust powers, and having complied with the requirements of this article, shall be appointed trustee, assignee, receiver, guardian, executor, administrator, special commissioner, curator, committee, or in any other fiduciary capacity, or shall be directed by the order or decree of any court to execute any trust whatsoever, the capital and other assets of the fiduciary corporation shall constitute the security required by law for the faithful
performance of its duties and shall be absolutely liable
in case of any default whatsoever, but, where the lia-
ability under any such appointment as trustee, assignee,
receiver, guardian, executor, administrator, special com-
missioner, curator or committee, or, in the execution of
any trust by order or decree of any court, shall be equal
to, or shall exceed the capital and surplus of such fiduciary
corporation, the court making such appointment or en-
tering such order or decree may require, and the fiduciary
shall give, additional security. No bond shall be required
of any banking institution unless such additional security
is required.

§31A-4-19. Reports; publication.

Every state banking institution shall make at least
four reports each year to the commissioner of banking
upon his call therefor. Such reports shall be called for
as nearly as conveniently may be on the dates on which
the comptroller of the currency shall call for reports
by national banking associations, and be in such form
and contain such details as shall be prescribed by the
commissioner of banking. The reports shall be verified
by the oath of the president or active vice president or
cashier and attested by the signatures of at least three
directors of the banking institution. Each report shall
show in detail, under appropriate heads, the resources
and liabilities of the banking institution at the close of
business on the date specified by the banking com-
missioner, and shall be transmitted to the commissioner
within ten days from the receipt of the request for the
same.

Such report, in the same form in which it is made to
the commissioner of banking, shall be published as a
Class I legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county in which the banking institution is located.

In lieu of such report and publication, the commissioner
of banking shall have discretion to accept from a banking
institution which is a member of the federal reserve
system a report, and the publication thereof required
of such banking institution by the federal reserve board, or by its agency, provided that such report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the day specified by the federal reserve board, or by its agency, and shall contain such further details as may be deemed necessary or desirable by the commissioner of banking.

Any report and the publication thereof shall be at the expense of the banking institution, and it shall furnish to the commissioner of banking such proof of the publication as may be required by him.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of examining committee; employment of accountants; examiners may require presence of executive or examining committee.

The stockholders of each state banking institution shall meet annually and at such annual meeting it shall be the duty of the cashier or other executive officer of such banking institution to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the month next preceding. At such meeting, the stockholders present in person or by proxy shall elect an examining committee composed of not less than three nor more than five persons, each of whom shall be a stockholder in such banking institution. At such time or times as it may be directed to do so by the written request of the board of directors or the commissioner of banking, such committee shall immediately proceed to examine the condition of the bank and, upon completion of such examination, shall file its report in writing with the board of directors. Such report shall set forth in detail all items included in the assets of the bank which the committee has reason to believe are not of the value at which they appear on the books and records of the bank, and shall give the value of each of such items according to its judgment. The board of directors shall cause such report to be retained as a part of the records of the bank and shall
§31A-4-21. Federal deposit insurance; membership in federal reserve system.

State banking institutions are authorized to do any act necessary to obtain insurance of their deposits by the United States or any agency or instrumentality thereof including the federal deposit insurance corporation and to acquire and hold membership in the federal reserve system. Such banking institutions which are members of the federal reserve system shall be vested with all powers conferred upon members of such system by the terms of the Federal Reserve Act, as amended, as fully as if such powers were specifically granted herein; and all such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, as amended, or by regulations of the federal reserve board made pursuant thereto. Any such banking institution shall continue to be subject to the supervision and examinations required by the laws of this state, except that the federal reserve board or the federal deposit insurance corporation shall have the right, if either deems it necessary to make examinations; and the commissioner of banking may disclose to the federal reserve board or the federal deposit insurance corporation, or to examiners duly appointed by either, all information in reference to the affairs of any banking institution which has become, or desires to become, a member of the federal reserve system or the federal deposit insurance corporation.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

Each state banking institution shall at all times maintain on hand as a reserve in lawful money of the United States:

1. One half of the demand deposits (excess of deposits over reserves) of the institution includable in the total deposits of the institution.
2. The amount of federal deposit insurance in respect of which such institution has elected to be insured in amounts in excess of 

The following reserves shall also be required:

1. One half of the demand deposits (excess of deposits over reserves) of the institution includable in the total deposits of the institution.
2. The amount of federal deposit insurance in respect of which such institution has elected to be insured in amounts in excess of
States of America an amount equal to at least seven percent of the aggregate of all of its deposits which are subject to withdrawal on demand and three percent of its time deposits. Whenever the commissioner of banking shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by rule or regulation from time to time change such requirements as to reserves against demand or time deposits, or both, but the reserves so prescribed shall in no event be less than those specified in this section nor more than twice those specified. Whenever such reserve shall fall below that required, the institution shall not thereafter make any new loan or investment until the required reserve shall be restored. For the purpose of computing such reserve, all deposits requiring notice of thirty days or more for withdrawal and time certificates of deposit and Christmas savings shall be deemed time deposits, and all checking accounts, certified checks, cashier's checks, demand certificates of deposit and balances due other banks shall be deemed demand deposits. But in lieu of lawful money on hand, four fifths of such reserve may consist of balances payable on demand from any national or state bank doing business in this state or solvent banking institutions in other states. The reserve balances required herein shall be computed on the basis of average daily net deposit balances and average daily currency and coin during biweekly periods. The required reserve balance of each bank shall be computed at the close of business each day based upon its net deposit balances and currency and coin at the opening of business on the same day. The biweekly period shall end at the close of business on days to be fixed by the commissioner in his promulgated rules and regulations. When, however, the reserve computation period ends with a nonbusiness day, or two or more consecutive nonbusiness days, such nonbusiness day or days may, at the option of the banking institution, and whether or not it had a deficiency in reserve balances in such computation period, be included in the next biweekly computation period.

The commissioner shall, by rule and regulation, require
regular reports from such banking institutions, which reports shall be submitted at such times and contain such information as will enable the commissioner to adequately supervise the maintenance of reserves under this section. Penalties for any deficiencies in the required reserves of any banking institution shall be assessed monthly by the commissioner on the basis of average daily deficiencies during each of the computation periods ending in the preceding calendar month. Such penalties shall be assessed at a rate of two percent per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the state of West Virginia and credited to the general fund.

Compliance on the part of any such banking institution which is a member of the federal reserve system with the reserve requirements of the Federal Reserve Act, as amended, shall be full compliance with the provisions hereof. No such member bank shall be required to carry or maintain a reserve other than such as required under terms of the Federal Reserve Act, as amended.

§31A-4-23. Borrowing by banking institutions; records thereof; penalties.

1 Any state banking institution may borrow money, rediscount any of its notes, or borrow bonds for the use of the bank in order to meet any emergency that may arise.
2 The books and accounts of such banking institutions shall at all times show the amount of such borrowed money, bonds or rediscounts. No officer, director or employee of any such banking institution shall issue the note of such banking institution for borrowed money, or rediscount any note or pledge any of the assets of such banking institution except when authorized by resolution of the board of directors of such banking institution.
3 A banking institution, when authorized by resolution of the board of directors thereof, may borrow money from
and contract with any federal agency or instrumentality 
created and existing pursuant to an act of the Congress of
the United States, or any other person or persons, and may 
pledge, hypothecate, assign or rediscount to any such fed-
eral agency or instrumentality, or to any other person or 
persons, any assets or securities belonging to the banking 
institution in such manner or form as may be approved by 
its board of directors, and subject to any terms or condi-
tions imposed in connection therewith, as collateral secur-
ity for the payment of any and all such loans. An accurate 
record of all securities and exact copies of all notes with-
drawn from the files of such banking institutions, to be 
pledged as collateral for borrowed money or other pur-
poses, shall be kept in the files of such banking institution 
at all times.

It shall be unlawful for any such banking institution to 
issue its certificate of deposit for purposes of borrowing 
money or to pledge or hypothecate more than two dollars 
of the book value of any of its assets for each one dollar 
of borrowed money.

In addition to applicable penalties provided in article 
eight of this chapter for any such violations, the commis-
sioner of banking may act administratively or through 
judicial proceedings in a court of competent jurisdiction 
to correct and prevent any such violations.

§31A-4-24. Capital notes and debentures; retirement; not sub-
ject to assessment.

With the written approval of the commissioner of bank-
ing and with the approval of its board of directors and 
stockholders, any banking institution may at any time is-
sue and sell either its nonconvertible capital notes or non-
convertible debentures or both its nonconvertible capital 
notes and nonconvertible debentures. In connection with 
his approval or disapproval of the issuance of the notes or 
debentures, the commissioner of banking shall take into 
consideration the financial condition of the banking insti-
tution, the need of expanded banking capital in the town, 
city or community in which the banking institution is lo-
cated, the objects and purposes to be accomplished by is-
suance of the notes or debentures, and such other econo-
mic and monetary factors as he, in his judgment and discretion, may deem to be proper bases for his action.

The word "capital," as used in the laws of this state relating to banking, shall be construed to include the amount of outstanding capital notes and debentures legally issued by the banking institution for all purposes. Such capital notes and debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors, but shall in no case be subject to any assessment. The holders of such capital notes and debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the banking institution, and shall not be held liable for assessments to restore any impairments in the institution's capital. The capital stock of the banking institution shall not be considered to be impaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds any impairment found by the commissioner of banking. If any such impairment in the institution's capital be found by the commissioner of banking, before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of the bank's capital, disregarding the notes or debentures, must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the banking institution.

§31A-4-25. Dividends; limitations; penal provisions.

The directors of any banking institution may declare and pay cash dividends. Before the declaration of any such dividend, at least one-tenth part of the net profits of the preceding calendar year shall be carried to its surplus fund until the same shall equal fifty percent of the amount of its capital stock. No such dividend shall be declared, except from earnings remaining after deducting all losses, all sums due for expenses, and all overdue debts upon which no interest has been paid for a period of six months, unless the same are well secured, and in process of collection and such other items as the commissioner of banking may direct. Any director voting
to pay any cash dividend, in violation of the provisions
of this section, shall be personally liable to the creditors
of such banking institution for any loss occasioned there-
by, and shall be guilty of a misdemeanor.

§31A-4-26. Limitation on loans and investments; loans to offi-
cers and employees of banks and banking depart-
ment; exceptions; valuation of securities.

The total liabilities to any banking institution of any
person, partnership, association or corporation under evi-
dences of indebtedness and agreements for the payment
of money, including in the liabilities of a partnership the
liabilities of the several members thereof, except limited
partners, and including in the liabilities of any corpora-
tion an investment by such banking institution in the
stock of such corporation, shall at no time exceed ten
percent of the unimpaired capital and surplus fund of
such banking institution. But such limitation of ten per-
cent shall be subject to the exceptions hereinafter stated:

(a) The following types of obligations shall not be
subject to any limitation based upon such capital and
surplus fund:

(1) The sale of federal funds;
(2) Obligations arising out of the discount of com-
mercial or business paper actually owned by the person,
partnership, association or corporation negotiating the
same;
(3) Obligations in the form of negotiable drafts or bills
of exchange which have been drawn in good faith against
actually existing values in connection with the sale of
goods and which have been accepted or endorsed;
(4) Obligations drawn in good faith against actually
existing values and secured by goods or commodities in
process of shipment;
(5) Obligations in the form of banker's acceptances of
other banks of the kind described in section thirteen of
the Federal Reserve Act;
(6) Obligations of the United States or general obliga-
tions of any state or political subdivision thereof, when
there has been no default in the payment of interest or
principal in respect of the general obligations of any such
state or political subdivision within ten years prior to the
purchase of such obligations, bonds or obligations issued
under authority of the West Virginia bridge commission
or the state road commission, commonly known as bridge
revenue bonds, or obligations issued under authority of
the Federal Farm Loan Act, as amended, or under the
authority of the “Farm Credit Act of 1933,” as amended,
or issued by the Federal National Mortgage Association,
Government National Mortgage Association or the Fed-
eral Home Loan Bank, or any loans or obligations to the
extent that they are secured or covered by guaranties or
by commitments or agreements to take over or to purchase
the same or to provide funds for the payment thereof,
made by any federal reserve bank or by the United States
or any department, board, bureau, agency, association,
commission or establishment of the United States, includ-
ing any corporation wholly owned, directly or indirectly,
by the United States;

(7) Obligations of a corporation owning the property
in which the banking institution is located when the
banking institution has an unimpaired capital and surplus
of not less than one million dollars, or when approved in
writing by the commissioner of banking; and

(8) Obligations arising from the sale of property
owned by a banking institution, when approved in writing
by the commissioner of banking.

(b) The following types of obligations shall be subject
to the following limitations:

(1) Obligations in the form of notes, secured by not
less than a like amount of bonds or notes of the United
States issued since April twenty-fourth, one thousand
nine hundred seventeen, or certificates of indebtedness
of the United States, treasury bills of the United States,
or obligations fully guaranteed both as to principal and
interest by the United States, shall be subject under this
section to a limitation of thirty-five percent of such un-
impared capital and surplus fund, in addition to such
ten percent of such capital and surplus fund;
(2) Obligations in the form of notes, secured by not less than a like amount of cash surrender value of life insurance policies shall be subject to a limitation of fifteen percent of such unimpaired capital and surplus fund, in addition to such ten percent of such capital and surplus fund; and

(3) Obligations in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing titles covering readily marketable, nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject to a limitation of ten percent of the unimpaired capital and surplus fund, in addition to such ten percent of such capital and surplus fund, when the market value of such staples securing such obligations is not at any time less than one hundred fifteen percent of the face amount of such obligations; and such limitations may be increased up to thirty-five percent of such unimpaired capital and surplus fund, in addition to such ten percent thereof, with a corresponding increase in market value of such staples securing such obligations up to not less than one hundred forty percent of the face amount of such additional obligations, but this exception shall not apply to obligations of any one person, partnership, association, or corporation arising from the same transaction or secured upon the identical staples for more than ten months.

No officer, director, clerk or other employee of any banking institution or the commissioner of banking or any employee of the department of banking shall borrow, directly or indirectly, from the banking institution with which he is connected, or which is subject to examination by the commissioner of banking, any sum of money without the approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee, embodied in a resolution adopted by a majority vote of such board or committee, exclusive of the director to whom the loan is made. If any officer, clerk or other em-
ployee of any bank shall own or control a majority of the
stock of any other corporation, a loan to such corporation
shall, for the purpose of this section, constitute a loan to
such officer, clerk or other employee.

Securities purchased by a banking institution shall be
entered upon the books of the bank at actual cost. For the
purpose of calculating the undivided profits applicable to
the payment of dividends, securities shall not be valued
at a valuation exceeding their present cost as determined
by amortization, that is, by deducting from the cost of a
security purchased at a premium, and charging to profit
and loss a sum sufficient to bring it to par at maturity.

§31A-4-27. Loans eligible for federal insurance or guaranty.

Banking institutions are authorized:

(a) To make such loans and advances of credit and
purchases of obligations representing loans and advances
of credit as are eligible for insurance or guaranty by the
federal housing commissioner or United States adminis-
trator of veterans' affairs, or by any other officer, depart-
ment, agency or instrumentality of the United States for
the purpose of financing alterations, repairs and improve-
ments upon real property, and to obtain such insurance or

(b) To make such loans secured by real property or
leasehold as the federal housing commissioner or ad-
ministrator of veterans' affairs or any other officer, depart-
ment, board, bureau, commission, agency or instrument-
ality of the United States insures or guarantees or makes
a commitment to insure or guarantee and to obtain such
insurance or guaranty.

§31A-4-28. Investments in obligations secured by mortgages or
deeds of trust insured or guaranteed by United
States; securities of federal agencies; use of
such obligations and securities as collateral, etc.

It shall be lawful for banking institutions to invest
their funds and the moneys in their custody or possession
eligible for investment, in notes, bonds or other obliga-
tions secured by mortgages or deeds of trust insured or
guaranteed by the federal housing commissioner or United
State administrator of veterans' affairs or by any other
officer, department, agency or instrumentality of the
United States and in notes, bonds, debentures and other
obligations and securities issued by, insured by, or guar-
anteed by the federal housing commissioner, federal na-
tional mortgage association or government national
mortgage association or in other federal agencies securi-
ties.

Wherever, by statute of this state, collateral is re-
quired as security for the deposit of public or other funds;
or deposits are required to be made with any public
official or department; or an investment of capital or
surplus, or a reserve or other fund, is required to
be maintained consisting of designated securities, such
notes and bonds, debentures, obligations and federal
agencies securities shall be eligible for such purposes.

§31A-4-29. Application of other laws to loans and investments
under §§31A-4-27 and 31A-4-28.

No law of this state prescribing the security upon which
loans or investments may be made or the nature, amount,
or form of such security, or prescribing or limiting the
period for which loans or investments may be made shall
be deemed to apply to loans or investments made pur-
suant to the provisions of the two preceding sections of
this article by banking institutions or by any person pur-
suant to the provisions of section five, article one of this
chapter; and no law limiting interest rates upon loans
or investments shall be deemed to apply to any such
loans or investments.

§31A-4-30. Charges and interest allowed in certain cases; nego-
tiability of installment notes.

In addition to the interest rate provided in article six
of chapter forty-seven of this code and elsewhere by law,
a banking institution may charge and collect a reason-
able amount to cover the expenses incurred in procuring
reports and information respecting loans and the value
of and title to property offered as security therefor,
and a charge of three dollars may be made for any loan or
forbearance of money or other thing where the interest
at the rate of six percent per annum would not amount
to that sum and the same shall not be a usurious charge
or rate of interest. Any banking institution authorized to
do, and doing business in this state, may contract for and
charge for a secured or unsecured loan, repayable in in-
stallments, not in excess of six percent per annum upon
the face amount of the instrument or instruments evi-
dencing the obligation to repay the loan, for the entire
period of the loan, and deduct such charge in advance
or add the same to the principal amount of the loan. But
if the entire unpaid balance outstanding on the loan is
paid on any installment date, prior to maturity, the bank
shall make a refund or rebate of such charge in an amount
computed on the aggregate installments not due, at the
original contract rate of charge; and any note evidencing
any such installment loan may provide that the entire un-
paid balance thereof at the option of the holder shall
become due and payable upon default in the payment of
any stipulated installment without impairing the negoti-
ability of such note, if otherwise negotiable.

§31A-4-31. Uniform and continuing depository bonds author-
ized; review of such bonds; correction of inade-
quacy; security for federally insured deposits not
required.

Notwithstanding any provision of any law, ordinance,
order, rule, regulation or resolution requiring depository
bonds of banking institutions covering state, county
and municipal deposits or the deposits of any state,
county, municipality or other political subdivision agency,
bureau, department, instrumentality or officer or public
 corporation to be renewed annually or periodically, all
such depository bonds may be uniform in content and
continuing in nature and need not be renewed annually
or periodically, but it shall be the responsibility of
any such depositor to review the bonds covering its
deposits from time to time, and at least once each year
on or about the anniversary date of each one thereof,
to ascertain and verify that the coverage and sureties are
adequate and sufficient in all particulars and that such
bonds comply with all lawful requirements. In the event any bond is found to be inadequate or insufficient, written notice of the inadequacy or insufficiency shall be given to the banking institution, and it shall be the responsibility of the banking institution to act promptly to correct the same by executing a new bond or enlarging and correcting the coverage of the existing bond, or by taking such other action as may be required.

The commissioner of banking, with the approval of the attorney general, shall prescribe the form of the uniform and continuing type of depository bonds as authorized by this section.

Notwithstanding any provision of any such law, ordinance, order, rule, regulation or resolution requiring security for such deposits in the form of collateral, surety bond or other assets or documents, security for such deposits shall not be required to the extent such deposits are insured by the federal deposit insurance corporation.

§31A-4-32. Adverse claims to deposits and property held in safe deposit.

(a) A banking institution shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account or property held in safe deposit (whether by the institution or in a safe-deposit box or other receptacle leased to a customer) made by a person or persons other than:

(1) The customer in whose name the account or property is held by the institution, or

(2) An individual or group of individuals who are authorized to draw on or control the account or property pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the institution, which:

(A) Has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the institution has received notice, and
20  (B) Is not the subject of a dispute known to the in-
21 stitution as to its original validity.
22  (b) To require an institution to recognize an adverse
23 claim to, or adverse claim of authority to control, a
24 deposit account or property held in safe deposit, who-
25 ever makes the claim must either:
26  (1) Obtain and serve on the institution an appropriate
27 order directed to the institution by a court restraining
28 any action with respect to the account or property until
29 further order of such court or instructing the institution
30 to pay the balance of the account or deliver the property,
31 in whole or in part, as provided in the order, or
32  (2) Deliver to the institution a bond, in form and
33 amount and with sureties satisfactory to the institution,
34 indemnifying the institution against any liability, loss,
35 damage, cost or expense, including reasonable attorney
36 fees, which it might incur because of its recognition of
37 the adverse claim or because of its refusal by reason
38 of such claim to honor any check or other order of, or
39 to deliver any property to anyone described in subdi-
40 visions (1) and (2) of subsection (a) of this section.

§31A-4-33. Deposits in trust; deposits in more than one name.

1  If any deposit in any banking institution be made by
2 any person describing himself in making such deposit as
3 trustee for another, and no other or further notice of the
4 existence and terms of a legal and valid trust than such
5 description shall be given in writing to the banking in-
6 stitution, in the event of the death of the person so de-
7 scribed as trustee, such deposit, or any part thereof, to-
8 gether with the interest thereon, may be paid to the
9 person for whom the deposit was thus stated to have
10 been made.

11  When a deposit is made by any person in the name of
12 such depositor and another or others and in form to be
13 paid to any one of such depositors, or the survivor or
14 survivors of them, such deposit, and any additions there-
15 to, made by any of such persons, upon the making there-
16 of, shall become the property of such persons as joint
17 tenants; and the same, together with all interest thereon,
shall be held for the exclusive use of the persons so named, and may be paid to any one of them during the lifetime of them, or to the survivor or survivors after the death of any of them; and such payment and the receipt or the acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge for all payments made on account of such deposit, prior to the receipt by the banking institution of notice in writing, signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof.

§31A-4-34. Payment of deposits to minors.

Whenever any minor shall make, or have credit for, a deposit in any banking institution, in his or her name, the money so deposited may be paid out on the check or order of such depositor the same as in case of a depositor of legal age, and such payment shall be in all respects valid, except when such banking institution has been specifically directed in writing by the parent or guardian of such minor not to make such payment.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals.

Any banking institution may cause to be copied or reproduced by any photographic, photostatic, microphotographic or other miniature photographic process, all or any number of its checks, and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings, in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent, and for the same purposes as the origi-
nal thereof, and the banking institution may destroy or otherwise dispose of the original. But every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least six years from the date of the last entry on such books or the date of making of such deposit tickets and card records, or, in the case of a banking institution exercising trust or fiduciary powers, until the expiration of six years from the date of termination of any trust or fiduciary relationship by a final accounting, release, court decree or other proper means of termination.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and film used therein shall be of durable material.

§31A-4-36. Statement of account to customers; duties of customers; limitations.

When a banking institution makes a statement of account available to its customer in the manner provided in section four hundred six, article four, chapter forty-six of this code, such customer shall, with respect to errors in said account, have the same duties and shall be bound by the same rules, preclusions and limitations as are provided in said section four hundred six with respect to any alteration of an item.

§31A-4-37. Sale of machine operations and services.

Any state banking institution or institutions, or institution or institutions jointly with a national banking association or associations, owning, leasing or renting, directly
or through a subsidiary corporation wholly owned by it
or them, computer, bookkeeping, or other like or similar
machines or equipment for its or their own business opera-
tions, may contract for the sale of and sell the services,
use and products of the machines or equipment to other
financial institutions and businesses, upon such terms and
conditions as may be the subject of agreement between
the parties, but only when the use and services of the
machines and equipment are not employed in the orderly
operations of such banking institution, institutions, asso-
ciation or associations.

§31A-4-38. Direct leasing of personal property.

Banking institutions may, subject to rules and regula-
tions promulgated by the commissioner of banking, ac-
quire and lease personal property pursuant to a binding
arrangement for the leasing of such property to any per-
son upon terms requiring payment to the institution, dur-
ing the minimum period of the lease, of rentals which in
the aggregate will exceed a reasonable estimate of the
total expenditures to be made by the institution for or in
connection with the acquisition, ownership, maintenance
and protection of the property.

§31A-4-39. Transactions on legal holidays and Sundays.

No act or transaction of any banking institution shall
be void or voidable because done on a legal holiday or a
Sunday. But this section shall not be construed to require
of any such institution the doing of any act on a legal
holiday or a Sunday.

§31A-4-40. Permissive closing on fixed weekday or portions
of weekdays; emergency closings; procedures.

(a) In addition to Sundays and legal holidays any
banking institution may remain closed on any one fixed
weekday or portion of such day in each calendar week,
or on any one fixed weekday and a portion of another
weekday in each calendar week, or on portions of two
weekdays in each calendar week, which day and/or por-
tion or portions of the day or days when the institution is
to remain closed shall be designated by a resolution
adopted by the board of directors thereof. Not less than fifteen nor more than thirty days in advance of closing on and such weekday and/or portion of one or more weekdays, such banking institution shall post a notice in a conspicuous place in its banking room stating that on or after a day certain and until further notice given in like manner, such banking institution will remain closed on a fixed weekday and/or portion of one or more weekdays. Concurrently with the posting of such notice, such banking institution shall cause a notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal office of such bank is located. Such notice shall set forth the time or times on which said bank will remain closed and the date when such closing becomes effective. A certified copy of such resolution certified by the cashier or secretary of such banking institution, together with an affidavit of posting and proof of publication of the notice herein required shall be filed with the commissioner of banking.

(b) The commissioner may permit any banking institution to close, without notice, during any period of actual or threatened enemy attack affecting the community in which such banking institution is located or during any period of other emergency including, but not limited to, fire, flood, hurricane, riot or civil commotion.

(c) Any fixed weekday and/or portion of one or more weekdays on which any banking institution shall elect to close and any period during which the commissioner may permit it to close pursuant to the authority of this section shall constitute a legal holiday with respect to such banking institution and not a business day or banking day for the purposes of the law relating to negotiable instruments, and any act or contract authorized, required or permitted to be carried out or performed at, by or with respect to such banking institution may be performed on the next business or banking day, and no liability or loss of rights on the part of any person or banking institution shall result therefrom.
§31A-4-41. Additional authority of board as to limited operations and cessation of business by state banks.

1 The board may, by and with the consent of the governor, permit or require any state bank or any number or all of such banks to:

2 (1) Operate and do business in such manner and under such limitations and regulations as the board, with the approval of the governor, may prescribe, or

3 (2) Cease business for such period of time as the board, with the approval of the governor, may direct, in which case the period of such cessation shall be held to be a legal holiday as to such bank or banks.

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.

1 No person except banking associations chartered and authorized to conduct a banking business in this state under the laws of the United States of America and having their principal places of business in this state, and state banking institutions which hold a permit, license or certificate to engage in such business issued by the commissioner under the provisions of section five, article two of this chapter, shall engage in the business of banking or the trust business in the state of West Virginia, or shall receive or accept deposits of money, or borrow money by receiving and giving credits for deposits, or by issuing certificates of deposits or certificates of indebtedness, or by making and negotiating any writing purporting to be a bond, contract, or other obligation, the performance of which requires the holder or other party to make deposits of money with the issuer, or receive or accept deposits by means of any other plan, pretext, scheme, shift or device.

19 Nothing contained in this section shall affect the rights, privileges, objects or purposes delegated to other corporations by the general corporation law or other laws of this state.

23 Any corporation or individual who violates any of the provisions of this section shall be guilty of a misdemeanor,
and, upon conviction, shall be fined not more than five thousand dollars, and, in addition to such penalty, every corporation so offending shall forfeit its corporate franchise, and every individual so offending shall be subject to a further penalty by confinement in jail for not more than one year.

ARTICLE 5. BANK SERVICE CORPORATIONS AND BANK SERVICES.

§31A-5-1. Definitions.
§31A-5-2. Authority of state banks to invest in bank service corporations.
§31A-5-3. Extension of bank services to competing banking institutions and associations.
§31A-5-4. Bank service corporation activities limited.
§31A-5-5. Regulation and examination of performance of bank services.

§31A-5-1. Definitions.

1 For the purposes of this article: “bank services,” means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a state bank or a national banking association and the sale of the services, use and products of machines and equipment as permitted by section thirty-seven, article four of this chapter; “bank service corporation” means a corporation organized under the laws of this state to perform bank services for two or more banking institutions, each of which owns part of the capital stock of such corporation, and the sale of the services, use and products of machines and equipment as permitted by section thirty-seven, article four of this chapter; and “invest” means any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except the payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

§31A-5-2. Authority of state banks to invest in bank service corporations.

1 Notwithstanding any other provision of law, any state bank is hereby authorized to invest not more than ten
percent of its paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. If stock in a bank service corporation has been held by two state banks, or by one such bank and one national banking association and one state bank or such association ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves a state bank as the sole stockholder, the bank service corporation may nevertheless continue to function as such and such state bank may continue to hold stock in such corporation.

§31A-5-3. Extension of bank services to competing banking institutions and associations.

Whenever a state bank or a national banking association applies for bank services for itself (hereinafter referred to in this section as “an applying bank”) from a bank service corporation which supplies the same type of bank services to one or more other state banks or national banking associations, or both, and the applying bank is competitive with any state bank or national banking association which holds stock in such corporation (referred to in this section as a “stockholding bank”), the corporation must offer to supply such services by either:

(a) Issuing stock to the applying bank and furnishing bank services to it on the same basis as to the stockholding banks, or

(b) Furnishing bank services to the applying bank at rates no higher than necessary to reflect fairly the cost of such services, including the reasonable cost of the capital provided to the corporation by the stockholding banks, at the corporation’s option, unless comparable services at competitive overall costs are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the bank service corporation. In any action or proceeding to enforce the duty imposed by this section or for damages for the breach thereof, the burden shall be upon the bank service corporation to show the availability of such comparable services or that the furnishing of such services
§31A-5-4. Bank service corporation activities limited.

1 No bank service corporation may engage in any activity other than the performance of bank services.

§31A-5-5. Regulation and examination of performance of bank services.

1 No state bank may cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, unless written assurances satisfactory to the commissioner of banking are furnished to him by both the state bank and the party performing such services that the performance thereof will be subject to regulation and examination by the commissioner and any federal supervisory agency to the same extent as if such services were being performed by the state bank on its own premises.

ARTICLE 6. NOMINEE REGISTRATION OF FIDUCIARY SECURITIES.

§31A-6-1. Procedures for nominee registration of securities.

§31A-6-2. Duties of bank making use of nominee registration.

§31A-6-3. Civil liabilities and criminal penalties.

§31A-6-4. Limitations on liability in transfers and changes of registration.

§31A-6-5. Registration of property to evade taxes prohibited.

§31A-6-1. Procedures for nominee registration of securities.

1 Any bank authorized to exercise trust powers under the laws of this state, which holds in a fiduciary capacity any stock, bond, debenture, note, warrant, certificate or other security evidencing ownership or interest, either whole or fractional, in fully paid and nonassessable intangible personal property, may cause such security or evidence of ownership, to be registered and held in the name of a nominee or nominees of such bank, or in its own name, without disclosing the fiduciary relationship, but, where such bank is acting jointly with some other individual or individuals, it shall first secure the written consent of such individual fiduciary or fiduciaries thereto, which consent such individual fiduciary or fiduciaries are hereby authorized to give.
The placing of property in the name of a nominee, nominees, or in the name of the bank, without disclosure of the fiduciary capacity, shall be deemed to be nominee registration under this article and every such registration shall ipso facto constitute a declaration of trust upon the part of the registered owner so far as the fiduciary and the beneficiaries of the fiduciary status are concerned.

§31A-6-2. Duties of bank making use of nominee registration.

Every such bank making use of nominee registration as provided in this article shall:

(a) At all times maintain such records as may be necessary to show the actual beneficial ownership of the property so held;

(b) At all times retain possession and control of such securities or other evidences of ownership which shall be kept separate and apart from the assets of such bank and assets held in other fiduciary capacities;

(c) Secure from such nominee or nominees such endorsements, assignments or other writings as may be necessary to effect retransfer of the securities or other evidences of ownership without notice, and such endorsements, assignments or other writings shall be valid and effective as of the date of delivery thereof whether the nominee die before transfer is perfected, or not;

(d) Enter into such contracts or agreements with its nominee or nominees as may be necessary to afford full protection to the ownership of its fiduciary account and the beneficiaries thereof;

(e) Clearly show in all of its reports and accounts the form of registration under which such securities or evidences of ownership are held.

§31A-6-3. Civil liabilities and criminal penalties.

Any such bank which places property in nominee registration under this article shall be absolutely liable in civil actions or suits for any or all loss or damage to its fiduciary account or the beneficiaries thereof occasioned by the acts of any of its nominees, or any of its agents, employees, or other persons acting for it with respect to such property, including reasonable attorney fees.
Any bank or its officers, employees, nominees or agents placing property in nominee registration in violation of any of the provisions of this article shall be guilty of a misdemeanor, and, in addition to civil liability for restitution, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars.

§31A-6-4. Limitations on liability in transfers and changes of registration.

No liability for any loss caused by the acts of the nominee of a bank shall attach to any transfer agent, registrar, corporation, officer or agent of a corporation, or other person, who, in compliance with the directions of any such bank acting under the provisions of this article, transfers or changes the registration of any such property.

The certification of the bank that it has complied with the provisions of this article shall be prima facie evidence of its compliance so far as any such transfer agent, registrar, corporation, officer or agent of a corporation, or other person, is concerned.

§31A-6-5. Registration of property to evade taxes prohibited.

No bank shall cause or permit the use of its name or the name of its nominee or nominees for the purpose of registering property to evade, avoid, minimize or relieve itself or any other person, firm or corporation, or the property, from taxation.

ARTICLE 7. CHANGES IN STRUCTURE AND STATUS.

§31A-7-1. Appointment, powers and duties of conservators; termination of conservatorship by commissioner; deposits and withdrawals during conservatorship; reorganization of bank.

§31A-7-2. Insolvent institutions and institutions with impaired capital; receivers; procedure for liquidation.

§31A-7-3. Appraisal of assets of institutions under conservator or receiver; procedure; publication; costs.

§31A-7-4. Receivers may borrow from federal lending agencies and others; procedures.

§31A-7-5. Reorganization; purchase, merger or consolidation of and by state banks; conversion of national bank to state bank; voluntary liquidation.

§31A-7-6. Enforced liquidation of financial institution after revocation of certificate of authority, permit or license.

§31A-7-7. Federal deposit insurance corporation or other federal agency as receiver or liquidator; subrogation of federal deposit insurance corporation to rights of depositors.
§31A-7-l. Appointment, powers and duties of conservators; termination of conservatorship by commissioner; deposits and withdrawals during conservatorship; reorganization of bank.

(a) Whenever the commissioner of banking shall deem it necessary, in order to conserve the assets of any state bank for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such state bank. The conservator may be an employee of the department of banking, and shall be required to give such bond and security as the commissioner deems proper.

(b) The conservator, under the direction of the commissioner of banking, shall take possession of the papers, books, records and assets of every description of such state bank and take such action as may be necessary to conserve such assets pending further disposition of the business of such institution.

(c) The conservator shall have all the rights, powers and privileges now possessed by or hereafter given receivers of state banks and shall be subject to all the liabilities, obligations and penalties, not inconsistent with the provisions of this article, to which receivers are now or may hereafter become subject.

(d) During the period that such conservator remains in possession of such state bank, the legal relations of all parties with respect thereto shall, subject to the other provisions of this section, be the same as if a receiver had been appointed therefor.

(e) All expenses of any such conservatorship shall be paid out of the assets of such state bank and shall be a lien thereon, which shall be prior to any other lien. The conservator shall receive a reasonable compensation for his services to be fixed by the commissioner of banking, but in no event shall such compensation exceed that paid to employees of the department of banking for similar services.

(f) Immediately upon taking charge of such state bank, the conservator in conjunction with a representative of the bank designated by the directors thereof shall make in triplicate a complete inventory of all assets and an
itemized list of all liabilities of such institution. The original and two copies of such list shall be subscribed and sworn to by the persons making the same and the original shall be filed with the commissioner as soon as practicable, and one copy shall be furnished to such institution and one copy retained by the conservator.

(g) If the commissioner of banking becomes satisfied that such a course of action may be pursued safely and that it will be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as he may prescribe.

(h) While such state bank is in the hands of the conservator, the commissioner of banking may require such conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the commissioner may be used safely for this purpose, subject to such priorities and preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits. Such deposits shall not be subject to any limitation as to payment or withdrawal. The deposits shall be segregated and shall not be used either to liquidate any indebtedness of such banking institution existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such banking institution existing at the time such conservator was appointed.

(i) Deposits received while the state bank is in the hands of a conservator shall: (1) Be kept on hand in cash, or (2) be deposited with a federal reserve bank or deposited with such banking institution as the commissioner of banking may, in his discretion, designate, or (3) be invested in the direct obligations of the United States or the state of West Virginia or the funded obligations of any political subdivision of this state approved by the commissioner of banking.

(j) In any reorganization of any state bank under a
plan of a kind which, by its own terms or under existing law, requires the consent, as the case may be, of depositors and other creditors, or of stockholders, or of both depositors and other creditors, and stockholders, such reorganization shall become effective only when the commissioner of banking shall be satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders, and that the plan is in the public interest and shall have approved the plan subject to such conditions, restrictions and limitations as he may prescribe; and when, after reasonable notice of such reorganization, as the case may require, depositors and other creditors of such banking institution representing at least seventy-five percent in amount of its total deposits and other liabilities; or stockholders owning at least two thirds in amount of its outstanding capital stock; or both depositors and other creditors representing at least seventy-five percent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock, shall have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of said banking institution in determining the seventy-five percent thereof as above provided.

(k) When such reorganization becomes effective, all books, records, and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the banking commissioner. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.
118  (l) Fifteen days after the affairs of a state bank shall
119 have been turned back to its board of directors by the
120 conservator, either with or without a reorganization as
121 provided in subsection (j) of this section, the provisions
122 of subsections (h) and (i) of this section shall no longer
123 be effective. Before the conservator shall turn back the
124 affairs of the institution to its board of directors he shall
125 publish a notice, in form approved by the commissioner,
126 stating the date on which the affairs of the banking in-
127 stitution will be returned to its board of directors and
128 that the said provisions of subsections (h) and (i) will
129 not be effective fifteen days after such date. Such notice
130 shall be published as a Class I legal advertisement in
131 compliance with the provisions of article three, chapter
132 fifty-nine of this code, and the publication area for such
133 publication shall be the county in which such bank is
134 located. On the date of the publication of such notice
135 the conservator shall send a copy of such notice by regis-
136 tered mail to the last known address of every person
137 who is a depositor as shown by the records of the in-
138 stitution. The conservator shall send similar notice in like
139 manner to every person making a deposit in such insti-
140 tution under subsection (h) after the date of such news-
141 paper publication and before the time when the affairs
142 of the bank are returned to its directors.
143  (m) Nothing in this section shall be construed to im-
144 pair in any manner any powers of the governor or the
145 commissioner of banking.
146  (n) The commissioner of banking is hereby authorized
147 to prescribe such rules and regulations as he may deem
148 necessary in order to carry out the provisions of this sec-
149 tion.

§31A-7-2. Insolvent institutions and institutions with impaired
capital; receivers; procedure for liquidation.

1  If the commissioner of banking shall ascertain from
2 any source that the capital of any financial institution is
3 substantially impaired, and any such institution, upon
4 notice from him, does not promptly make good such im-
5 pairment, or if the commissioner shall ascertain from any
source that any such financial institution is insolvent, he shall have authority to appoint an employee of the department of banking receiver thereof to take charge of the papers, books, records, moneys and assets of every description of such institution; and immediately upon taking charge of any such institution, the commissioner of banking and a representative of such institution designated by the directors thereof shall make in triplicate a complete inventory of all assets and an itemized list of all liabilities of such institution. The original and two copies of such list shall be subscribed and sworn to by the persons making the same and the original shall be retained by the commissioner and one copy shall be furnished such receiver and one copy to such institution, and such receiver, upon assuming office, shall open and keep such books and records as are prescribed by the commissioner of banking.

In addition to all other powers vested in him, such receiver shall have all the powers vested in special receivers by general law. The receiver, with the approval of the commissioner of banking, shall institute and prosecute any action or actions necessary to obtain possession of any property and to sell and dispose of the same and to collect all obligations due such institution and wind up the affairs of such institution. The receiver in such action, or by separate actions, with the approval of the commissioner of banking, shall enforce against the officers, directors and stockholders any liability incurred by them and existing in favor of the creditors of such institution, and collect from such officers, directors and stockholders any sums for which they are liable as aforesaid. He shall also defend any actions brought against such institution.

If it shall appear that the assets of any such insolvent financial institution are not sufficient to pay in full all of its creditors and depositors, without waiting to administer the assets of such institution, or delaying for any other cause, the receiver, with the approval of the commissioner, shall forthwith institute any action or actions necessary to collect from each of the several stockholders of such institution all sums for which they are severally
liable to such institution, for the benefit of its creditors. Any action or proceeding instituted by the receiver under this or any other section of this article may be instituted in the receiver's name, the name of the commissioner of banking or the name of the financial institution, as the commissioner may direct.

In connection with the administration of the assets of any such institution, any such receiver may bring an action in the circuit court of the county where such institution is located, to ascertain the several depositors and creditors of such institution and the amounts and priorities of their respective claims. In any such action instituted by a receiver the financial institution and all the stockholders thereof and all of the creditors and depositors thereof, or a representative number of such creditors and depositors determined in accordance with the provisions of Rule 23 of the West Virginia Rules of Civil Procedure, shall be made parties defendant and all persons who theretofore filed proofs of claims against such institution with the commissioner of banking or receiver or thereafter file such proofs of claim in such action shall be deemed defendants as though they had been specifically named as defendants therein. The court shall refer the cause to a commissioner of that court who shall thereupon cause to be published a notice to all depositors and creditors of such financial institution requiring them to present their claims to such court commissioner for allowance. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the suit is pending. After publication of such notice is completed, such court commissioner shall proceed as promptly as possible to ascertain and report the several depositors and creditors of such institution and the amounts and priorities of their respective claims, proven before him. All claims as shall have been duly proved and allowed by the receiver or the commissioner of banking, before the decree of reference, may be allowed and reported by the court commissioner without further proof, unless the
same shall be contested and disallowed for proper cause. The court commissioner shall also ascertain and report what funds and assets of such institution have come into the hands of the receiver, what disposition has been made of such assets, and what dividends, if any, have been paid. The court shall enter such orders and decrees and take such proceedings as are proper to ascertain the several depositors and creditors of such financial institution, and adjudicate their respective rights and direct the distribution of the assets and funds in the hands of the receiver and confirm any distribution made under orders of the commissioner of banking, and may confirm any and all sales made by such receiver of property and assets of such financial institution and settle the accounts of such receiver. Any creditor whose claim is not presented and allowed before any decree of distribution becomes final shall be forever barred from participating in the funds distributed under such decree, or theretofore distributed and confirmed by such decree, and shall have no claim by reason of such distribution against any creditor sharing therein or against the commissioner of banking, the receiver, or any surety upon the receiver's bond. Any claim which shall have been proved and allowed after any dividend or distribution has been made by the receiver shall be paid dividends equal or proportionate in amount to those already received by the other creditors of the same rank and priority, if the funds and assets in the hands of the receiver are sufficient therefor, before such other creditors receive any further dividend or distribution.

In any such action brought by the receiver for the purpose of ascertaining the several depositors and creditors of such institution, as hereinbefore provided, the receiver may also proceed against the officers, directors and stockholders of the institution to enforce their individual liabilities as hereinabove provided, or for the adjudication of any other pertinent matter involved in the administration of the assets and affairs of such institution.

All of the assets of any such insolvent institution shall be administered under, applied and paid out through the
orders of the commissioner of banking or a court of
competent jurisdiction, as herein provided. The costs and
expenses of the receivership and of any action or actions
brought by the receiver under the direction of the com-
missioner of banking shall be entitled to priority of pay-
ment out of the assets of such institution.

The receiver shall, by proper proceedings, ascertain the
several creditors and the amounts and priorities of their
respective claims against such institution and shall, from
time to time, as the assets of the institution are reduced to
possession, and converted into cash, pay the same to the
several creditors in the order and the manner in which
they are respectively entitled to payment, but, without
regard to priority, the receiver may at any time pay in
full the claim of any creditor which is less than five
dollars.

If the assets of any such institution, including any sums
collected from the stockholders, shall more than suffice
to pay all of the creditors of the institution who have
presented and proved, or caused to be allowed, their
several demands, the surplus shall be disbursed as fol-
lows: First in the case of a banking institution, to the
stockholders, who have paid in any sums upon their
extraordinary liability as stockholders, pro rata up to
the respective amounts paid by each of them. Second,
if anything shall remain thereafter it shall be paid to the
stockholders of the institution in proportion to the num-
ber of shares owned by them respectively.

The salary of such receiver for the time devoted to such
receivership and all expenses incurred by such receiver
in the discharge of his duties, including reasonable fees
paid for legal services, shall be paid out of the assets of
such institution as a part of the costs of the receivership.
No other compensation shall be paid to such officer for
acting as receiver of such institution.

The receiver of any such financial institution, before
entering upon the discharge of his duties, or receiving
into his possession any of the assets of such institution,
shall enter into bond in favor of the state of West Virginia, in a penalty fixed by and with corporate surety authorized to transact business in this state, approved by the commissioner, conditioned for the faithful discharge of his duties as receiver, and for accounting for and paying over, as required by law, all properties, moneys and funds which shall come into the hands of such receiver, his agents, attorneys or representatives. The bond and certificate of appointment of such receiver shall be recorded in the office of the clerk of the county court of the county in which such institution is situated, and a certified copy thereof shall be forthwith transmitted by the receiver to the commissioner of banking.

Upon the appointment of a receiver for a banking institution engaged in business in this state and authorized to exercise trust powers, such trust powers and authority shall end, and for every case where such banking institution has acted as fiduciary, such receiver shall immediately make a final settlement before the court in which such banking institution qualified as such fiduciary, which settlement shall cover all matters not included in a prior settlement, if any. Thereupon, such court shall proceed as is provided in section six, article five, chapter forty-four of this code, and no formal revoking or annulling order shall be necessary.

Nothing in this section shall impair the right of any court in any action, on a proper showing, to appoint a receiver for any such institution, in cases where the commissioner of banking has failed, refused or neglected to act.

In the administration of the assets of banking institutions by receivers appointed pursuant to this article, having deposits of money belonging to the state of West Virginia, no greater rate of interest, notwithstanding the provisions of the contracts relative to interest between such banking institutions and the state of West Virginia, shall be paid on such deposits than that paid for the same period or periods on the same class or classes of such deposits
§31A-7-3. Appraisal of assets of institutions under conservator or receiver; procedure; publication; costs.

Within sixty days after the filing of the inventory of the assets of a state banking institution in conservatorship or receivership its assets shall be appraised in the manner herein provided and a copy filed with the commissioner of banking. The commissioner shall not approve or consent to the reorganization, consolidation, merger or sale of the business of such banking institution in conservatorship or receivership until an appraisal shall have been made and published as provided in this section. Appraisal shall be made on the basis of present true and actual value by three appraisers one of whom shall be the conservator or receiver, one a representative of such banking institution designated by its board of directors, and the third a representative of the depositors, who was a depositor at the time the conservator or receiver was appointed and shall not have disposed of his claim, to be designated by the commissioner of banking upon the nomination in writing of a majority in amount of depositors or assigns if such nomination is filed with the commissioner not later than two weeks after the filing of the inventory in the receivership or conservatorship. If no such nomination is made, the commissioner shall designate the depositors' representative in his discretion. In the event of disagreement as to a valuation the determination of any two of the appraisers shall be final. A copy or a summary of the completed appraisal shall be published, in form approved by the commissioner of banking, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the banking institution is located. The expense of appraisal and publication shall be deemed part of the cost of the conservatorship or receivership and shall include reasonable compensation allowed the appraisers, other than a conservator or receiver, by the commissioner of banking.
§31A-7-4. Receivers may borrow from federal lending agencies and others; procedures.

Any receiver of a banking institution, heretofore or hereafter appointed under the provisions of this chapter, if there be no proceeding instituted as authorized by law by such receiver in any court in this state against such banking institution and its stockholders, with the consent in writing of the commissioner of banking, and if there be a proceeding instituted as authorized by law by such receiver in any court in this state against such banking institution and its stockholders, with the consent in writing of the commissioner of banking and the approval of the court, and any receiver of a banking institution heretofore or hereafter appointed by any court in this state in connection with any proceeding in such court against such banking institution, with the consent in writing of the commissioner of banking and the approval of the court, is hereby authorized and empowered to borrow money from and contract for loans with any federal finance or lending agency, created and existing under any act of the Congress of the United States, or any other agencies or persons, for the purpose of furnishing immediate relief to or aiding in the reorganization or liquidation or reopening of such banking institution, protecting and preserving the assets in charge of the receiver, expediting the making of distributions and the payment of dividends to depositors and other creditors of the institution, providing for the expenses of administration and liquidation or its merger or consolidation with another banking institution, and paying the claims of secured creditors where the security is deemed by the receiver and the commissioner of banking to be of a value in excess of the debt so secured and to be for the preservation of the assets of such banking institution; and to pledge, hypothecate, assign or transfer to any such agency or other person any assets or securities belonging to the banking institution as collateral security for the payment of any and all such loans, subject to terms and conditions imposed and agreed upon between the parties.
All acts of the receiver or commissioner of banking hereunder are hereby declared to be legal, valid and binding and effective to transfer to any such agencies or persons, their respective successors and assigns, assets and securities in accordance with the terms of the contract of pledge, transfer or assignment.

The commissioner of banking and receiver of any such banking institution shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action necessary or proper to consummate such loans and to provide for the repayment thereof and to give bond, when required, for the faithful performance of all undertakings in connection therewith.

The authority herein conferred on a receiver of a banking institution for the procuring and obtaining of such loans includes authority to renew the same from time to time, with the consent in writing of the commissioner of banking.

An accurate record of all securities and exact copies of all notes withdrawn from the files of such banking institution, to be pledged as aforesaid as collateral for borrowed money, shall be kept in the files of such banking institution at all times.

§31A-7-5. Reorganization; purchase, merger or consolidation of and by state banks; conversion of national bank to state bank; voluntary liquidation.

In any voluntary or compulsory proceeding to liquidate a state banking institution, such banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court with the consent in writing of the commissioner of banking and the approval of the court, may reorganize, reclaim possession of its assets, and continue in business.

Any state banking institution may at any time, with the approval of the board, purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution, the terms and conditions of any such purchase, merger or consolidation to be
first approved by the board. With the approval of the
board and compliance with all applicable laws of this
state and the United States, any state banking institution
may purchase the business and assets and assume the
liabilities of a national banking association, or merge or
consolidate with a national banking association to form
a resulting state bank, the terms and conditions of any
such purchase, merger or consolidation to be first ap-
proved by the board. With the approval of the board and
compliance with all applicable laws of this state and the
United States a national banking association may con-
vert into a state bank. After any such purchase, merger
or consolidation, no other corporation shall be allowed
to take or use the name of any institution participating
in such purchase, merger or consolidation.

Unless in conflict with a law of the United States of
America, at the completion of any purchase, merger or
consolidation, whether heretofore or hereafter effected
under any past, present or future law of this state or of
the United States of America, and whether such bank-
ing institution be organized under the provisions of the
laws of this state or of the United States of America,
or both, the purchasing, merged or consolidated banking
institution shall be deemed to have been substituted by
operation of law in the place and stead of each of the
participating institutions in all fiduciary relationships, and
all and singular the titles, properties, offices, appoint-
ments, rights, powers, duties, obligations and liabilities
of each participating institution as trustee, agent, ex-
ecutor, administrator, guardian, depository, registrar,
transfer agent or other fiduciary or in any other capacity,
office or position shall be deemed to have become vested
in and devolved upon the purchasing, merged or con-
solidated institution, and such purchasing, merged or con-
solidated institution shall be entitled to take, receive, ac-
cept, hold, administer and discharge any and all grants,
gifts, bequests, devises, conveyances, trusts, powers and
appointments made by deed, deed of trust, will, agree-
ment, order of court or otherwise to, in favor of, or in
the name of, any such participating institution, whether
made, executed or entered before or after such purchase,
merger or consolidation, and whether to vest or become
effective before or after such purchase, merger or con-
solidation, as fully and to the same effect as if the pur-
chasing, merged or consolidated institution had been
named in such deed, deed of trust, will, agreement, order
or other instrument instead of another participating in-
stitution; and all acts heretofore taken or performed in
its own name or in the name of, or in behalf of, any in-
stitution participating in any such purchase, merger or
consolidation by any purchasing, merged or consolidated
institution as trustee, agent, executor, administrator,
guardian, depository, registrar, transfer agent, or other
fiduciary shall be as good, valid, and effectual as if this
section had been in force at the time of the taking or per-
formance of such acts.

Any banking institution may, after thirty days' notice
to the commissioner of banking, cease to transact business
and go into voluntary liquidation and convert its assets
into money and pay the same to the persons entitled there-
to.

§31A-7-6. Enforced liquidation of financial institution after
revocation of certificate of authority, permit or
license.

1 If the commissioner of banking shall revoke the certifi-
cate of authority, permit or license of any financial insti-
tution other than a state bank, or if the board shall revoke
such certificate, permit or license of a state bank and any
such financial institution or state bank shall, within a
reasonable time, fail to comply with the laws of the state
and the requirements of the commissioner or board, and
thereby fail to secure a new certificate of authority, per-
mit or license to continue in business, it shall be the duty
of the commissioner of banking to compel any such offend-
ing financial institution or state bank to go into liquida-
tion, wind up its affairs and surrender its charter. In any
such case the attorney general, at the request of the com-
missioner of banking, shall institute an action in the
circuit court of the county in which the business of the
offending financial institution or state bank is located,
in the name of the state of West Virginia, to wind up the
affairs and dissolve such financial institution or state bank, and such court shall have jurisdiction to make and enter all necessary and proper orders and to wind up the affairs and dissolve the financial institution or state bank as in the case of insolvent corporations.

If any such financial institution or state bank shall, within a reasonable time after the revocation of its certificate of authority, license or permit to transact business in this state, fail to comply with the laws of the state and the requirements of the department of banking and thereby fail to secure a new certificate of authority, permit or license to continue in business, it shall be the duty of the commissioner of banking to cause the assets of such offending financial institution located in the state of West Virginia to be liquidated, and to compel such financial institution to cease to transact business in the state of West Virginia. At the request of the commissioner of banking, the attorney general shall institute and prosecute any action or actions in the circuit court of the county in which any of the assets of the offending financial institution may be located, in the name of the state of West Virginia, to accomplish the purposes of this section.

§31A-7-7. Federal deposit insurance corporation or other federal agency as receiver or liquidator; subrogation of federal deposit insurance corporation to rights of depositors.

The federal deposit insurance corporation, or a successor federal agency or instrumentality in lieu thereof, is hereby authorized and empowered to be and act without bond as receiver or liquidator of any state banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors.

In the event of such closing the commissioner of banking may tender to such corporation the appointment as receiver or liquidator of such banking institution, and, if the corporation accepts said appointment, the corpora-
tion shall have and possess all the powers and privileges
provided by the laws of this state with respect to a re-
ceiver or liquidator respectively of a banking institution,
its depositors and other creditors, and be subject to all
the duties of such receiver or liquidator, except insofar
as such powers, privileges or duties are in conflict with
the provisions of the Federal Reserve Act or the Federal
Deposit Insurance Corporation Act and any amendments
thereto.

When a banking institution shall have been closed, as
herein contemplated, and the federal deposit insurance
corporation shall pay or make available for payment the
insured deposit liabilities of such closed institution, the
corporation, whether or not it shall have become receiver
or liquidator of such closed banking institution, as herein
provided, shall be subrogated to all rights against such
closed banking institution of the owners of such deposits
in the same manner and to the same extent as subrogation
of the corporation is provided for under the Federal De-
posit Insurance Act and amendments thereto, but the
rights of depositors and other creditors of the closed in-
stitution shall be determined in accordance with the ap-
licable provisions of the laws of this state.

Upon the corporation's acceptance of appointment as
receiver or liquidator, as herein provided, the possession
of and title to all the assets, business and property of
such banking institution of every kind and nature shall
pass to and vest in said corporation and without the
execution of any instruments of conveyance, assignment,
transfer or endorsement.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDI-
CIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-1. Hearings before commissioner or hearing examiner; proce-
dure, etc.
§31A-8-2. Judicial review; appeals to supreme court of appeals.
§31A-8-3. Certain practices by affiliates, officers, etc., of corporate
financial institutions forbidden; penalties.
§31A-8-4. Change in control of banking institution; loans on bank
stocks; required procedures; prohibitions; penalties.
§31A-8-5. Dealing in own stock; limitations; exceptions.
§31A-8-6. Receiving deposits or issuing choses in action during in-
solvency.
§31A-8-7. Certifying checks falsely.
§31A-8-8. False statements concerning banking institutions.
§31A-8-9. Misapplication of funds; fraud by officers or employees; false
entries in books; false statements; penalties.
§31A-8-10. Unlawful activity by bank personnel.
§31A-8-11. Failure to make, publish or distribute reports; penalty.
§31A-8-12. Branch banks forbidden; limitation on purchase of bank
stock.
§31A-8-13. Banking institution not to be surety; hypothecation and
other dealings with securities and assets limited.
§31A-8-14. Interest on demand deposits not allowed.
§31A-8-15. General penalties.
§31A-8-16. Misdemeanors and felonies.
§31A-8-17. Legal representation of commissioner and board.
§31A-8-18. References to code provisions.

§31A-8-1. Hearings before commissioner or hearing examiner;
procedure, etc.

(a) Any person who is adversely affected by any
order, demand, action, refusal, failure to act, denial or
requirement of the commissioner (other than the pro-
mulgation of rules and regulations which promulgation
shall be in accordance with the provisions of article three,
chapter twenty-nine-a of this code) shall be entitled
to a hearing thereon before the commissioner or a hearing
examiner appointed by him, if such person files with the
commissioner a written demand for such hearing within
ten days after receiving written notice of such order, de-
mand, action, refusal, failure to act, denial or requirement
or within ten days after receiving knowledge thereof
through the application or implementation thereof or by
any other means, whichever event shall first occur.

(b) Upon receipt of a demand for such hearing the
commissioner shall set a time and place therefor not less
than ten and not more than thirty days thereafter. Said
hearing may be continued by the commissioner upon
his own motion or for good cause shown by the person
demanding the same.

(c) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures in
connection with and following such hearing.

(d) Any such hearings shall be conducted by the com-
missioner or a hearing examiner appointed by him. For
the purpose of conducting such hearings the commissioner
or such hearing examiner shall have the power and
authority to issue subpoenas and subpoenas duces tecum
which shall be issued and served within the time, for the
fees and shall be enforced and governed as provided in
section one, article five of said chapter twenty-nine-a.

(e) The person demanding such hearing may rep-
resent himself thereat or be represented by an attorney
at law admitted to practice before any circuit court of
this state.

(f) After any such hearing and consideration of all
of the testimony, evidence and record in the case, the
commissioner shall render his decision in writing affirm-
ning, modifying or reversing the order, demand, action,
refusal, failure to act, denial or requirement with respect
to which such hearing was demanded, which decision
shall be accompanied by findings of fact and conclusions
of law as specified in section three, article five, chapter
twenty-nine-a of this code, and a copy of such decision
and accompanying findings and conclusions shall be
served upon the person demanding such hearing, and his
attorney of record, if any.

§31A-8-2. Judicial review; appeals to supreme court of appeals.

(a) Any person adversely affected by any decision
of the commissioner made and entered after a hearing as
provided in section one of this article shall be entitled to
judicial review thereof in the manner provided in sec-
tion four, article five, chapter twenty-nine-a of this code.

(b) Any person adversely affected by a final judg-
ment of a circuit court following judicial review as pro-
vided in subsection (a) of this section may seek review
thereof by appeal to the supreme court of appeals in the
manner provided in article six, chapter twenty-nine-a of
this code.

§31A-8-3. Certain practices by affiliates, officers, etc., of corpor-
ate financial institutions forbidden; penalties.

(a) It shall be unlawful for an affiliate of any corporate
financial institution or for an officer, director or employee
of any corporate financial institution or affiliate thereof:

(1) To solicit, accept or agree to accept, directly or
indirectly, from any person other than such institution,
any gratuity, compensation or other personal benefit for
any action taken or omitted by such institution or for
endeavoring to procure the same; or
(2) To have any interest, directly or indirectly, in the
proceeds of a purchase or sale made by such institution,
unless such purchase or sale is expressly authorized by
provisions of this chapter and is approved in advance by
vote of a majority of all directors of such institution, any
interested director taking no part in such vote; or
(3) To have any interest, direct or indirect, in the
purchase at less than its face value of any evidence of
indebtedness issued by the institution.
(b) For purposes of this section the term "affiliate"
shall include:
(1) Any person who holds a majority of the stock of
such corporate financial institution or has been deter-
mined by the commissioner of banking to hold a con-
trolling interest therein, or any other corporation in
which such person owns a majority of the stock, or any
partnership in which he has an interest;
(2) Any corporation in which the institution or an
officer, director or employee thereof holds a majority of
the stock or any partnership in which such institution or
any officer, director or employee thereof has an interest;
and
(3) Any corporation of which a majority of the di-
rectors are officers, directors or employees of the cor-
porate financial institution or any corporation of which
officers, directors or employees thereof constitute a ma-
jority of the directors of the corporate financial institu-
tion.
(c) Any person who violates any provision of this
section shall be guilty of a misdemeanor and be sub-
ject to the penalties provided in section fifteen of this
article.
§31A-8-4. Change in control of banking institution; loans on
bank stocks; required procedures; prohibitions;
penalties.
(a) Whenever a change occurs with respect to the
outstanding voting stock of any banking institution
which will result in control or in a change in the control of such banking institution, the president or other chief executive officer of such bank shall promptly report such facts to the commissioner of banking upon obtaining knowledge of such change. As used in this subsection, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the banking institution. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than ten percent of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change with respect to the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the commissioner.

(b) Whenever a banking institution makes a loan or loans, secured, or to be secured, by twenty-five percent or more of the outstanding voting stock of another banking institution, the president or other chief executive officer of the lending bank shall promptly report such fact to the commissioner of banking upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is that of a newly organized bank prior to its opening.

(c) The reports required by this section shall contain the following information to the extent that it is known by the person making the report: (1) the number of shares involved, (2) the names and addresses of the sellers (or transferors), (3) the names and addresses of the purchasers (or transferees), (4) the names and addresses of the beneficial owners if the shares are registered in another name, (5) the purchase price, (6) the total number of shares owned by the sellers (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction,
and in the case of a loan, (7) the name and address of the borrower, (8) the amount of the loan, and (9) the name of the banking institution issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the commissioner of the effect of the transaction upon control of the bank whose stock is involved.

(d) Whenever such a change as described in subsection (a) of this section occurs, such banking institution shall report promptly to the commissioner any changes or replacements of its chief executive officer or of any director which occur in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors thereof.

(e) It shall be unlawful for any person to purchase or acquire the stock in any banking institution for purposes of transferring, selling, lending, investing or otherwise disposing of properties, funds, securities or other assets of the institution in any manner jeopardizing or imperiling the institution's financial condition.

(f) Any person who violates any provision of this section shall be guilty of a misdemeanor and be subject to the penalties provided in section fifteen of this article.

§31A-8-5. Dealing in own stock; limitations; exceptions.

1 No banking institution shall make any loan or discount any obligation on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, except shares of authorized but unissued stock provided for by the charter of such banking institution in accordance with the provisions of section four, article four of this chapter unless taken as a pledge or purchased to prevent loss upon a debt previously contracted lawfully and in good faith; and all shares of its stock, purchased or held in such manner, shall, within six months after the time of the purchase or pledge, be sold or disposed of at public or private sale.
14 Any banking institution and any officer thereof who
15 violates any provision of this section shall be guilty of
16 a misdemeanor and subject to penalties provided in sec-
17 tion fifteen of this article.

§31A-8-6. Receiving deposits or issuing choses in action dur-
ing insolvency.

1 No financial institution shall accept or receive on
2 deposit, with or without interest, any money of the
3 United States of America, bills, checks or drafts, or
4 fraudulently receive money or money's worth in ex-
5 change for the issuance of any choses in action of such
6 institution when such institution is insolvent; and any
7 officer, director, cashier, manager, secretary, member,
8 owner, employee or stockholder of any financial insti-
9 tution who shall knowingly violate the provisions of
10 this section or be accessory to, or permit, or connive at,
11 the receiving or accepting on deposit of any such de-
12 posits or such issuance of any choses in action, shall be
13 guilty of a misdemeanor and subject to the penalties
14 provided in section fifteen of this article.

§31A-8-7. Certifying checks falsely.

1 Any officer, agent or employee of any banking insti-
2 tution who shall wilfully certify any check drawn upon
3 such banking institution, unless the person, firm or cor-
4 poration drawing the same has on deposit, in collected
5 funds subject to check, with the banking institution, at
6 the time such check is certified, an amount of money
7 equal to the amount certified in such check, or shall
8 certify such check before the amount thereof shall have
9 been regularly entered to the credit of the person draw-
10 ing the same, upon the books or deposit slips of the
11 banking institution, shall be guilty of a misdemeanor
12 and subject to the penalties provided in section fifteen
13 of this article.

§31A-8-8. False statements concerning banking institutions.

1 Whoever, directly or indirectly, wilfully and know-
2 ingly makes or transmits to another, or circulates, or
3 counsels, aids, procures, or induces another to make,
transmit or circulate, any false or untrue statement, rumor or suggestion derogatory to the financial condition, solvency or financial standing of any banking institution, or with intent to depress the value of the stocks, bonds or securities of any such banking institution, directly or indirectly, wilfully and knowingly makes or transmits to another, circulates or counsels, aids, procures or induces another to make, transmit or circulate any false or untrue statement, rumor or suggestion derogatory to the financial condition, or with respect to the earnings or management of the business of any banking institution or resorts to any fraudulent means with intent to depress in value the stocks, bonds or securities of any banking institution, shall be guilty of a misdemeanor and subject to the penalties provided in section fifteen of this article.

§31A-8-9. Misapplication of funds; fraud by officers or employees; false entries in books; false statements; penalties.

Every officer, director, employee or agent of any financial institution who wilfully misapplies or without authority loans any of the money, funds or credits of the institution, or who, without authority from the directors, issues or puts into circulation any of the notes of any financial institution; or who, without authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, deed of trust, judgment or decree; or who makes or causes to be made any false entry in any book, record, document, report or statement of any financial institution, or fails to make proper entries therein, with intent, in either case, to injure or defraud the institution or any person, or to deceive any officer of any financial institution or other person, or any agent appointed to examine the affairs of such financial institution, and every person who with like intent, in any way aids or abets any officer, director, employee or agent in the violation of this section, shall be guilty of a felony.

Any person who shall wilfully or knowingly make or cause to be made, any false statement, or exhibit any
falsified, forged or invalid paper, with intent to deceive any person authorized to examine into the affairs of such financial institution; or shall make, state or publish any false statement of the financial condition of any financial institution, knowing or having reason to believe the same to be false, shall be deemed guilty of a felony.

Any officer, director, employee or agent of any financial institution or any other person guilty of any felony offense as provided in this section shall, upon conviction thereof, be imprisoned in the penitentiary not less than one nor more than five years and also, in the discretion of the court, may be fined not to exceed ten thousand dollars.

§31A-8-10. Unlawful activity by bank personnel.

It shall be unlawful for an officer, director, employee or agent of a banking institution:

(a) To maintain or authorize the maintenance of any account of such institution in a manner which, to his knowledge, does not conform to requirements of the provisions of this chapter and any rules and regulations promulgated by the commissioner of banking thereunder;

(b) To obstruct or endeavor to obstruct a lawful examination of such institution by any lawfully authorized officer or employee of any state or federal governmental supervisory department, agency or office.

§31A-8-11. Failure to make, publish or distribute reports; penalty.

Every financial institution failing to make and transmit to the commissioner any of the reports required by law or any rule and regulation or order thereunder in the form prescribed by the commissioner of banking, or failing to publish or distribute the reports, as so required, shall forthwith be notified by the commissioner of banking and, if such failure continues for ten days after receipt of such notice, such delinquent institution shall be subject to a penalty of one hundred dollars for each day thereafter that such failure continues, such penalty to be recovered by the commissioner of banking.
and paid into the state treasury to the account of the
general fund.

§31A-8-12. Branch banks forbidden; limitation on purchase of
bank stock.

(a) No banking institution shall:
(1) Install or maintain any branch bank; or
(2) Engage in business at any place other than at its
principal office in this state.
(b) It shall be unlawful for any person to purchase
and hold stock in any banking institution for the purpose
of selling, negotiating or trading participation in the
ownership thereof either for the purpose of perfecting
control of one or more such banking institutions or for
the purpose of inducing other persons, firms or corpora-
tions or the general public to become participating own-
ers therein. Nothing herein shall prevent the ownership
of stock in any such banking institution by any person
for investment purposes.
(c) Any violation of any provision of this section
shall constitute a misdemeanor offense punishable by
applicable penalties as provided in section fifteen of
article eight of this chapter.

§31A-8-13. Banking institution not to be surety; hypothecation
and other dealings with securities and assets
limited.

No banking institution shall become or be accepted
as surety on any bond or undertaking required by the
laws or by the courts of this state or any other state, or
shall become surety or guarantor of any person for the
discharge of any duty in any position or the performance
of any contract or undertaking. No banking institution
shall pledge, hypothecate or deliver any of its assets of
any description whatsoever to any person to indemnify
him as surety for such banking institution or as surety
for any other person. But a bank may pledge, hypothecate,
deliver or deposit securities to guarantee deposits of the
United States, or any agency or instrumentality thereof,
the state of West Virginia, or any agency or instrumen-
tality thereof, or any county, district, municipal corpora-
tion, or other governmental agency or instrumentality, and the deposits of a bankrupt's estate made pursuant to an order of a court of bankruptcy, and, with the consent in writing of the commissioner of banking, may pledge, hypothecate, deliver or deposit securities or assets to guarantee deposits made by receivers of closed or insolvent banking institutions; and the receiver of a closed or insolvent banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court, with the consent in writing of the commissioner of banking and the approval of the court, may accept securities or assets of a banking institution to secure deposits made by such receiver. In every such case, the hypothecation of such securities or assets shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as a depository for any such deposits as aforesaid, and such collateral security shall be released only by order of record of the public officer or public body, or by the receiver of a closed or insolvent banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court, with the consent in writing of the commissioner of banking and the approval of the court, when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. The public officer or public body, or the receiver of a closed or insolvent banking institution, shall make ample provision for the safekeeping of such hypothecated securities or assets, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid.

The foregoing shall not prevent the hypothecation of the securities or assets of any banking institution to secure the repayment of money borrowed from another banking institution.

§31A-8-14. Interest on demand deposits not allowed.

Consistent with provisions of the federal reserve and
federal deposit insurance corporation laws, as enacted and amended by the Congress of the United States, subject to any authority granted by the board pursuant to section two, article three of this chapter, and notwithstanding any provisions of the laws of the state of West Virginia to the contrary, no banking institution shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand, including deposits of public funds by any governments or governmental bodies, agencies or activities.

§31A-8-15. General penalties.

Upon conviction for any misdemeanor offense under provisions of this chapter, an offending financial institution shall be fined not more than five thousand dollars and may, in the discretion of the court in consideration of the nature of the offense, be required to forfeit its corporate charter and franchise. Upon conviction of any individual, whether officer, director, agent, employee or any other person connected or not connected with a financial institution, of any misdemeanor offense under provisions of this chapter, the offending individual shall be fined not more than one thousand dollars and may, in the discretion of the court, be confined in the county jail for not more than twelve months.

§31A-8-16. Misdemeanors and felonies.

The failure to perform any duty required of any financial institution or individual pursuant to provisions of this chapter, or the doing of any act by any financial institution or individual forbidden by the provisions of this chapter, shall constitute a misdemeanor offense, except any act which is made a felony offense by specific language of this article.

§31A-8-17. Legal representation of commissioner and board.

The board and the commissioner shall, upon request, be represented by the attorney general and by his assistants in any hearings before them, or either of them, and in any actions, proceedings or appeals to which they, or either of them, may be a party and shall also be repre-
sented in any action, proceeding or appeal in any circuit court of this state by the prosecuting attorney of such county, all without additional compensation.

§31A-8-18. References to code provisions.

Wherever in the code of West Virginia, in any act, in general law or elsewhere in the law, reference is made to any section, any article, any chapter or any particular provision or term thereof of the code of West Virginia which is repealed by the passage of this new chapter thirty-one-a of the code of West Virginia, as such section, article, chapter, particular provision or term thereof existed immediately prior to the effective date of this new chapter thirty-one-a, such reference shall henceforth be read, construed and understood to mean the comparable section, article, chapter, particular provision or term of this new chapter thirty-one-a.

CHAPTER 8

(Senate Bill No. 228—By Mr. Hubbard and Mr. Hedrick)

[Passed February 19, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact sections four and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sale of nonintoxicating beer; fees for licenses.

Be it enacted by the Legislature of West Virginia:

That sections four and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-4. Amount of license tax; Class A and Class B retail dealers.

§11-16-13. Unlawful acts of licensees; penalties.
§11-16-4. Amount of license tax; Class A and Class B retail dealers.

1 There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer as defined by this article, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period the same shall be computed quarterly in proportion to the remainder of the fiscal year as follows:

(a) Retail dealers shall be divided into two classes, Class A and Class B. In the case of a Class A retail dealer the license fee shall be one hundred dollars for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred dollars; and except that railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of ten dollars for each dining, club, or buffet car in which the same is dispensed.

Class A licenses issued for social, fraternal or private clubs and for railroad dining, club or buffet cars, as herein provided, shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

In the case of a Class B retailer, there shall be two types of a Class B license, each type to be colored differently so as to be easily distinguished. The fee for a Class B license authorizing the sale of unchilled beer only shall be fifteen dollars. The fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be one hundred dollars. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be
issued only to the proprietor or owner of a grocery store.

For the purpose of this article the term "grocery store"
means and includes any retail establishment commonly
known as a grocery store or delicatessen, where food or
food products are sold for consumption off the premises.

(b) In the case of a distributor the license fee shall
be two hundred fifty dollars for each place of business.

(c) In the case of a brewer with its principal place
of business located in this state, the license fee shall be
five hundred dollars for each place of manufacture.

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

It shall be unlawful:

(a) For any licensee, his, its or their servants, agents
or employees to sell, give or dispense, or any individual
to drink or consume, in or on any licensed premises
or in any rooms directly connected therewith, nonin-
toxicating beer on weekdays between the hours of one
o'clock a.m., and seven o'clock a.m. eastern standard
time, or before one o'clock in the afternoon of any
Sunday, except in private clubs licensed under the pro-
visions of article seven, chapter sixty of this code, where
the hours shall conform with the hours of sale of alcoholic
liquors;

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

(c) For any distributor to sell or offer to sell, or any
retailer to purchase or receive, any nonintoxicating beer
except for cash; and no right of action shall exist to
collect any claims for credit extended contrary to the pro-
visions of this subdivision. Nothing herein contained shall
prohibit a licensee from crediting to a purchaser the
actual price charged for packages or containers returned
by the original purchaser as a credit on any sale, or
from refunding to any purchaser the amount paid or
deposited for such containers when title is retained by
the vendor;
(d) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday;

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

(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed three and two-tenths percent by weight;

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

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

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

(j) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibitions contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code;

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

(l) For any retail licensee to sell or dispense non-intoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this state;

(m) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: Provided, That no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(n) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;
(o) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

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

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, on or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.
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 thirteen-a, relating to unlawful acts of brewers, persons, firms or corporations engaged in the business of selling nonintoxicating beer, ale or other malt beverages to a wholesaler.

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 thirteen-a, to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13a. Unlawful acts of brewers, etc.; penalties.

1. It shall be unlawful:

2. (a) For any brewer, or any other person, firm or corporation engaging in the business of selling nonintoxicating beer, ale or other malt beverage to a wholesaler, to discriminate in price, allowance, rebate, refund, commission, discount or service between distributors licensed in West Virginia. “Discriminate” as used in this section, shall mean the granting of more favorable prices, allowances, rebates, refunds, commissions, discounts or services to one West Virginia distributor than to another.

3. (b) For any brewer, or any other person, firm or corporation engaging in the business of selling nonintoxicating beer, ale or other malt beverage to a wholesaler, to sell or deliver nonintoxicating beer, ale or other malt beverage to any licensed distributor unless and until such brewer, person, firm or corporation, as the case may be,
17 shall have filed the brewery or dock price of such beer, 18 ale or other malt beverage, by brands and container sizes, 19 with the West Virginia nonintoxicating beer commis- 20 sioner. No price schedule shall be put into effect until 21 three days after receipt of same by the commissioner. 22 The violation of any provision of this section by any 23 brewer shall constitute grounds for the forfeiture of the 24 bond furnished by such brewer in accordance with the 25 provisions of section five of this article.

CHAPTER 10  
(House Bill No. 564—By Mrs. Withrow and Mr. Burke)

[Passed February 28, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Hopemont State Hospital.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. HOPEMONT STATE HOSPITAL.

§26-9-1. Establishment; name and location; management; qualification and appointment of superintendent.
§26-9-2. Eligibility for admission of patients.

§26-9-1. Establishment; name and location; management; qualification and appointment of superintendent.

1 Hopemont State Hospital, heretofore established, shall 2 be continued as a hospital for both chronically ill and 3 infirm, which hospital shall be managed, directed and 4 controlled as prescribed in article one, chapter twenty- 5 five of this code. The chief executive officer thereof shall 6 be the superintendent, who shall be a regularly qualified
7 physician, shall be a person of good executive ability and
8 shall be appointed by the governor by and with the ad-
9 vice and consent of the Senate.

§26-9-2. Eligibility for admission of patients.

1 All persons meeting requirements for admission to
2 Denmar State Hospital pursuant to the provisions of
3 section two, article six of this chapter, or requirements
4 for admission to Andrew S. Rowan Memorial Home, pur-
5 suant to the provisions of section two, article three of
6 this chapter, shall be eligible for admission to Hopemont
7 State Hospital pursuant to such rules and regulations
8 regarding admissions as may be promulgated by the
9 commissioner of public institutions.

CHAPTER 11
(Senate Bill No. 45—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

(Passed January 21, 1969; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact section seventeen, article six,
chapter twelve of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the post-
audit of the West Virginia state board of investments.

Be it enacted by the Legislature of West Virginia:
That section seventeen, 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.
§12-6-17. Postaudit.

1 There shall be a continuous postaudit conducted by the
2 legislative auditor of the investment transactions of the
3 board, and a copy of said postaudit for the preceding
4 calendar year shall be furnished to each member of the
5 Legislature on the first day of February of each year.
CHAPTER 12

(Senate Bill No. 58—By Mr. Hubbard)

[Passed March 7, 1969; in effect ninety days 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-e, relating to and authorizing the issuance by any city, town, village, county, public service district, sanitary district, political subdivision and any other public entity, and the state, of refunding bonds for the purpose of refunding any outstanding revenue bonds whether or not such outstanding revenue bonds are at the time due or optional for redemption; providing for the payment and security of such refunding bonds; providing for the retirement of revenue bonds being refunded; and providing for and making other provisions pertinent to the foregoing.

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-e, to read as follows:

ARTICLE 2E. REVENUE BOND REFUNDING ACT.

§13-2E-3. Authority to refund.
§13-2E-4. Terms, form and execution of refunding bonds.
§13-2E-5. Issuance of refunding bonds; application of proceeds.
§13-2E-6. Determination of governing body to be conclusive.
§13-2E-8. Authority for escrow agreement.
§13-2E-12. Tax exemption; exceptions.
§13-2E-14. Article complete authority for refunding bonds; effect on other laws; liberal construction.

1 This article may be cited as "Revenue Bond Refunding Act."


1 The following terms or words wherever used or referred to in this article shall have the following meaning, unless a different meaning plainly appears from the context:

2 The term "public body" shall mean any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the state of West Virginia acting through any of its agencies, boards, commissions or departments, having power to issue revenue bonds.

3 The term "governing body" shall mean board, council or other body having power to borrow money on behalf of a public body.

4 The term "law" shall mean any act or statutes, general, special or local, of this state, including, without being limited to, the charter of any public body.

5 The term "enterprise" shall mean any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

6 The term "revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the public body from the operation of any enterprise or arising from any enterprise, and including earnings derived from investments and bank deposits.

7 The term "revenue bonds" shall mean notes, bonds, certificates or other obligations of a public body hereto-
fore or hereafter issued and outstanding under any law
and which by their terms are payable from the revenues
derived by such public body from the operation of an
enterprise.

The term "refunding bonds" shall mean notes, bonds,
certificates or other obligations of a public body issued
pursuant to this article.

The term "holder of bonds" or "bondholder" or any
similar term shall mean any person who shall be the bear-
er of any outstanding refunding bond or refunding bonds
registered to bearer or not registered, or the registered
owner of any such outstanding refunding bond or re-
funding bonds which shall at the time be registered
other than to bearer.

The words "net interest cost" when referring to an
outstanding issue of revenue bonds to be refunded, shall
mean the total amount of interest which would accrue on
such revenue bonds from the date of the refunding bonds
to the respective maturity dates of the outstanding reve-
nue bonds to be refunded, without regard to any retained
options of redemption.

The words "net interest cost" when referring to a pro-
posed issue of refunding bonds, shall mean the total
amount of interest to accrue on the refunding bonds from
their date to their respective maturities, without regard
to any retained options of redemption, plus the amount
of any discount below par or less the amount of any pre-
mium above par at which the bonds may be sold.

The words "net effective interest rate" when referring
to a proposed issue of refunding bonds, shall mean the
net interest cost of said refunding bonds divided by the
product obtained by multiplying the aggregate principal
amount of such refunding bonds maturing on each
maturity date by the number of years from the date of
the refunding bonds to their respective maturities, with-
out regard to any retained options of redemption.

The term "certified public accountant" shall mean an in-
dependent certified public accountant or firm of certified
public accountants licensed to practice in this state.
Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

§13-2E-3. Authority to refund.

Any public body may issue refunding bonds for the purpose of refunding all or any part of its revenue bonds now or hereafter outstanding, whether or not such revenue bonds are at the time of the refunding due or optional for redemption, under the circumstances and restrictions set forth in this article. Refunding bonds shall be payable from revenues derived from the same enterprise as the revenue bonds to be refunded except where the public body has outstanding revenue bonds payable from the revenues of an enterprise and is authorized under any other law to combine and consolidate such enterprise with another enterprise and issue revenue bonds payable from the revenues of the combined and consolidated enterprises. An issue of refunding bonds may refund part or all of one or more issues of outstanding revenue bonds: Provided, That part or all of two or more issues of outstanding revenue bonds may not be refunded under this article unless either (a) all of the issues of outstanding revenue bonds to be refunded are payable from revenues derived from the same enterprise, or (b) the public body is authorized under any other law to combine or consolidate the enterprises in question and issue revenue bonds payable from the revenues of the combined or consolidated enterprises.

Refunding bonds may be issued hereunder whenever the governing body of the public body deems it expedient.

§13-2E-4. Terms, form and execution of refunding bonds.

Refunding bonds authorized under this article may be issued in one or more series, may bear such date or dates, may mature at such time or times, not later than the date of final maturity of the bonds to be refunded and not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from
their respective dates; may bear interest at such rate or rates; may be in such denomination or denominations; may be in such form either coupon or registered; may carry such registration and conversion privileges; may be executed in such manner; may be payable in such medium of payment, at such place or places; may be subject to such terms of redemption, with or without a premium; may be declared or become due before the maturity date; may provide for the replacement of mutilated, destroyed, stolen or lost bonds; may be authenticated in such manner and upon compliance with such conditions; and may contain such other terms and covenants, as may be determined by the governing body in the proceedings authorizing the refunding bonds. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

§13-2E-5. Issuance of refunding bonds; application of proceeds.

1 Refunding bonds issued under this article may be exchanged for not less than a like principal amount of the revenue bonds to be refunded, or may be sold at public or private sale, or may be exchanged in part and sold in part, in such manner and upon such terms as may be determined by the governing body to be for the best interests of the public body: Provided, That such refunding bonds shall not be sold or exchanged at a price lower than a price which will show a net saving to the issuer after deducting all expenses of the refunding.

If any such refunding bonds are to be sold, they may be issued in such principal amount as may be determined advisable by the governing body including, without limitation, the aggregate principal amount of the revenue bonds to be refunded, interest accrued and to accrue to the date or dates on which the revenue bonds being refunded are scheduled to mature or to be redeemed prior to maturity, any redemption premiums which must
be paid in order to refund such outstanding revenue
bonds and any costs and expenses of issuing the re-
funding bonds and providing for retirement of revenue
bonds to be refunded. If sold, the net proceeds shall either
be immediately applied to the payment or redemption
and retirement of the revenue bonds to be refunded,
or the net proceeds of the refunding bonds may be invested
at the discretion and under the supervision of the escrow
agent in whole, or in part, (a) in direct obligations issued
by the United States of America or one of its agencies, (b)
in obligations unconditionally guaranteed by the United
States of America as to principal and interest, or (c) in certi-
ficates of deposit of a banking corporation or association
which is a member of the federal deposit insurance corpo-
ration, or successor; but any such certificates of deposit
must be fully secured as to both principal and interest by
pledged collateral consisting of direct obligations of or
obligations guaranteed by the United States of America
having a market value, excluding accrued interest, at all
times at least equal to the amount of the principal of and
accrued interest on such certificates of deposit. Any such
investments must mature, or be payable in advance of
maturity at the option of the holder, and must bear inter-
est in such manner as to provide funds which, together
with uninvested money placed in the hereinafter men-
tioned escrow, will be sufficient to pay when due or called
for redemption the revenue bonds refunded, together
with interest accrued and to accrue thereon and redemp-
tion premiums, if any, and such refunding bond pro-
ceeds or obligations so purchased thitherwith shall, and
with other funds legally available to the public body
for such purpose may, be deposited in escrow with the
state sinking fund commission to be held in trust for
the payment and redemption of the revenue bonds re-
 fundraind, and such money and obligations and any re-
investment thereof shall be held in trust by such escrow
agent for the payment of interest on the refunded bonds
when due, and principal thereof and applicable redemp-
tion premiums, if any, when due, or upon the date or dates
for which they shall have been called for redemption, or
upon an earlier voluntary surrender at the option of the
escrow agent; provided if interest earned by any investment in such escrow are shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded revenue bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed by the public body as are other revenues of the enterprise. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding revenue bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds. The term "net proceeds" as used above shall mean the gross proceeds of the refunding bonds after the deduction therefrom of all accrued interest, costs and expenses incurred in connection with the authorization and issuance of the refunding bonds and the retirement of the outstanding revenue bonds, and including all costs and expenses resulting from price variations to par or otherwise incurred in the purchase of obligations for escrow and in the disposition of the refunding bonds.

§13-2E-6. Determination of governing body to be conclusive.

The determination by the governing body of any public body issuing refunding bonds under this article that the limitations herein imposed upon the issuance of refunding bonds have been met, shall be conclusive: Provided, however, That such public body shall have obtained from an independent certified public accountant a certification that the amount of saving stated to be achieved by the refunding shall in fact be served, based upon his review, comparison and analysis of the net interest cost in dollars of the refunding bonds and the net interest cost in dollars of the bonds to be refunded.


Refunding bonds and all acts required to be authorized hereunder shall be authorized in the manner in which the bonds to be refunded were authorized and issued.
§13-2E-8. Authority for escrow agreement.
1 The governing body of any public body shall have
2 power to enter into such escrow agreements and to insert
3 therein such protective and other covenants and provi-
4 sions as it may consider necessary to permit the carrying
5 out of the provisions of this article and to insure the
6 prompt payment of principal of and interest and redemp-
7 tion premiums on the revenue bonds refunded.

1 Where any revenue bonds to be refunded are not to
2 be surrendered for exchange or payment and are not to
3 be paid at maturity with escrowed obligations, but are to
4 be paid from such source prior to maturity pursuant to
5 call for redemption exercised under a right of redemption
6 reserved in such revenue bonds, the governing body of
7 the public body shall, prior to the issuance of the refund-
8 ing bonds, determine which redemption date or dates
9 shall be used, call such revenue bonds for redemption
10 and provide for the giving of the notice of redemption
11 required by the proceedings authorizing such revenue
12 bonds. Where such notice is to be given at a time subse-
13 quent to the issuance of the refunding bonds, the neces-
14 sary notices may be deposited with the state sinking fund
15 commission or the bank acting as escrow agent of the
16 refunding bond proceeds and the escrow agent appro-
17 priately instructed and authorized to give the required
18 notices at the prescribed time or times. If any officer of
19 the public body signing any such notice shall no longer
20 be in office at the time of the utilization of the notice,
21 the notice shall nevertheless be valid and effective for
22 its intended purpose.

1 Refunding bonds shall be special obligations of the
2 public body and shall be payable solely from and secured
3 by a lien upon the gross revenues or net revenues of the
4 enterprise, as shall be more fully described in the ordinance
5 or resolution authorizing the issuance of refunding bonds,
6 and the ordinance or resolution authorizing such refunding
7 bonds shall provide for a special fund into which there shall
be pledged a fixed amount or a fixed proportion of such revenues which shall be sufficient to pay the principal of and interest on the refunding bonds as the same become due.

In order to assure payment of the principal and interest on any refunding bonds it shall be the duty of the governing body of the public body to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges for the services of such enterprise as shall be necessary to produce revenues sufficient, after making due and reasonable allowance for contingencies and for a margin of error in estimates, to pay at all times principal and interest on the refunding bonds as the same become due, to pay current expenses of operation and maintenance, to provide for depreciation, to provide for reserves for any of the foregoing, to comply in all respects with any contract or agreement with bondholders set forth in the ordinance or resolution authorizing such refunding bonds, and to meet any other obligations of the public body which by their terms are charges, liens, or encumbrances upon the revenues of such enterprise.

The ordinance or resolution authorizing any refunding bonds may contain such covenants with the holders of the refunding bonds as to the efficient management and operation of the enterprise; the collection, keeping and disposition of the revenues of the enterprise; the issuance of additional refunding bonds or revenue bonds; the carrying of insurance on such enterprise and the disposition of insurance proceeds; the keeping of books and records and the auditing thereof; the inspection by bondholders at reasonable times of the enterprise and the records, accounts and data of the public body relating thereto; limitations upon the sale or other disposition of integral parts of the enterprise; the discontinuance of the services and facilities of the enterprise upon failure to pay for such services and facilities; the appointment and duties of a trustee; the rights, liabilities, powers and duties arising upon the breach by the public body of any covenants, conditions or obligations contained in the ordinance or resolution authorizing the issuance of such refunding bonds; remedies of bondholders upon default in the payment of the principal of or interest on any refunding
bonds, including the appointment by a court of competent
jurisdiction of a receiver for the operation and manage-
ment of the enterprise and the collection and disburse-
ment of the revenues thereof, but such receiver or any
court having jurisdiction in the matter shall not be per-
mitted to sell, mortgage or otherwise dispose of any assets
of the enterprise and useful in its operation or cause
any of such assets to be sold, mortgaged or otherwise
disposed of; and any other conditions, acts or pertinent
matters as may be deemed necessary or proper by the
governing body of the public body to assure efficient
operation of the enterprise, payment of the refunding
bonds and marketability of the refunding bonds upon
favorable terms. Any agreement or covenant contained
in the ordinance or resolution authorizing such refunding
bonds shall constitute a contract with the holders of such
refunding bonds.

All refunding bonds of the same issue shall be equally
and ratably secured, without priority by reason of num-
ber, date or time of sale, execution or delivery, by a
lien upon the revenues of the enterprise in accordance with
the provisions of this section and the ordinance or reso-
ution authorizing the issuance of such refunding bonds.

Nothing in this section or in any other section of
this article shall be deemed in any way to alter the terms
of any agreements made with the holders of any out-
standing revenue bonds of the public body, or to authorize
the public body to alter the terms of any such agreements,
or to impair, or authorize the public body to impair, the
rights and remedies of any creditors of the public body.

Nothing in this section or in any other section of this
article shall be deemed in any way to authorize any
public body to do anything in any manner or for any
purpose which would result in the creation or incurring
of a debt or indebtedness or the issuance of any instru-
ment which would constitute a bond or debt within the
meaning of any provision, limitation, or restriction of the
constitution relating to the creation or incurring of a
debt or indebtedness or the issuance of an instrument
classifying as a bond or a debt.

1 No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the general fund of any public body, nor shall the credit or taxing power of any public body be deemed to be pledged thereto.

2 The refunding bonds, and interest thereon, shall not be a debt of the public body, nor a charge, lien or encumbrance, legal or equitable, upon any property of the public body, nor upon any income, receipts, or revenues of the public body other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the public body is under no obligation to pay the same, except from said revenues.

§13-2E-12. Tax exemption; exceptions.

1 The refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate and transfer taxes.


1 Refunding bonds bearing the signatures of officers of the public body in office on the date of the signing thereof shall be valid and binding obligations of the public body for all purposes, notwithstanding that before the delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be officers of the public body, the same as if such persons had continued to be officers of the public body until after the delivery thereof. The ordinance or resolution authorizing any refunding bonds may provide that such refunding bond may contain a recital that such refunding bond is issued pursuant to this article, and any refunding bond containing such recital under authority of any such ordinance or resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this article.

16 Where any refunding bonds have been heretofore authorized by any public body which would have been valid under and in compliance with the provisions of this
article had this article been in existence at the time of
the authorization of such refunding bonds, such refunding
bonds if heretofore issued, and if not yet issued then such
refunding bonds when they shall have been issued, and
the proceedings authorizing their issuance, are hereby
validated, ratified and confirmed and declared to be bind-
ing and enforceable obligations in accordance with their
terms.

§13-2E-14. Article complete authority for refunding bonds;
effect on other laws; liberal construction.

This article constitutes full and complete authority
for the issuance of refunding bonds. No procedure or
proceedings, publications, notices, consents, approvals,
orders, acts or things by any governing body of any
public body, or any board, officer, commission, depart-
ment, agency, or instrumentality of the state or any
public body shall be required to issue any refunding
bonds or to do any act or perform anything under
this article, except as may be prescribed in this article.
The powers conferred by this article shall be in addi-
tion and supplemental to, and not in substitution for,
and the limitations imposed by this article shall not
affect, the powers conferred by any other law. This article
is remedial in nature and shall be liberally construed.


If any one or more provisions of this article or the
applicability thereof to any persons or circumstances are
ever held by a final decision of a court of competent
jurisdiction to be invalid, such invalidity shall not affect
any other provision or provisions, application or appli-
cations of this article, and to this end, the provisions of
this article are declared to be severable.

CHAPTER 13

(Senate Bill No. 131—By Mr. McCourt and Mr. Carrigan)

[Passed March 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections three, four, five, six, seven, eight,
nine, ten, eleven, twelve and thirteen, article four, chapter
five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eighteen, article one, chapter four; section six, article seven, chapter five; section two, article nine, chapter five; section nine, article ten, chapter five; sections one, two-a, three, four and five, article one, chapter five-a; sections one, two, ten, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven, article two, chapter five-a; section eighteen, article three, chapter five-a; sections one and six, article four, chapter five-a; section three, article seven, chapter six; section eleven, article three, chapter twelve; section twenty-three, article two, chapter fourteen; section two, article two, chapter fifteen; sections six and seven, article one, chapter twenty; section one-b, article one-a, chapter twenty-five; and sections five and six, article fourteen, chapter twenty-nine, all of said code; and to amend article two, chapter five-a of said code by adding thereto a new section, designated section thirty-four, all relating to the duties and authority of the governor under section fifty-one, article six of the constitution of West Virginia and responsibilities of the governor and various state departments, officers and agencies with regard to the budget bill, budget document, and other reports, statements, estimates, requests, proposals, recommendations and procedures related to the budget, state funds and revenues; governor's authority to fix or approve compensation for certain state officers and employees; power of the governor to prescribe duties for the department of finance and administration; governor's authority to approve bonds required of certain state officers and employees; designation of the budget division of the department of finance and administration as staff agency for the governor; governor's authority of immediate supervision of commissioner of the department of finance and administration as director of the budget; preparation and submission of tentative budget to the governor; reports to the governor on condition of state revenues and funds; prohibition of transfers of amounts between items of appropriation; reserves for
emergencies; quarterly allotments; expenditures of excess in collections; reduction of appropriations; system of management accounting; personnel classification and uniform salary and wage scales with exceptions; special revenue fund of the purchasing division of the department of finance and administration; major repairs to and alterations of capitol buildings, governor's mansion and grounds thereof; location of certain state offices; right of appeal to governor from application of authority under chapter five-a of the code, relating to the department of finance and administration; amounts necessary for personnel, stationery, equipment, supplies, services and travel for certain state offices; out-of-state travel rules and regulations; payment of dues or membership in organizations; inclusion of awards recommended by the court of claims; and relating to the office hours of the department of natural resources and director thereof.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen, article four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eighteen, article one, chapter four; section six, article seven, chapter five; section two, article nine, chapter five; section nine, article ten, chapter five; sections one, two-a, three, four and five, article one, chapter five-a; sections one, two, ten, thirteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven, article two, chapter five-a; section eighteen, article three, chapter five-a; sections one and six, article four, chapter five-a; section three, article seven, chapter six; section eleven, article three, chapter twelve; section twenty-three, article two, chapter fourteen; section two, article two, chapter fifteen; sections six and seven, article one, chapter twenty; section one-b, article one-a, chapter twenty-five; and sections five and six, article fourteen, chapter twenty-nine, all of said code, be amended and reenacted; and that article two, chapter five-a of said code be amended by adding thereto a new section, designated section thirty-four, all to read as follows:
CHAPTER 4. THE LEGISLATURE.

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS.

§4-1-18. Legislature to prepare digest of budget bill; distribution.

1. The Legislature, acting by its appropriate committees, shall consider the budget bill, the budget document and matters relating thereto, and following such consideration and upon the passage of the budget bill by the Legislature, the Legislature shall prepare a digest or summary of the budget bill containing detailed information similar to that included in the budget document submitted to the Legislature by the governor but including amendments of legislative committees, and as finally enacted by the Legislature. Such digest or summary shall be prepared at the direction of and approved by members of the conferees committee on the budget and shall be included in the journals of the Legislature or printed as a separate document, and copies shall be furnished to the governor, commissioner of finance and administration,
and the various state spending units for such use as may be deemed proper.

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 RIGHT COMMISSION; WEST VIRGINIA ANTIQUITIES COMMISSION; PUBLIC EMPLOYEES AND TEACHERS RECIPROCAL SERVICE CREDIT ACT; WHITE CANE LAW.

Article
7. Social Security Agency.
9. Department of Commerce.
10. West Virginia Public Employees Retirement Act.

ARTICLE 7. SOCIAL SECURITY AGENCY.

§5-7-6. Contribution fund; appropriations thereto.

(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund: (1) All contributions, interest, and penalties collected under sections four and five. (2) All moneys appropriated thereto under this article. (3) All moneys paid to the state pursuant to any agreement entered into under subsection (b) of section three of this article. (4) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund. (5) Interest earned upon any moneys in the fund. (6) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the
administration thereof consistent with the provisions of
this article.

(b) The contribution fund shall be established and held
separate and apart from any other funds or moneys of
the state and shall be used and administered exclusively
for the purpose of this article. Withdrawals from such
fund shall be made for, and solely for (A) payment of
amounts required to be paid to the federal agency pur-
suant to an agreement entered into under section three;
(B) payment of refunds provided for in subsection (c)
of section four of this article; and (C) refunds of over-
payments, not otherwise adjustable, made by a political
subdivision or instrumentality.

(c) From the contribution fund the custodian of the
fund shall pay to the federal agency such amounts and
at such time or times as may be directed by the state
agency in accordance with any agreement entered into
under section three, and applicable federal law.

(d) The treasurer of the state shall be ex officio treasur-
er and custodian of the contribution fund and shall ad-
imister such fund in accordance with the provisions of
this article and the directions of the state agency and
shall pay all warrants drawn upon it in accordance with
the provisions of this section and with such regulations
as the state agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated
annually to the contribution fund, in addition to the
contributions collected and paid into the contribution
fund under sections four and five, to be available for
the purposes of subsections (b) and (c) of this section
until expended, such additional sums as are found to be
necessary in order to make the payments to the federal
agency which the state is obligated to make pursuant to
an agreement entered into under section three.

(2) The state agency shall submit to the governor, at
least ninety days in advance of the beginning of each
regular session of the Legislature, an estimate of the
amounts authorized to be appropriated to the contribu-
tion fund by paragraph (1) of this subsection for the
next appropriation period.
ARTICLE 9. DEPARTMENT OF COMMERCE.
§5-9-2. Advisory board established; composition; appointment, term and qualifications of members; authority generally; meetings and expenses.

There is hereby established an advisory board for the department of commerce. The board shall be composed of seven members appointed by the governor for terms of four years and until their successors are appointed and qualified. There shall be at least one member appointed from each congressional district, and not more than four members shall be of the same political party. The first two members appointed shall serve for a period of one year; the second two for a period of two years; the next two for a period of three years; and the remaining member for a period of four years. Thereafter, all such appointments shall be made for a term of four years, except that in case of a vacancy, the appointment shall be made to fill the unexpired term. The members of the board shall be citizens and residents of the state, selected with special reference to their training and experience in relation to the principal activities required of the department of commerce, and for their ability and fitness to perform their duties within the purposes of this article. The board shall serve the department of commerce in an advisory capacity only. It shall have the authority and it shall be its duty:

(1) To advise with the commissioner of commerce concerning all administrative rules and regulations to be issued by the department.

(2) To advise with the commissioner of commerce as to all budget proposals to be submitted to the governor.

(3) To advise with the commissioner of commerce concerning such studies of economic conditions, travel promotion and industrial development as it may consider appropriate.

(4) To advise with the commissioner of commerce on any other matters applicable to the department of commerce if requested by the governor.
The board shall meet at the call of the commissioner of commerce, and each member of the board shall receive his actual and necessary traveling expenses incurred in the performance of his duties.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-9. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

(a) The board of trustees shall elect from its own number a chairman and a vice chairman.

(b) The board of trustees shall appoint an executive secretary of the retirement system. The executive secretary shall be the chief administrative officer of the system; and he shall not be a member of the board. He shall perform such duties as are required of him in this article and as the board shall from time to time delegate to him. The compensation of the executive secretary shall be fixed by the board subject to the approval of the governor. He shall, with the approval of the board of trustees, employ such administrative, technical, and clerical employees as shall be required in the proper operation of the system.

(c) The state treasurer shall be treasurer of the retirement system and the custodian of its funds. All bonds and other investments purchased according to the provisions of this article shall forthwith be deposited with the state treasurer. It shall be his duty to collect the principal thereof and the interest and dividends thereon as the same become due and payable, and when so collected deposit same to the credit of the retirement system. All disbursements from the funds of the system shall be made by the state treasurer only upon written certification duly authorized by a continuing or specific resolution adopted by the board of trustees. He shall furnish the board with a statement of the retirement system securities in his safekeeping as the board shall from time to time request.

(d) The attorney general shall be the legal advisor to the board of trustees.
The board of trustees shall appoint an actuary who shall be the technical advisor to the board regarding the operation of the retirement system on an actuarial basis.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

Article

1. Department of Finance and Administration.
2. Budget Division.
3. Purchasing Division.
4. General Services Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-1. Definitions.
§5A-1-4. Reports by commissioner.
§5A-1-5. Oath and bond of commissioner; bonds for directors and employees.

§5A-1-1. Definitions.

1 For the purpose of this chapter:
2 "Commissioner" means the commissioner of finance and administration and, as used in article two of this chapter, the director of the budget.
3 "Director" means the director of the division referred to in the heading of the article in which the word appears.
4 "Spending unit" means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.
5 "Spending officer" means the executive head of a spending unit, or a person designated by him.
6 "Commodities" means supplies, material, equipment, contractual services, and any other articles or things used by or furnished to a department, agency or institution of the state government.
7 "Contractual services" shall include telephone, telegraph, electric light and power, water and similar services.
8 "Printing" means printing, binding, ruling, lithography, engraving and other similar services.
9 "Expendable commodities" means those commodities which, when used in the ordinary course of business,
will become consumed or of no market value within the
period of one year or less.

"Removable property" means any personal property not
permanently affixed to or forming a part of real estate.

"Nonprofit workshops" means an establishment (a)
where any manufacture or handiwork is carried on, and
(b) which is operated either by a public agency or by a
cooperative or by a nonprofit private corporation or non-
profit association, in which no part of the net earnings
thereof inures, or may lawfully inure, to the benefit of
any private shareholder or individual, and (c) which is
operated for the primary purpose of providing remunera-
tive employment to blind and severely disabled persons
who cannot be absorbed into the competitive labor market,
and (d) which shall be approved, as evidenced by a certif-
icate of approval, by the state board of vocational educa-
tion, division of vocational rehabilitation.

§5A-1-2a. Powers and duties of commissioner, division heads
and employees.

The commissioner shall have control and supervision
of the department of finance and administration and shall
be responsible for the work of each of its employees. The
commissioner shall have the authority to employ such
assistants as may be necessary for the efficient operation
of the department. The commissioner, the division heads
and the employees of the department shall perform the
duties herein specified and shall also perform such other
duties as the governor may prescribe.


The council of finance and administration is hereby
created and shall be composed of ten members, four of
whom shall serve ex officio and six of whom shall be
appointed as herein provided. The ex officio members
shall be the governor, attorney general, the state treasurer
and the state auditor. From the membership of the Legis-
lature, the president of the Senate shall appoint three
senators as members of the council, not more than two of
whom shall be members of the same political party, and
the speaker of the House shall appoint three delegates
as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House shall serve at the will and pleasure of the officer making their appointment. The commissioner of finance and administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof.

The council shall serve the department of finance and administration in an advisory capacity only, and shall have the following duties:

1. To advise with the commissioner as to all budget proposals to be submitted to the governor;
2. At the time of the submission of the proposed budget to the governor, to report to the governor its conclusions concerning the proposed budget and any additions, modifications or adjustments that it may care to suggest;
3. To advise with the commissioner concerning such studies of government and administration as it may consider appropriate;
4. To advise with the commissioner in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies.

Members of the council shall be paid all necessary expenses incurred in the discharge of their duties.

§5A-1-4. Reports by commissioner.

The commissioner shall make an annual report to the governor concerning the conduct of the department and the administration of the state finances. He shall also make such other reports as the governor may require.

§5A-1-5. Oath and bond of commissioner; bonds for directors and employees.

The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by section 5, article IV of the constitution. He shall execute a bond in the penalty of twenty-five thousand dollars, approved by the governor, in form prescribed by
the attorney general and conditioned upon the faithful
performance of his duties and the accounting for all
money and property coming into his hands by virtue of
his office. The oath and bond shall be filed with the secre-
tary of state. The division heads and all other employees
shall be covered by bonds in cases where the commis-
sioner thinks it necessary, which bonds shall be in the
penalty prescribed by the commissioner and shall be filed
with the secretary of state.

ARTICLE 2. BUDGET DIVISION.

§5A-2-1. Powers and duties of budget division.
§5A-2-2. General powers and duties of commissioner as director of
budget.
§5A-2-10. Preparation of tentative budget and submission to governor.
§5A-2-17. Requests for quarterly allotments; approval or reduction by
governor.
§5A-2-20. Expenditure of excess in collections; notices to auditor and
treasurer.
§5A-2-23. Same—Pro rata reduction of appropriations from general
revenue.
§5A-2-24. Same—Pro rata reduction of appropriations from other
funds.
§5A-2-34. Personnel classification of offices and employments in state
government and agencies.

§5A-2-1. Powers and duties of budget division.
1 The budget division shall act as staff agency for the
governor in the exercise of his powers and duties under
section 51, article VI of the state constitution, and shall
exercise and perform the other powers and duties con-
ferred upon it by this article.

§5A-2-2. General powers and duties of commissioner as di-
rector of budget.
1 The commissioner, under the immediate supervision of
the governor, shall have the power and duty to:
3 (1) Exercise general supervision of, and make rules
and regulations for, the government of this division;
(2) Prepare, in accordance with this article, requests for appropriations, estimates of cost and the contents of the state budget into a tentative budget for submission to the governor;

(3) Administer the budget in accordance with this article;

(4) Serve as staff agency to the governor in the consideration of requests for appropriations and the preparation of the budget document;

(5) Make such investigations and submit such reports as the governor may require;

(6) Make a continuous study of state expenditures and make such recommendations to the governor for the more economical use of state funds as he shall find practicable;

(7) Render assistance to spending officers with respect to the fiscal affairs of spending units;

(8) Exercise such other powers as are vested in him by this article, or which may be appropriate to the discharge of his duties.

§5A-2-10. Preparation of tentative budget and submission to governor.

The commissioner shall prepare for the consideration of the governor a tentative budget for the fiscal year next ensuing. The budget shall state actual receipts and expenditures for the fiscal year next preceding, estimated receipts and expenditures for the current fiscal year, recommended expenditures for the current fiscal year as shown in the legislative digest, and it shall state also the requested amounts, or estimates, for the fiscal year next ensuing with respect to:

(1) Appropriations requested by each spending unit and requested general appropriations;

(2) The amount of the total of each appropriation to be paid out of collections;

(3) Amounts and purposes of appropriations requested other than for spending units of the state;

(4) Revenue of each of the funds of the state;

(5) A summary statement of requests and revenues showing the amount of an anticipated surplus or deficit;
(6) Balances carried forward to July first from fiscal year next preceding on all reappropriated accounts from general revenue fund and general school fund;

(7) Percentage of increase or decrease by comparison of recommended appropriation for next ensuing year with current fiscal year.

On or before November fifteenth, the commissioner shall submit the tentative budgets to the governor. The commissioner shall convey to the governor all explanatory and justification statements and statements of personnel requirements of spending units as reported and filed in his office.


The commissioner shall ascertain the collection of the revenue of the state, and shall determine each quarter of the fiscal year the proportion which the amount actually collected bears to the collection estimated for that period.

The commissioner shall certify to the governor and the legislative auditor, as soon as possible after the close of each quarter, and at such other times as the governor may request, the condition of the state revenues and of the several funds of the state. For the purposes of this section, the commissioner shall have the authority to require all necessary estimates and reports from any spending unit of the state government.


The commissioner, with the approval of the governor, may require that an expenditure schedule provide for a reserve for emergencies out of the total amount appropriated to the spending unit. The amount of the reserve shall be determined by the commissioner in consultation with the spending officer.

§5A-2-17. Requests for quarterly allotments; approval or reduction by governor.

At least thirty days prior to the beginning of each quarter of the fiscal year, each spending officer shall submit to the commissioner a request for an allotment of public funds sufficient to operate the unit during the
ensuing quarter in accordance with the approved expenditure schedule.

The commissioner shall examine the requests and, if he finds that the amounts requested are in accordance with the approved expenditure schedules and are in accordance with sound fiscal policy, he shall submit the requests to the governor. The commissioner shall also submit a summary statement showing the amounts expended under the budget for each preceding quarter of the fiscal year and the total amount requested for allotment during the ensuing quarter.

The governor shall consider the amount of requests for allotment and the collection of revenues. If the governor finds that the collection of revenue warrants the expenditure of the amount requested in the allotment, he shall approve the allotment of funds for the ensuing quarter and send copies of the requests to the legislative auditor after approval. If the governor finds that the collection of revenue does not warrant the allotment of the requested amount, he may reduce the amount of allotments pending the collection of sufficient revenue.


The expenditures of a spending unit during a quarter of the fiscal year shall not exceed the amount of the approved allotment, unless the governor approves the expenditure of a larger amount. Any amounts remaining unexpended at the close of the quarter shall be available for reallocation and expenditure during any succeeding quarter of the same fiscal year.


Notwithstanding any other provision of law to the contrary, there shall be no transfer of amounts between items of appropriation, and moneys appropriated for any particular purpose shall not be spent by a spending unit for any other purpose.

§5A-2-20. Expenditure of excess in collections; notices to auditor and treasurer.

If the amount actually collected by a spending unit exceeds the amount which it is authorized to expend from
collections, the excess in collections shall be set aside in
a special surplus fund for the spending unit. Expendi-
tures from this fund shall be made only in accordance
with the following procedure:

The spending officer shall submit to the commissioner:

1. A plan of expenditure showing the purposes for
which the surplus is to be expended, and
2. A justification statement showing the reasons why
the expenditure is necessary and desirable.

The commissioner shall submit the request to the gov-
ernor with his recommendation.

If the governor approves the plan of expenditure and
justification statement, and is satisfied that the expendi-
ture is required to defray the additional cost of the serv-
ice or activity of the spending unit, and that the expendi-
ture is in accordance with sound fiscal policy, he may
authorize the use of the surplus during the current fiscal
year. Notices of such authorization shall be sent to the
state auditor, the state treasurer and the legislative
auditor.

An expenditure from a special surplus fund without
the authorization of the governor, or other than in ac-
cordance with this section, shall be an unlawful use of
public funds.


The governor may reduce appropriations according to
any of the methods set forth in sections twenty-three,
twenty-four and twenty-five of this article.

§5A-2-23. Same—Pro rata reduction of appropriations from
general revenue.

If the governor determines that the amounts, or parts
thereof, appropriated from the general revenue cannot be
expended without creating an overdraft or deficit in the
general fund, he may instruct the commissioner to reduce
equally and pro rata all appropriations out of general
revenue in such a degree as may be necessary to prevent
an overdraft or a deficit in the general fund.
§5A-2-24. Same—Pro rata reduction of appropriations from other funds.

1 The governor in the manner set forth in section twenty-three may reduce appropriations from:
2 (1) Funds supported by designated taxes or fees;
3 (2) Fees or other collections set aside for the support of designated activities or services.
4 Each fund and each fee or collection account shall be treated separately, but appropriations from the same fund or account shall be treated equally and reduced pro rata.


1 If the governor determines that the reductions authorized in sections twenty-three and twenty-four will dangerously impair the existence of the essential services of government, he may instruct the commissioner to reduce the amount to be expended from separate appropriations in accordance with the following method:
2 (1) The commissioner shall first classify appropriations as follows:
3 Class One: For agencies collecting revenue and administering the fiscal operations of government, including the offices and departments of the tax commissioner, auditor, treasurer, and sinking fund commission;
4 Class Two: For agencies vested with the supervision, control, and direction of executive policy and law enforcement, including the governor’s office, the attorney general’s office, the department of finance and administration, and the department of public safety;
5 Class Three: For state institutions, educational, charitable and corrective;
6 Class Four: For other departments and services of the state government;
7 Class Five: For transfers from the general fund.
8 (2) The commissioner shall first reduce the appropriations from Class Five and then, if necessary, for the other classes in descending numerical order as follows:
Class Four, Class Three, Class Two, Class One. All reductions shall be in multiples of five percent, but a fixed relationship shall be maintained between the classes which shall be measured by a difference of five percent in the rate of reduction. The maximum reduction shall not exceed twenty-five percent in Class Five and in the other classes it shall be proportioned according to the following table:

<table>
<thead>
<tr>
<th>Classes</th>
<th>Five</th>
<th>Four</th>
<th>Three</th>
<th>Two</th>
<th>One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of reductions</td>
<td>10%</td>
<td>5%</td>
<td>15%</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>Percent from total</td>
<td>15%</td>
<td>10%</td>
<td>15%</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>Percent of appropriations</td>
<td>20%</td>
<td>15%</td>
<td>10%</td>
<td>10%</td>
<td>5%</td>
</tr>
</tbody>
</table>


The commissioner shall formulate the requirements of a system of management accounting for the planning, management, reporting, and control of state expenditures. The requirements shall include methods for recording the collection of all income, amounts available for expenditure, obligations, encumbrances and disbursements for each spending unit, and publication of a detailed statement of receipts and expenditures of state moneys. The system shall include the accounts to be kept by the commissioner, the auditor, and the treasurer. The commissioner shall, after the system has been approved by the governor, require its use by all spending units.

The governor is hereby authorized to direct by executive order, not inconsistent with the provisions of this article, the transfer of such records, equipment, personnel, and appropriations between the departments of finance and administration, the auditor, and the treasurer as may be necessary to effectuate the purposes of central accounting and reporting.

§5A-2-34. Personnel classification of offices and employments in state government and agencies.

With the exception of those institutions under the control of the state board of education and the board of governors of West Virginia University, and with the ex-
ception of classified service positions and pay provided for in section eight, article six, chapter twenty-nine of this code, the commissioner, with the approval of the governor, shall classify the offices and employments in the state government and its agencies, into a personnel classification which reflects the differences in training, experience, ability and responsibility required for different types or kinds of service or employment, and shall establish uniform salary and wage scales within each class.

The governor shall require the state board of education and the board of governors of West Virginia University to prepare and apply personnel classifications to the institutions under their control.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-18. Special fund; purposes; how composed.

There is hereby created a special revenue fund to be administered by the director to finance and facilitate the following functions of the director:

(1) Purchase in volume and for maintenance of stocks and commodities to supply the needs of state departments;

(2) Performance of state departments of all mimeographing, photostating, microfilming, multilithing, multigraphing, and other work as provided by section thirty-three of this article.

The amount of the fund may be fixed and changed by the governor upon the recommendation of the commissioner. If at the end of each fiscal year the cash balance plus value of commodity inventories on hand exceeds the amount so fixed, the excess in cash shall be transferred by the governor upon recommendation of the commissioner to the general revenue fund and become a part of the general revenue of the state. The fund shall be composed of the following:

(1) The cash balance and inventories of the fund hereafter established by this section;

(2) Charges made by the director for commodities sold and services rendered to the state departments as herein
described: Provided, That charges shall not exceed total cost to the fund, which total cost shall include storage, supplies, equipment and salaries and wages of employees necessary to supply commodities and services in addition to purchase price of commodities.

ARTICLE 4. GENERAL SERVICIES DIVISION.

§5A-4-1. Care, control and custody of capitol buildings and grounds; messenger and telephone services.

§5A-4-6. Right of appeal from interference with functioning of agency.

§5A-4-1. Care, control and custody of capitol buildings and grounds; messenger and telephone services.

1 The director shall be charged with the full responsibility for the care, control and custody of the capitol buildings and in this connection he shall:

2 (1) Furnish janitors for the capitol buildings and grounds, together with all the departments therein, or connected therewith, regardless of the budget or budgets, departmental or otherwise, from which such janitors are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the buildings. Under the direction of the president of the Senate and speaker of the House of Delegates, the director shall have charge of the halls and committee rooms of the two houses and any other quarters at the state capitol provided for the use of the Legislature or its staff, and keep the same properly cleaned, warmed and in good order, and shall do and perform such other duties in relation thereto as either house may require;

3 (2) Furnish messenger service to the various state departments. Department heads shall be consulted with reference to the amount of messenger service required for their departments. Janitor-messengers, or messengers, shall receive from the director compensation for total services in the same manner as other employees are paid;

4 (3) Have immediate control and direction of the switchboard telephone service for the various departments of the state capitol. Changes in telephone instruments or equipment in the various departments of the state capitol shall be referred to the director, and pay-
ment for any such changes will not be honored unless
such changes have been approved by the director. A
simple accounting system shall be installed and main-
tained by the director for all telephone service to the
state departments;
(4) Landscape and take care of the lawns and gardens;
(5) Direct the making of all minor repairs to and
alterations of the capitol buildings and governor's man-
sion and the grounds of such buildings and mansion.
Major repairs and alterations shall be made under the
supervision of the director, subject to the direction of
the governor.
The offices of the assistants and employees appointed
to perform these duties shall be located where designated
by the governor, except that they shall not be located
in any of the legislative chambers, offices, rooms or halls.
Office hours shall be so arranged that emergency or
telephone service shall be available at all times. The
hours of employment shall be so arranged that janitorial
service shall not interfere with other employment during
regular office hours.
§5A-4-6. Right of appeal from interference with functioning of
agency.
1 Upon occasion of a showing that the application of
2 the authority vested under the provisions of this chapter
3 may interfere with the successful functioning of any
4 department, institution or agency of the government,
5 such department, institution or agency may have the
6 right of appeal to the governor for review of the case
7 and the decision or conclusion of the governor shall
8 govern in such cases.

CHAPTER 6. GENERAL PROVISIONS RESPECTING
OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.
§6-7-3. Provision for clerical assistance, stationery, offices,
traveling expenses and contingent fund.
1 It shall be the duty of the governor to ascertain and
2 report to the Legislature at each regular session the
amount deemed necessary to provide each of the officers mentioned in section two of this article with sufficient clerical and office assistance, stationery and equipment for the proper discharge of the duties of the office, and, where offices are not furnished in the capitol building, with proper offices and light, heat and janitor's services for the same; and where any such officer is required in the proper discharge of the duties of his office to travel or journey from place to place, the amount necessary to provide for such purpose; and, where the circumstances may warrant it, the amount necessary to provide for a contingent fund to cover stationery, blank books, blanks, advertising, printing, fuel, lights, postage, express charges, office supplies, furniture, and any other necessary article that may not be otherwise specially provided for.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for institutions of higher education.

The governor shall promulgate rules and regulations concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of state government and except for the attorney general, auditor, secretary of state, treasurer and commissioner of agriculture and their employees. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer and commissioner of agriculture shall promulgate rules and regulations concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules and regulations shall be filed with the auditor, and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules and regulations so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper
item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for the governing board of any state institution of higher education to authorize the payment of traveling expenses incurred by any person invited to visit the campus or other facilities of such institution to be interviewed concerning his possible employment by such governing board or agent thereof.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2. CLAIMS AGAINST THE STATE.

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

The clerk shall certify to the director of the budget, on or before the twentieth day of November of each year, a list of all awards recommended by the court to the Legislature for appropriation. The clerk may certify supplementary lists to the governor to include subsequent awards made by the court. The governor shall include all awards so certified in his proposed budget bill transmitted to the Legislature.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-2. Appointment of inspector, other commissioned officers, noncommissioned officers, troopers and civilian employees.

The superintendent shall appoint, from the enlisted membership of the department, an inspector with the rank of lieutenant colonel who shall be next in authority to the superintendent, and for the purpose of operating and maintaining the executive offices, training school, scientific laboratory, keeping records relating to crimes and criminals, coordinating traffic safety activities and maintaining a system of supplies and accounting and carrying on other necessary services, he shall appoint not more than one major, one captain, four lieutenants, two master sergeants, four sergeants, three corporals and six troopers. In addition the superintendent may appoint,
from the enlisted membership of the department, not
more than four other lieutenants for duties consisting
of technical or scientific examination of evidence in
criminal cases, but no member shall be appointed to fill
these vacancies in the grade of lieutenant unless (1)
he shall have completed four years' study at an ac-
credited college or university and hold a bachelor's degree
from such college or university and (2) such member
shall have actually conducted numerous examinations
of physical evidence in criminal cases and have been
qualified in a court of record of this state to testify as an
expert witness with respect thereto.

The superintendent shall appoint such civilian em-
ployees as may be necessary.

The inspector, major, captains, lieutenants, master ser-
geants, sergeants, corporals and troopers shall be en-
rolled and enlisted as members of the department of
public safety and shall be entitled to wear the insignia
of rank as provided by law or authorized by department
regulations.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-6. Offices and office hours.
§20-1-7. Additional powers, duties and services of director.

§20-1-6. Offices and office hours.

1 The director shall arrange with the general services
division of the department of finance and administration
for adequate office space, accommodations and facilities
for the department of natural resources in the state
capitol offices. The department of finance and adminis-
tration shall make such office accommodations and facili-
ties available and shall provide for orderly servicing and
maintenance thereof. The offices of the director and of
the department shall be opened and staffed for business
transactions and services during regular hours.

§20-1-7. Additional powers, duties and services of director.

1 In addition to all other powers, duties and responsibili-
ties granted and assigned to the director in this chapter
(1) With the advice of the commission, prepare and
administer, through the various divisions created by
this chapter, a long-range comprehensive program for
the conservation of the natural resources of the state
which best effectuates the purpose of this chapter and
which makes adequate provisions for the natural re-
sources laws of the state;

(2) Sign and execute in the name of the state by the
"department of natural resources" any contract or agree-
ment with the federal government or its departments or
agencies, subdivisions of the state, corporations, associa-
tions, partnerships or individuals;

(3) Conduct research in improved conservation
methods and disseminate information matters to the resi-
dents of the state;

(4) Conduct a continuous study and investigation of
the habits of wildlife, and for purposes of control and
protection to classify by regulation the various species
into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and
method by which the various species of wildlife may be
taken, or chased, unless otherwise specified by this
chapter;

(6) Fix by regulation the open seasons and the bag,
creel, size, age, weight and sex limits with respect to wild-
life in this state;

(7) Hold at least six meetings each year at such times
and at such points within the state, as in the discretion
of the director may appear to be necessary and proper
for the purpose of giving interested persons in the various
sections of the state an opportunity to be heard concern-
ing open seasons for their respective areas, before such
seasons and bag limits are fixed;

(8) Suspend open hunting seasons upon any or all
wildlife in any or all counties of the state with the prior
approval of the governor in case of an emergency such as
a drought, forest fire hazard or epizootic of disease among
wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours' notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(9) Supervise the fiscal affairs and responsibilities of the department;

(10) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(11) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(12) Acquire for the state in the name of the "department of natural resources" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, esthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping, or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or
waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(13) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(14) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section shall extend for a period of more than ten years. And all contracts heretofore entered into by the state for the sale of timber shall not be validated by this section if the same be otherwise invalid. The proceeds arising from the sale of the timber
so sold, shall be paid to the treasurer of the state of West Virginia, and shall be credited to the department and used exclusively for the purposes of this chapter;

(15) Sell or lease, with the approval in writing of the governor, coal, oil, gas, sand, gravel and any other minerals that may be found in the lands under the jurisdiction and control of the director, except those lands that are designated as state parks. The director, before making sale or lease thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which such lands are located. The minerals so advertised shall be sold or leased to the highest responsible bidder, who shall give bond for the proper performances of the sales contract or lease as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise the bids. The proceeds arising from any such sale or lease shall be paid to the treasurer of the state of West Virginia and shall be credited to the department and used exclusively for the purposes of this chapter;

(16) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(17) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(18) Report to the governor each year all information relative to the operation and functions of his department and he shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the department of each fiscal year, and he shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to
each house of the Legislature when convened in January
next following;

(19) Keep a complete and accurate record of all pro-
ceedings, record and file all bonds and contracts taken or
entered into, and assume responsibility for the custody
and preservation of all papers and documents pertaining
to his office, except as otherwise provided by law;

(20) Offer and pay, in his discretion, rewards for in-
formation respecting the violation, or for the apprehen-
sion and conviction of any violators, of any of the pro-
visions of this chapter;

(21) Require such reports as he may deem to be neces-
sary from any person issued a license or permit under
the provisions of this chapter, but no person shall be re-
quired to disclose secret processes or confidential data of
competitive significance;

(22) Purchase as provided by law all equipment neces-
sary for the conduct of his department;

(23) Conduct and encourage research designed to
further new and more extensive uses of the natural re-
sources of this state and to publicize the findings of such
research;

(24) Encourage and cooperate with other public and
private organizations or groups in their efforts to publicize
the attractions of the state;

(25) Accept and expend, without the necessity of ap-
propriation by the Legislature, any gift or grant of money
made to the department for any and all purposes specified
in this chapter, and he shall account for and report on all
such receipts and expenditures to the governor;

(26) Cooperate with the state historian and other appro-
priate state agencies in conducting research with refer-
ence to the establishment of state parks and monuments
of historic, scenic and recreational value, and to take such
steps as may be necessary in establishing such monuments
or parks as he deems advisable;

(27) Maintain in his office at all times, properly in-
dexed by subject matter, and also, in chronological
sequence, all rules and regulations made or issued
under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(28) Delegate the powers and duties of his office, except the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

(29) Conduct schools, institutes and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state; and

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board.

CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.

ARTICLE 1A. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS.

*§25-1A-1b. Collection, disposition and use of additional registration fee; creation of special capital improvements fund; revenue bonds.

1 In addition to all other fees imposed by the governing boards of state institutions of higher education, there is hereby imposed and the governing board of each state institution of higher education is hereby directed to provide for the collection of an additional registration fee from all students in the amounts as hereinafter provided.

2 For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The board of governors of West Vir-
Virginia University and the West Virginia board of education shall have authority to increase such additional registration fee at any institution of higher education under their respective control for students who are non-residents of this state. For all part-time students and for all summer school students, the respective governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the board of governors of West Virginia University for the benefit of West Virginia University and Potomac State College of West Virginia University, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at West Virginia University and at Potomac State College.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the West Virginia board of education for the benefit of the state institutions of higher education under its control, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at such institutions.

The respective boards may make expenditures from such special capital improvements funds at the various state institutions of higher education under their control to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes: (1) The acquisition of land or any rights or interest therein. (2) The construction or
acquisition of new buildings. (3) The renovation or construc-
tion of additions to existing buildings. (4) The acqui-
sition of furnishings and equipment for any such build-
ings. (5) The construction or acquisition of any other
capital improvements or capital educational facilities
at such state institutions of higher education, includ-
ing any roads, utilities or other properties, real or per-
sonal, or for other purposes necessary, appurtenant or
incidental to the construction, acquisition, financing and
placing in operation of such buildings, capital improve-
ments or capital educational facilities.

The respective boards, at their discretion, may use the
moneys in such special capital improvements funds to
finance the costs of the above purposes on a cash basis,
or may from time to time issue revenue bonds of the
state as provided in this section to finance all or part of
such purposes and pledge all or any part of the moneys
in such special funds for the payment of the principal of
and interest on such revenue bonds, and for reserves
therefor. Any pledge of such special funds for such reve-
nue bonds shall be a prior and superior charge on such
special funds over the use of any of the moneys in such
funds to pay for the cost of any of such purposes on
a cash basis: Provided, That any expenditures from such
special funds, other than for the retirement of revenue
bonds, may only be made by the board of governors of
West Virginia University and the West Virginia board of
education to meet the cost of a predetermined capital
improvements program for one or more of the state in-
itutions of higher education under their control, in
such order of priority as shall have been agreed upon by
the respective boards and presented to the governor for
inclusion in the annual budget bill, and only with the ap-
proval of the Legislature as indicated by direct appro-
priation for the purpose.

Such revenue bonds may be authorized and issued from
time to time by the respective boards to finance in whole
or in part the purposes provided in this section in an
aggregate principal amount not exceeding the amount
which the respective boards shall determine can be paid
as to both principal and interest and reasonable margins
for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the respective board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates not exceeding five per centum per annum; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as such respective board shall determine. Such revenue bonds shall be signed by the governor and by the president of the respective board authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of such respective board. Such revenue bonds shall be sold in such manner as the respective board may determine to be for the best interests of the state, such sale to be made at a price not lower than a price which will show a net return of not more than six per centum per annum to the purchaser upon the amount paid therefor computed to the stated maturity dates of such revenue bonds without regard to any right of prior redemption.

Such respective board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the same board under the provisions of this section; as to the maintenance or revision of the amounts of such
additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by such respective board in the best interest of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education under the control of the board which issued the bonds shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the Negotiable Instruments Law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 14. STATE COMMISSION ON AGING.

§29-14-5. Director.
§29-14-6. Personnel.

§29-14-5. Director.

After its citizen members have been appointed by the governor, the commission shall appoint a director who shall act as the chief administrative officer of the commission. He shall be a person who is professionally qualified by experience and training to assume the responsibilities of the position. The director’s annual salary shall, within the limits of funds available, be fixed by the governor, and he may be reimbursed for travel and other necessary expenses actually incurred in the perform-
§29-14-6. Personnel.

1 The director shall, with the advice and consent of the commission, appoint such other personnel as the commission deems to be necessary for the efficient performance of the duties prescribed by this article. Within the limits of funds available, and with the approval of the governor, the commission may fix the compensation of such other personnel, and may incur other expenses necessary to the effective discharge of its powers and duties.

CHAPTER 14

(House Bill No. 716—By Mr. Watson)

[Passed February 15, 1969; in effect ninety days 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-two, relating to the powers, privileges, authorities and duties of building and loan associations organized under the laws of this state; permitting such building and loan associations to accept savings accounts, to issue account books or separate certificates evidence the ownership thereof, and to pay dividends and earnings thereon, all upon the same terms and conditions and subject to the same limitations and restrictions as were provided on the first day of July, one thousand nine hundred sixty-eight, for federal savings and loan associations whose home offices are 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-two, to read as follows:

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-42. State associations to have same rights, powers, etc., as federal associations as to savings accounts.

(a) Building and loan associations organized and existing under the laws of this state shall have all of the rights, powers, privileges and benefits to accept savings accounts and to issue to each holder of its savings accounts an account book, or a separate certificate, evidencing the ownership of the account and the interest of the holder thereof in the capital of such association, and to pay dividends and to distribute earnings thereon, all upon the same terms and conditions and subject to the same limitations and restrictions as were provided on the first day of July, one thousand nine hundred sixty-eight, for federal savings and loan associations whose home offices are located in this state, under the “Rules and Regulations for the Federal Savings and Loan System” issued by the federal home loan bank board, and under the “Rules and Regulations for Insurance of Accounts”, issued by the federal savings and loan insurance corporation: Provided, That whenever and wherever amendments to the charter or bylaws of said federal savings and loan associations were at said date permitted or required, as a prerequisite to the exercise of any such right, power, privilege or benefit, such amendments may be adopted to the charter, constitution and bylaws of building and loan associations organized under the laws of this state: Provided, however, That whenever and wherever action by the board of directors of said federal savings and loan associations was at said date permitted or required as a prerequisite of the exercise of such right, power, privilege or benefit, such action may be taken by the board of directors of building and loan associations organized under the laws of this state.

(b) This statute shall not grant to any building and loan association organized under the laws of this state, permission or authority to install or maintain any branch or to engage in business at any place other than its principal office in this state.
AN ACT to amend and reenact section three, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of the state building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-3. Powers of commission.

1. The commission shall have power:
   1. To sue and be sued, plead and be impleaded;
   2. To have a seal and alter the same at pleasure;
   3. To contract to acquire and to acquire, in the name of the commission or of the state, by purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;
   4. To acquire, hold and dispose of personal property for its corporate purposes;
   5. To make bylaws for the management and regulation of its affairs;
   6. With the consent of the attorney general of the state of West Virginia to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;
   7. To appoint officers, agents and employees, and fix their compensation;
8. To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by, this article;

9. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interest will be best served;

10. To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space therein, in Kanawha county for the West Virginia alcohol beverage control commissioner, and equip and furnish the same; and to acquire or construct buildings and additions to buildings (and equip and furnish the same), including remodeling, renovation and repair, as may be required for the safety and care of patients, guests and inmates at hospitals under the jurisdiction and supervision of the department of mental health and at institutions under the jurisdiction and supervision of the commissioner of public institutions; and to formulate and program plans for the orderly and timely capital improvement of all of said hospitals and institutions and the state capitol buildings; and to construct 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; and to establish one or more systems or complexes of buildings and projects under control of the commission and, subject to prior agreements with holders of bonds previously issued, to change the same from time to time, in order to facilitate the issuance and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests therein necessary
or convenient to accomplish the purposes of this sub-

or convenient to accomplish the purposes of this sub-

11. To maintain, construct and operate a project au-

11. To maintain, construct and operate a project au-

12. To charge rentals for the use of all or any part of a

12. To charge rentals for the use of all or any part of a

13. To issue negotiable bonds and to provide for the

13. To issue negotiable bonds and to provide for the

14. To enter on any lands and premises for the purpose

14. To enter on any lands and premises for the purpose

15. To invest in United States government obligations,

15. To invest in United States government obligations,

16. To do all things necessary or convenient to carry

16. To do all things necessary or convenient to carry

The rights and powers set forth in subdivision ten of

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this section shall not be construed as in derogation of any

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rights and powers now vested in the West Virginia alcohol

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beverage control commissioner, the department of mental

beverage control commissioner, the department of mental

health or the commissioner of public institutions.

health or the commissioner of public institutions.

CHAPTER 16

CHAPTER 16

(House Bill No. 958—By Mr. Kincaid and Mr. Buck)

(House Bill No. 958—By Mr. Kincaid and Mr. Buck)

[Passed March 8, 1969; in effect from passage. Approved by the Governor.]

[Passed March 8, 1969; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state

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
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; adjutant general; department of welfare; commissioner of public institutions; department of education; alcohol beverage control commissioner; department of natural resources; department of mental health; state aeronautics commission; department of finance and administration; and workmen’s compensation fund, to be moral obligations of the state, and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims versus the State Road Commission:

1. Everett Lee Akers .................................. $ 25.00
2. Acie W. Albert ....................................... 88.07
3. The Baker & Hickey Company ....................... 11,151.12
4. Henry A. Beasley ..................................... 100.00
5. Walter L. Blankenship ................................ 68.61
6. Central Asphalt Paving Company .................... 16,483.75
7. Central Asphalt Paving Company .................... 10,600.00
8. Justine Chamberlain ................................ 110.16
9. Peter Chapman ........................................ 73.24
10. Charleston Concrete Floor Company ............... 9,713.78
11. Charleston Construction Inc. ..................... 1,245.95
12. Katharine Chatfield .................................. 247.07
13. Chesapeake & Ohio Railway Company ............... 212.01
14. William Curry and Mary E. Curry ................ 2,106.71
15. Thornton Deskins ................................... 100.00
16. C. L. Dotson .......................................... 23.00
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<td>Federal Insurance Company and Raymond T. Dalton</td>
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<td>Doran Frame, d/b/a Doran Frame Electrical Contractors</td>
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<td>60</td>
<td>Marilyn Stollings</td>
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69  (b)  Claims versus the Adjutant General:
70       (1)  City of Morgantown ..................................... 150.00
71  (c)  Claims versus the Department of Welfare:
72       (1)  Rahall Realty Company ................................... 40,500.00
73  (d)  Claims versus the Commissioner of
74     Public Institutions:
75       (1)  Reliance Electric & Engineering
76           Company .................................................... 53.34
77       (2)  T & L—Wheeling Plumbing &
78           Industrial Supply Company ............................ 2,275.22
79       (3)  James P. Lewis ........................................... 177.35
80       (4)  William L. Wilson ...................................... 31.00
81  (e)  Claims versus the Department of
82     Education:
83       (1)  Lawrence V. Jordan ...................................... 272.14
84       (2)  C. A. Robrecht Company .............................. 464.41
85       (3)  C. A. Robrecht Company .............................. 1,687.74
86       (4)  Patrick C. Williams .................................... 24.00
87  (f)  Claims versus Alcohol Beverage Control
88     Commissioner:
89       (1)  Clarence C. Elmore ..................................... 803.79
90  (g)  Claims versus the Department of
91     Natural Resources:
92       (1)  Eureka Pipe Line Company ............................ 6,741.99
93  (h)  Claims versus the Department of Mental
94     Health:
95       (1)  Mary Ann DeBolt ........................................ 177.42
96       (2)  C. A. Robrecht Company .............................. 170.78
97       (3)  C. A. Robrecht Company .............................. 83.75
98       (4)  C. A. Robrecht Company .............................. 135.96
99  (i)  Claims versus the State Aeronautics
100    Commission:
101      (1)  Ralph E. Phillips ...................................... 1,744.00
102  (j)  Claims versus the Department of Finance
103         and Administration:
104     (1)  Columbia Ribbon & Manufacturing
105           Company, Inc. .............................................. 94.94
106     (2)  International Business Machines
107         Corporation .................................................... 7,882.03
Claims against the State

(3) Otis Elevator Company ................................ 426.61
(4) United Airlines, Inc. ........................................ 512.91
(k) Claims versus State Road Commission
and Department of Finance and Administration:
(1) J. E. Greene .................................................. 6,008.45
(l) Claims versus Workmen’s Compensation Fund:
(1) Mountain State Consultants, Inc........ 7,200.00.

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payment to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriation for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 17
(Com. Sub. for Senate Bill No. 123—By Mr. Jackson, Mr. President)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three, relating to payment of interest on public construction contracts when final payment is delayed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. INTEREST ON PUBLIC CONTRACTS.

§14-3-1. Payment of interest by the state on contracts when final payment is delayed.
§14-3-2. Approving authority.
§14-3-3. Source of funds for payment of interest.

§14-3-1. Payment of interest by the state on contracts when final payment is delayed.

1 All public contracts let in accordance with article three, chapter five-a of the code or let by the state board of education, West Virginia board of regents, state armory board, or by any other board, agency or commission of the state, entered into on and after March one, one thousand nine hundred sixty-nine, except the state road commissioner, shall contain the following paragraph:

1 “Within ninety days after the completion of this contract is certified by the approving authority to be complete in accordance with terms of the plans or specifications, or both where appropriate, or is accepted by the authorized spending officer as complete, or is occupied by the owner, or is dedicated for public use by the owner, whichever occurs first, the balance due the contractor herein shall be paid in full. Should such payment be delayed for more than ninety days beyond the day the completion of this contract is certified by the authorized spending officer or is accepted by the owner as complete, or is occupied by the owner, or is dedicated for public use by the owner, said contractor shall be paid interest, beginning on the ninety-first day, at the rate of six per centum per annum on any unpaid balance: Provided, That whenever the approving authority reasonably determines that delay in completing the contract or in accepting payment for the contract is the fault of the contractor herein, the approving authority may accept and use the commodities or printing or the project may be occupied by the owner or dedicated for public use by the owner without payment of any interest on amounts withheld past the ninety-day limit.”

1 All public construction contracts relating to roads or
32 bridges let by the state road commissioner, entered into
33 on and after March one, one thousand nine hundred sixty-
34 nine, shall contain the following paragraph:
35 "Within one hundred fifty days after the approving
36 authority notifies the contractor, in writing, of the final
37 acceptance by such approving authority of the project for
38 which this contract provides, the balance due the prime
39 contractor shall be paid in full. Should such payment be
40 delayed for more than one hundred fifty days beyond the
41 date that the approving authority notifies the contractor
42 of the final acceptance of the project in accordance with
43 the terms of the contract and the plans and specifications
44 thereof, said prime contractor shall be paid interest, be-
45 beginning on the one hundred fifty-first day, at the rate of
46 six per centum per annum on such unpaid balance: Pro-
47 vided, That if the prime contractor does not agree to the
48 amount of money determined by the approving authority
49 to be due and owing to the prime contractor and set forth
50 on the final estimate document, and the approving author-
51 ity makes an offer to pay the amount of the final estimate
52 to the said prime contractor, then the prime contractor
53 shall not be entitled to receive any interest on the amount
54 set forth in said final estimate, but shall only be entitled
55 to the payment of interest at the rate of six per centum
56 per annum on the amount of money finally determined
57 to be due and owing to the said prime contractor, less the
58 amount of the final estimate that the approving authority
59 had originally offered to pay to the said prime contractor."

§14-3-2. Approving authority.
1 The approving authority provided for in section one
2 of this article shall be the contracting state board, agency
3 or commission or its authorized spending officer; except,
4 in the case of contracts let by the state road commissioner
5 relating to roads and bridges, the approving authority
6 shall be the state highway engineer.

§14-3-3. Source of funds for payment of interest.
1 Payment of interest as provided by this article shall be
2 made from the same appropriation or other source from
3 which the principal debt under the contract is to be paid.
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 two-b, relating to weather modification.

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 two-b, to read as follows:

ARTICLE 2B. WEATHER MODIFICATION.

§29-2B-1. Declaration of policy.


§29-2B-3. Administration by director and commission.

§29-2B-4. When license and registration of equipment required.

§29-2B-5. Application for license.

§29-2B-6. Registration of equipment.

§29-2B-7. Publication of notice of intention to undertake operation.


§29-2B-10. Research projects; safety.


§29-2B-12. Suspensions or revocations of license.


§29-2B-1. Declaration of policy.

1 The public interest, health, safety, welfare and necessity require that scientific experimentation in the field of artificial nucleation, and that scientific efforts to develop and increase natural precipitation of rain, snow, moisture, or water in any form contained in the atmosphere, within the state, be encouraged in order to develop, conserve, and protect the natural water resources of the state and to safeguard life and property.

1 As used in this article:

2 (a) "Director" means the director of aeronautics.

3 (b) "Commission" means the West Virginia aeronautics commission.

4 (c) "Operation" means the performance of weather modification and control activities pursuant to a single contract entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year, or, if the performance of weather modification and control activities is to be undertaken individually or jointly by a person or persons to be benefited and not undertaken pursuant to a contract, "operation" means the performance of weather modification and control activities entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one geographical area over one continuing time interval not exceeding one year.

5 (d) "Person" means any individual, firm, association, organization, partnership, company, corporation, private or public, political subdivision, or other public agency.

6 (e) "Research and development" means theoretical analysis, exploration and experimentation and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials and processes.

7 (f) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of any or all atmospheric cloud forms and precipitation forms which occur in the troposphere.

§29-2B-3. Administration by director and commission.

1 The director shall administer this article under the supervision of the commission.
§29-2B-4. When license and registration of equipment required.

(a) No person, without first securing a license from the commission, shall cause or attempt to cause condensation or precipitation of rain, snow, moisture, or water in any form contained in the atmosphere.

(b) No person without registering with the commission shall have in his possession any cloud seeding equipment unless he is an employee of or under contract with a person conducting a weather modification and control operation who has been granted a license by the commission.

§29-2B-5. Application for license.

(a) Any person desiring to do any of the acts specified in section four may file with the director an application in writing for a license. Each application shall be accompanied by a filing fee fixed by the commission but not to exceed one hundred dollars, and shall be on a form to be supplied for such purpose by the director.

(b) Every application shall set forth all of the following:

(1) The name and post-office address of the applicant.

(2) The previous education, experience, and qualifications of the applicant, or, if the applicant is other than an individual, the previous education, experience, and qualifications of the persons who will be in control of and charged with the operations of the applicant. Previous experience includes subcontracting or counseling services.

(3) A general description of the operations which the applicant intends to conduct and the method and type of equipment including all nucleating agents, that the applicant proposes to use. Aircraft must be listed by numbers and pilots’ names.

(4) A statement listing all employees, who are residents of West Virginia or who will be directly employed in the intended operation, or both.

(5) A bond or insurance covering any damage the licensee may cause through his operations in an amount
of fifteen thousand dollars or other evidence of financial responsibility shall be furnished and executed at the time of the grant of the license: Provided, however, That no bond shall be required of any person who shall cause or attempt to cause condensation or precipitation of rain, snow, moisture or water in any form contained in the atmosphere over any landing strip or runway of any airport, or any approach thereto, in an effort to improve the visibility above the landing strip, runway, or approach thereto.

(6) Every applicant shall have a resident agent within this state.

(c) Upon the filing of the application upon a form supplied by the director and containing the information prescribed by this article and accompanied by the required filing fee and bond or insurance, the director may issue a license to the applicant entitling the applicant to conduct the operations described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended or modified.

(d) A license may be renewed annually upon application to the director, accompanied by a renewal fee fixed by the commission but not to exceed one hundred dollars, on or before the last day of January of the calendar year for which the license is renewed.

§29-2B-6. Registration of equipment.

Every person not desiring a license who owns or possesses cloud seeding equipment shall promptly register the same with the director on a form furnished by him.

§29-2B-7. Publication of notice of intention to undertake operation.

(a) Prior to undertaking any operation authorized by the license, the licensee shall file with the director and cause to be published a notice of intention. The licensee shall then confine his activities for that operation substantially within the time and area limits set forth in the notice of intention.

(b) The notice of intention shall set forth all of the following:
(1) The name and address of the licensee.

(2) The nature and object of the intended operation and the person or persons on whose behalf it is to be conducted.

(3) The area in which and the approximate time during which the operation will be conducted.

(4) The area which will be affected by the operation as near as the same may be determined in advance.

(c) The notice of intention required by this section shall be published as a Class III legal advertisement and the publication area shall be the county wherein the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation within each of such counties.

(d) Proof of publication shall be filed by the licensee with the director within fifteen days from the date of the last publication of the notice. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.


(a) Notwithstanding any provision of this article to the contrary, the director may grant a licensee permission to undertake an emergency nucleation project, without prior compliance by the licensee with the provisions of section seven, subsection (a), if the same appears to the commissioner to be necessary or desirable in aid of extinguishment of fires.

(b) Notwithstanding any provision of this article to the contrary, upon request of the county commissioners of a county or of the governing body of a city, borough, town or township, and upon the submission of such supporting evidence as the commission may require, the com-
mission may grant a licensee permission to undertake a nucleation project for the purpose of alleviating a drought emergency, without prior compliance by the licensee with the provisions of section seven, subsection (a), requiring publication of notice of intention, if such project appears to the department to be necessary or desirable.

(c) Nothing contained in this section shall be construed as to relieve the licensee in the cases set forth in subsection (a) or (b) of this section from compliance with the provisions of section seven requiring publication of notice of intention and filing of proof of such publication, as soon after the granting of permission by the director as is practicable. In lieu thereof the licensee may furnish equivalent transmission of notice of intention by radio or television, and proof thereof, as soon after the granting of permission by the director as is practicable.


(a) Every licensee shall keep and maintain a record of all operations conducted by him pursuant to his license showing the method employed, the type of equipment used, the times and places of operation of the equipment, the name and post-office address of each person participating or assisting in the operation other than the licensee, and such other information as may be required by the commission, and shall report the same to the director immediately upon the completion of each operation.

(b) Each licensee shall further prepare and maintain an evaluation statement for each operation which shall include a report as to estimated precipitation, defining the gain or loss occurring from nucleation activities, together with supporting data therefor. This statement, together with such other pertinent information as the commission may require, shall be sent to the commission upon completion and be available to inspection by the commission or director at all times on the licensee's premises.

(c) The commission shall require written reports concerning each operation conducted by a licensee under this article.
(d) All information on an operation shall be submitted to the commission before any information on such operation may be released to the public.

(e) The reports and records in the custody of the commission shall be open for public examination as public documents.

§29-2B-10. Research projects; safety.
(a) Research work within the province of this statute shall be permitted only when authorized by the commission.
(b) Government and armed forces projects within the province of this statute must meet all the requirements of this article.
(c) No nucleating agent may be used in concentrations dangerous to man or causes environmental pollution as determined by the state department of health.

In order to enforce the provisions of this article, the West Virginia state police shall, on request of the commission, assign at least one trooper and one investigator to an area where unlawful cloud seeding is suspected. If such police request the same, the commission shall assign an airplane and pilot. Air samples shall be taken by the West Virginia air pollution control commission if requested by the state police or the commission. For such enforcement purposes, the state department of health shall furnish such technical services as the commission or director may request.

§29-2B-12. Suspensions or revocations of license.
Any license may be revoked, suspended or modified if the commission finds, after due notice to the licensee and a hearing thereon, that the licensee has failed or refused to comply with any of the provisions of this article. The proceedings herein referred to shall be conducted in accordance with the provisions of article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, known as the “West Virginia Administrative Procedures Act” and the commission shall have all the powers granted therein.
1 Any licensee who causes a drought as determined by
2 the commission shall compensate farmers for damages.
3 Any licensee who by causing heavy downpours or storms
4 which cause damage to lands as determined by the com-
5 mission shall compensate farmers and property owners
6 for such damages.

1 (a) Nothing contained in this article shall authorize
2 any person to carry out a cloud seeding operation from
3 West Virginia to seed in another state where such cloud
4 seeding is prohibited.
5 (b) Nothing contained in this article shall be con-
6 strued to authorize the suppression of lightning.

1 (a) Any airplane pilot who flies an airplane with
2 numbers invisible to escape identification under this ar-
3 ticle shall be guilty of a misdemeanor, and, upon convic-
4 tion thereof, have his license revoked for a period of five
5 years.
6 (b) Any airport owner or operator who knowingly
7 boards cloud seeding planes to seed clouds or who operates
8 as a cloud seeder without a license shall be guilty of a
9 misdemeanor, and, upon conviction thereof, have his
10 airport permit revoked for one year and be sentenced to
11 pay a fine of not more than five hundred dollars and
12 for a second or subsequent offense, he shall be sentenced
13 to pay a fine of not more than one thousand dollars.
14 (c) Any person knowingly having in his possession
15 without registering the same with the commission any
16 cloud seeding equipment shall, on conviction thereof, be
17 sentenced to pay a fine of ten thousand dollars.
18 (d) Any person who makes any false statement to
19 secure a license under this article shall, on conviction
20 thereof, have his license revoked permanently.
21 (e) Any person who violates any other provision of
22 this article shall be guilty of a misdemeanor, and, upon
23 conviction thereof, shall be fined not more than one thou-
AN ACT to amend and reenact sections sixty-three, sixty-three-a and sixty-three-a-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consolidation and merger of corporations.

Be it enacted by the Legislature of West Virginia:

That sections sixty-three, sixty-three-a and sixty-three-a-one, 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.

§31-1-63. Consolidation or merger of domestic corporations.
§31-1-63a. Consolidation or merger of domestic with foreign corporations.
§31-1-63al. Merger of domestic parent corporation and wholly owned subsidiary.

§31-1-63. Consolidation or merger of domestic corporations.

1 Any two or more corporations organized under the provisions of this chapter, or existing under the laws of this state, for the purpose of carrying on any kind of business, may consolidate or merge into a single corporation which may be any one of such constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required. The directors, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and
under the corporate seals of the respective corporations, 
prescribing the terms and conditions of consolidation or 
merger, the mode of carrying the same into effect, and 
stating such other facts required or permitted by the pro-
visions of this article to be set out in an agreement of 
incorporation, as can be stated in the case of a consolida-
tion or merger, stated in such altered form as the circum-
stances of the case require, as well as the manner of 
converting the shares of each of the constituent corpo-
rations into shares of the consolidated or merged corpo-
ration, with such other details and provisions as are 
deemed necessary.

Such agreement shall be submitted to the stockholders 
of each constituent corporation, at a meeting thereof, 
called separately for the purpose of taking the same into 
consideration; of the time, place and object of which 
meeting due notice shall be given by publication as a 
Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code, 
and the publication area for such publication shall be 
the county wherein each such corporation either has its 
principal office or conducts its business. A copy of such 
notice shall also be mailed to the last known post-office 
address of each stockholder of each such corporation, at 
least twenty days prior to the date of such meeting: 
Provided, however, That in the consolidation or merger 
of banking institutions as defined in this chapter, in the 
case of emergency, and upon the order of the commis-
sioner of banking, the meeting may be held upon at least 
twelve hours’ notice sent by mail or telegraph to the 
last known post-office address of each stockholder, and 
without publication.

At any such stockholders’ meeting of any corporation 
said agreement shall be considered and a vote by ballot, 
in person or by proxy, taken for the adoption or rejection 
of the same, each share entitling the holder thereof to 
one vote; and if the votes of stockholders of each such 
corporation representing two thirds of the total number 
of shares of its capital stock then issued and outstanding 
shall be for the adoption of such agreement, then that 
fact shall be certified on such agreement by the secretary
of each such corporation under the seal thereof; and the
agreement so adopted and certified shall be signed by the
president and secretary of each of such corporations un-
der the corporate seals thereof and acknowledged by the
president of each of such corporations before any officer
authorized by the laws of this state to take acknowledg-
ments of deeds to be the respective act, deed and agree-
ment of each of such corporations, and the agreement
so certified and acknowledged shall be filed in the office
of the secretary of state, and shall thence be taken and
deemed to be the agreement and act of consolidation
or merger of the said corporations; and a copy of such
agreement and act of consolidation or merger, duly cer-
tified by the secretary of state under the seal of his office,
shall also be recorded in the offices of the clerks of the
county courts of the counties of this state in which the
respective corporations so consolidating or merging shall
have their original certificates of incorporation recorded,
if any, or if any of the corporations shall have been
specially created by a public act of the Legislature, then
such agreement shall be recorded in the county where
such corporation shall have had its principal place of
business, if any, and such record, or a certified copy
thereof, shall be evidence of the agreement and act of
consolidation or merger of such corporations, and of the
observance and performance of all acts and conditions
necessary to have been observed and performed precedent
to such consolidation or merger.

On such date as shall be specified in such agreement,
or if no effective date is specified in such agreement, on
the date such certified copy of said agreement is issued
by the secretary of state, for all purposes of the laws
of this state, the separate existence of all the constituent
corporations, parties to said agreement, or of all such
constituent corporations except the one into which the
other or others of such constituent corporations have
been merged, or consolidated, as the case may be,
shall cease and the constituent corporations shall be-
come a new corporation, or be merged into one of such
corporations, as the case may be, in accordance with the
provisions of said agreement, possessing all the rights,
privileges, powers, franchises and trust and fiduciary
duties, powers and obligations, as well of a public as of
a private nature, and being subject to all the restrictions,
disabilities and duties of each of such corporations so
consolidated or merged, and all and singular the
rights, privileges, powers, franchises, and trust and
fiduciary rights, powers, duties and obligations, of each
of said corporations; and all property, real, personal and
mixed, and all debts due to any of said constituent corpo-
ations on whatever account, as well for stock sub-
scriptions as all other things in action or belonging to
each of such corporations shall be vested in the corpora-
tion resulting from or surviving such consolidation or
merger; and all property, rights, privileges, powers, and
franchises, and all and every other interest shall be
thereafter as effectually the property of the resulting
or surviving corporation as they were of the several
and respective constituent corporations; and the title
to any real estate, whether vested by deed or otherwise,
under the laws of this state, vested in any of such con-
stituent corporations, shall not revert or be in any way
impair ed by reason of this chapter: Provided, however,
That all rights of creditors and all liens upon any prop-
erty of any of said constituent corporations shall be
preserved unimpaired, and all debts, liabilities and duties
of the respective constituent corporations shall thence-
forth attach to said resulting or surviving corporation,
and may be enforced against it to the same extent as if
said debts, liabilities and duties had been incurred or
contracted by it.

§31-1-63a. Consolidation or merger of domestic with foreign
corporations.

Any one or more corporations organized under the
provisions of this chapter, or existing under the laws of
this state, may consolidate or merge with one or more
other corporations organized under the laws of any
other state or states of the United States of America, if
the laws under which said other corporation or corpo-
ations are formed shall permit such consolidation or
merger. The constituent corporations may merge into
a single corporation, which may be any one of said con-
stituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the state of incorporation of any one of said constituent corporations as shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares or other securities of the corporation resulting from or surviving such consolidation or merger if such corporations have shares, and such other details and provisions as shall be deemed necessary or proper. There shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws of the state, which are stated in said agreement to be the laws that shall govern said resulting or surviving corporation and that can be stated in the case of a consolidation or merger. Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and, in the case of a West Virginia corporation, in the manner provided in section sixty-three of this article. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy thereof, certified by the secretary of state, shall be recorded as provided in section sixty-three of this article with respect to the consolidation or merger of corporations of this state; and said agreement shall become effective on such date as shall be specified in such agreement, or if no effective date is specified in such agreement, on the date such certified copy of said agreement is issued by the secretary of state, and shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state.

Wherever the laws of another state than West Virginia are selected as the laws which shall govern the merged or consolidated corporation, such surviving cor-
Corporation shall comply with the provisions of section seventy-nine, article one, of chapter thirty-one, as last amended, before it holds property or transacts business in this state, and thereafter shall comply with the laws of this state with respect to foreign corporations holding property or transacting business in this state.

§31-1-63al. Merger of domestic parent corporation and wholly owned subsidiary.

In addition to the method of merger and consolidation provided in section sixty-three of this article, any corporation now or hereafter organized under the provisions of this chapter or existing under the laws of this state, for the purpose of carrying on any kind of business, owning all the stock of any other corporation now or hereafter organized under the provisions of this chapter or existing under the laws of this state, or now or hereafter organized under the laws of any other state of the United States of America, if the laws under which said other corporation is formed shall permit a merger as herein provided, may file in the office of the secretary of state a certificate of such ownership in its name and under its corporate seal, signed by its president or a vice president, and its secretary or treasurer or assistant secretary or assistant treasurer, and setting forth a copy of the resolution of its board of directors to merge such other corporation, and to assume all of its obligations, and the date of the adoption thereof; and a certified copy of said certificate shall be recorded in the office of the clerk of the county court of the county in which the principal place of business of the parent corporation is located, and if the other corporation is also a West Virginia corporation and its principal place of business is located in a different county, another certified copy of said certificate shall be recorded in the office of the clerk of the county court of such other county. On such date as shall be specified in such resolution, or if no effective date is specified in such resolution, on the date such certified copy of said certificate is issued by the secretary of state, all of the estate, property, rights, privileges and franchises of such other corporation shall
vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by such parent corporation, and except as hereinafter in this section provided, in its name, but subject to all liabilities and obligations of such other corporation and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law by or pursuant to which such parent corporation is organized. The parent corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation, and shall be liable in the same manner as if it had itself incurred such liability and obligations. Any plan of consolidation or merger which requires or contemplates any changes other than those herein specifically authorized with respect to the parent corporation, shall be accomplished under the provisions of section sixty-three of this article.

CHAPTER 20

(House Bill No. 831—By Mr. Watson)

(Passed March 7, 1969: in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section seventy-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to service of process on corporations.

Be it enacted by the Legislature of West Virginia:

That section seventy-one, 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.

§31-1-71. Auditor constituted attorney in fact for all corpora-
tions; manner of acceptance or service of notices
and process upon auditor; what constitutes doing
business in this state for purposes of this section;
secretary of state constituted such attorney in fact
in proceedings brought by auditor.

1 The auditor of this state is hereby constituted the
2 attorney in fact for and on behalf of every corporation
3 created by virtue of the laws of this state and every
4 foreign corporation authorized to do business herein
5 pursuant to the provisions of section seventy-nine of
6 this article, with authority to accept service of notice
7 and process on behalf of and upon whom service of notice
8 and process may be made in this state for and upon
9 every such corporation. No act of such corporation
10 appointing the auditor such attorney in fact shall be
11 necessary. Immediately after being served with or ac-
12 cepting any such process or notice, of which process
13 or notice two copies for each defendant shall be fur-
14 nished the auditor with the original notice or process,
15 the auditor shall file in his office a copy of such process
16 or notice, with a note thereon endorsed of the time of
17 service, or acceptance, as the case may be, and trans-
18 mit one copy of such process or notice by registered mail
19 to such corporation at the address last furnished by it,
20 as required by law. But no process or notice shall be
21 served on the auditor or accepted by him less than ten
22 days before the return day thereof. Such corporation
23 shall pay the annual fee prescribed in article twelve,
24 chapter eleven of this code for the services of the auditor
25 as its attorney in fact.

26 Any foreign corporation which shall do any business
27 in this state without having been authorized so to do
28 pursuant to the provisions of section seventy-nine of
29 this article shall be conclusively presumed to have ap-
30 pointed the auditor of the state as its attorney in fact
31 with authority to accept service of notice and process
32 on behalf of and upon whom service of notice and
process may be made in this state for and upon every such corporation in any action or proceeding described in the next following paragraph of this section. No act of such corporation appointing the auditor such attorney in fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the auditor with the original notice or process, together with a fee of two dollars, the auditor shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered mail, return receipt requested, to such corporation at the address of its principal place of business, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient: Provided, that such return receipt shall be signed by an agent or employee of such corporation, or the registered mail so sent by said auditor is refused by the addressee and the registered mail is returned to said auditor, or to his office, showing thereon the stamp of the post office department that delivery thereof has been refused, and such return receipt or registered mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. But no such process or notice shall be served on the auditor or accepted by him less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.

For the purposes of this section, a foreign corporation not authorized to do business in this state pursuant to the provisions of section seventy-nine of this article shall nevertheless be deemed to be doing business here-in (a) if such corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state, (b) if such corporation commits a tort in whole or in part in this state, or, (c) if such corporation manufactures, sells, offers for sale or supplies any
product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such corporation had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as hereinabove described shall be deemed to be the agreement of such corporation that any notice or process served upon, or accepted by, the auditor pursuant to the next preceding paragraph of this section in any action or proceeding against such corporation arising from, or growing out of, such contract, tort, or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such corporation in this state.

For the purpose of all suits or proceedings instituted for the collection of license taxes due the state, pursuant to the provisions of section eighty-six, article twelve, chapter eleven of this code, as amended, and for the purpose of all other cases where it is the duty of the auditor to collect a debt or claim due the state from corporations, the secretary of state, in lieu of the auditor, is hereby constituted the attorney in fact for such corporations. No act of any such corporation appointing the secretary of state such attorney in fact shall be necessary. All provisions in this section relating to the service of process on, or acceptance of process by, the auditor, and the duties imposed upon the auditor, shall apply to the secretary of state in such cases.

CHAPTER 21
(Senate Bill No. 6—By Mr. Jackson, Mr. President, and Mr. Brotherton)

[Passed January 17, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article two, chapter twenty-six and articles two and four, chapter twenty-eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia colored orphans' home, the industrial home for colored boys and the industrial home for colored girls.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of statutory provisions relating to West Virginia colored orphans' home, industrial home for colored boys and industrial home for colored girls.

1. Article two, chapter twenty-six and articles two and four, chapter twenty-eight, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

CHAPTER 22

(Senate Bill No. 7—By Mr. Jackson, Mr. President, and Mr. Brotherton)

[Passed January 17, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nineteen, twenty, twenty-one and twenty-two, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to repeal article six, chapter forty-eight of said code, relating to the binding out of girls committed to the state industrial home for girls as apprentices and relating to minors as apprentices.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of sections relating to binding out girls committed to the state industrial home for girls as apprentices.

§2. Repeal of article relating to apprentices.

§1. Repeal of sections relating to binding out girls committed to the state industrial home for girls as apprentices.

1. Sections nineteen, twenty, twenty-one and twenty-two, article three, chapter twenty-eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

§2. Repeal of article relating to apprentices.

Article six, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 23
(House Bill No. 884—By Mr. Rogerson and Mr. Polen)

[Passed February 28, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary of investigator of Marshall county; rewards; detection of crime.

Be it enacted by the Legislature of West Virginia:

That section two, article four, 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 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-2. Rewards; detection of crime; bounties.

The prosecuting attorney of any county, with the approval of the county court, or of the governor, or of the court of the county vested with authority to try criminal offenses, or of the judge thereof in vacation, may, within his discretion, offer rewards for the apprehension of persons charged with crime, or may expend money for the detection of crime. Any money expended under this section shall, when approved by the prosecuting attorney, be paid out of the county fund, in the same
manner as other county expenses are paid. The county
court may also offer reasonable bounties and rewards
for the destruction of noxious animals, birds of prey,
or weeds in the county, payable out of the county
treasury: Provided, however, That nothing herein shall
permit or give to the prosecuting attorney of any county,
having a population according to the last official census
of sixty thousand or less, the right to appoint a
full-time investigator or detector of crime, or to expend
any money for the investigation of any crime committed
in his county beyond the actual expenses of the
investigation of said crime, except in the county of
Wyoming, the prosecuting attorney with the consent of
the circuit judge and the county court therein, may
appoint an investigator of crime to be paid an annual
salary of not less than one thousand two hundred
dollars nor more than twenty-four hundred dollars, and
actual expenses, the salary to be fixed within these
limits by the county court; except further in the county
of Wayne, the prosecuting attorney may appoint an
investigator of crime to be paid an annual salary of
not less than thirty-six hundred dollars nor more than
forty-eight hundred dollars, and actual expenses, the
salary within these limits to be fixed by the county
court; except further in the county of Lincoln, the prose-
cuting attorney may appoint an investigator of crime
to be paid an annual salary of not less than one thou-
sand two hundred dollars nor more than two thousand
four hundred dollars, and actual expenses, the salary
within these limits to be fixed by the prosecuting attorney;
except further in the county of Mason, the prosecuting
attorney with the consent of the county court or the
circuit judge, may appoint an investigator of crime to
be paid a salary of not less than one hundred dollars
nor more than two thousand four hundred dollars and
actual expenses, the salary to be fixed within these
limits by the county court; except further in the county
of Marshall, the prosecuting attorney may appoint an
investigator of crime to be paid an annual salary to be
fixed by the county court and actual expenses.
CHAPTER 24
(House Bill No. 709—By Mr. Loop)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment of legal counsel by county courts.

Be it enacted by the Legislature of West Virginia:

That section three, article four, 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 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-3. Employment of counsel.

1 The county court of any county, having a population, according to the last official census, of one hundred thousand or more shall have authority to employ such legal counsel as it may deem necessary for the purpose of advising such county court touching all matters of a civil character and to conduct any litigation of a civil character to which the county is a party. The county court shall also have the authority to fix the compensation of any counsel so employed, and to pay the same out of the county treasury. Any such counsel so employed may be removed at the pleasure of the county court.

CHAPTER 25
(House Bill No. 966—By Mr. Shiflet)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section twenty, relating to group insurance for county employees and officers.

Be it enacted by the Legislature of West Virginia:

That article five, 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 twenty, to read as follows:

ARTICLE 5. FISCAL AFFAIRS.

§7-5-20. Group insurance programs authorized.

1 Every county through its county court shall have plenary power and authority to negotiate for, secure and adopt for the officers and regular employees thereof, other than provisional, temporary, emergency and intermittent employees, who are in officer or employee status with such county on and after the effective date of this section, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the county court bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the insurance commissioner of this state as to form, rate and benefits.

20 For said group policy or policies, the county court is hereby authorized and empowered to pay up to a maximum county payment of eighteen dollars per month for each participating officer or employee. Whenever the above described officers or regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the county court, the county court is hereby authorized and empowered to make periodic premium deductions of the amount of the contri-
COUNTY COURTS AND COUNTY OFFICERS [Ch. 26

30 bution each such subscribing officer or employee is re-
31 quired to make for such participation from the salary or 
32 wage payments due each such subscribing officer or em-
33 ployee as specified in a written assignment furnished to
34 the county clerk by each such subscribing officer or em-
35 ployee.
36 When a participating officer or employee shall retire
37 from his office or employment, he may, if he so elects and
38 the insurance carrier or carriers agree, remain a member
39 of the group plan by paying the entire premium for the
40 coverage involved.

CHAPTER 26

(House Bill No. 1019—By Mr. Hoard)

[Passed March 8, 1969: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six-(one), six-(three),
six-(five), six-(seven), six-(fifteen), six-(eighteen), six-
(nineteen), six-(twenty-five), six-(twenty-eight), six-
(thirty), six-(thirty-two), six-(thirty-four), six-(thirty-
six), six-(thirty-nine), six-(forty-one), six-(forty-two), six-
(forty-five), six-(forty-six), six-(forty-nine), six-(fifty-
one) and six-(fifty-four), article seven, chapter seven of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to appointment and sal-
aries of assistants, stenographers and clerks for prose-
cutting attorneys.

Be it enacted by the Legislature of West Virginia:

That sections six-(one), six-(three), six-(five), six-(seven),
six-(fifteen), six-(eighteen), six-(nineteen), six-(twenty-five),
six-(twenty-eight), six-(thirty), six-(thirty-two), six-(thirty-
four), six-(thirty-six), six-(thirty-nine), six-(forty-one), six-
(forty-two), six-(forty-five), six-(forty-six), six-(forty-nine),
six-(fifty-one) and six-(fifty-four), 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.

§7-7-6(1). Assistants, stenographers and clerks for prosecuting attorney; salaries—Barbour county.

§7-7-6(3). Same—Boone county.
§7-7-6(5). Same—Brooke county.
§7-7-6(7). Same—Calhoun county.
§7-7-6(15). Same—Hancock county.
§7-7-6(18). Same—Jackson county.
§7-7-6(19). Same—Jefferson county.
§7-7-6(25). Same—Marshall county.
§7-7-6(28). Same—Mercer county.
§7-7-6(30). Same—Mingo county.
§7-7-6(32). Same—Monroe county.
§7-7-6(34). Same—Nicholas county.
§7-7-6(36). Same—Pendleton county.
§7-7-6(39). Same—Preston county.
§7-7-6(41). Same—Raleigh county.
§7-7-6(42). Same—Randolph county.
§7-7-6(45). Same—Summers county.
§7-7-6(46). Same—Taylor county.
§7-7-6(49). Same—Upshur county.
§7-7-6(51). Same—Webster county.
§7-7-6(54). Same—Wood county.

§7-7-6(1). Assistants, stenographers and clerks for prosecuting attorney; salaries—Barbour county.

1 For the county of Barbour, one assistant attorney, one thousand dollars; one stenographer, three thousand dollars.

§7-7-6(3). Same—Boone county.

1 For the county of Boone, one assistant attorney, four thousand five hundred dollars; one stenographer at four thousand five hundred dollars.

§7-7-6(5). Same—Brooke county.

1 For the county of Brooke, one assistant attorney, three thousand eight hundred dollars; one stenographer, three thousand five hundred dollars.

§7-7-6(7). Same—Calhoun county.

1 For the county of Calhoun, one assistant attorney, three hundred dollars; one stenographer, at not more than two thousand five hundred dollars.
§7-7-6(15). Same—Hancock county.
1 For the county of Hancock, first assistant attorney, five
two thousand four hundred dollars; second assistant attorney,
four thousand nine hundred fifty dollars; one stenog-
rapher, not less than three thousand six hundred nor
more than four thousand two hundred dollars.

§7-7-6(18). Same—Jackson county.
1 For the county of Jackson, one assistant attorney, one
two thousand eight hundred dollars; one stenographer, not
more than three thousand dollars.

§7-7-6(19). Same—Jefferson county.
1 For the county of Jefferson, one stenographer, not less
than one thousand eight hundred dollars nor more than
five thousand dollars.

§7-7-6(25). Same—Marshall county.
1 For the county of Marshall, one assistant attorney, one
stenographer or clerk, at reasonable salaries to be fixed
and paid by the county court.

§7-7-6(28). Same—Mercer county.
1 For the county of Mercer, one assistant attorney; one
stenographer or clerk.

§7-7-6(30). Same—Mingo county.
1 For the county of Mingo, one assistant attorney, not
more than six thousand dollars; one stenographer, not
more than four thousand two hundred dollars.

§7-7-6(32). Same—Monroe county.
1 For the county of Monroe, one assistant attorney; one
stenographer, not more than one thousand eight hundred
dollars.

§7-7-6(34). Same—Nicholas county.
1 For the county of Nicholas, one investigative assistant;
not more than two stenographers.

§7-7-6(36). Same—Pendleton county.
1 For the county of Pendleton, one assistant attorney,
two thousand four hundred dollars; one stenographer or
clerk, not more than one thousand five hundred 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 two stenographers.

§7-7-6(41). Same—Raleigh county.

1 For the county of Raleigh, one assistant attorney, six
2 thousand six hundred dollars; two stenographers.

§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 ste-
3 nographer, not less than three thousand six hundred dol-
4 lars.

§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 dol-
3 lars; one stenographer.

§7-7-6(46). Same—Taylor county.

1 For the county of Taylor, one assistant attorney; one
2 stenographer.

§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 ste-
3 nographer.

§7-7-6(51). Same—Webster county.

1 For the county of Webster, one stenographer, three
2 thousand 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; one stenographer;
3 and in addition thereto, the prosecuting attorney may,
4 with the consent of the county court, appoint one addi-
5 tional assistant attorney and additional stenographers.
AN ACT to amend and reenact article eleven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a county parks and recreation commission by county courts of counties having a population in excess of two hundred thousand persons, to establish, improve, develop, administer, maintain and operate a parks and recreation system for the county; constituting any such commission a body corporate; providing that any such commission shall have perpetual existence; relating to the powers and duties of any such commission; providing for the appointment, qualification, term of office and oath of the members of any such commission; relating to insurance; relating to the personnel of the commission; relating to the power of eminent domain; authorizing any such commission to receive, deposit, invest, manage, control and expend its own income and funds; authorizing any such county court to turn over to any such commission the funds to be appropriated by such county court and other income to such commission; authorizing rules and regulations, the violation of which shall constitute a misdemeanor; authorizing any such commission to appoint, establish and maintain a park police force; and providing a severability clause.

Be it enacted by the Legislature of West Virginia: 

That article eleven, 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 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-1. County courts authorized to create a county parks and recreation commission.

§7-11-2. Commission a body corporate; perpetual existence; name; power and authority; authority of county court.

§7-11-3. Number of members; quorum; qualifications; appointments; terms; disqualifications.

§7-11-4. Oath of members; officers; location of office; personnel.
§7-11-5. General powers of commission; rules and regulations; misdemeanor offenses; park police authorized.

§7-11-6. Severability.

§7-11-1. County courts authorized to create a county parks and recreation commission.

1. The county court of any county having a population in excess of two hundred thousand persons is hereby authorized and empowered, by order entered of record, to create a county parks and recreation commission for the purpose of establishing, improving, developing, administering, operating and maintaining a county public parks and recreation system.

§7-11-2. Commission a body corporate; perpetual existence; name; power and authority; authority of county court.

1. Any parks and recreation commission created by a county court pursuant to the authority of this article shall be a public corporate body with perpetual existence and a corporate seal. It shall be known as the (name of county) county parks and recreation commission. Any board of park and recreation commissioners heretofore created under the former provisions of this article shall hereafter be known as the (name of county) county parks and recreation commission, and such commission shall succeed to all of the properties, interest and assets of any such board of park and recreation commissioners. The commission shall have the power and authority to receive and control any gift, federal grant, other grant, donation and bequest or devise; to exercise the right of eminent domain if an order of the county court authorizing exercise of the right as to any proposed acquisition is first made and entered; to take and hold title to any real or personal property; to receive all operating and capital funds appropriated by the county court to the commission; to receive all income and other funds, whether in cash or check, received by the county court and derived from properties and facilities devoted to park and recreational uses and under the control of said commission; to receive all receipts from income producing park and recreational properties and facilities under the control of the com-
COUNTY COURTS AND COUNTY OFFICERS  [Ch. 27

mission; to deposit, invest, manage and disburse, all such funds, income or receipts, including the interest or income earned thereon or therefrom; to sue and be sued; to contract and be contracted with; to obtain one or more insurance policies affording coverage for loss of or damage to the properties and facilities under its control and affording public liability coverage for the legal liability of the commission, its officers, agents and employees; to adopt bylaws governing the operation of the commission and specifying the powers and duties of its officers; and to do any and all things which may be necessary or convenient to carry out and effectuate the purposes and provisions of this article.

Any such county court is hereby empowered and authorized to transfer to any such commission all such funds or income, as provided for in the preceding paragraph of this section, and such county court may require a blanket surety bond covering those individuals authorized to sign checks on behalf of the commission in a penal sum not in excess of twenty-five thousand dollars.

§7-11-3. Number of members; quorum; qualifications; appointments; terms; disqualifications.

The commission shall consist of eleven members, a majority of whom shall constitute a quorum for the transaction of business. Each member of said commission shall be a bona fide resident of the county and shall own real estate within such county. The term of the commission members shall be for three years and until their successors have been appointed and have qualified: Provided, That the county court in appointing the members of the first commission shall appoint three members for a term of one year; four members for a term of two years and four members for a term of three years. The order of the county court shall fix the date on which the term of such commission members shall begin. The members of any board of park and recreation commissioners heretofore created under the former provisions of this article shall continue in office as members of the parks and recreation commission of such county until their terms expire and their successors
have been appointed and have qualified. Any member of the commission who shall cease to be a bona fide resident of the county or a freeholder thereof, shall thereby be disqualified as a member of said commission and his office shall become vacant. When a vacancy occurs on said commission by reason of death, resignation, change of residence from the county, failure to remain a freeholder of the county, or expiration of term, the county court shall appoint a successor or successors to fill out the unexpired term of the member of the commission whose term has been vacated.

§7-11-4. Oath of members; officers; location of office; personnel.

After appointment, the members of the commission shall qualify by taking and filing with the clerk of the county court the oath prescribed by law for public officials; one of the members of said commission shall be elected as president, another as vice president, and a secretary shall be elected who need not be a member of the commission. Said commission shall maintain an office at any place it may designate in the county and have control of the management and operation of all properties and facilities which shall be operated in connection with the public parks and recreation system of such county and shall have power to employ or appoint such persons as, in its opinion, may be necessary for the construction, establishment, improvement, development, administration, operation and maintenance of the properties and facilities under its control, subject, however, to the limits of available funds.

§7-11-5. General powers of commission; rules and regulations; misdemeanor offenses; park police authorized.

The commission shall have the necessary powers and authority to manage and control all public parks and recreational properties and facilities owned by the county or commission and used as a part of such public parks and recreation system, including the right to promulgate rules and regulations concerning the management and control of such parks and recreational properties and facilities and to enforce any such rules and regulations so promulgated.
The commission shall also have plenary power and authority to prepare and submit to the county court for adoption rules and regulations regulating the use of any parks and recreational properties and facilities under the control of the commission and prohibiting any type of use of or activities in connection with any such properties or facilities, and any such rules and regulations, if so adopted, shall be duly entered of record in the order book of the county court. The violation of any such rule and regulation so adopted by the county court shall constitute a misdemeanor, and any person convicted of any such violation shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in jail for a period not exceeding thirty days, or by both such fine and imprisonment. Justices of the peace of the county shall have concurrent jurisdiction with the circuit court and other courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this article. The violation of any such rule and regulation which also constitutes the violation of any state law or municipal ordinance may be prosecuted and punished as a violation of such state law or municipal ordinance rather than under the provisions of this section. To enforce any such rules and regulations, to protect and preserve all properties and facilities under the control of the commission and to preserve law and order in connection therewith, the commission shall have plenary power and authority to provide in its bylaws procedures for the appointment, supervision and discharge of one or more park police officers. Whenever any such appointment is made, a copy of the order of appointment shall be filed by the commission with the county court.

In any area under the jurisdiction and control of the commission, or in connection with any properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or more individuals therefrom, any park police officer so appointed shall have all of the power and authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers appointed as afore-
said shall not be required to obtain a state license to carry a weapon, as required by the provisions of section two, article seven, chapter sixty-one of this code. When any such commission has purchased one or more policies of public liability insurance providing the commission and its officers, agents and employees insurance coverage for legal liability of said commission and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said commission and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said commission, or its officers, agents or employees in the performance of their official duties, and so long as the coverage afore- said remains in full force and effect as to such park police officers, then the bond specified in section five, article seven of said chapter sixty-one shall not be required as to such park police officers.

§7-11-6. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 28

(Senate Bill No. 250—By Mr. Jackson, Mr. President, and Mr. Hubbard)

[Passed March 4, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salaries of circuit judges.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-4. Salaries of judges of circuit courts; additional compensation from counties.

The salaries of the judges of the circuit courts shall be paid out of the state treasury and shall, unless otherwise provided by law, be in the following annual amounts:

1. In circuits having more than sixty thousand population, nineteen thousand dollars;
2. In circuits having less than sixty thousand population, seventeen thousand five hundred dollars.

Any county court or the board of commissioners of Ohio county may pay the judge of the circuit court additional compensation, but the salary and additional compensation or combined contribution of the several county courts and board of commissioners shall not exceed twenty-five thousand dollars.

The population shall be according to the United States census, or the estimate of the United States bureau of census, as certified to the state auditor by the United States director of the census last preceding the beginning of the calendar year in which salary is payable.

CHAPTER 29

(House Bill No. 548—By Mr. Belknap)

[Passed February 26, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mileage and expenses of judges.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-5. Mileage and expenses of judges.

1. A judge of the supreme court of appeals and of a circuit court shall be entitled to an allowance for mileage at the rate of ten cents for each mile, to be computed according to the distance by the nearest practicable route, necessarily traveled from his place of residence, to the place of holding any term of court in a county other than that of his residence, and from such place to his residence; and a judge of the circuit court shall be paid the sum of twelve dollars per day as expenses while holding court in a county other than that in which he resides:

Provided, That no judge of a circuit court shall be paid mileage and expenses for holding more than ten terms of court in any county in any one year, including regular, adjourned and special terms. The mileage and expenses provided for in this article shall be paid to any judge out of the state treasury as and when the salary of such judge is payable.

CHAPTER 30

(Senate Bill No. 64—By Mr. Lambert and Mr. Knapp)

[Passed March 4, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowances to circuit judges for stationery, postage and stenographic help.

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.

§6-7-6. Allowances to circuit judges for stationery, postage and stenographic help; additional stenographic compensation from counties; payments therefor.

1. Each judge of the circuit court shall be allowed an amount not to exceed four 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.

2. The judge shall be reimbursed for the actual amounts expended by him for stationery, supplies and postage.

3. 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.

4. 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 31

(House Bill No. 746—By Mr. Sparacino)

[Passed February 15, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-j, article two, chapter fifty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the terms of court for the tenth circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

§51-2-1j. Tenth circuit.

1 For the county of Raleigh, on the third Monday in January, on the third Monday in April, and on the third Monday in September.

CHAPTER 32

(Senate Bill No. 168—By Mr. Floyd)

[Passed March 3, 1969; in effect April 30, 1969. Approved by the Governor.]

AN ACT to amend and reenact section one-dd, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court for thirtieth judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

§51-2-1dd. Thirtieth circuit.

1 For the county of Mingo, on the third Monday in February, May and October.
AN ACT to amend and reenact section four, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to official court reporters, transcripts and fees therefor, the authentication thereof and the furnishing of transcripts in criminal cases; and specifying the size of transcript pages, the margins of such pages and the number of lines thereon.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. OFFICIAL REPORTERS.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

1 The reporter shall furnish, upon request, to any party to a case, a typewritten transcript of his shorthand notes of the testimony or other proceedings, which shall be upon paper measuring eight and one half inches in width and eleven inches in length, with margins of one half inch on the right side and bottom, one inch at the top and one and one half inches on the left, with twenty-four lines on each page, and shall certify the same as being correct, and shall be paid therefor, by the party requesting such transcript, at the rate of ninety cents for each page so transcribed and certified; and for each carbon copy of such transcript, ordered at the same time, he shall be paid thirty cents for each page so furnished.

A transcript of such testimony or proceedings, when certified by the official reporter and by the judge of the court, shall be authentic for all purposes, and shall be used by the parties to the cause in any further pro-
ceeding therein wherein the use of the same may be required. It may be used, without further authentication, in making up the record on appeal, as provided in sections thirty-six and thirty-seven, article six, chapter fifty-six of this code; and in all cases of appeal such reporter shall also make a carbon copy of such transcript, which copy shall be filed in the office of the clerk of the court in which the trial or proceedings were had, to be used, if necessary, in making up the record on appeal, and, if so used, the clerk shall not be entitled to any fee for that part of the record. If, upon appeal or writ of error, the judgment, decree or order entered in the cause be reversed, the cost of such transcript shall be taxed as other costs; and if such transcript be requested or required for the purpose of demurring to the evidence, the cost thereof shall be taxed in favor of the party prevailing on the demurrer.

It shall also be the duty of such reporter in any criminal case, upon the request of the court or the judge thereof, and for his use, to furnish a transcript of his notes of the testimony and proceedings without extra charge.

CHAPTER 34

(Senate Bill No. 245—Originating in the Senate Committee on the Judiciary)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend article two, 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 fifteen-a, excluding in certain prosecutions for statutory rape any and all evidence based upon any action taken, application, certification or representations made, consents given, orders made, license issued or marriage solemnized under or pursuant to the provisions of section one, article one, chapter forty-eight of said code.
Be it enacted by the Legislature of West Virginia:

That article two, 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 fifteen—a, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.


1 Whenever a male person over the age of sixteen years is charged, under the provisions of section fifteen of this article, with carnally knowing a female person of previous chaste character, not his wife, under that age, any action taken, application, certification or representations made, consents given, orders made, license issued or marriage solemnized under or pursuant to the provisions of section one, article one, chapter forty-eight of this code, shall not be used against the accused or be any evidence whatever of any element of the alleged offense.

CHAPTER 35

(Com. Sub. for Senate Bill No. 244—By Mr. Poffenbarger)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four—a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obtaining or attempting to obtain credit and to obtaining or purchasing or attempting to obtain or purchase any goods, property, service or transmission by false or fraudulent use of credit cards or other false or fraudulent schemes, devices, means or methods; and increasing the penalties therefor.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-24a. Obtaining or attempting to obtain goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means; penalties.

It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

It shall be unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

The word “notice” as used in the first paragraph of this section shall be construed to include either notice given in person or notice given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, shall be prima facie evidence that such notice was duly received.

Any person who violates any provision of this section
shall, if the credit, goods, property, service or transmission
be of the value of one hundred dollars or more, be deemed
guilty of a felony, and, upon conviction thereof, shall be
punished by imprisonment in the penitentiary not less
than one nor more than ten years; and if of less value,
be deemed guilty of a misdemeanor, and, upon convict-
tion thereof, shall be punished by imprisonment in jail
not exceeding one year or by a fine of not more than
five hundred dollars, or, in the discretion of the court,
by both such imprisonment and fine. Any person con-
icted of an attempt to commit an offense under the pro-
visions of this section shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be punished by im-
prisonment in jail not exceeding six months or by a
fine of not more than three hundred dollars, or, in the
discretion of the court, by both such imprisonment and
fine.

CHAPTER 36
(House Bill No. 663—By Mr. Jones, of Roane)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirty, article three,
chapter sixty-one of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
the taking and carrying away, destroying, injuring or
defacing of any property or the breaking down, destroy-
ing, injuring, defacing or removing of any boundary
monument or boundary tree; providing criminal penalties;
and granting jurisdiction of such offenses to justices of the
peace.

Be it enacted by the Legislature of West Virginia:

That section thirty, article three, chapter sixty-one of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-30. Removal, injury to or destruction of property, or monuments designating land boundaries; penalties.

If any person unlawfully, but not feloniously, take and carry away, or destroy, injure or deface any property, real or personal, not his own, he shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to a fine in an amount not to exceed five hundred dollars, or confinement in the county jail for a period not to exceed one year, or both such fine and confinement, in the discretion of the court.

And if any person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any tree marked for that purpose, he shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to a fine in an amount of not less than twenty dollars nor more than two hundred dollars, or confinement in the county jail for a period of not less than one nor more than six months, or both such fine and confinement, in the discretion of the court. Justices of the peace shall have concurrent jurisdiction of all offenses arising under the provisions of this section.

CHAPTER 37

(Com. Sub. for House Bill No. 617—By Mr. Sommerville and Mr. Burke)

[Passed March 1, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the suppression and control of riots, routs and unlawful assemblages; and providing criminal penalties.
CRIMES AND OFFENSES

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-1. Suppression of riots and unlawful assemblages.
§61-6-1a. Control of riots and unlawful assemblages.
§61-6-2. Commitment and recognizance of rioters.
§61-6-3. Failure of member of department of public safety, mayor or sheriff to exercise powers at riots and unlawful assemblages; penalty.
§61-6-4. Summoning of persons to aid in suppressing riots and unlawful assemblages.
§61-6-5. Death of person in suppression of riot and unlawful assemblages.

§61-6-1. Suppression of riots and unlawful assemblages.

All members of the department of public safety, all sheriffs within their respective counties and all mayors within their respective jurisdiction, may suppress riots, routs and unlawful assemblages. It shall be the duty of each of them to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they shall not thereupon immediately and peaceably disperse, such member of the department of public safety, sheriff or mayor giving the command, and any other present, shall command the assistance of all persons present, and of all or any part of other law-enforcement personnel available to him, as need be, in arresting and securing those so assembled. If any person present, on being required to give his assistance, depart, or fail to obey, he shall be deemed a rioter.

§61-6-1a. Control of riots and unlawful assemblages.

Members of the department of public safety, sheriffs and mayors, and those acting under their order, may, when engaged in suppressing a riot, rout or unlawful assemblage, cordon off any area or areas threatened by such riot, rout or unlawful assemblage, and may take all actions which are necessary and reasonable under the
emergency to restore law and order, and such actions may be, but are not limited to, the following:

(a) Prohibit the sale, offering for sale, dispensing, furnishing or transportation of firearms or other dangerous weapons, ammunition, dynamite or other dangerous explosives in, to or from such areas.

(b) Prohibit the sale, offering for sale, dispensing, furnishing or consumption of alcoholic beverages or non-intoxicating beer in a public place in such areas, and prohibit the transportation of alcoholic beverages or nonintoxicating beer in, to or from such areas.

(c) Impose curfews, as required, to control movement of persons in, to and from such areas.

(d) Enter a private dwelling or other building or other private place in such areas when in fresh pursuit of a rioter, when in search of a sniper who has fired upon a person from such a dwelling or other building or place or when in search of firearms, other dangerous weapons, ammunition, dynamite or other dangerous explosives when there is reason to believe that such items are stored in the said dwelling, building or place and that they will be removed therefrom before a search warrant could be obtained.

No person shall wilfully fail to obey a lawful order of any mayor, sheriff, deputy sheriff, municipal police officer, member of the department of public safety, or other officer, given pursuant to this section.

Any person who violates an order given pursuant to the authority of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

§61-6-2. Commitment and recognizance of rioters.

If any person be arrested for a riot, rout or unlawful assemblage, he shall be taken without unreasonable delay before a justice of the county in which the arrest is made who shall commit him to jail, unless he shall enter into a recognizance, with sufficient security, to appear before the court having jurisdiction of the offense,
§61-6-3. Failure of member of department of public safety, mayor or sheriff to exercise powers at riots and unlawful assemblages; penalty.

1 If any member of the department of public safety, sheriff or mayor have notice of a riotous, tumultuous, or unlawful assemblage in his respective jurisdiction as provided in section one of this article, and fail to proceed immediately to the place of such assemblage, or as near as he may safely go, or fail to exercise his authority for suppressing it and arresting the offenders, he shall be fined not exceeding one hundred dollars.

§61-6-4. Summoning of persons to aid in suppressing riots and unlawful assemblages.

1 If any person engaged in such assemblage, being commanded, as hereinbefore provided, to disperse or to peaceably leave the scene of such assemblage, fail to do so without delay, any such member of the department of public safety, sheriff or mayor may require the aid of a sufficient number of persons, in arms or otherwise, and proceed, in such manner as he may deem expedient, to disperse and suppress such assemblage, and arrest and secure those engaged in it.

§61-6-5. Death of person in suppression of riot and unlawful assemblages.

1 If, by any means taken under the authority of this article to disperse any such assemblage or arrest those engaged in it, any person present, as spectator or otherwise, be killed or wounded, and neither malice, nor premeditation be present, any member of the department of public safety, sheriff, or mayor exercising such authority, and everyone acting under his order, shall be held guiltless; and if the member of the department of public safety, sheriff or mayor, or any person acting under the order of either of them, be killed or wounded in taking such means, or by the rioters, all persons engaged in such assemblage shall be deemed guilty of such killing or wounding.
CHAPTER 38
(Senate Bill No. 59—By Mr. Hubbard and Mr. Brotherton)

[Passed January 28, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, 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 seventeen, relating to false information concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device, providing criminal penalties therefor; and providing concurrent jurisdiction in justice of the peace courts.

Be it enacted by the Legislature of West Virginia:

That article six, 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 seventeen, to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

1 Any person who shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished
Not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.

Justices of the peace shall have concurrent jurisdiction with circuit courts of the offense set out herein.

CHAPTER 39

(Senate Bill No. 95—By Mr. Hubbard)

[Passed March 4, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, 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 eighteen, prohibiting the placing, erection or construction of shelter accommodations on certain property owned by or leased to the state, any county or any municipality without written permission; providing penalties; and providing that any such erected shelter accommodation is a public nuisance which may be abated at the expense of any person erecting or using the same.

Be it enacted by the Legislature of West Virginia:

That article six, 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 eighteen, to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-18. Camping upon governmental grounds or lawns; penalties; public nuisance.

1 If any person shall go upon the ground or lawn surrounding or adjacent to (1) the state capitol building or
2 any state office building which is a part of the state capitol complex, or (2) a county courthouse, or (3) any
municipal office building where the principal business of the municipality is conducted, which ground or lawn is owned by or leased to the state of West Virginia, the county, or such municipality, as the case may be, and place, erect or construct or attempt to place, erect or construct for himself or others shelter accommodations thereon or use any such erected shelter accommodations, without the written permission first had and obtained of the governor, the county court, or the governing body of the municipality, as the case may be, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in jail for not more than thirty days, or in the discretion of the court, by both such fine and imprisonment, and any such shelter accommodations are hereby constituted a public nuisance which may be abated at the expense of any such person. Each day upon which any violation of the provisions of this section continues shall constitute a separate offense.

CHAPTER 40

(House Bill No. 628—By Mr. Shaffer and Mr. Burke)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, 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 thirty, relating to prohibiting open water wells; penalty.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 thirty, to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.


1 It shall be unlawful for any person to keep, maintain or
2 allow any abandoned or currently used water well upon
3 any land in which such person has any right to possession
4 as owner, tenant or otherwise, which does not have
5 affixed thereto a cover of sufficient strength to prevent
6 any person from accidentally falling into such well.

CHAPTER 41

(House Bill No. 656—By Mr. Shiflet)

[Passed March 4, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section twelve, article eleven,
chapter sixty-one of the code of West Virginia, one thou­
sand nine hundred thirty-one, as amended, relating to the
venue of certain criminal cases.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eleven, 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 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-12. Venue of offense committed in more than one
county.

1 When an offense is committed partly in one county and
2 partly in one or more other counties within this state,
3 it may be alleged that the offense was committed and
4 the accused may be tried in any one county in which any
5 substantial element of the offense occurred.
AN ACT to amend and reenact section five, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of certain persons to carry dangerous weapons.

Be it enacted by the Legislature of West Virginia:

That section five, article seven, 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 7. DANGEROUS WEAPONS.

§61-7-5. Exceptions as to sheriffs and certain regularly appointed officers and deputies; bonds; liability thereon.

1 Nothing in this article shall be so construed as to prohibit sheriffs, their regularly appointed full-time deputies who have been duly confirmed by the county court, and all constables in their respective counties and districts, and all regularly appointed police officers of their respective cities, towns or villages, all jailers, state probation and parole officers, county probation officers and game protectors who have been duly appointed as such, the state fire marshal, the deputy state fire marshal, and such assistant state fire marshals as are full-time employees of the state and fully paid by the state, and members of the department of public safety of this state, from carrying the weapons mentioned in section one of this article, who shall have given bond in the penalty of not less than three thousand five hundred dollars, conditioned for the faithful performance of their respective duties, which said officers shall be liable upon their said official bonds, for the damages done by the unlawful or careless use of any such weapon or weapons, whether such bond is so conditioned or not.
CHAPTER 43
(Com. Sub. for Senate Bill No. 70—By Mr. Martin)

[Passed February 17, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twenty-nine, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety, the superintendent of such department, the location of the headquarters of such department, the criminal identification bureau of such department, and the release of the records of such bureau.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.
§15-2-1. Superintendent; departmental headquarters.
§15-2-29. Criminal identification bureau; establishment; officer in charge; purpose; fingerprints, photographs, records and other information; offenses and penalties.

§15-2-1. Superintendent; departmental headquarters.
1 The department of public safety, heretofore established, shall be continued. The executive and administrative head of the department shall be a superintendent, who shall be appointed by the governor, by and with the advice and consent of the Senate. The superintendent shall be entitled to all rights, benefits and privileges of regularly enlisted members. The superintendent shall be, on the date of his appointment, at least thirty years of age. He shall, before entering upon the discharge of the duties of his office, execute a bond in the penalty of ten thousand dollars, with security thereon, payable to the state of West Virginia and conditioned for the faithful performance of his duties. Such bond both as to form and security...
shall be approved by the board of public works. Before entering upon the duties of his office the superintendent shall subscribe to the oath hereinafter provided.

The headquarters of the department, hereinafter referred to in this article as departmental headquarters, shall be located in Kanawha county, and suitable and adequate offices for such purpose shall be provided.

§15-2-29. Criminal identification bureau; establishment; officer in charge; purpose; fingerprints, photographs, records and other information; offenses and penalties.

(a) The superintendent of the department of public safety shall establish, equip and maintain at the departmental headquarters a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a regularly enlisted member of the department as officer in charge of the criminal identification bureau and such officer shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The criminal identification bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are
necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The criminal identification bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection (d) for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The criminal identification bureau may furnish fingerprints, photographs, records and other information of persons arrested or sought to be arrested in this state to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail, in this state shall take, or cause to be taken, the fingerprints and description of all persons lawfully committed thereto or confined therein and furnish the same in duplicate to the criminal identification bureau, department of public safety. Such fingerprints shall be taken on forms approved by the superintendent of the department of public safety. All such officials as herein named may, when possible to do so, furnish photographs to the criminal identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs, constables, and each and every peace officer in this state, shall take or cause to be taken the fingerprints and description of all persons arrested or detained by them, charged with any crime or offense in this state, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they
have reason to believe is a fugitive from justice or an habitual criminal, and furnish the same in duplicate to the criminal identification bureau, department of public safety, on forms approved by the superintendent of said department of public safety. All such officials as herein named may, when possible to do so, furnish to the criminal identification bureau, photographs of such persons so fingerprinted. The arresting officer shall submit to the criminal identification bureau, in duplicate, a report of final disposition concerning any case held for court, or in any case in which the disposition thereof has not been previously furnished to said bureau (on the fingerprint record of the person arrested). Such report of final disposition shall be made on forms furnished or approved by the superintendent of the department of public safety.

(h) Any person who has been fingerprinted or photographed in accordance with the provisions of this section, who is acquitted of the charges upon which he or she was arrested, and who has no previous criminal record, may, upon the presentation of satisfactory proof to the superintendent of the department of public safety, have such fingerprints or photographs, or both, returned to them.

(i) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred dollars, or by imprisonment in the county jail for a period of not exceeding sixty days, or both, in the discretion of the court. Such neglect shall constitute misfeasance in office and subject such person to removal from office. Any person who wilfully removes, destroys, or mutilates any of the fingerprints, photographs, records or other information of the department of public safety, shall be guilty of a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a period
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 the organization of companies and platoons of the department of public safety, the training of members, and the 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.

§15-2-3. Companies and platoons; how constituted; training of members and other peace officers; salaries and bonds of members.

1 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 and troopers first class as the superintendent may decide best, but such number of troopers and troopers first class in any company or platoon shall not at any time be less than twenty-five.

13 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 eleven thousand three hundred four dollars; the major shall receive an annual salary of ten thousand two hundred twenty-four dollars; captains shall each receive an annual salary of nine thousand one hundred forty-four dollars; lieutenants shall each receive an annual salary of eight thousand six hundred forty dollars; the master sergeants and first sergeants shall receive an annual salary of eight thousand sixty-four dollars; sergeants shall each receive an annual salary of seven thousand eight hundred twelve dollars; corporals shall each receive an annual salary of seven thousand four hundred sixty-four dollars; troopers first class shall receive an annual salary of seven thousand two hundred twenty-four dollars; and each newly enlisted trooper shall receive a salary of four hundred ninety-six dollars during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each trooper shall receive, during the remainder of his first year's service, a salary of five hundred fifty-six dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of six thousand eight hundred sixteen dollars; during the third year of his service each trooper shall receive an annual salary of six thousand nine hundred sixty dollars; and during the fourth and fifth years of his service and for each year thereafter each trooper shall receive an annual salary of seven thousand one hundred four dollars. Each member of the department entitled thereto by the provisions hereof shall receive an increase in salary over that hereinbefore set forth in this section, for grade and rank,
based on length of service, including that heretofore and hereafter served, with the department, as follows: For each five-year period of service with the department, from the date of first enlistment, each member of the department shall receive a salary increase of three hundred dollars per year to be effective during his next five years of service which increases shall be successive and cumulative, until a total of four such increases shall be received.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this act becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

Each member of the department of public safety, except the superintendent and civilian employees, shall, before entering upon the discharge of his duties, execute a bond with security in the sum of three thousand five hundred dollars payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the board of public works, and the same shall be filed with the secretary of state and preserved in his office.

CHAPTER 45

(House Bill No. 586—By Mr. Speaker, Mr. Boiarsky)

[Passed February 4, 1969: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of the superintendent, officers and members of the department of public safety.
Be it enacted by the Legislature of West Virginia:

That section eleven, 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.


1 The superintendent and each of the officers and members of the department of public safety are hereby authorized and empowered as follows:

2 (a) To make arrests anywhere within the confines of the state of any and all persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, may arrest without warrant; to arrest and detain any and all persons suspected of the commission of any felony or misdemeanor whenever complaint is made and a warrant is issued thereon for such arrest, and any and all persons so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

3 (b) To serve criminal process issued by any court or justice of the peace anywhere within this state, except that they shall not serve civil process;

4 (c) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the state road commission, department of motor vehicles and department of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government;

5 (d) Members of the department of public safety shall be and are hereby created forest patrolmen and game...
and fish wardens through the state to do and perform any and all duties and exercise any and all powers of such officers, and may apprehend and bring before any court or justice of the peace having jurisdiction of such matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code, and any and all amendments thereto; and the department of public safety shall at any time be subject to the call of the West Virginia alcohol beverage control commissioner to aid in apprehending any person violating any of the provisions of said chapter sixty. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff, constable or any other peace officer of this state, except that they shall not serve any civil process or exercise any of the powers of such officers in matters of a civil nature;

(e) Any member of the department of public safety knowing or having reason to believe that anyone has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same and bring such person before the proper tribunal having jurisdiction. He shall make return on all such warrants to such tribunals and his official title shall be "member of the department of public safety." Members of the department of public safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before such tribunal and make return thereon as provided by law, and any return by a member of the department of public safety showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff;

(f) Each member of the department of public safety, when called by the sheriff of any county, or when the governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the governor, to direct and command
absolutely the assistance of any sheriff, deputy sheriff, constable, chief of police, policeman, town marshal, game and fish warden, and any and every peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When so called, any officer or person shall, during the time his assistance is required, be and be considered to be, for all purposes, a member of the department of public safety force and subject to all the provisions of this article.

CHAPTER 46

(House Bill No. 990—Originating in the House Committee on the Judiciary)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to payment of defense costs in criminal cases.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-30. Employment of counsel in criminal cases.

1 Notwithstanding the provisions of section one, article three, chapter five, the superintendent may employ an attorney to act in proceedings wherein criminal charges are brought against members of the department because
of action in line of duty. For such attorney services an
amount determined by the superintendent, not to ex-
ceed two thousand dollars, may be expended in any
one case.

CHAPTER 47
(Com. Sub. for House Bill No. 589—By Mr. Speaker,
Mr. Boiarsky)

[Passed February 21, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five and seven,
article three, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
to the establishment of communication systems by the
department of public safety; limiting the use thereof to
police purposes; forbidding the use of radio transmitters
on the state police frequency without authority; providing
for the revocation of such authority; relating to intercept-
ing messages transmitted on such systems and forbidding
the use of such intercepted messages in certain cases; pro-
viding penalties; relating to certain personnel in the
department of public safety and duties and powers of the
superintendent.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five and seven, article three, 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 3. COMMUNICATION SYSTEMS FOR POLICE PUR-
POSES.

§15-3-1. Communication system for department of public safety.
§15-3-2. Radio transmitters operating on the state police frequency.
§15-3-5. Use of information obtained by interceptions of transmissions
on department of public safety communications system for-
bidden; penalties.
§15-3-7. Staffs of police radio stations.
§15-3-1. Communication system for department of public safety.

1 The superintendent of the department of public safety is authorized and empowered to establish such systems of communication for the department as may be appropriate, including one or more radio broadcasting stations in the state, one of which shall be at the departmental headquarters. Such systems shall be used for police purposes only. The superintendent is further authorized and empowered to provide for the purchase of the necessary apparatus and equipment, and of materials for the construction and maintenance of such systems, and shall be responsible for the operation, maintenance and conduct thereof.

§15-3-2. Radio transmitters operating on the state police frequency.

1 No person in this state shall operate any radio transmitter on any frequency assigned by the federal communications commission to the department of public safety unless authorized by the superintendent of the department of public safety. Such authorization may be revoked by the superintendent whenever he finds that such transmitter is being operated in violation of any law or of any rule and regulation promulgated by the superintendent.

§15-3-5. Use of information obtained by interceptions of transmissions on department of public safety communications system forbidden; penalties.

1 No person shall intercept any message or transmission made on or over any communications system established by the department of public safety and use the information obtained thereby to aid, abet or assist in committing a crime, or in violating any law of this state, or use the same in a manner which will interfere with the discharge of the department's operations.

8 Any person who violates any provision of this section or of section two of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to confinement in the county jail for a period not to
12 exceed one year or by a fine of an amount not to exceed
13 five hundred dollars or by both such confinement and
14 fine in the discretion of the court.

§15-3-7. Staffs of police radio stations.

1 The superintendent of the department of public safety
2 may employ, establish the qualifications for and, within
3 the limits of available funds, fix the salaries of radio en-
4 gineers, radio technicians, radio operators, radio teletype
5 operators and other personnel as may be necessary to
6 effectuate the purposes of this article.

CHAPTER 48

(Senate Bill No. 3—By Mr. Jackson, Mr. President,
and Mr. Brotherton)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to repeal sections seven, thirteen, nineteen and twenty-
one, article one, chapter forty-eight of the code of West
Virginia, one thousand nine hundred thirty-one, as amend-
ed, and to amend and reenact sections one, two, three,
five, six, six-c, six-d, ten, eleven, twelve, twelve-a, twenty-
two and twenty-three of said article one, relating to mar-
rriages, the age of consent, certain prohibited marriages, the
necessity, issuance, content, form and recordation of mar-
rriage licenses, persons authorized to celebrate marriages,
their qualifications, forfeiture of any such person's bond,
marriage under the age of consent when the female is
pregnant; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, thirteen, nineteen and twenty-one,
article one, chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be re-
pealed, and that sections one, two, three, five, six, six-c, six-d,
ten, eleven, twelve, twelve-a, twenty-two and twenty-three of
said article one, be amended and reenacted to read as follows:
ARTICLE 1. MARRIAGE.

§48-1-1. Age of consent; exception in case of pregnancy.

For marriage the age of consent of the male shall be eighteen years of age, and of the female sixteen years. If, however, the male or female, or both, be under the age of consent as aforesaid, and if a licensed physician shall certify in writing that he has examined said female and found her to be pregnant, and if consent be obtained from the parents, parent or guardian in the manner prescribed in section eight of this article, the judge of any court of record of the county, in which county an application for marriage license may otherwise be properly filed as provided in this article, may direct the issuance of a marriage license by the clerk of the county court of such county. In the absence or incapacity to act of the judges of all courts of record of the county in which the application is to be filed, the order may be made and directed to the clerk of the county court of such county by any judge of a court of record in any judicial circuit adjoining the circuit in which such county is located.

§48-1-2. What relatives a man may not marry.

No man shall marry his mother, grandmother, sister, daughter, granddaughter, half sister, aunt, brother's daughter, sister's daughter, first cousin, or double cousin.

§48-1-3. What relatives a woman may not marry.

No woman shall marry her father, grandfather, brother,
§48-1-5. Necessity of license.

Every marriage in this state shall be solemnized under a license as provided in this article.

§48-1-6. Application for license; requirements for issuance of license.

Every license for marriage shall be issued by the clerk of the county court of the county in which the female to be married usually resides; except that in the case of a female who is a nonresident of the state of West Virginia, the license shall be issued by the clerk of the county court of the county in which application is made. Such license shall be issued not sooner than three days after the filing with said clerk of a written application therefore. The day upon which such application is filed shall be counted as the first day, but two full days shall elapse after the day of such filing before the license shall be issued. Before any such license is issued each applicant therefor shall file with the clerk a certificate or certificates from any physician duly licensed in the state, stating that each party thereto has been given such examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than thirty days prior to the date on which such license is issued, and stating that in the opinion of the physician the person therein named either is not infected with syphilis or, if so infected, is not in the state of the disease which is or may later become communicable.

Such examinations and tests as are required hereunder may be given as provided by section nineteen, article four, chapter sixteen of this code.

The application for a marriage license shall contain a statement of the full names of both parties, their respective ages and their places of birth and residence. It shall be signed by both of the parties to the contemplated marriage, under oath before the clerk of the county court or before a person authorized to administer oaths under the laws of this state. At the time of the execu-
tion of such application, the clerk, or the person ad-
ministering the oath to the applicants, shall require some
evidence of the age of each of the applicants. Evidence
of the age of each applicant may be in the form of a
certified or photostatic copy of a birth certificate, a
voter's registration certificate, an operator's or chauf-
feur's license, an affidavit of both parents or legal guar-
dian of the applicant or other good and sufficient evi-
dence of such age. Where such an affidavit is relied upon
as evidence of the age of an applicant, and one parent
is dead, the affidavit of the surviving parent or of the
guardian of the applicant shall suffice; if both parents
are dead, the affidavit of the guardian of the applicant
shall suffice. If the parents of the applicant are living
separate and apart, the affidavit of the parent having
custody of the applicant shall suffice. Such application
shall be recorded in the register of marriages provided
for in section eleven of this article. The date of the
filing of the application shall be noted in said register,
which notation, or a certified copy thereof, shall be legal
evidence of the facts therein contained.

To the extent otherwise provided by section six-c of
this article, the provisions of this section shall not apply.
No application for license shall be received nor any license
issued on any Sunday, or before the hours of eight o'clock
a. m. and after five o'clock p. m. on any week day, nor
any application be received nor any license issued except
in the office of such clerk.

§48-1-6c. Issuance of license in case of emergency or extra-
ordinary circumstances.

1 In case of an emergency or extraordinary circum-
stances, as shown by affidavit or other proof, a judge of
any court of record of the county, in which county an ap-
plication for a marriage license is to be filed, may direct
the clerk of the county court by order duly entered in
the office of the clerk of said court of record, to issue
such license at any time before the expiration of the
three-day limit and to dispense with those requirements
which relate to the filing with the licensing authority
by either or both of the parties of the physician's certificate and laboratory statement.

A certified copy of the order shall be attached to and filed with the application by the licensing authority who shall thereupon proceed with the issuance of the marriage license in accordance with the terms of the judge's order. In the absence or incapacity to act of the judges of all courts of record of the county in which the application is to be filed, the order may be made and directed to the clerk of the county court of such county by any judge of a court of record in any judicial circuit adjoining the circuit in which such county is situated.

§48-1-6d. Offenses and penalties.

Any applicant for a marriage license, any physician or representative of a laboratory who shall knowingly misrepresent any of the facts called for in the physician's statement or laboratory report, respectively; and any clerk of the county court or other licensing authority who shall make a false entry as to the date of application for a marriage license; and any clerk of the county court or other licensing authority who shall issue a marriage license prior to the end of the required three-day period or without the required physician's statement and laboratory report (unless these shall have been dispensed with by judicial order pursuant to section six-c), or who shall issue such license despite his having reason to believe that any of the facts contained in said statement or report have been misrepresented, or shall issue a license on any Sunday or after five o'clock p.m. and before eight o'clock a.m. on any week day, or who shall receive an application for such license or issue any such license in any place other than the office of such licensing authority, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by confinement in jail for not less than three nor more than nine months, or by both such fine and confinement in the discretion of the court; or if any clerk of the county court or other licensing authority shall otherwise knowingly issue a marriage license contrary to law, he shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by confinement in jail not more than one year, or by both such fine and confinement in the discretion of the court.

§48-1-10. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

Every person solemnizing a marriage shall retain the license authorizing such marriage, and on or before the fifth day of each month shall forward to the county clerk issuing such license the original of all such licenses in his possession, with an endorsement thereon of the fact of such marriage and the time and place of celebrating the same. In the event that the marriage authorized by such license is not solemnized within sixty days from the date of its issuance, then such license shall become null and void. Should the county clerk not receive the said original within sixty days after its issuance, he shall by certified mail notify each of the applicants of that fact.

§48-1-11. Register of marriages.

The county court of each county shall furnish to the clerk of such county court a suitable book to be used as a register of marriages, which such clerk shall keep in his office among his records, and in which he shall promptly enter a complete record of all matters which he is required by this article to ascertain relative to the right of any person to obtain a marriage license, of each marriage license issued by him, and of the minister's, priest's, rabbi's, or judge's endorsement certifying that such marriage was solemnized. Such register of marriage shall be properly indexed by the clerk in the names of both parties to the marriage: Provided, however, That if the license is issued by reason of the female being pregnant, such fact of pregnancy shall not be noted in the clerk's register of marriages.

§48-1-12. Persons authorized to celebrate marriages.

Any minister, priest or rabbi over the age of twenty-one years, who has complied with the provisions of section twelve-a of this article, or a judge of any court of record
in this state, is authorized to celebrate the rites of mar-
riage in all the counties of the state. No person, other
than a minister, priest or rabbi, who has complied with
the provisions of section twelve-a of this article, or a
judge of any court of record in this state, shall here-
after celebrate the rites of marriage in this state, any-
thing in any act of the Legislature or of any court to the
contrary, notwithstanding.

§48-1-12a. Qualifications of minister, priest or rabbi for cele-
brating marriages.

When any minister, priest or rabbi shall, before the
county court of any county in this state, or the clerk of
any such court in vacation, produce proof that he is over
the age of twenty-one, duly licensed by, and being in
regular communion with the religious society of which he
is a member, and give bond in the penalty of fifteen
hundred dollars, with surety approved by such court or
clerk thereof in vacation, such court or clerk may make
an order authorizing him to celebrate the rites of mar-
riage in all the counties of the state: Provided, however,
That any minister, priest or rabbi who gives proof be-
fore the county court of any county in this state, or the
clerk of any such court in vacation, of his ordination by
his respective church, denomination or synagogue, shall
be exempted from the giving of such bond.

§48-1-22. Failure to endorse and return license; penalties.

If any minister, priest or rabbi who shall have given
bond in order to become authorized to celebrate marriages
in this state shall wilfully fail to comply with the provi-
sions of section ten of this article, the conditions of such
bond shall be deemed to be thereby broken and such
bond shall be forfeited as otherwise provided by law,
and the license of any minister, priest or rabbi who shall
wilfully fail to comply with the provisions of said section
ten, whether he shall have given bond or not, to celebrate
marriages shall be suspended for a period of not less than
six months and not to exceed one year. It shall be the
duty of the county clerk to whom the marriage license
should have been returned to notify the prosecuting at-
torney of such county of such failure to return such mar-
riage license as provided in section ten of this article, and,
thereupon, it shall be the duty of such prosecuting
attorney to institute proceedings before a judge of the
circuit court of said county to suspend the license of any
such minister, priest or rabbi to celebrate marriages, after
reasonable notice of such proceedings has been given to
such minister, priest or rabbi. Said court shall deter-
mine all questions of law and fact.

§48-1-23. Unlawful to solicit celebration of marriage, etc.

It shall be unlawful for any minister, priest or rabbi
to solicit in any manner the celebration of any marriage
ceremony and it shall be unlawful for a minister, priest
or rabbi, by giving or making directly or indirectly,
any tip, gift, present, subscription, contribution, loan
or anything of value, to reward any person who may
accompany, bring, send or direct the holders of a
marriage license to such minister, priest or rabbi.
The penalty for a violation of the foregoing provisions
shall be a revocation of the license of such minister,
priest or rabbi to celebrate marriages and no such license
shall thereafter be issued to him. It shall be the duty
of the prosecuting attorney of the county wherein the
violation occurs, to institute proceedings before the
judge of the circuit court of said county to revoke said
license, after reasonable notice thereof has been given
to said minister, priest or rabbi. Said court shall deter-
mine all questions of law and fact.

CHAPTER 49

(Senate Bill No. 4—By Mr. Jackson, Mr. President,
and Mr. Brotherton)

[Passed March 8, 1969; in effect April 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact article two, chapter forty-eight
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to divorce, annulment and separate maintenance.

Be it enacted by the Legislature of West Virginia:

That 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, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. For what and when marriages void.
§48-2-2. Affirmation or annulment of marriage.
§48-2-6. Right to sue to annul or affirm a marriage.
§48-2-7. Right to sue for divorce.
§48-2-8. Venue of actions for annulment, affirmation or divorce.
§48-2-10. Procedure; verification of pleadings; necessary proof; costs.
§48-2-12. Particeps criminis may become a party.
§48-2-14. When a divorce not to be granted.
§48-2-16. What considered in awarding alimony.
§48-2-17. Recordation of order for support, maintenance or alimony.
§48-2-18. Court may release certain liens created for support, maintenance or alimony.
§48-2-19. Annulment bars dower.
§48-2-20. Divorce bars dower; compensation to innocent party.
§48-2-21. Court may restore to either party his or her property.
§48-2-23. Former name of wife; restoration.
§48-2-24. Maturing of actions for divorce, annulment and separate maintenance; hearing; testimony and depositions; reference of action to commissioner.
§48-2-25. Reference to commissioner; taking of depositions; oral testimony before court.
§48-2-27. Sealing by clerk of evidence and pleadings.
§48-2-29. Advertising of any offer to obtain divorces prohibited.
§48-2-30. Validation of certain divorce decrees; limitation on suits contesting such decrees.
§48-2-31. Validation of certain divorce orders; limitations on actions contesting such orders.
§48-2-1. For what and when marriages void.

1 All marriages which are prohibited by law on account of
2 either of the parties having a former wife or husband then
3 living; all marriages which are prohibited by law on ac-
4 count of consanguinity or affinity between the parties; all
5 marriages solemnized when either of the parties was an
6 insane person, feebleminded person, idiot, imbecile, or
7 was afflicted with a venereal disease, or was incapable,
8 because of natural or incurable impotency of body, of
9 entering into the marriage state, or was under the age of
10 consent; all marriages solemnized when either of the
11 parties, prior to the marriage, without the knowledge of
12 the other, had been convicted of an infamous offense,
13 or when, at the time of marriage, the wife, without the
14 knowledge of the husband, was with child by some person
15 other than the husband, or prior to such marriage had
16 been, without the knowledge of the husband, notoriously
17 a prostitute, or when, prior to such marriage, the hus-
18 band, without the knowledge of the wife, had been noto-
19 riously a licentious person, are voidable and shall be
20 void from the time they are so declared by a judgment
21 order of nullity.

§48-2-2. Affirmation or annulment of marriage.

1 When a marriage is supposed to be void, or voidable, or
2 any doubt exists as to its validity, for any of the causes
3 mentioned in section one of this article, or for any other
4 cause recognized in law, either party may, except as
5 provided in the next succeeding section, institute an
6 action for annulling or affirming the same, and, upon hear-
7 ing the proofs and allegations of the parties, the court
8 shall enter a judgment order annulling or affirming the
9 marriage, according to the right of the case. In every such
10 case, and in every other case where the validity of a mar-
11 riage is called in question, it shall be presumed that the
12 marriage is valid, unless the contrary be clearly proven,
13 and, if the marriage be adjudged to be valid it shall be
14 conclusive upon all persons concerned.


1 An action for annulling a marriage may not be instituted:
2 (a) Where the cause is the natural or incurable im-
potency of body of either of the parties to enter the mar-
riage state, by the party who had knowledge of such in-
capacity at the time of marriage; or

(b) Where the cause is fraud, force or coercion, by the
party who was guilty of such fraud, force or coercion, nor
by the injured party if, after knowledge of the facts, he
or she has by acts or conduct confirmed such marriage; or

(c) Where the cause is affliction with a venereal disease
existing at the time of marriage, by the party who was so
afflicted if such party has subsequent to the marriage be-
come cured of such disease, nor by the person who was not
so afflicted if he or she after the curing of the afflicted
person has by acts or conduct confirmed the marriage; or

(d) Where the cause is the nonage of either of the
parties, by the party who was capable of consenting, nor
by the party not so capable if he or she has by acts or
conduct confirmed the marriage after arriving at the age
of consent; or

(e) Where the cause is lack of consent on the part of
either of the parties, by the party consenting or bringing
about the marriage; or

(f) Where the cause is that either of the parties has
been convicted of an infamous offense prior to marriage,
by the other party if, after knowledge of such fact, he or
she has cohabited with the party so convicted; or

(g) Where the cause is that the wife was at the time of
marriage with child by some person other than the
husband, or that prior to the marriage the wife had been
notoriously a prostitute, by the husband, if after know-
ledge of the fact, he has cohabited with the wife; or

(h) Where the cause is that the husband was prior to
the marriage notoriously a licentious person, by the wife
if, after knowledge of the fact, she has cohabited with
the husband.


(a) A divorce may be ordered:

(1) For adultery; or

(2) When either of the parties subsequent to the mar-
riage has, in or out of this state, been convicted for the
commission of a crime which is a felony, and such conviction has become final; or

(3) To the party abandoned, when either party wilfully abandons or deserts the other for one year; or

(4) For cruel or inhuman treatment, or reasonable apprehension of bodily hurt, and false accusation of adultery or homosexuality by either party against the other shall be deemed cruel treatment within the meaning of this subdivision; cruel and inhuman treatment shall also be deemed to exist when the treatment by one spouse of another, or the conduct thereof, is such as to destroy or tend to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable and under no circumstances whatever shall it be necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce; or

(5) For habitual drunkenness of either party subsequent to the marriage; or

(6) For the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic drug or drugs or dangerous drug or drugs as those terms are defined in this code; or

(7) Where the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for two years, whether such separation was the voluntary act of one of the parties or by the mutual consent of the parties; and a plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party's obtaining a divorce on this ground. If alimony is sought under the provisions of section fifteen of this article, the court may inquire into the question of who is the party at fault and may award such alimony according to the right of the matter and such determination shall not affect the right of either party to obtain a divorce on this ground; or

(8) For permanent and incurable insanity. No divorce shall be granted on the ground of insanity unless such permanently incurable insane person shall have been
confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint; nor shall a divorce be granted on these grounds unless the court shall have heard competent medical testimony that such insanity is permanently incurable. The court granting a divorce under this subdivision may in its discretion order support and maintenance for such permanently incurable insane party by the other. Where an insane person, within the meaning of this section, is a plaintiff in an action for divorce or annulment, the defendant shall not enter a plea of recrimination which is based upon the insanity of the plaintiff.

(b) It shall not be necessary to allege the facts constituting the ground or grounds relied upon, and a complaint or counter complaint shall be sufficient if any one of the grounds is alleged in the language of such ground as set forth in subsection (a) of this section.


The circuit court and courts of record vested with jurisdiction over domestic relations by act of the Legislature shall have jurisdiction of actions for annulling or affirming marriages, or for divorces.

§48-2-6. Right to sue to annul or affirm a marriage.

No action to annul or affirm a marriage shall be maintainable unless at the commencement of the action one of the parties is a bona fide resident of this state, except that in the case of an action to annul a marriage that was performed in this state it shall not be necessary, if a matrimonial domicile has not been established elsewhere, that one of the parties be such a resident.

§48-2-7. Right to sue for divorce.

No action for divorce shall be maintainable:

(a) If the cause for divorce is adultery, whether the cause of action arose in or out of this state, unless one of the parties, at the commencement of the action, is a bona fide resident of this state. In such case if the defendant is a nonresident of this state and cannot be per-
Ch. 49] DOMESTIC RELATIONS 331

7 sonally served with process within this state, such action
8 shall not be maintainable unless the plaintiff has been an
9 actual bona fide resident of this state for at least one year
10 next preceding the commencement of the action; or
11 (b) If the cause for divorce is other than adultery,
12 unless one of the parties was, at the time the cause of
13 action arose, or has since that time become, an actual
14 bona fide resident of this state and has continued so
15 to be for at least one year next preceding the com-
16 mencement of the action.

§48-2-8. Venue of actions for annulment, affirmation or divorce.
1 The action for annulling or affirming a marriage, or
2 for divorce, shall, if the defendant be a resident of this
3 state be brought in the county in which the parties last
4 cohabited, or, at the option of the plaintiff, in the county
5 in which the defendant resides; but if the defendant
6 be not a resident of this state, the action shall be brought
7 either in the county in which the plaintiff resides,
8 or in the county in which the parties last cohabited.
9 In the case of an action to annul a marriage performed
10 in this state, where neither party is a resident of the
11 state, the action shall be brought in the county where
12 the marriage was performed.

1 A judgment order may be entered upon service of proc-
2 ess in the manner specified in the Rules of Civil Procedure
3 for Trial Courts of Record for the service of process upon
4 individuals.

§48-2-10. Procedure; verification of pleadings; necessary proof;
costs.
1 Such action shall be instituted and conducted as other
2 actions, except as provided in this article. Process shall
3 not issue until the complaint shall have been filed, which
4 may be done at any time, notwithstanding a term of
5 court is not then being held. All pleadings shall be
6 verified by the party in whose name they are filed;
7 but the complaint shall not be taken for confessed, and
8 whether the defendant answers or not, the case shall
9 be tried and heard independently of the admissions of
either party in the pleadings or otherwise; and no judgment order shall be granted on the uncorroborated testimony of the parties or either of them. Costs may be awarded to either party as justice requires, and in all cases the court, in its discretion, may require payment of costs at any time, and may suspend or withhold any order until the costs are paid.


In any action for divorce or annulment, an infant party shall sue, answer and plead by a next friend, and an incompetent or insane party shall sue, answer and plead by his committee, and no guardian ad litem shall be required unless specifically ordered by the court or judge hearing said action.

§48-2-12. Particeps criminis may become a party.

Anyone charged as a particeps criminis shall be made a party to a divorce action, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.


The court may, at any time after commencement of the action and reasonable notice to the other party, make any order that may be proper to compel either party to pay any sum necessary for the maintenance of the other party and to enable him or her to carry on or defend the action in the trial court and on appeal should one be taken, or to prevent either party from imposing any restraint on the personal liberty of the other, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the action, or to preserve the estate of either party, so that it be forthcoming to meet any order which may be made in the action, or to compel either party to give security to abide such order, or to compel either party to deliver to the other any of his or her separate estate which may be in the possession or control of the other, or to prevent either from interfering with the separate estate of the other.
§48-2-14. When a divorce not to be granted.

1 No divorce for adultery shall be granted on the un-
2 corroborated testimony of a prostitute, or a particeps
3 criminis, or when it appears that the parties voluntarily
4 cohabited after the knowledge of the adultery, or that it
5 occurred more than three years before the institution of
6 the action; nor shall a divorce be granted for any cause
7 when it appears that the action has been brought by
8 collusion, or that the offense charged has been condoned,
9 or was committed by the procurement or connivance of
10 the plaintiff, or that the plaintiff has, within three years
11 before the institution of action, been guilty of adultery
12 not condoned: Provided, That the defense of collusion
13 shall not be pleaded as a bar to a divorce being granted
14 upon the ground that the parties have lived separate and
15 apart in separate places of abode without any cohabita-
16 tion and without interruption for two years, whether such
17 separation was a voluntary act of one of the parties or by
18 the mutual consent of the parties.


1 Upon ordering a divorce, the court may make such
2 further order as it shall deem expedient, concerning the
3 maintenance of the parties, or either of them; and upon
4 ordering the annulment of a marriage, or a divorce, the
5 court may make such further order as it shall deem
6 expedient, concerning the care, custody, education and
7 maintenance of the minor children, and may determine
8 with which of the parents or other proper person or per-
9 sons the children or any of them, may remain; and the
10 court may, from time to time afterward, on the verified
11 petition of either of the parties, revise or alter such
12 order concerning the maintenance of the parties, or
13 either of them, and make a new order concerning
14 the same, as the altered circumstances or needs of
15 the parties may render necessary to meet the ends
16 of justice; and the court may also from time to time
17 afterward, on the verified petition of either of the parties
18 or other proper person having actual or legal custody
19 of such child or children, revise or alter such order
20 concerning the care, custody, education and mainte-
inance of the children, and make a new order concerning the same, as the circumstances of the parents or other proper person or persons and the benefit of the children may require. In any case where the divorce or the annulment is denied, if the parties are living separate and apart from each other, the court shall retain jurisdiction of the case for the purpose of determining with which of the parents or other proper person or persons the children or any of them may remain and of making such order concerning the care, custody, education and maintenance of the minor children, or any of them, as to the court may seem proper and the benefit of the child or children may require; and such order may, from time to time afterward, on verified petition of either of the parties or other proper person having actual or legal custody of such child or children, be revised or altered, and a new order made, as the circumstances of the parties or the needs of the children may require. For the purpose of making effectual any order provided for in this section the court may make any order concerning the estate of the parties, or either of them, as it shall deem expedient.

In any case where a divorce is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may make such further order as it shall deem expedient, concerning the maintenance of the parties, or either of them, or concerning the care, custody, education and maintenance of the minor children, and in any case where an annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may make such further order as it shall deem expedient concerning the care, custody, education and maintenance of the minor children.

§48-2-16. What considered in awarding alimony.

1 All judges and courts of this state, called upon to fix, ascertain and determine an amount as alimony, support or maintenance to be paid by a spouse or to modify any order pertaining thereto, shall take into consideration, among other things, the financial needs of the
§48-2-17. Recordation of order for support, maintenance or alimony.

An order for support, maintenance or alimony shall not give rise to a lien on any real estate of the person against whom the order is entered until such order is entered of record in the office of the clerk of the county court where any such real estate is situate. On and after the effective date of this section, any such order shall be recorded in the same manner as other judgments are recorded.

§48-2-18. Court may release certain liens created for support, maintenance or alimony.

If any person deem that his or her interest, or that of any person for whom he or she may act in a fiduciary or representative capacity, will be promoted by a release, in full or in part, of a lien created upon his or her real or personal property for the support or maintenance of another person or persons, or for alimony, he or she may apply by petition, in a summary way, to the court that entered the order or decree creating such lien for relief from said order; the petition shall be verified and shall describe said lien, the circumstances of the petitioner or the person for whom he is acting, the name or names of the person or persons holding such lien, and the circumstances calculated to show the propriety of the release requested; all persons interested shall be made defendants and shall be given ten days' notice before hearing upon the petition. If authorized by the court, the release may be so conditioned as to promote substantial justice, but the release shall be prospective in effect, only, and shall not operate to deprive the person secured by the lien of the right to receive alimony or support payments accrued to the date of the hearing.
§48-2-19. Annulment bars dower.
1 When any marriage shall be annulled all rights of
2 either husband or wife to dower shall be thereby barred.

§48-2-20. Divorce bars dower; compensation to innocent party.
1 When a divorce shall be granted, all rights of either
2 husband or wife to dower shall be thereby barred; but
3 the court when granting any divorce shall, in every
4 proper case, compel the guilty party to compensate the
5 innocent party for any inchoate right of dower, in any
6 then existing property, that may be barred by the
7 divorce; and to secure the payment of such compensation
8 the court may make such compensation a lien upon the
9 real estate of the party liable therefor.

§48-2-21. Court may restore to either party his or her property.
1 Upon decreeing the annulment of a marriage, or upon
2 decreeing a divorce, the court shall have power to award
3 to either of the parties whatever of his or her property,
4 real or personal, may be in the possession, or under the
5 control, or in the name, of the other, and to compel a
6 transfer or conveyance thereof as in other cases of
7 chancery.

§48-2-22. Provisions concerning prior divorces from bed and
board.
1 Any decree of divorce from bed and board entered be-
2 fore the effective date of this article, may be revoked at
3 any time by the same court by which it was pronounced,
4 under such regulations and restrictions as the court may
5 impose, upon the joint application of the parties, and upon
6 their producing satisfactory evidence of their reconcilia-
7 tion. Either party to a suit in which a divorce from
8 bed and board has been granted prior to the effective date
9 of this article may proceed to have the same made final
10 in the manner prescribed by this code.

§48-2-23. Former name of wife; restoration.
1 The court upon granting an annulment or divorce to the
2 husband or wife may if there are no living children of such
marriage allow the wife to resume her maiden name. The court may also allow the wife to resume the name of a former husband if she has any living child or children by her marriage to such former husband.

§48-2-24. Maturing of actions for divorce, annulment and separate maintenance; hearing; testimony and depositions; reference of action to commissioner.

Actions for divorce, annulment and separate maintenance shall mature in the same manner as other actions provided for in the Rules of Civil Procedure of the state of West Virginia, and when ready for hearing under said rules shall be tried before the court, in chambers, and all witnesses shall appear and testify at the hearing the same as witnesses in other civil actions. Such actions may be heard, when matured, and a judgment order entered, at any time irrespective of whether or not there is a term of court in session. The law governing the taking and reading of depositions, as provided for in the Rules of Civil Procedure, shall apply to depositions in the hearing of a divorce case. The court may, instead of proceeding with the action under this section, refer the same to a commissioner, or a special commissioner, of said court as provided for in section twenty-five of this article.

§48-2-25. Reference to commissioner; taking of depositions; oral testimony before court.

Instead of proceeding with the action under the provisions of section twenty-four of this article, the court may, in its discretion, refer it to one of the commissioners of such court, or to a special commissioner, who shall take and return the testimony in such action, with a report of all such facts as the commissioner may be able to obtain as to property rights of the parties, their income, their character, conduct, health, habits, their children, their respective places of residence from the time of their marriage up to the time of such report, and any other matter deemed necessary by the court, together with his recommendation concerning whether a divorce, annulment or affirmation, as the case may be, should be granted, and concerning any other matter on which the court
may request his recommendation. All such facts so re-
ported and the recommendation of the commissioner shall
be considered by the court in passing on the merits of the
case, whether the same be referred to in the pleadings or
evidence, or not. Except as otherwise expressly provided
herein, the procedure in respect to the reference of such
a case to a commissioner shall be governed in all respects
by the rules applicable to references to commissioners
generally.

If testimony is to be taken in a county other than that
in which the action is pending, or of witnesses residing out
of the state of West Virginia, the same shall be taken be-
fore some person duly authorized to take depositions in
the county or state where taken. If such depositions are
taken out of the county in which the action is pending, or
without the state, the same shall be, by the person taking
the same, filed with or forwarded to the clerk of the court
wherein such action is pending, and on receipt of such
depositions such clerk shall lay the same before the com-
missioner to whom such action has been referred, who
shall consider the same in connection with his report
hereinbefore mentioned. The person before whom deposi-
tions are taken hereunder shall be personally present
at the time and place of taking depositions, and no deposi-
tion shall be taken or read in the action unless it appears
therefrom that such person was personally present during
the taking of the same. It is hereby made the duty of the
person before whom such depositions are taken, to see
that all witnesses are so examined as to elicit all facts
within their knowledge pertaining to the action. If any
person before whom any such depositions are taken certi-
fied falsely as to his presence at the taking of such deposi-
tions, he shall be guilty of a misdemeanor, and, on con-
viction thereof, shall be fined not less than fifty nor more
than five hundred dollars.

The court in which such action is pending may so refer
the same as often as, in its judgment, justice requires,
and may, if it so elect, summon anyone to appear before
such court, and give evidence with reference thereto, and
base its findings on such oral evidence solely. The com-
missioner shall be allowed for his services the same compensation as is allowed in other court actions, and all costs, including stenographer's fees, shall be taxed as in other court actions.


1 The commissioner to whom any case is referred under the provisions of the preceding section shall, before proceeding to execute the requirements of the order of reference, cause the party desiring to take depositions and evidence, to give to the opposing party, or the attorney of record for said opposing party, at least ten days' notice of the time and place when and where he will commence proceedings, but if said opposing party is not then represented by an attorney, and personal service of such notice cannot be had on that party by reason of absence from the state, or nonresidence, then it shall be sufficient to publish such notice in a newspaper of general circulation in the county wherein the action is pending, upon entry of order setting forth the basis therefor and for the number of insertions as the order may direct: Provided, however, That no notice of such proceedings shall be required to be given in any action wherein the defendant has not appeared in person in any hearing or proceeding before the court, or has not appeared by a pleading or written motion, duly filed in the action, unless specifically required and ordered by the court.

2 The opposing party, or his attorney, may waive such ten-day notice requirement by written waiver thereof.

§48-2-27. Sealing by clerk of evidence and pleadings.

1 When a judgment order is entered in any action for annulment of marriage or for divorce the clerk shall immediately seal in a package all pleadings, except the orders of the court, all the written testimony, exhibits to the testimony, the stenographic notes or other recordings of the testimony, if any were taken, the commissioner's report, and all other evidence, and the same shall not be again opened except upon written permission of the court.

Whenever a husband shall, without good and sufficient cause, have failed to provide suitable support for his wife, or have abandoned or deserted her, or if the wife shall have grounds for divorce, the court of any county that would have jurisdiction of an action for divorce between the parties, shall, at the action of the wife, whether or not a divorce be prayed for, order to the wife as alimony and separate maintenance such sum out of the husband's earnings or income as the court may determine, considering the circumstances of the parties and their stations in life, and may prohibit the husband from imposing any restraint on her personal liberty, and may free her real and personal property from possession, control or any interest of the husband; and during the pendency of the action the court shall have the same powers to make such orders as are provided for actions for divorce by section thirteen of this article insofar as the same are applicable on behalf of the wife. Any order entered in the case shall be effective during such time as the court shall by its order direct, or until the further order of the court thereon, and upon the petition of either party, the court may, from time to time afterwards, revise or alter such order, or make further orders, concerning the maintenance of the wife and the interest of the husband in the property of the wife, and the care, custody, education and maintenance of the minor children of the parties, and may determine with which of their parents the children or any of them shall remain.

§48-2-29. Advertising of any offer to obtain divorces prohibited.

Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, or, by such publication as above mentioned, offers to engage, appear or act as attorney or counsel in any action for alimony, divorce, or the severance, dissolution, or
annulment of marriage, either in this state or elsewhere, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than three hundred dollars, and if the person so convicted be an attorney at law he shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this state. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this state or orders of any court.

§48-2-30. Validation of certain divorce decrees.

All decrees of divorce heretofore entered by courts of this state, having jurisdiction of suits for divorce, wherein maturity of the cause at rules has been waived, consent given for hearing, the cause placed upon the docket and set for hearing and a final decree and judgment entered by the court therein, shall be recognized as having full force and effect from the date of their rendition and entry as though said divorce causes had been regularly matured at rules, placed upon the docket and regularly set for hearing.

§48-2-31. Validation of certain divorce orders; limitations on actions contesting such orders.

All orders of divorce and annulment of marriage heretofore entered on and after March twenty-six, one thousand nine hundred sixty-three, and before January first, one thousand nine hundred sixty-five, wherein the action was tried or heard less than the maximum period of time within which the defendant was required to answer, shall be recognized as having full force and effect from the date of the entry of such order as though the action had been tried or heard after the maximum period of time within which the defendant was required to answer, unless an interested party shall institute proceedings or an action to set aside any such order of divorce or annulment, upon such ground, before the first day of January, one thousand nine hundred sixty-nine.
AN ACT to amend and reenact sections nine, thirteen and nineteen, article three; sections one, three, four, five, six and seven, article four; sections one and three, article five; and sections one, four, five, six and eight, article seven, all of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to domestic relations, including the rights of married women, procedures for adoption, change of name, and the maintenance of illegitimate children.

Be it enacted by the Legislature of West Virginia:

That sections nine, thirteen and nineteen, article three; sections one, three, four, five, six and seven, article four; sections one and three, article five; and sections one, four, five, six and eight, article seven, all of 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 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.

§48-3-9. Contracts between husband and wife unenforceable unless in writing and signed.

§48-3-13. Restraints on alienation of married woman's property.

§48-3-19. Actions by and against married woman; joinder of husband.

§48-3-9. Contracts between husband and wife unenforceable unless in writing and signed.

A contract between a husband and wife shall not be enforceable at law, unless such contract, or some mem-
3 orandum or note thereof, be in writing and signed by the
4 party to be charged thereby.

§48-3-13. Restraints on alienation of married woman's prop-
erty.

1 Any property to which a married woman is entitled
2 may not be subjected to any restraints upon alienation
3 or other restrictions that may not lawfully be placed
4 upon the property of persons not married.

§48-3-19. Actions by and against married woman; joinder of
husband.

1 A married woman may sue or be sued alone in any
2 court in this state that may have jurisdiction of the
3 subject matter, the same in all cases as if she were a
4 single woman, and her husband shall not be joined with
5 her in any case unless, for reasons other than the marital
6 relation, it is proper or necessary, because of his interest
7 or liability, to make him a party. In no case need a
8 married woman, because of being such, prosecute or
9 defend by guardian or next friend.

ARTICLE 4. ADOPTION.

§48-4-1. Who may adopt; petition; consent required; when notice re-
quired.

§48-4-3. Proceedings on petition; appointment of next friend; contents
of order.

§48-4-4. Recordation of order; fees; disposition of records; names of
adopting parents not to be disclosed; certificate for state
registrar of vital statistics; birth certificate.

§48-4-5. Effect of order as to relations of parents and child and as to
rights of inheritance; intestacy of adopted child.

§48-4-6. Revocation of adoption.

§48-4-7. Adoption of adults.

§48-4-1. Who may adopt; petition; consent required; when
notice required.

1 (a) It shall be lawful for any person not married, or
2 any husband with his wife's consent, or any wife with
3 her husband's consent, or any husband and wife jointly,
4 to petition the circuit court or any other court of record
5 having jurisdiction of adoption proceedings of the county
6 wherein he, she or they may reside, or the judge of such
7 court in vacation, for permission to adopt any minor
8 child, and also to petition for a change of name of such
Consent to the adoption of a minor child shall be required and obtained as follows:

1. In the case of a legitimate child sought to be adopted, the written consent, duly acknowledged, of both parents, or the surviving parent, of such legitimate child sought to be adopted must be obtained and presented with the petition: Provided, That, if both parents are living and one parent is insane or has abandoned the child sought to be adopted, only the consent of the other parent shall be required, but the parent who is alleged to have abandoned the child must be personally served, either within or without the state, with a copy of the petition and notice of the date, time and place of the hearing on said petition at least twenty days prior to the date set for the hearing; and if after due diligence personal service cannot be obtained, then the copy of the petition and the notice of the hearing may be sent by registered mail to the last known address of such surviving parent, such service to be complete upon mailing. If both parents are either dead, unknown, insane, have abandoned the child sought to be adopted or have been deprived of the custody of the person of such child by law, then and in such case, the written consent, acknowledged as aforesaid, of the legal guardian of such child or those having at the time the legal custody of the child shall be obtained and so presented, and if there be no legal guardian nor any person having the legal custody of the child, then such consent must be obtained from some discreet and suitable person appointed by the court or judge thereof to act as the next friend of such child in the adoption proceedings.

2. In the case of an illegitimate child sought to be adopted, the written consent, duly acknowledged, of the mother of such illegitimate child sought to be adopted must be obtained and presented with the petition. If the mother of such illegitimate child is dead, insane, has abandoned the child sought to be adopted or has been deprived of the custody of the person of such child by law, then and in such case the written consent, acknowledged as aforesaid, of the legal guardian of such child or those having at the time the legal custody of the child shall
be obtained and so presented, and if there be no legal
guardian nor any person having the legal custody of the
child, then such consent must be obtained from some
discreet and suitable person appointed by the court or
judge thereof to act as the next friend of such child in
the adoption proceedings.

(3) In addition to the consent required in subdivisions
(1) and (2) of this subsection, in any case where the child
sought to be adopted be twelve years of age or over, the
written consent of such child to such adoption, given in
the presence of the judge having jurisdiction thereof,
must also be obtained and presented with the petition,
unless for extraordinary cause such is waived by court
order.

(b) No petition for an adoption shall be made or pre-
sented until after the child sought to be adopted shall
have lived in the home of the adopting parent or parents
for a period of six months.

§48-4-3. Proceedings on petition; appointment of next friend;
contents of order.

Upon the presentation of such petition to the court, or
the judge of such court in vacation, the same shall be
ordered filed with the clerk of such court, and the court
or judge thereof shall appoint a day for the hearing of
such petition and the examination under oath of the
parties in interest. The court or judge thereof may
adjourn the hearing of such petition or the examination
of the parties in interest from time to time, as the nature
of the case may require. Between the time of the filing
of the petition for adoption and the hearing thereon, the
court or judge thereof shall, unless the court or judge
otherwise directs, cause a discreet inquiry to be made
to determine whether such child is a proper subject for
adoption and whether the home of the petitioner or peti-
tioners is a suitable home for such child. Any such in-
quiry, if directed, shall be made by any suitable person
or agency designated by the court, or judge thereof, and
the results thereof shall be submitted to the court or
judge thereof at or prior to the hearing upon the petition
and shall be filed with the records of the proceeding and
become a part thereof. If it shall be necessary, under
the provisions of this article, that a discreet and suitable
person shall be appointed to act as the next friend of
the child sought to be adopted, then and in that case
the court or judge thereof shall order a notice of the
petition and of the time and place when and where the
appointment of next friend will be made, to be published
as a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the county where such court is located. At the time and
place so named and upon due proof of the publication
of such notice, the court or judge thereof shall make
such appointment, and shall thereupon assign a day for
the hearing of such petition and the examination of the
parties interested. Upon the day so appointed the court
or judge thereof shall proceed to a full hearing of the
petition and examination of the parties in interest, under
oath and of such other witnesses as the court or judge
thereof may deem necessary to develop fully the stand-
ing of the petitioners and their responsibility, and the
status of the child sought to be adopted; and if the court
or judge thereof shall be of the opinion from the testi-
mony that the facts stated in the petition are true, and
if upon examination the court or judge thereof is satis-
fied that the petitioner is, or the petitioners are, of good
moral character, and of respectable standing in the com-
munity, and are able properly to maintain and educate
the child sought to be adopted, and that the best interests
of the child would be promoted by such adoption, then
and in such case the court or judge thereof shall make
an order reciting at length the facts proved and the name
by which the child shall thereafter be known, and de-
claring and adjudging that from the date of such order,
the rights, duties, privileges and relations, theretofore
existing between the child and his or her parents, shall
be in all respects at an end, and that the rights, duties,
privileges and relations between the child and his or her
parent or parents by adoption shall thenceforth in all re-
spects be the same, including the rights of inheritance, as
if the child had been born to such adopting parent or
§48-4-4. Recordation of order; fees; disposition of records; names of adopting parents not to be disclosed; certificate for state registrar of vital statistics; birth certificate.

The order shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as in other cases. All records of proceedings in adoption cases and all papers and records relating to such proceedings shall be kept in the office of the clerk of the court in a sealed file, which file shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except upon court order for good cause shown. No person in charge of adoption records shall disclose the names of the adopting parent or parents or adopted child except by court order. The clerk of the court keeping and maintaining the records in adoption cases shall keep and maintain an index of such cases separate and distinct from all other indices kept or maintained by him, and the index of adoption cases shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except upon court order for good cause shown. Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said court, showing:

(1) The date and place of birth of the adoptee, if known;
(2) The names of the natural parents of the adoptee, if known;
(3) The name by which said child has previously been known;
(4) The names and addresses of the adopting parents;
(5) The name by which the child is to be thereafter known; and
(6) Such other information from the record of said adoption proceedings as may be required by the law.
of this state relating to vital statistics and as may enable
the state registrar of vital statistics to carry out the duty
imposed upon him by this section.
Upon receipt of said certificate, the said registrar of
vital statistics shall forthwith issue and deliver by mail
to the adopting parents at their last known address and to
the clerk of the county court of the county wherein such
order of adoption was entered a birth certificate in the
form required by law, except that the name of the adopt-
tee shown in said certificate shall be the name given him
by the order of adoption. Such county court clerk shall
record such birth in the manner provided by chapter six-
ten, article five, section nineteen of this code.
§48-4-5. Effect of order as to relations of parents and child and
as to rights of inheritance; intestacy of adopted
child.
Upon the entry of such order of adoption, the natural
parent or parents, any parent or parents by any previous
legal adoption, and the lineal or collateral kindred of any
such parent or parents, except any such parent who is
the husband or wife of the petitioner for adoption, shall
be divested of all legal rights, including the right of in-
heritance from or through the adopted child under the
statutes of descent and distribution of this state, and shall
be divested of all obligations in respect to the said adopted
child, and the said adopted child shall be free from all
legal obligations, including obedience and maintenance,
in respect to any such parent or parents. From and after
the entry of such order of adoption, the adopted child
shall be, to all intents and for all purposes, the legitimate
issue of the person or persons so adopting him or her and
shall be entitled to all the rights and privileges and
subject to all the obligations of a natural child of such
adopting parent or parents.
For the purpose of descent and distribution, from and
after the entry of such order of adoption, a legally
adopted child shall inherit from and through the parent
or parents of such child by adoption and from or through
the lineal or collateral kindred of such adopting parent
or parents in the same manner and to the same extent as
though said adopted child were a natural child of such
adoption parent or parents, but such child shall not in-
erit from his or her natural parent or parents nor their
lineal or collateral kindred, except that a child legally
adopted by a husband or wife of the natural parent shall
inherit from the natural parent of such child as well as
from the adopting parent. If a legally adopted child shall
die intestate, all property, including real and personal,
of such adopted child shall pass, according to the statutes
of descent and distribution of this state, to those persons
who would have taken had the decedent been the natural
child of the adopting parent or parents.

§48-4-6. Revocation of adoption.

(a) Except when the consent to such adoption has been
properly given by the department of welfare or a
licensed child welfare agency, as provided in section
one, article three, chapter forty-nine of this code, a parent
or guardian of a legitimate child or the mother or guard-
ian of an illegitimate child who did not consent to the
adoption of such child, or any parent of a legitimate child
entitled to notice as provided in subdivision (1) of sec-
tion one of this article who was not served with notice as
provided in said subdivision (1), may, at any time within
one year after learning of the adoption, apply by petition
to the court in which the adoption was granted, praying
that the adoption be vacated. The court to which such
application is made shall fix a date and time for a hear-
ing, shall cause notice thereof to be given to the person
or persons who were permitted to adopt such minor, and,
at the time so fixed, shall hear the petitioner and all
parties interested, and may vacate or affirm the adoption
in its discretion. Any party interested may appeal to
the supreme court of appeals from the decision of the
court in the matter, as in other civil cases.

(b) When any minor has been adopted, he may, with-
in one year after becoming of age, sign, seal and acknowl-
edge before proper authority, in the county in which the
order of adoption was made, a dissent from such adoption,
and file such instrument of dissent in the office of the clerk
of the court which granted said adoption and the clerk of
§48-4-7. Adoption of adults.

1 Any adult person who is a resident of West Virginia may petition the circuit court or any other court of record having jurisdiction of adoption proceedings for permission to adopt one who has reached the age of twenty-one years or over, and, if desired, to change the name of such person. The consent of the person to be adopted shall be the only consent necessary. The order of adoption shall create the same relationship between the adopting parent or parents and the person adopted and the same rights of inheritance as in the case of an adopted minor child. If a change in name is desired, the adoption order shall so state.

ARTICLE 5. CHANGE OF NAME.

§48-5-1. Petition to court for change of name; contents thereof; notice of application.

§48-5-3. When court may order change of name.

§48-5-1. Petition to court for change of name; contents thereof; notice of application.

1 Any person desiring a change of his own name, or that of his child or ward, may apply therefor to the circuit court or any other court of record having jurisdiction of the county in which he resides, or the judge thereof in vacation, by petition setting forth that he has been a bona fide resident of such county for at least one year prior to the filing of the petition, the cause for which the change of name is sought, and the new name desired; and previous to the filing of such petition such person shall cause to be published a notice of the time and place that such application will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

§48-5-3. When court may order change of name.

1 Upon the filing of such petition, and upon proof of the publication of such notice and of the matters set
forth in the petition, and being satisfied that no injury
will be done to any person by reason of such change,
that reasonable and proper cause exists for changing
the name of petitioner, and that such change is not desired
because of any fraudulent or evil intent on the part of
the petitioner, the court or judge thereof in vacation may
order a change of name as applied for.

ARTICLE 7. MAINTENANCE OF ILLEGITIMATE CHILDREN.
§48-7-1. How accusation of paternity made; warrant; recognizance.
§48-7-4. Proceedings in court.
§48-7-5. Power of court to change payments or require new bond.
§48-7-6. Recovery on bonds.
§48-7-8. Defendant may request blood grouping tests; admissibility of
tests; cost.

§48-7-1. How accusation of paternity made; warrant; recogni-
zance.

Any unmarried woman may go before a justice of the
county in which she resides and accuse any person of
being the father of a bastard child of which she has
been delivered. Such justice shall examine her under
oath, and reduce her examination to writing and sign it.
On such examination, unless the child be three years
old or upwards, the justice shall issue a warrant, directed
to the sheriff of, or a constable in, any county where the
accused may be, requiring him to be apprehended and
taken before a justice of the county in which he may
be found; and it shall be the duty of such justice to
require the accused to enter into a recognizance, with
one or more good securities, in a sum not less than five
hundred nor more than one thousand dollars, conditioned
for his appearance at the next term of the circuit court or
any other court of record having jurisdiction of the county
in which such warrant issued, to answer such charge, and
to abide by and perform the order of the court in relation
thereto. If a married woman live separate and apart from
her husband for the space of one year or more, and shall
not at any time during such separation, cohabit with such
husband she may, if she be delivered of a child at any time
after such one year, and while such separation continues,
accuse any person, other than her husband, of being the
father of such child, in like manner, and the same pro-
ceedings shall thereupon be had, as if she were an un-
married woman.

§48-7-4. Proceedings in court.

1 If the accused appear and plead not guilty, the issue
2 shall be tried by a jury, if not waived by the parties, and,
3 if the accused fail to appear, the court shall, unless a jury
4 is demanded by the plaintiff, try and determine the issue;
5 and if, in either event, the accused be found guilty, the
6 court shall order him to pay to the county court, or as
7 the court may otherwise direct, for the maintenance, edu-
8 cation, and support of the child until such child shall at-
9 tain the age of eighteen years, and all reasonable medical
10 expenses incidental to the birth of the child, such sums
11 as the court may deem proper for each year, fixing such
12 times of payment as the court may deem proper, until
13 such time as the court may appoint, which in no event
14 shall extend beyond such child attaining the age of
15 eighteen years, unless the child shall sooner die, and, if
16 such father be then in court, the court shall order him to
17 give bond in such penalty and with such sureties as the
18 court may deem sufficient for the performance of such
19 order; and shall order him to jail until such bond be given
20 in the court or filed in the office of the clerk thereof, with
21 sufficient sureties to be approved by the court or clerk, or
22 until the woman and the county court consent to his dis-
23 charge, or until he be discharged by an order of the
24 court, the court being satisfied that the prisoner cannot
25 pay the judgment of the court or give the bond required,
26 or until he be otherwise legally discharged; and in the
27 case of forfeiture of such bond and enforcement thereof,
28 the sum recovered may, in the discretion of the court
29 wherein the forfeiture is enforced, be paid in whole or in
30 part for the maintenance, education and support of the
31 child, as the court may direct. If he be found not guilty,
32 he shall be discharged, and shall recover his costs against
33 the party in whose name the proceedings are had. In the
34 event such judgment is rendered by the court against such
35 father upon a trial had on the nonappearance of such
36 father and in his absence, such judgment shall be render-
37 ed against him and his sureties upon his bond given
38 before the justice, required by section one of this article,
39 and the court may likewise issue an attachment for
40 such father to bring him into court, there to be dealt with
41 as prescribed by this article, as if judgment had been
42 rendered against him when present in court and upon a
43 finding of a jury that he is guilty as charged in the war-
44 rant after trial had in his presence.

§48-7-5. Power of court to change payments or require new
bond.

1 Until the child shall reach the age of eighteen years
2 such court shall have and retain jurisdiction of any such
3 proceedings to make, when circumstances justify it, any
4 further order or orders increasing or decreasing the
5 amount of money to be paid for the maintenance, educa-
6 tion and support of the child, or requiring a new or addi-
7 tional bond.

§48-7-6. Recovery on bonds.

1 As often as the condition of any bond or bonds given
2 as provided in this article is broken, a motion may be
3 made before the court and judgment may be given in the
4 name of the county court, against such father and his
5 sureties on any bond or bonds in force at the time of
6 any breach, and against his and their personal representa-
7 tives, for the money due, with lawful interest thereon
8 from the time or times when the same ought to have been
9 paid.

§48-7-8. Defendant may request blood grouping tests; admissi-
bility of tests; cost.

1 The court, or judge thereof in vacation, on motion of
2 the defendant, if seasonably made, shall order the mother,
3 her child and the defendant to submit to one or more
4 blood grouping tests by a person duly qualified to make
5 such tests to determine whether or not the defendant can
6 be excluded as being the father of the child, and the
7 results of such tests may be received in evidence but only
8 in cases where definite exclusion is established. The cost
9 and expense of making such tests shall be borne by the
10 defendant.
CHAPTER 51
(Senate Bill No. 5—By Mr. Jackson, Mr. President, and Mr. Brotherton)

[Passed January 17, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to the right of married women to recover damages for the loss of consortium.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.

§48-3-19a. Married woman may sue for loss of consortium.

1 A married woman may sue and recover for loss of consortium to the same extent and in all cases as a married man.

CHAPTER 52
(Senate Bill No. 201—By Mr. Floyd and Mr. Carrigan)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment of voting precincts and places, number of voters in precinct, and precinct map.
Be it enacted by the Legislature of West Virginia:

That section five, 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.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map.

1 The precinct shall be the basic territorial election unit. The county court shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

11 Each precinct within any urban center shall contain not less than three hundred nor more than eight hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters. If, at any time the number of registered voters shall exceed the maximum number in either case herein specified, it shall be the duty of the county court to, and it shall, rearrange the precincts within the political division so that the new precincts formed therefrom, or from any part thereof, shall each contain a number of registered voters within the limits above provided. If such county court fails to so act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty.

26 In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other political subdivisions of the municipality except in instances where found by the county court to be wholly impracticable so to do.
The provisions of this section shall be subject to the provisions of section twenty-eight of article four of this chapter relating to the number of voters in precincts in which voting machines are used.

The county court shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county with the current boundaries of all precincts.

CHAPTER 53

(Senate Bill No. 199—By Mr. Floyd and Mr. Carrigan)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to challenge and cancellation of voter’s registration.

Be it enacted by the Legislature of West Virginia:

That section twenty-nine, 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.

§3-2-29. Challenges; notice; cancellation of registration.

1 Any person claiming the right to be registered as a voter may be challenged by the clerk of the county court, the secretary of state, any registrar of the county, the chairman of any political party committee, or any voter who shall appear in person at the clerk’s office. Such challenge shall be entered upon a form prescribed by the secretary of state and shall be filed as a matter of record in the office of the clerk of the county court. Upon the receipt and filing of such challenge, the clerk of the county court shall mail to the person so challenged a notice thereof requesting such person to appear in
12 person during business hours at the clerk’s office within
13 a period of thirty days from and after the mailing of
14 such notice to show cause, if any he can, why such
15 challenge should be removed. The form of the notice
16 of challenge shall be prescribed by the secretary of
17 state and shall be mailed by registered or certified mail
18 with return receipt requested. Failure of the challenged
19 person to appear and show cause within the prescribed
20 time shall constitute immediate cancellation of his voter
21 registration, if any, theretofore effected and shall be
22 prima facie evidence of his ineligibility to be registered
23 as a voter. If he does timely appear and show cause, the
24 clerk shall determine his eligibility to be registered
25 as a voter as in any other case.

CHAPTER 54
(Senate Bill No. 11—By Mr. Jackson, Mr. President,
and Mr. Floyd)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections; marking of ballots; addresses where ballots are to be mailed; time; obtaining ballot; and voting in person.

Be it enacted by the Legislature of West Virginia:

That section five, article three, 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 3. VOTING BY ABSENTEES.

§3-3-5. Mailing of ballots; time; applicant may obtain ballot and vote in person.

1 Between the thirtieth day and the fourth day next
2 prior to the election in which the absent voter’s ballot
is to be used, the clerk of the circuit court of the county in which an applicant is a qualified voter shall mail, postage prepaid, to each duly registered applicant who has executed and filed his application, to the address shown therein, an official ballot or ballots (if more than one are to be voted at such election), except that the clerk shall not, after the fifteenth day next prior to such election, mail any such ballot to an applicant whose address is shown to be outside the continental limits of the United States of America. All absentee ballots mailed upon the basis of applications therefor made on federal standard form number seventy-six, issued by the federal government under authority of Public Law No. 296, or any revision or replacement of such form, whether designated in the same or a different manner, shall be mailed by the clerk in envelopes embossed with the words "Official Election Balloting Material Via Air Mail," printed in red, with the notation in the upper right-hand corner, "Free of U. S. Postage Including Air Mail." The clerk shall, without delay, mail all such absent voter ballots as soon after the thirtieth day next prior to the election as he shall have in his office properly executed applications therefor.

The applicant may obtain the absent voter ballot or ballots by applying personally at the office of the clerk of the circuit court during regular business hours not more than fifteen days before such election and on any day thereafter up to and including the Saturday next preceding the date of the primary or general election or, in the case of special elections, up to and including the third day next preceding the day of any such special election, and shall at the time of applying personally vote such ballot or ballots in the clerk's office.

In computing the thirtieth, fifteenth, fourth and third day before the election day, the day of election shall be excluded. Before any ballot is mailed or delivered the clerk shall affix his official seal and he and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof.
AN ACT to amend chapter 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, relating to electronic voting systems and the use thereof.

Be it enacted by the Legislature of West Virginia:

That chapter 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. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized.
§3-4A-2. Definitions.
§3-4A-3. Procedure for adopting electronic voting systems.
§3-4A-4. Procedure for terminating use of electronic voting systems; future proceedings after termination of or failure to adopt system.
§3-4A-5. Duty of county court to acquire vote recording devices and use of automatic tabulating equipment and counting centers; competitive bidding; provision in some precincts.
§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.
§3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts.
§3-4A-8. Approval of electronic voting system by state election commission; expenses; compensation of persons examining system.
§3-4A-9. Minimum requirements of electronic voting systems.
§3-4A-10. County clerk to be custodian of vote recording devices; duties.
§3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.
§3-4A-12. Ballot label arrangement in vote recording devices; drawing by lot to determine position of candidates for House of Delegates on ballots or ballot labels; sealing of devices; record of identifying numbers.
§3-4A-13. Inspection of vote recording devices; duties of county court, ballot commissioners and election commissioners; records relating to vote recording devices.
§3-4A-1. Use of electronic voting systems authorized.

Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections, provided that the use thereof shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

(a) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballot cards and tabulate the results;

(b) "Ballot card" means a tabulating card or paper...
on which votes may be recorded by means of perforating or marking in electronic sensitized ink or pencil;

(c) "Ballot labels" means the cards, papers, booklet, pages or other material showing the names of offices and candidates and the statements of measures to be voted on, which are placed on the vote recording device;

(d) "Counting center" means one or more facilities equipped with suitable and necessary automatic tabulating equipment, selected by the county court, for the electronic counting of votes recorded on ballot cards;

(e) "Electronic voting system" is a means of conducting an election whereby votes are recorded on ballot cards by means of marking with electronic sensitized ink or perforating, and such votes are subsequently counted by automatic tabulating equipment at one or more counting centers; and

(f) "Vote recording device" means equipment in which ballot labels and ballot cards are placed to allow a voter to record his vote.

§3-4A-3. Procedure for adopting electronic voting systems.

An electronic voting system may be adopted for use in general, primary and special elections in any county by either of the following procedures, and not otherwise:

(1) By a majority of the members of the county court voting to adopt the same at a meeting regularly called in regular or special session: Provided, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county court shall enter an order of its intention to adopt the use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of
such order. Such county court shall not adopt the use of an electronic voting system until ninety days after the entry of such order of its intention to adopt the same. Promptly after the expiration of ninety days after the entry of such order of intention to adopt the use of an electronic voting system, if no petition has theretofore been filed with such county court requesting a referendum on the question of adoption of an electronic voting system as hereinafter provided, such county court shall enter a final order adopting the electronic voting system, and the electronic voting system shall thereby be adopted.

If five percent or more of the registered voters of such county shall sign a petition requesting that an electronic voting system be not adopted for use in such county and such petition be filed with the county court of such county within ninety days after the entry of such order of intention to adopt the use of an electronic voting system, such county court shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall an electronic voting system be adopted in ____ County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, an electronic voting system shall thereby be adopted. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall not be adopted.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of the adoption of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the adoption of an electronic voting system for use in such county, and such petition be filed with the county court of such county, such county court shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall an electronic voting system be adopted in ____ County?" If this
§3-4A-4. Procedure for terminating use of electronic voting systems; future proceedings after termination of or failure to adopt system.

If at any time after the adoption of an electronic voting system in any county as herein provided, five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated, and such petition be filed with the county court of such county, such county court shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall the use of an electronic voting system in ________ County be terminated?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system in all future elections shall thereby be terminated; otherwise, the use of an electronic voting system shall be continued. Any vote pursuant to this section and the preceding section which results in a failure to adopt, or in a termination of the use of an electronic voting system shall not be construed to preclude any future proceeding by the voters or the county court of any county to adopt or readopt an electronic voting system in a lawful manner as provided herein.

§3-4A-5. Duty of county court to acquire vote recording devices and use of automatic tabulating equipment and counting centers; competitive bidding; provision in some precincts.

If the use of an electronic voting system shall have been adopted as hereinbefore provided, it shall be the duty of the county court of such county to acquire the
necessary number of vote recording devices to supply all or part of the election precincts within such county as soon as possible, and to acquire such reserve device or devices as will be deemed necessary. All such acquisition of vote recording devices shall be by sealed competitive bidding.

If it shall be impossible or impractical for the county court to supply each election precinct with a vote recording device or vote recording devices for use at the next election following the adoption of an electronic voting system, as many vote recording devices shall be supplied for that election and the succeeding elections as it is possible or practical for the county court to acquire in the manner as hereinafter provided, and the devices so acquired may be used in such election precincts within the county as the county court may direct until it shall be possible to provide the requisite number of vote recording devices properly to equip all precincts within the county. Where it is impossible or impractical to supply all of the election precincts within such county with vote recording devices, such vote recording devices may be used in combination with approved existing methods of voting as provided in this chapter.

It shall be the further duty of the county court of such county to acquire prior to any election in which such electronic voting system is to be used, the use of automatic tabulating equipment approved by the state election commission, for the purpose of counting votes in such election. In addition, the county court of such county shall provide the necessary counting centers for use in said election. Such counting centers shall not be located more than one hundred miles from the county seat of the county involved.

§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

(a) The county court may acquire vote recording devices by any one or any combination of the following methods:
(1) By purchasing the same and paying the purchase price therefor in cash from funds available from the maximum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease and paying the rentals therefor in cash from funds available from the maximum general levy or any other lawful source.

(b) The county court may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor in cash from funds available from the maximum general levy or other lawful source.

The county court is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(c) The county court may also secure a counting center.

§3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts.

Contracts for the purchase or lease of vote recording devices shall be based on competitive bids. The county court shall solicit sealed bids by sending requests by mail to all known manufacturers and suppliers of vote recording devices which have been previously approved by the state election commission as hereinafter provided.

The award of contracts of purchase or lease shall be based on the quality, cost, specifications and suitability of the particular vote recording device, technical services to be provided by the manufacturer, and the cost and availability of automatic tabulating equipment suitable for use in connection with said vote recording devices and the ballot cards used therewith.

No bid shall be accepted by the county court unless accompanied by a contract which shall provide that in the event the bid is accepted the party or parties making the sale or lease shall:

(1) Guarantee in writing to keep the vote recording devices in good working order for five years without additional cost to the county court.
(2) Warrant to defend and indemnify the county court against any claim for patent infringement, and in case any vote recording device or devices shall be held to be an infringement of a valid patent, to obtain a license for the use of such patent on the vote recording devices sold or leased to the county court or to modify the devices so that the offending infringement is removed without altering the efficiency or statutory requirements of the devices; all at the sole cost and expense of the supplier of the vote recording devices.

(3) Provide a bond with good corporate surety duly qualified to do business in West Virginia, conditioned upon the due performance of said guaranty and said warranty, in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the party or parties submitting the bid shall file with the bid an affidavit:

(1) Disclosing the name and address of, and the amount of any contribution paid or to be paid to, any individual, partnership, corporation or association hired regularly and specially for the purpose, or party for the purpose, of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

(2) Declaring that no individual, partnership, corporation or association not disclosed in said affidavit shall thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

For the purpose of this affidavit, the word "contribution" shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any agreement providing for a payment, distribution, loan, advance, deposit, or gift by money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall know-
ingly or wilfully fail to disclose any material fact in
the affidavit required by this section shall be guilty
of a felony, and, upon conviction thereof, shall be pun-
ished by a fine of not less than one thousand dollars
nor more than five thousand dollars or imprisonment
in the state penitentiary for not less than one year
nor more than three years, or both, in the discretion of
the court.

In construing this section, the term "person" shall
include an individual, partnership, committee, associa-
tion, and any other organization or group of persons.

§3-4A-8. Approval of electronic voting system by state election
commission; expenses; compensation of persons
examining system.

Any person or corporation owning or being interested
in any electronic voting system may apply to the state
election commission to the end that such system may
be examined and a report be made on its accuracy,
efficiency, capacity, and safety. The state election com-
mission shall appoint two qualified experts who are not
members of the same political party to examine the
system and make full reports thereon to the commission
within thirty days from the date of the application.
They shall state in the report whether or not the system
so examined complies with the requirements of this
article and can be safely used by voters at elections
under the conditions prescribed in this article. If the
report be in the affirmative on said question, the system
may be approved by the commission and, if approved
by the commission, a system of its make and design may
be adopted for use at elections as herein provided. Any
form of electronic voting system not so approved shall
not be used at any election. Each of the two qualified
experts appointed by the commission shall be entitled
to two hundred dollars for his compensation and ex-
penses in making such examination and report, and such
compensation shall be paid by the person or corporation
applying for such examination, which sum shall be paid
in advance of making the examination and which sum
§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design shall not be approved by the state election commission or be purchased, leased, or used, by any county court unless it shall fulfill the following requirements:

2 (1) It shall secure or insure the voter absolute secrecy in the act of voting, or, at the voter’s election, shall provide for open voting;

3 (2) It shall be so constructed that no person except in instances of open voting, as herein provided for, can see or know for whom any voter has voted or is voting;

4 (3) It shall permit each voter to vote at any election for all persons and offices for whom and which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot label as a candidate; and it shall permit each voter to vote for as many persons for an office as he is lawfully entitled to vote for; and to vote for or against any question upon which he is lawfully entitled to vote and the automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card or paper ballot if the number of such choices exceeds the number to which a voter is entitled;

5 (4) It shall permit each voter to deposit, write in, or affix upon devices to be provided for that purpose, ballots containing the names of persons for whom he desires to vote whose names do not appear upon the ballot labels;

6 (5) It shall permit each voter to change his vote for any candidate and upon any question appearing upon the ballot labels up to the time when his ballot or ballot card is deposited in the ballot box;

7 (6) It shall correctly record and accurately count all votes cast for each candidate and for and against
It shall permit each voter at any election other than primary elections, by one mark or punch to vote a straight party ticket, and by one mark or punch to vote for all candidates of one party for presidential electors; and to vote a mixed ticket selected from the candidates of any and all parties and from independent candidates;

(8) It shall permit each voter in primary elections to vote only for the candidates of the party with which he has declared his affiliation, and preclude him from voting for any candidate seeking nomination by any other political party, permit him to vote for the candidates, if any, for nonpartisan nomination or election, and permit him to vote on public questions;

(9) It shall be provided with means for sealing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(10) It shall have the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and to accommodate the wording of at least fifteen questions;

(11) It shall be durably constructed of material of good quality and in a workmanlike manner and in a form which shall make it safely transportable;

(12) It shall be so constructed with frames for the placing of ballot labels and with suitable means for the protection of such labels, that the labels on which are printed the names of candidates and their respective parties, titles of offices, and wording of questions shall be so reasonably protected from mutilation, disfigurement or disarrangement;

(13) It shall bear a number that will identify it or distinguish it from any other machine;
370 ELECTIONS [Ch. 55

75 (14) It shall be so constructed that a voter may easily
76 learn the method of operating it and may expeditiously
77 cast his vote for all candidates of his choice; and
78 (15) It shall be accompanied by a mechanically op-
79 erated instruction model which shall show the arrange-
80 ment of ballot labels, party columns or rows, and ques-
81 tions.

§3-4A-10. County clerk to be custodian of vote recording de-
1 vices; duties.
2 When an electronic voting system is acquired by any
3 county court, the vote recording devices shall be im-
4 mediately placed in the custody of the county clerk,
5 and shall remain in his custody at all times except when
6 in use at an election or when in custody of a court or
7 court officers during contest proceedings. The clerk shall
8 see that the vote recording devices are properly pro-
9 tected and preserved from damage or unnecessary deteri-
10 oration, and shall not permit any unauthorized person
11 to tamper with them. The clerk shall also be charged
12 with the duty of keeping the vote recording devices in
13 repair and of preparing the same for voting.

§3-4A-11. Ballot labels, instructions and other supplies; va-
1 cancy changes; procedure and requirements.
2 The ballot commissioners of any county in which an
3 electronic voting system is to be used in any election
4 shall cause to be printed for use in such election the
5 ballots or ballot labels, as appropriate, for the electronic
6 voting system. The ballot labels so printed shall total in
7 number one and one-half times the total number of vote
8 recording devices to be used in the several precincts
9 of the county in such election. All such labels shall be
10 delivered to the clerk of the county court at least fifty
11 days prior to the day of the election in which such labels
12 are to be used. The labels shall contain the name of
13 each candidate and each question to be voted upon and
14 shall be clearly printed or typed in black ink on clear
15 white material of such size as will fit the vote recording
16 devices. Arrows may be printed on the ballot labels to
17 indicate the place to punch the ballot card, which may
18 be to the right or left of the name or proposition.
The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one column or on one ballot label page, the ballot label shall be clearly marked that the list of candidates is continued on the following column or page, and so far as possible, the same number of names shall be printed on each column or page. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek.

In elections in which voters are authorized to vote for persons whose names do not appear on the ballot card, a separate write-in ballot, which may be in the form of a paper ballot or card, shall be provided if required to permit voters to write in the title of the office and the names of persons whose names are not on the ballot, for whom he wishes to vote.

One set of ballot labels shall be inserted in the vote recording device prior to the delivery of such device to the polling place. The remainder of such ballot labels for each device shall be retained by the clerk of the county court for use in the event the set so inserted in such device becomes lost, mutilated or damaged.

In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county. In addition they shall provide all other materials and equipment necessary to the conduct of the election, including voting booths, appropriate facilities for the reception and safekeeping of ballot cards, the ballots of absent voters and of challenged voters and of such "independent" voters who shall, in primary elections,
§3-4A-12. Ballot label arrangement in vote recording devices; drawing by lot to determine position of candidates for House of Delegates on ballots or ballot labels; sealing of devices; record of identifying numbers.

When the ballot labels are printed and delivered to the clerk of the county court, he shall place them in the vote recording devices in such manner as will most nearly conform to the arrangement prescribed for paper ballots, and as will clearly indicate the party designation or emblem of each candidate. Each column row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot.

The clerk of the circuit court shall appoint a time at which all candidates for the House of Delegates are to appear in his office for the purpose of drawing by lot to determine where their names will appear on the ballots or ballot labels. The clerk shall give due notice of such time to each such candidate by registered or certified mail, return receipt requested. At the time appointed, all such candidates for the House of Delegates shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots or ballot labels. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots or ballot labels. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots or ballot labels. The clerk shall then seal the vote recording devices so as to prevent tampering with ballot labels. The clerk shall then enter in an appropriate book,
opposite the number of each precinct, the identifying
or distinguishing number of the specific vote recording
device or devices to be used in that precinct.

§3-4A-13. Inspection of vote recording devices; duties of county
court, ballot commissioners and election commissioners; records relating to vote recording
deVICES.

1 When the clerk of the county court has completed
the preparation of the vote recording devices, as pro-
vided in the next preceding section, and not later than
seven days before the day of the election, he shall
notify the members of the county court and the ballot
commissioners that the devices are ready for use. There-
upon the members of the county court and the ballot
commissioners shall convene at the office of the clerk
or at such other place wherein the vote recording devices
are stored, not later than five days before the day of the
election, and shall examine the devices to determine
whether the requirements of this article have been met.
Any candidate, and one representative of each political
party having candidates to be voted on at the election,
may be present during such examination. If the devices
are found to be in proper order, the members of the
county court and the ballot commissioners shall endorse
their approval in the book in which the clerk entered
the numbers of the devices opposite the numbers of the
precincts. Not later than three days before the election
the election commissioner of each precinct who shall
have been previously designated by the ballot commis-
sioners, shall attend at the office of the clerks of the
circuit and county courts of such county to receive the
necessary election records, books and supplies required
by law. Such election commissioners shall receive the
per diem mileage rate prescribed by law for this service.
Such election commissioners shall give the ballot com-
missioners a receipt for such records, books and supplies.

§3-4A-14. Election boards where electronic voting system used;
instruction; vacancies; compensation.

1 The county court shall appoint a uniform election
board, consisting of three election commissioners and
two poll clerks, to conduct each election in each precinct of each county in which an electronic voting system has been adopted and is to be used.

The county court shall call the necessary meeting or meetings for the instruction of all election officials in the use of the electronic voting system. Such meeting or meetings shall be held and the proper instruction given not less than seven days prior to any election in which the electronic voting system is to be used. No election officer, upon being so notified to appear for instruction, shall fail without just cause to do so. If any officer does so fail to appear, the county court may appoint some other qualified person, and such person, after instruction, shall act in the place of the defaulting officer. If such defaulting officer were appointed by the county court upon the written recommendation of a county executive committee as provided in article one of this chapter, the county court shall give written notice of such default to such county executive committee and appoint a person to take the place of such defaulting person upon the recommendation of such county executive committee. The election officers shall receive the per diem mileage rate prescribed by law for attending such instruction meetings.

Where not inconsistent with the provisions of this section, provisions of article one of this chapter, relating to the appointment of election officers, shall be applicable herein.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

For the instruction of the voters on any election day there shall be provided for each polling place one instruction model for each vote recording device. Each such instruction model shall be constructed so as to provide a replica of a vote recording device, and shall contain the arrangement of the ballot labels, party columns or rows, office columns or rows, and questions. Fictitious names shall be inserted in the ballot labels of the models. Such models shall be located on the
election officers' tables or in some other place in which the voter must pass to reach the vote recording device. Each voter, upon request, before voting, shall be offered instruction by the election officers in the operation of the vote recording device by use of the instruction model, and each voter shall be given ample opportunity to operate the model himself.

The ballot commissioners shall also provide facsimile ballots or ballot labels, at least two of which, or complete sets of which, shall be posted on the walls of each polling place. The facsimile diagrams shall be exact diagrams of the ballot labels or paper ballots to the end that the voter may become familiar with the location of the parties, offices, candidates and questions as they appear on the vote recording device to be used in his precinct.

The ballot commissioners may, with the consent of the county court, or the county court may, prepare and mail to each qualified voter at his address as shown on the registration books a facsimile sample of the ballot or ballot labels for his precinct.

In counties where an electronic voting system has been adopted, the legal ballot advertisements required by articles five and six of this chapter, shall consist of a facsimile of the ballot or ballot labels with the names of the candidates and the offices for which they are running shown in their proper positions.

§3-4A-16. Delivery of vote recording devices; time, arrangement for voting.

The clerk of the county court shall deliver or cause to be delivered each vote recording device to the polling place where it is to be employed. Such delivery shall be made not less than one hour prior to the opening of the polls. At the time of the delivery of the vote recording device, it shall be sealed in such a way to prevent its use and tampering with the ballot labels. The election commissioners shall then cause the vote recording device to be arranged in the voting booth in
such manner that the front of the vote recording device, on which the ballot labels appear, will not be visible, when the vote recording device is being operated, to any person other than the voter if the voter shall elect to close the curtain, screen or hood to the voting booth.

§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.

Before permitting the first voter to vote, the election officers shall examine the vote recording devices to ascertain whether the ballots or ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballots or ballot labels are arranged incorrectly, the officers shall immediately notify the clerk of the county court of the foregoing facts and obtain from such clerk a reserve vote recording device, and thereafter proceed to conduct the election. Any reserve vote recording device so used shall be prepared for use by the clerk or his duly appointed deputy and said reserve vote recording device shall be delivered and examined in the same manner as hereinbefore provided. The vote recording device found to have been with incorrect ballot labels shall be returned immediately to the custody of the clerk who shall then promptly cause such vote recording device to be repaired in order that it may be used as a reserve vote recording device if needed.

§3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.

If, during the conduct of an election, a vote recording device becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election officers shall seal it in such manner as to prevent further voting thereon. Then the election officers shall secure from the county clerk a reserve vote recording device, which shall be prepared for use, delivered and examined in the same manner as hereinbefore provided, and shall thereafter proceed to conduct the election.
§3-4A-19. Conducting electronic voting system elections generally; duties of election officers.

1 (1) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than three minutes.

2 (2) In primary elections, before a voter is permitted to occupy the voting booth, the election officer representing the party to which the voter belongs shall direct the voter to the vote recording device which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated.

3 (3) The election officers shall issue to each voter when he signs the poll book a card or ticket numbered to correspond to the number on the poll book of such voter, and in the case of a primary election, indicating the party affiliation of such voter, which numbered card or ticket shall be presented to the election officer in charge of the vote recording device.

4 (4) One hour before the opening of the polls the precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers, open the vote recording devices, place them in the voting booths, and examine them to see that they have the correct ballots or ballot labels by comparing them with the sample ballots, and are in proper working order. They shall open and check the ballots, ballot cards, supplies, records and forms, and post the sample ballots or ballot labels and instructions to voters.

5 (5) Each voter shall be instructed how to operate the vote recording device before he enters the voting booth.

6 (6) Any voter who shall spoil, deface or mutilate the ballot or ballot card delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot or ballot card delivered to him shall, before leaving the election room return such ballot or ballot card
to the poll clerks. When a spoiled or defaced ballot or ballot card is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, and the word “spoiled” shall be written across the face of the ballot or ballot card and it shall be placed in an envelope for spoiled ballots or ballot cards.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots or ballot cards during the election and the number of ballots or ballot cards remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, over their signatures, to the clerk of the county court, the number of ballots or ballot cards cast, the number of ballots or ballot cards spoiled during the election and the number of ballots or ballot cards unused. All unused ballots or ballot cards shall at the same time be returned to the clerk of the county court, who shall immediately destroy them by fire or otherwise.

Each commissioner who is a member of an election board which fails to account for every ballot or ballot card delivered to it shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both.

The board of ballot commissioners of each county, or the chairman thereof, shall preserve the ballots or ballot cards that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election, and such ballots or ballot cards, shall then be destroyed by such board, or the chairman thereof, by fire or otherwise.

(7) Where ballot cards are used, the voter, after he has marked his ballot card, shall, before leaving the voting booth, place the ballot card inside the envelope provided for this purpose, with the stub extending outside said envelope, and return it to an election officer who shall remove the stub and deposit the envelope
with the ballot card inside in the ballot box. No ballot
from which the stub has been detached shall be accepted
by the officer in charge of the ballot box, but it shall
be marked "spoiled" and placed with the spoiled ballots.

(8) The precinct election officers shall prepare a re-
port in quadruplicate of the number of voters who have
voted, as indicated by the poll books, and shall place
two copies of this report in the ballot box, which there-
upon shall be sealed with a paper seal signed by the
election officers so that no additional ballots may be de-
posited or removed from the ballot box. Two election
officers of different political parties shall forthwith de-
deliver the ballot box to the counting center or other
designated place and receive a signed numbered receipt
therefor, and the time of their departure from the poll-
ing place shall be noted on the two remaining copies
of the report, which shall be immediately mailed to the
clerk of the county court.

(9) The poll books, register of voters, unused ballots
or ballot cards, spoiled ballots or ballot cards and other
records and supplies shall be delivered to the clerk of
the county court.

§3-4A-20. "Independent" voting in primary elections.

1 If at any primary elections nonpartisan candidates for
2 office and public questions are submitted to the voters
3 and on which candidates and questions persons regis-
tered as "independent" are entitled to vote, as provided
4 in section eighteen of article two of this chapter, the
5 election officers shall provide a vote recording device
6 so that such "independent" voters may vote only those
7 portions of the ballot or ballot card relating to the
8 nonpartisan candidates and the public questions sub-
9 mitted.
10 If vote recording devices are not available for the
11 "independent" voters, provision shall be made for sealing
12 the partisan section or sections of the ballot or ballot
13 labels on a vote recording device using temporary seals
14 thus permitting the independent voter to vote for the
15 nonpartisan section or sections of the ballot or ballot
labels. After the “independent” voter has voted, the temporary seals may be removed and the device may then be used by partisan voters.

In lieu of using a vote recording device, such “independent” voter may request official printed ballots relating to such nonpartisan candidates and public questions. Such ballots, when signed on the back by the poll clerks as in other elections, shall be voted and folded by the “independent” voter and shall be delivered to one of the election commissioners who shall secure same in a sealed or locked container until canvassed and counted in the same manner as provided for handling and recording absent voter ballots as provided in section twenty-one of this article.

§3-4A-21. Recording and disposition of absent voters’ ballots.

When absent voters’ ballots have been voted and delivered to the election board of any precinct, the election commissioners shall as time permits proceed to determine the legality of such ballots as prescribed in article six of this chapter. Without unfolding the absent voters’ ballots determined to be legal, the election commissioners shall shuffle and intermingle the same so as to preserve the secrecy of the ballots to the fullest extent practicable, and prior to the close of the polls and before sealing the vote recording device, shall record such ballots on the vote recording device. Such recording of absent voters’ ballots shall be done by one of the election commissioners and the act of casting such votes shall be performed in the presence, and under the careful observation and full view, of all members of the precinct election board, and the ballot or ballot card shall not be deposited in the ballot box until each member of such board is satisfied that the votes have been recorded in such a manner as fully carries out the intent of the voter as shown by the cross marks on the paper ballot.

After completion of the count, absentee ballots shall be enclosed in a sealed package, properly endorsed, and returned and filed with the statement of returns.
§3-4A-22. Assistance to illiterate and disabled voters.

1 Any duly registered voter, who shall have indicated on his registration record that he is unable, because of illiteracy or physical disability, to write or whose physical disability, in the opinion of the election officers prevents him from operation of the vote recording device, may ask for assistance from two election officers of opposite political party affiliation to whom he shall thereupon declare his choice of candidates and his position on public questions appearing on the ballot or ballot labels. Such election officers, in the presence of the voter and in the presence of each other, shall thereupon cause such voter's declared choices to be recorded on the vote recording device as votes.

§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting the election officials acting under authority of sections nineteen, twenty, twenty-one and twenty-two of this article in the conduct of the election, no person other than the voter alone may be in, about or within five feet of the voting booth during the time such voter is in the process of voting at any election, and, during such time, no person may communicate in any manner with the voter and the voter may not communicate with any other person or persons. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, in excess of the authority vested in such official by provisions of this article, shall constitute a violation of the provisions hereof. Any person violating any provision or provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars or be sentenced to imprisonment in the county jail for a period not exceeding twelve months, or, in the discretion of the court, shall be subject to both such fine and imprisonment.


1 If the right of any person to vote be challenged in accordance with provisions of article one of this chapter relating to the challenging of voters, such person shall
not be permitted to cast his vote by use of the vote re-
cording device but he shall be supplied by the election
officer at the polling place with an official printed ballot
of such election. Such ballot shall not be endorsed on
the back by the poll clerks but, when voted by the chal-
lenged voter, shall have affixed thereto by the poll clerks
their statement of information as to the challenge on
the form prescribed therefor. Such challenged ballots
shall be secured, handled and disposed of as challenged
ballots in other elections, as provided in article one of
this chapter.

§3-4A-25. Closing polls.

1 As soon as the polls have been closed and the last
2 qualified voter has voted, the vote recording devices shall
3 be sealed against further voting. All unused ballots or
4 ballot cards shall be placed in a container for return
5 to the clerk of the county court.

§3-4A-26. Test of automatic tabulating equipment.

1 Within one week prior to the start of the count of the
2 votes recorded on ballots or ballot cards, the clerk of
3 the county court shall have the automatic tabulating
4 equipment tested to ascertain that it will accurately
5 count the votes cast for all offices and on all measures.
6 Public notice of the time and place of the test shall be
7 given not less than forty-eight hours nor more than two
8 weeks prior thereto by publication of such notice as a
9 Class I legal advertisement, in compliance with the pro-
visions of article three, chapter fifty-nine of the code
and the publication area for such publication shall be
the county involved.

13 The test shall be open to be witnessed by representa-
tives of the political parties, candidates, the press and
the public. It shall be conducted by processing a pre-
audited group of ballots or ballot cards as appropriate,
so punched or marked as to record a predetermined
number of valid votes for each candidate and on each
measure, and shall include for each office one or more
ballots which have votes in excess of the number
allowed by law in order to test the ability of the auto-
matic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the board before the count is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the count the programs, test materials, and ballots shall be sealed and retained as provided in this chapter for paper ballots.

§3-4A-27. Proceedings at the counting center.

(1) All proceedings at the counting center shall be under the direction of the clerk of the county court and shall be conducted under circumstances which allow observation by representatives of each political party and the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take an oath that they will faithfully perform their assigned duties. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," and shall bear a serial number which shall be recorded on the damaged or defective ballot.

(2) The returns printed by the automatic tabulating equipment, to which have been added write-in and other valid votes, shall, when certified by the board of canvassers, constitute the official return of each precinct or election district. Upon completion of the count, the official returns shall be open to the public.

(3) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the board of canvassers may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.
§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

1 (1) The vote recording devices and the ballots and ballot cards shall remain sealed during the canvass of the returns of the election and for a period of seven days after the canvass is finally concluded, during which time any candidate or the chairman of any county executive committee of any political party or their appointed representatives, shall be permitted to examine the vote recording devices and the ballots and ballot cards under the supervision of the county court.

2 (2) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballots and ballot cards and the automatic tabulating equipment used in such election and shall determine the number of votes cast for each candidate and for and against each question and by such examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his party representative may be present at such examination.

3 (3) If any candidate shall demand a recount of the votes cast at an election, the ballots and ballot cards shall not be reexamined during such recount for the purpose of reascertaining the total number of votes cast for any candidate.

§3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.

1 (1) When during a canvass or a recount of votes in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a vote recording device or piece of automatic tabulating equip-
ment used in the election has by reason of mechanical
failure or improper or fraudulent preparation or tam-
pering, incorrectly recorded or tabulated the actual votes
cast or counted on such device or equipment, the board
of canvassers shall proceed to determine whether an
error has occurred in the vote recorded or counted on
such device or equipment. If an error is found, the board
of canvassers shall have the cause of the error corrected
and the ballots affected recounted so that the election
returns will accurately reflect the votes cast at such
election if it is possible to accurately correct such error.
If the board of canvassers is unable to accurately cor-
rect such errors made by said device or equipment and
therefore cannot correct the returns to accurately re-
flect the actual votes cast at such election, the total
votes recorded or tabulated on such device or equipment,
despite the fact that such vote may be erroneous, shall
be accepted in the canvass and in the recount as the
votes cast.

(2) If it is necessary for the board of canvassers to
test any vote recording device or automatic tabulating
equipment counting device for its mechanical accuracy
in recording or tabulating the votes cast at such elec-
tion, such test shall be conducted by the clerk of the
county court in the presence of the board of canvassers
and of any candidate or his party representative. After
the completion of such test the clerk will then and there
prepare and file a statement in writing giving in de-
tail the result of the examination and test.

§3-4A-30. Adjustments in voting precincts where electronic
voting system used.

The provisions of section five of article one of this
chapter, relating to the number of registered voters in
each precinct, shall not apply to and control in precincts
in counties in which electronic voting systems have been
adopted and the county courts of such counties, sub-
ject to other provisions of this chapter with respect to
the altering or changing of the boundaries of voting
precincts, may change the boundaries of precincts or
consolidate precincts, as practicable, to achieve the maxi-
mum advantage from the use of electronic voting systems.

The county court may in the urban centers of any county adopting an electronic voting system, designate a voting place without the limits of a precinct, provided such voting place is in a public building, and in an adjoining precinct. In such event more than one precinct may vote in any such public building.

§3-4A-31. Use of electronic voting systems in municipal elections.

The county court of any county which has adopted the use of an electronic voting system is hereby authorized to make such system available to any municipality in, or partly in, such county for use in elections conducted by such municipality, and the use of the electronic voting system by such municipality shall be upon such terms and conditions as may be agreed upon between the county court and the municipality.

§3-4A-32. Applicability of general laws relating to elections.

Except as modified by this article, the general laws applying to regular, special and primary elections shall apply to elections conducted with the use of electronic voting systems.

If it shall be impracticable for the county court of any county, after the adoption of an electronic voting system by such county, to supply the necessary vote recording devices to each precinct of such county for use in any election, the holding of any election in such precincts, which have not been supplied with vote recording devices shall be governed by the general laws with respect to conducting a regular, special and primary election by the use of printed ballots or the laws with respect to conducting such election by the use of voting machines if such machines are used.

§3-4A-33. Tampering with vote recording devices or automatic tabulating equipment; other dishonest practices; attempts; penalty.

Any person not an election officer or other public official who shall tamper or attempt to tamper with any
vote recording device or automatic tabulating equip-
ment, or in any way intentionally impair or attempt to
impair, their use, and any person who shall be guilty
of or shall attempt any dishonest practice upon any
such device or equipment, or with or by its use, shall
be deemed guilty of a felony, and, upon conviction
thereof, shall be confined in the penitentiary for not less
than one year nor more than ten years.

Any clerk of a county court, county commissioner,
ballet commissioner, election commissioner, or poll clerk,
or any custodian, technician, or other public official
authorized to take part in the holding of an election
or in preparing for an election, who, with intent to
cause or permit any vote recording device or automatic
tabulating equipment to fail to record or tabulate cor-
rectly all votes cast thereon or tabulated therewith, tam-
pers with or disarranges such device in any way, or
any part or appliance thereof, or who causes or consents
to the use of such device or equipment for vote record-
ing or tabulating at any election with knowledge of the
fact that the same is not in order, or not perfectly
set and adjusted so that it will correctly record or tabu-
late all votes cast, or who, with the purpose of defraud-
ing or deceiving any voter or of causing it to be doubt-
ful for what ticket or candidate or candidates or propo-
sition any vote is cast, or of causing it to appear on
said device or devices that the votes cast for one ticket,
candidate or proposition, were cast for another ticket,
candidate or proposition, removes, changes or mutilates
any ballot or ballot label on said device or any part
thereof, or does any other thing intended to interfere
with the validity or accuracy of the election, shall be
deemed guilty of a felony, and, upon conviction there-
of, shall be confined in the penitentiary not less than one
year nor more than ten years.

§3-4A-34. Wilful neglect of duty by officials; penalties.

Any public officer or election officer upon whom any
duty is imposed by this article who shall wilfully omit
or neglect to perform such duty, or who shall do any
act prohibited in this article for which punishment is
not otherwise provided herein, shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be punished
by a fine of not less than five hundred dollars nor more
than one thousand dollars, or imprisonment in the county
jail for not less than sixty days nor more than one year,
or both, in the discretion of the court.

CHAPTER 56

(House Bill No. 769—By Mr. Speaker, Mr. Boiarasky,
and Mr. Watson)

[Passed February 14, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article one, chapter thirty-six 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 abolition of the doctrine
of worthier title and the common law rule that a grantor
cannot create a limitation in favor of his own heirs or
next of kin.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-14a. Doctrine of worthier title and rule that grantor
cannot create a limitation in his own heirs or
next of kin abolished.

Wherever a person, by conveyance inter vivos or by
will, purports to create any present or future interest
in real or personal property in a class of persons described
as his own heirs, next of kin, distributees, or by other
words of like import, such heirs, next of kin or other described persons shall take, by purchase and not by descent or distribution, the interest so purported to be created; it being the intent and purpose of this section to completely abolish the rule of law known as the doctrine of worthier title and the rule of law that a grantor cannot create a limitation in favor of his own heirs or next of kin. This section shall only apply to instruments which become effective after the effective date of this section.

CHAPTER 57

(Senate Bill No. 248—By Mr. Smith, of Cabell, and Mr. Barnett)

[Passed March 3, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, 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; and relating to the retention of fiduciary investments and court direction as to fiduciary investments.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 Any executor, administrator, guardian, curator, committee, trustee, or other fiduciary whose duty it may be to loan or invest money entrusted to him as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and with-
out liability for any loss resulting from investments therein: *Provided,* That such fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the “Federal Farm Loan Act,” debentures issued by “Banks for Cooperatives” under the “Farm Credit Act of One Thousand Nine Hundred Thirty-three,” as amended, and debentures issued by the federal national mortgage association; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development or by the Inter-American Development Bank;

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the legislature of such state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality, or any other political division of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by
wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such mortgage or trust deed, and when such mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title, or title insurance policy, showing good title in the mortgagor when making such mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision (e), in which such investments may be made, shall not be less than two percent, nor more than eight percent, per annum;

(f) In savings accounts and time deposits of bank or trust companies to the extent that such deposits are insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon such savings accounts or time deposits shall not be less than the rate paid other depositors in such bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that such shares are insured by the federal savings and loan insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided that there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the dividend rate upon such shares shall not be less than the rate paid to other shareholders in such associations;

(h) In other securities of corporations organized and existing under the laws of the United States or of the District of Columbia or any state of the United States including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stocks of such corporations and securities of any
open end or closed end management type investment
company or investment trust registered under the "Fed-
eral Investment Company Act" of one thousand nine
hundred forty, as from time to time amended, which men
of prudence, discretion and intelligence acquire or retain
for their own account, provided, and upon conditions,
however, that:

(1) No investment shall be made pursuant to the pro-
visions of this subdivision (h) which, at the time such
investment shall be made, will cause the aggregate market
value thereof to exceed fifty percent of the aggregate
market value at that time of all of the property of the
fund held by such fiduciary. Notwithstanding the afore-
said percentage limitation the cash proceeds of the sale
of securities received or purchased by a fiduciary and
made eligible by this subdivision (h) may be reinvested
in any securities of the type described in this subdivi-
sion (h).

(2) No bonds, debentures, notes, equipment trust
obligations or other evidence of indebtedness of such cor-
porations shall be purchased under authority of this sub-
division (h) unless such obligations, if other than issues
of a common carrier subject to the provisions of section
twenty-a of the "Interstate Commerce Act," as amended,
shall be obligations issued, guaranteed or assumed by
corporations which have any securities currently regis-
tered with the securities and exchange commission.

(3) No common or preferred stocks, other than bank
and insurance company stocks, shall be purchased under
authority of this subdivision (h) unless currently fully
listed and registered upon an exchange registered with
the securities and exchange commission as a national
securities exchange. No sale or other liquidation of any
investment shall be required solely because of any change
in the relative market value of those investments made
eligible by this subdivision (h) and those made eligible
by the preceding subdivisions of this section. In deter-
mining the aggregate market value of the property of a
fund and the percentage of a fund to be invested under
the provisions of this subdivision, a fiduciary may rely
upon published market quotations as to those investments
for which such quotations are available, and upon such
valuations of other investments as in the fiduciary’s best
judgment seem fair and reasonable according to available
information.

Trust funds received by executors, administrators,
guardians, curators, committees, trustees and other fidu-
ciaries may be kept invested in the securities originally
received by them, unless otherwise ordered by a court
having jurisdiction of the matter, as hereinafter provided,
or unless the instrument under which the trust was
created shall direct that a change of investment be made,
and any such fiduciary shall not be liable for any loss
that may occur by depreciation of such securities.

This section shall not apply where the instrument
creating the trust, or the last will and testament of any
testator, or any court having jurisdiction of the matter,
specially directs in what securities the trust funds shall
be invested, and every such court is hereby given power
specially to direct by order or orders, from time to time,
additional securities in which trust funds may be in-
vested, and any investment thereof made in accordance
with any such special direction shall be legal, and no
executor, administrator, guardian, curator, committee,
trustee or other fiduciary shall be held for any loss result-
ing in any such case.

CHAPTER 58
(House Bill No. 973—By Mr. Seibert)

(Passed March 4, 1969; in effect ninety days from passage. Approved by the
Governor.)

AN ACT to amend and reenact sections four, five, six, eight,
seventeen and eighteen, article three, chapter twenty-
eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to industrial
home for girls.
Be it enacted by the Legislature of West Virginia:

That sections four, five, six, eight, seventeen and eighteen, article three, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. INDUSTRIAL HOME FOR GIRLS.

§28-3-4. Medical examination in commitment proceedings; health certificate; venereal diseases of girls; pregnancy.

§28-3-5. Compensation of physician and matron in commitment proceeding.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.

§28-3-8. Transfer of certain inmates to other institutions.

§28-3-17. Same—Preparation of inmate lists for billing purposes; application of county funds in state treasury.

§28-3-18. Same—Determination of payments due; levy; compelling payment.

§28-3-4. Medical examination in commitment proceedings; health certificate; venereal diseases of girls; pregnancy.

1 Before committing a girl to the industrial home, the
2 court committing her shall cause her to be examined
3 by a reputable physician authorized to practice medicine
4 in this state, in order to ascertain whether such girl is
5 sound in mind, and whether she is an imbecile or an
6 idiot, or is pregnant, or afflicted with epilepsy, syphilis,
7 gonorrhea, or any other infectious disease, and as to
8 any other particulars that may be prescribed in the rules
9 and regulations of the state commissioner of public insti-
10 tutions. Such examination shall be made in private, but
11 there shall be present during the examination a woman
12 of good character and of mature years, to be named by
13 the judge. The physician making such examination shall
14 make out a statement, under oath, respecting the particu-
15 lars named in the form prescribed by the state com-
16 missioner of public institutions, which certificate of the
17 physician shall accompany the commitment. If it shall
18 appear from such examination or otherwise that the
19 girl is of unsound mind, or is imbecile, or idiotic, or
20 epileptic, or has any infectious disease, or, being over
21 sixteen years of age, is or has been an inmate of a
house of ill-fame, or an assignation house, she shall not be committed to said home, except as hereinafter provided; and the superintendent of the home shall not receive any girl into such home unless the commitment is accompanied by a certificate of health, signed by a reputable physician, showing that she is not of unsound mind, and is not an imbecile or idiot, and is not pregnant, nor afflicted with epilepsy, syphilis, gonorrhea, or any other infectious disease, nor one, who, being over sixteen years of age, is or has been an inmate of a house of ill-fame or an assignation house. If, upon such examination, it shall appear that the girl is suffering with a venereal disease in any stage, the judge committing such girl shall make an order committing her to the industrial home, and shall make an additional order directing that she first be transferred to the Fairmont emergency hospital, or the Huntington state hospital, or to the Welch emergency hospital, for observation, treatment and detention pending such treatment until cured of such venereal disease or rendered completely noninfectious therefrom, after which time she shall be transferred to the industrial home at Salem, there to be kept as provided by law: Provided, however, That any such girl who is feeble minded shall be sent to Huntington state hospital, and not to Fairmont emergency hospital nor to Welch emergency hospital: And provided further, That any feeble-minded girl who may be so sent to Huntington state hospital shall not afterwards be transferred to the West Virginia industrial home for girls. It shall be the duty of the superintendents of the hospitals at Fairmont, Huntington and Welch to receive into said hospitals all girls who may be committed thereto, as provided herein, and to detain, care for, and treat such girls until cured or rendered completely noninfectious, and as soon thereafter as convenient to transfer them to the industrial home at Salem, except as hereinbefore provided. The state commissioner of public institutions shall provide such suitable buildings, wards and equipment at said hospitals as may be necessary to carry out the provisions of this section, including the expense of transferring the girls to Salem.
It shall be the duty of the judge, upon committing a girl who is infected with a venereal disease to any of said hospitals, as provided herein, to notify the director of the bureau of venereal diseases of West Virginia of the fact, giving the name, age and address of the girl and the disease from which she is suffering. It shall be the duty of the superintendent of the hospital receiving such girl to notify the director when any girl is received and when she is transferred to the industrial home, as provided herein.

§28-3-5. Compensation of physician and matron in commitment proceeding.

In a proceeding for the commitment of a girl to the industrial home for girls, or to Fairmont emergency hospital, Huntington state hospital or Welch emergency hospital, the compensation of the physician making the examination, and of the woman or matron present at such examination, shall be fixed by the court and paid as the other costs of the case are taxed and paid. Provided, That the compensation of the physician shall not exceed three dollars, and the compensation of the matron shall not exceed one dollar, for each examination.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.

Whenever a girl is committed to the industrial home, to Fairmont emergency hospital, Huntington state hospital or Welch emergency hospital, by any of the courts hereinbefore named, it shall be the duty of the clerk of the court before whom the trial was held to prepare the commitment papers in the case and forward the same by mail without delay to the superintendent of the industrial home, or to the superintendents in charge of the Fairmont emergency hospital, Huntington state hospital or Welch emergency hospital, as the case may appear to demand. On receipt of such commitment papers, the superintendent of the home, if the commitment is found by her to conform to the provisions of this article, and there is room in said home, shall promptly so advise the authority making the commitment, who shall at once send the girl so committed to the home, under escort of
17 a discreet woman of mature age. Such escort shall be
18 designated by the authority by whom the commitment was
19 made, and her compensation, which shall be fixed by the
20 same authority and shall not exceed three dollars per
21 day of twenty-four hours, and her expenses, and the
22 girl's necessary traveling expenses, fully itemized and
23 sworn to by the escort, shall be paid out of the treasury
24 of the county from which the commitment was made, by
25 the county court thereof. No girl committed to said in-
26 dustrial home shall be lodged in any jail or lockup; but
27 the authority committing her shall designate an officer
28 or other proper person, preferably a woman, in whose
29 custody she will be kept until she is delivered to the per-
30 son duly authorized to conduct her to said home. The
31 expense of keeping such girl shall be paid like any other
32 expense of the hearing or trial.

§28-3-8. Transfer of certain inmates to other institutions.

1 The state commissioner of public institutions shall have
2 authority to transfer any girl who is an inmate of the
3 industrial home, who is insane, or an imbecile, or an
4 idiot, to any state institution charged with the care and
5 treatment of such persons; to transfer any girl in such
6 home who is blind or deaf, or whose sight or hearing is
7 so impaired as to make a transfer desirable, to the schools
8 for the deaf and blind; to transfer to Fairmont emergency
9 hospital, Huntington state hospital or Welch emergency
10 hospital, any girl infected with syphilis or gonorrhea.

§28-3-17. Same—Preparation of inmate lists for billing pur-
poses; application of county funds in state treasury.

1 The superintendent of the industrial home, the super-
2 intendents of Fairmont emergency hospital, Huntington
3 state hospital and Welch emergency hospital, shall, be-
4 fore the tenth day of January of each year, prepare and
5 certify to the auditor and the state commissioner of pub-
6 lic institutions each a list by counties of all such girls as
7 are mentioned in the preceding section, who were kept
8 in the home during the preceding year or any part of it,
9 showing as to each girl what part of the year she was
10 so kept in the home. On receiving such list the auditor
shall charge to each county fifty dollars on account of each girl from such county who was kept in such home during the preceding year, and a proportionate amount on account of each girl kept in the home for any part of such year less than the whole. Any money in the treasury of the state to the credit of any such county, from whatever source arising, and not appropriated to pay any other debt of the county to the state, shall be applied, so far as necessary, to the payment of the sums so charged. If any sum in the treasury due the county shall not be sufficient to pay the whole amount so charged against it, such sum shall be applied as a credit on the amount charged, and the balance shall remain a charge against the county.

§28-3-18. Same—Determination of payments due; levy; compelling payment.
1. Within ten days after receiving such list the auditor shall certify to the county court of such county a list of the girls from the county in such home, or Fairmont emergency hospital, Huntington state hospital or Welch emergency hospital, stating the length of the term during the year each girl was in such home, as shown by the list certified by the superintendent, the amount due from the county on her account, and the total amount due on account of all. He shall credit on such statement whatever amount has been applied as a payment thereon from any funds of the county in the treasury. Such statement shall be a receipt to the county for any amount so credited, and shall be a bill for any amount still appearing to be due from the county. Unless the bill shall have been paid by the application of funds of the county in the state treasury, the county court shall, at its next levy term, provide for the payment of the same, or such part as may not have been paid, and cause the amount to be paid into the state treasury. If the amount so due from any county be not paid in a reasonable time after such levy term, the auditor may in the name of the state, apply to the circuit court of the county for a mandamus to require the county court to provide for and pay the same, or he may proceed in the name of the state by any other appropriate remedy to recover the same.
CHAPTER 59

(House Bill No. 813—By Mr. Harman, of Taylor, and Mr. Watson)

[Passed February 21, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of property of subordinate lodges of Odd Fellows, Knights of Pythias or Order of Eagles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROVISIONS REGARDING PARTICULAR FRATERNAL ORGANIZATIONS.

§35-4-1. Disposition of property of subordinate lodge of Odd Fellows, Knights of Pythias or Order of Eagles.

1 If any subordinate lodge of the Independent Order of Odd Fellows, the order Knights of Pythias or Fraternal Order of Eagles, in this state, working under the respective jurisdiction of the parent grand lodge of said respective orders, for this state, shall disband, surrender or forfeit its charter and cease to work, all its property, real and personal, shall, immediately upon such disbanding, surrender or forfeiture, vest in the said respective parent grand lodge, having jurisdiction over said subordinate lodge, to be held by that body for the charitable uses of the said respective parent grand lodge, in this state, according to the rules, regulations and policy of the grand lodge concerned, and said respective parent grand lodge is authorized in its corporate name, to sue for and recover such property, real and personal.
AN ACT to amend and reenact section two, article two-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of family planning clinics; purposes; eligibility therefor.

Be it enacted by the Legislature of West Virginia:

That section two, article two-b, 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 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-2. Local boards of health authorized to establish clinics; supervision; purposes; procedures not approved; approval by state board of programs.

A local board of health, created and maintained pursuant to the provisions of article two or article two-a of this chapter, is authorized to establish and operate within its jurisdiction, one or more family planning and child spacing clinics under the supervision of a licensed physician for the purpose of disseminating information, conducting medical examinations and distributing family planning and child spacing appliances, devices, drugs, approved methods and medication without charge to indigent and medically indigent persons on request and with the approval of said licensed physician. Such information, appliances, devices, drugs, approved methods and medication shall be dispensed only in accordance with the recipients’ expressed wishes and beliefs and in accordance with all state and federal laws for the dispensing of legend drugs: Provided, however, That the procedures of sterilization and abortion shall not be considered approved methods of family planning and child spacing within the intent of this section and are expressly ex-
20 eluded from the programs herein authorized. All local
21 boards of health receiving state or federal funds for
22 family planning or child spacing programs shall first
23 receive approval by the state board of health of their
24 general plan of operation of such programs.

CHAPTER 61

(House Bill No. 577—By Mr. Watson)

[Passed February 13, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter sixteen of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the establishment,
maintenance and operation of a statewide system of vital
statistics within the state department of health; providing
for registration of births, deaths, fetal deaths, divorces,
annulments, and other records; specifying duties of the
state board of health; providing for appointment and du­
ties of the state registrar; providing for registration dis­
tricts and appointment, removal and duties of local reg­
istrars, deputy local registrars and subregistrars; fixing
compensation and fees of local registrars; prescribing
forms of certificates, reports and other returns; providing
for birth registration, including method, place of local
registration, designation of persons responsible for pre­
paring and signing birth certificates; providing for reg­
istration of infants of unknown parentage, delayed reg­
istration of births, judicial procedure to establish facts of
births, registration of adoptions by courts and their clerks,
and reports by courts of results of paternity determina­
tions; providing for issuance of new certificates of birth
following adoption, legitimation, and paternity determi­
nation; providing for registration of deaths, and desig­
nation of places of local registration; specifying duties of
funeral directors, physicians, and other persons, relating
to deaths; providing for issuance of death certificates for
fetal deaths, issuance of burial or transit permits for dis-
position of dead bodies, issuance of permits for disinter-
ment and reinterment, and the form and contents of such
permits; specifying duties of custodians of burial grounds;
endorsement and return of burial permits; providing for
extensions of time for filing of death certificates, fetal
death certificates, medical certifications of cause of death,
and for obtaining burial or transit permits; providing pro-
cedure for correcting and amending certificates of birth,
death, and other certificates; reproduction of records by
state registrar; restrictions upon disclosure of records and
information contained therein; issuance of regulations
authorizing disclosure; providing for appeals from deci-
sions of custodians of permanent local records who· r·efuse
to disclose information; copies of records, searches of rec-
ords, and fees therefor; providing for record keeping by
institutions; penalties for violations; severability.

Be it enacted by the Legislature of West Virginia:

That article five, chapter sixteen of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-1. Definitions.
§16-5-2. Division of vital statistics; statewide system; supervision by
state board of health; offices, etc.
§16-5-3. Rules and regulations of state board of health.
§16-5-4. Appointment of state registrar of vital statistics.
§16-5-5. Duties of state registrar of vital statistics; enforcement of
article.
§16-5-6. Registration districts.
§16-5-7. Appointment and removal of local registrars, deputy local
registrars, and subregistrars.
§16-5-8. Duties of local registrars, deputy registrars and subregistrars.
§16-5-10. Payment of fees to local registrars.
§16-5-11. Form of certificates, etc.
§16-5-12. Birth registration generally.
§16-5-13. Infants of unknown parentage; foundling registration.
§16-5-14. Delayed registration of births.
§16-5-16. Court reports of adoption.
§16-5-17. Court reports of determination of paternity.
§16-5-18. New certificate of birth following adoption, legitimation, or
determination of paternity.
§16-5-19. Death registration.
§16-5-20. Fetal death registration.
§16-5-22. No burial without permit; duty of custodian or funeral director.
§16-5-23. Extension of time for filing death certificates, etc.
§16-5-24. Correction and amendment of vital records.
§16-5-25. Reproduction of records.
§16-5-27. Copies of data from vital records.
§16-5-28. Fees for copies and searches.
§16-5-29. Persons required to keep records.
§16-5-30. Duty to furnish information relative to vital events.
§16-5-31. Penalties.
§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.
§16-5-33. Registration of marriages.
§16-5-34. Registration of divorces and annulments of marriages.
§16-5-35. Severability.

§16-5-1. Definitions.

1 As used in this article:
2 a. “Dead body” means a lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.
3 b. “Fetal death” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.
4 c. “Filing” means the presentation of a certificate, report or other record provided for in this article, of a birth, death, fetal death, adoption, marriage, divorce or annulment, for registration by the division of vital statistics of the state department of health.
5 d. “Final disposition” means the burial, interment, cremation or other disposition of a dead body or fetus.
6 e. “Institution” means any establishment, public or private, which provides in-patient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals or to which persons are committed by law.
f. "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

g. "Physician" means a person authorized or licensed to practice medicine pursuant to article three or article fourteen, chapter thirty of this code.

h. "Registration" means the acceptance by the division of vital statistics, and the incorporation in its official records, of certificates, reports, or other records provided for in this article, of births, deaths, fetal deaths, adoptions, marriages, divorces and annulments.

i. "System of vital statistics" means the registration, collection, preservation, amendment, certification of vital statistics records and activities related thereto, including, but not restricted to, the tabulation, analysis and publication of statistical data derived from such records.

j. "Vital statistics" means records of birth, death, fetal death, marriage, divorce, annulment and data related thereto.

k. "Local registrar" means the person appointed by the state registrar of vital statistics for a county or other district to perform the vital statistics functions specified to be performed in and for such county or other district.

l. "Deputy local registrar" means a person appointed by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of such local registrar.

m. "Subregistrar" means a person appointed, with the approval of the state registrar of vital statistics, by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of such local registrar.
§16-5-2. Division of vital statistics; statewide system; supervision by state board of health; offices, etc.

Pursuant to the provisions of section seven, article one of this chapter, there is hereby established in the state department of health a division of vital statistics which shall install, maintain, and operate the system of vital statistics throughout this state. The state board of health shall have general supervision over the division of vital statistics, which shall be under the immediate supervision of the state registrar of vital statistics. The board shall provide for such clerical and other assistants in the division of vital statistics as may be necessary for the purposes of this article. Suitable offices shall be provided at the seat of state government for the division of vital statistics, and such offices shall be properly equipped with a fireproof vault and filing cases for the permanent and safe preservation of all official records made, maintained, or filed under the provisions of this article.

§16-5-3. Rules and regulations of state board of health.

The state board of health is authorized, in conformity with the provisions of section three, article one of this chapter to adopt, amend and repeal rules and regulations for the purpose of carrying out the specific provisions of this article.

§16-5-4. Appointment of state registrar of vital statistics.

The state board of health, with the advice of the state director of health, shall appoint and prescribe the qualifications of the state registrar of vital statistics in accordance with the provisions of section seven, article one of this chapter.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

a. The state registrar of vital statistics shall:

(1) Administer and enforce the provisions of this article and all other applicable laws of this state and all lawful rules and regulations adopted and promulgated thereunder.
(2) Direct and supervise the statewide system of vital statistics and the operation of the division of vital statistics, and act as custodian of its records.

(3) Direct, supervise and control the activities of local registrars and the activities of public officers in relation to the operation of the vital statistics system and provide them with the postage necessary for them to carry out their duties under this article.

(4) Prescribe, with the approval of the state board of health, and provide and distribute all forms necessary to carry out the provisions of this article and of the rules and regulations adopted and promulgated thereunder.

(5) Prepare and publish annual reports of vital statistics of this state, and such other reports as may be required by the state board of health.

b. The state registrar of vital statistics may delegate such functions and duties as are hereby vested in him to officers and employees of the division of vital statistics and to local registrars as the state registrar may deem necessary or expedient.

c. The state registrar, either personally or by a duly delegated representative, shall have authority to investigate cases of irregularity or violation of law arising under the provisions of this article, and all local registrars, deputy local registrars, and subregistrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. When any such case is reported to him by the state registrar, the prosecuting attorney shall forthwith initiate and promptly prosecute the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney general shall assist in the enforcement of the provisions of this article.

§16-5-6. Registration districts.

For the purposes of this article the state board of health may establish registration districts throughout the state. The board may eliminate, or change the boundaries of,
any district and may consolidate two or more districts or subdivide any district to facilitate registration.


a. The state registrar of vital statistics shall appoint a local registrar and the local registrar may appoint one or more deputy local registrars of vital statistics for each registration district.

b. When it appears necessary for the convenience of the people in any district, the local registrar may, with the approval of the state registrar, appoint one or more persons to act as subregistrars.

c. The state registrar may remove a local registrar, a deputy local registrar, or a local subregistrar for reasonable cause.

§16-5-8. Duties of local registrars, deputy registrars and subregistrars.

a. A local registrar, with respect to his registration district, shall:

(1) Administer and enforce the provisions of this article and all instructions, rules and regulations adopted and promulgated pursuant thereto.

(2) Require that certificates be completed and filed in accordance with provisions of this article and the rules and regulations adopted and promulgated pursuant thereto.

(3) Transmit, on the first and fifteenth day of each month or as soon as possible thereafter, the certificates, reports or other returns filed with him to the state registrar of vital statistics, or transmit the same more frequently when directed to do so by the state registrar.

(4) Maintain such records, make such reports and perform such other duties as may be required by the state registrar of vital statistics.

b. In accordance with rules and regulations adopted and promulgated pursuant to this article, the deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of such local registrar and shall perform such other duties as may be prescribed.
HEALTH


1 a. Each local registrar shall be paid the sum of one dollar for each certificate of birth, death, or fetal death registered by him and transmitted to the state registrar of vital statistics in accordance with the rules and regulations adopted and promulgated pursuant to this article.

b. If no birth, death or fetal death is registered by him during any calendar month, the local registrar shall report that fact to the state registrar of vital statistics and be paid the sum of one dollar for such report.

c. No compensation shall be paid under this section to any full-time employee of any state or local governmental unit or body. Where such employee is designated to serve, and serves, as a local registrar, the compensation provided by this section shall be paid to the governmental unit or body by which such local registrar is employed.

§16-5-10. Payment of fees to local registrars.

The state registrar of vital statistics shall certify at the end of each quarter of the calendar year, to the county courts of the several counties, the number of births, fetal deaths and deaths properly registered with the names of the local registrars and the amounts due each. All amounts payable to a local registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon the order of the county court of such county issued upon such certification by the state registrar of vital statistics. Where a local registrar is a full-time employee of any state or local governmental unit or body, the state registrar shall so state in his certification, and, in such case, the county court shall make payment, pursuant to section nine of this article, to the governmental unit or body by which such registrar is employed.

§16-5-11. Form of certificates, etc.

a. In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports
and other returns required by this article, or by rules and
regulations adopted and promulgated thereunder, shall
include as a minimum (in addition to the items required
by the laws of this state) the items recommended by the
federal agency responsible for national vital statistics,
subject to the approval of, and to modification by, the
state board of health.

b. Each certificate, report and form required to be
filed under this article shall have entered upon its face
the date of registration, duly attested.

§16-5-12. Birth registration generally.

a. A certificate of birth for each live birth which
occurs in this state shall be filed with the local registrar
of the district in which the birth occurs within seven
days after such birth and shall be registered by such
registrar if it has been completed and filed in accordance
with this section. When a birth occurs in a moving con-
veyance, a birth certificate shall be filed in the district in
which the child is first removed from the conveyance.

b. When a birth occurs in an institution, the person
in charge of the institution or his designated representa-
tive shall obtain the personal data, prepare the certificate,
secure the signatures required for the certificate and file
it with the local registrar. The physician in attendance
shall certify to the facts of birth and provide the medical
information required for the certificate within five days
after the birth.

c. When a birth occurs outside an institution, the cer-
tificate shall be prepared and filed by one of the following
in the indicated order of priority:

(1) The physician in attendance at or immediately
after the birth, or in the absence of such a person,

(2) Any other person in attendance at or immediately
after the birth, or in the absence of such a person,

(3) The father, the mother, or, in the absence of the
father and the inability of the mother, the person in
charge of the premises where the birth occurred.

d. If the mother was married either at the time of
conception or birth, the name of the husband shall be
entered on the certificate as the father of the child unless
paternity has been determined otherwise by a court of
competent jurisdiction, in which case the name of the
father as determined by the court shall be entered.

e. If the mother was not married either at the time
of conception or birth, the name of the father shall not
be entered on the certificate of birth without the written
consent of the mother and of the person to be named as
the father unless a determination of paternity has been
made by a court of competent jurisdiction, in which case
the name of the father as determined by the court shall
be entered.

f. Either of the parents of the child shall sign the
certificate of live birth to attest to the accuracy of the
personal data entered thereon, in time to permit its filing
within the seven days prescribed above.

g. In order that each county may have a complete
record of the births occurring in said county, the local
registrar shall transmit each month to the county clerk
of his county the copies of the certificates of all births
occurring in said county, from which copies the clerk
shall compile a record of such births and shall enter the
same in a systematic and orderly way in a well-bound
register of births, which said register shall be a public
record: Provided, That such copies and register shall
not state that any child was either legitimate or illegit-
imate. The form of said register of births shall be pre-
scribed by the state registrar of vital statistics.

§16-5-13. Infants of unknown parentage; foundling registra-
tion.

a. Whoever assumes the custody of a living infant of
unknown parentage shall report, on a form and in the
manner prescribed by the state registrar of vital statistics,
within seven days of the date of such assumption of
custody, to the local registrar of the district in which
the child was found, the following information:

(1) The date and place of finding;

(2) Sex, color or race and approximate age of child;
(3) Name and address of the persons with whom or
the institution with which the child has been placed for
11 care; and
(4) Other data required by rules and regulations
adopted and promulgated pursuant to this article.
14 b. The place where the child was found shall be en-
15 tered as the place of birth and the date of birth shall be
determined by approximation.
17 c. A report registered under this section shall consti-
tute the certificate of birth for the infant.
19 d. If the child is identified and a certificate of birth
is found or obtained, any report registered under this sec-
tion shall be sealed and filed and may be opened only by
order of a court of record of competent jurisdiction or as
may be provided by lawful rule and regulation adopted
and promulgated pursuant to this article.

§16-5-14. Delayed registration of births.

a. When the birth of a person born in this state has
not been registered within the time period provided in
section twelve of this article, a certificate may be filed in
accordance with rules and regulations adopted and pro-
mulgated by the state board of health. Such certificate
shall be registered subject to such evidentiary require-
ments as the state board of health shall by rule and regula-
tion prescribe to substantiate the alleged facts of birth.

b. Certificates of birth registered one year or more
after the date of occurrence shall be marked "Delayed"
and shall show on their face the date of the delayed
registration.

b. Certificates of birth registered one year or more
after the date of occurrence shall be marked "Delayed"
and shall show on their face the date of the delayed
registration.

c. A summary statement of the evidence submitted
in support of the delayed registration shall be endorsed
on the certificate.

d. (1) When an applicant does not submit the mini-
mum documentation required in the rules and regulations
for delayed registration or when the state registrar of vital
statistics finds reason to question the validity or adequacy
of the certificate or the documentary evidence, the state
registrar of vital statistics shall not register the delayed
(2) The state board of health may by rule and regulation provide for the dismissal of an application which is not actively prosecuted.


a. If a delayed certificate of birth is refused under the provisions of section fourteen of this article, a petition may be filed with the circuit court or other court of record of competent jurisdiction for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

b. Such petition shall allege:

(1) That the person for whom a delayed registration of birth is sought was born in this state;

(2) That no record of birth of such person can be found in the office of the state or the local custodian of birth records;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section fourteen of this article and of any rules and regulations adopted and promulgated thereunder;

(4) That the state registrar of vital statistics has refused to register a delayed certificate of birth; and

(5) Such other allegations as may be required by the court.

c. The petition shall be accompanied by a copy of the statement of reasons of the registration official made in accordance with subsection d (1), section fourteen of this article and by all documentary evidence which was submitted to the registration official in support of such registration.

d. The court shall fix a time and place for hearing the petition and shall require that the petitioner give the registration official who refused to register the petitioner's delayed certificate of birth not less than twenty days' notice of said hearing. Such official, or his authorized representative, may appear and testify in the proceeding.
Ch. 61] HEALTH 413

33 e. If the court finds from the evidence presented that
34 the person for whom a delayed certificate of birth is sought
35 was born in this state, it shall make findings as to the
36 place and date of birth, parentage, and such other find-
37 ings as the case may require and shall issue an order
38 setting forth the information required under the provi-
39 sions of this article to establish a record of birth. This
40 order shall include the birth date to be registered, a sum-
41 mary statement of the evidence presented, and the date
42 of the court’s action.
43 f. The clerk of the court shall forward each such order
44 to the state registrar of vital statistics not later than the
45 tenth day of the calendar month following the month in
46 which it was entered. Such order shall be registered by
47 the state registrar of vital statistics and shall constitute
48 the record of birth, from which copies may be issued in
49 accordance with the provisions of this article.
50 Any judgment shall be final unless reversed, vacated or
51 modified on appeal, and any appeal shall be sought in the
52 manner and within the time provided by law for appeals
53 in other civil cases.

§16-5-16. Court reports of adoption.

1 a. In conformance with the provisions of chapter forty-
2 eight, article four, section four of this code, any court in
3 this state entering an order of adoption shall require the
4 preparation by the clerk of the court of a certificate of
5 adoption on a form prescribed and furnished by the
6 state registrar of vital statistics. Such certificate shall
7 include the factual information described in chapter forty-
8 eight, article four, section four; shall provide such addi-
9 tional information as may be required under rules and
10 regulations duly adopted pursuant to this article to estab-
11 lish a new certificate of birth of the person adopted; shall
12 identify the order of adoption; and shall be certified by
13 the clerk of court.
14 b. Information in the possession of the petitioner neces-
15 sary to prepare the certificate of adoption shall be pleaded
16 in the petition for adoption or shall be furnished to the
17 clerk of the court by the petitioner for adoption at the
18 time the petition is filed. Any social or welfare agency
or other person concerned with the adoption shall supply
the petitioner with such information in the possession of
such agency or person as may be necessary to complete
the certificate.

c. Whenever an adoption order or decree is amended
or vacated, the clerk of the court shall prepare a cer-
tificate thereof, which shall include such facts as are
necessary to identify the original adoption certificate and
the facts amended in the adoption order of decree which
are required to properly amend the birth record.

d. Not later than the tenth day of each calendar month,
the clerk of the court shall forward to the state registrar
of vital statistics a report of all orders or decrees of adop-
tion and of annulments or amendments thereof, entered in
the preceding month, together with such related certifi-
cates and reports as may be required under the provisions
of this article.

e. When the state registrar of vital statistics shall re-
ceive a record of adoption or of an annulment or amend-
ment of an order or decree of adoption from a court for
a person born outside of this state, such record shall be
forwarded to the appropriate registration authority in the
state of birth.

§16-5-17. Court reports of determination of paternity.

a. Whenever a judgment has been entered determining
the paternity of a child, the clerk of the court shall pre-
pare a certificate on a form prescribed and furnished by
the state registrar of vital statistics. The certificate shall
include such facts as are necessary to locate and identify
the certificate of birth of the person whose paternity is
determined; shall provide information necessary to estab-
lish a new certificate of birth of the person whose pa-
ternity is determined; and shall identify the action and
be certified by the clerk of court.

b. Not later than the tenth day of each calendar month,
the clerk of the court shall forward to the state registrar
of vital statistics certificates of paternity entered in the
preceding month, together with such related reports as
the state registrar of vital statistics shall require.
§16-5-18. New certificate of birth following adoption, legitimation, or determination of paternity.

1 a. The state registrar of vital statistics shall establish
2 a new certificate of birth for a person born in this state,
3 when he receives either of the following:
4 (1) A certificate of adoption as provided in section
5 sixteen of this article or a certified copy of an order or de-
6 cree of adoption together with all information necessary to
7 identify the original certificate of birth and to establish a
8 new certificate of birth.

9 (2) A request that a new certificate be established,
10 together with such evidence as is required by statute or
11 duly adopted rule and regulation showing that such person
12 has been legitimated, or that a court of competent jurisdic-
13 tion has determined the paternity of such a person.

14 b. When a new certificate of birth is established, the
15 actual place and date of birth, if known, shall be shown.
16 It shall be substituted for the original certificate of birth
17 and thereafter the original certificate and the evidence of
18 adoption, paternity, or legitimation shall not be subject
19 to inspection except upon order of a court of competent
20 jurisdiction. Upon receipt of notice of the vacation of an
21 adoption, the original certificate of birth shall be restored
22 to its place in the files and the new certificate and evidence
23 shall not be subject to inspection except upon order of a
24 court of competent jurisdiction.

25 c. If no certificate of birth is on file for the person for
26 whom a new certificate is to be established under this
27 section, a delayed certificate of birth shall be filed with
28 the state registrar of vital statistics as provided in section
29 fourteen or section fifteen of this article, before a new
30 certificate of birth is established, except that when the
31 date and place of birth and parentage have been estab-
32 lished in the adoption proceedings, a delayed certificate
33 shall not be required.

34 d. When a new certificate of birth is established by
35 the state registrar of vital statistics, all copies of the
36 original certificate of birth in the custody of any custodian
37 of permanent local records in this state shall be sealed
§16-5-19. Death registration.

a. A death certificate for each death which occurs in this state shall be filed with the local registrar of the registration district in which the death occurs within three days after such death, and prior to removal of the body from the state, and shall be registered by such registrar if it has been completed and filed in accordance with this section: Provided, That

(1) if the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three days after the finding; and

(2) if death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body is first removed from such conveyance.

b. The funeral director or person acting for him who first assumes custody of a dead body shall file the death certificate. He shall obtain the necessary personal data from the next of kin or the best qualified person or source available. He shall obtain the medical certification of the cause of death from the person responsible for making such certification.

c. The medical certification shall be completed and signed within twenty-four hours after death by the physician in charge of the patient's care for the illness or condition which results in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provision of this code.

d. When death occurs without medical attendance and inquiry is not required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code, the local health officer shall investigate the cause of death and complete and sign the medical certification within twenty-four hours after receiving notice of the death.

e. When death occurs in a manner subject to investigation, the coroner or other officer or official charged with the legal duty of making such investigation shall investi-
gate the cause of death and shall complete and sign the
medical certification within twenty-four hours after mak-
ing determination of the cause of death.

f. In order that each county may have a complete
record of the deaths occurring in said county, the local
registrar shall transmit each month to the county clerk
of his county a copy of the certificates of all deaths occur-
ing in said county, and if any person shall die in a county
other than that county within the state in which such
person last resided prior to death, then the state registrar
shall, if possible, also furnish a copy of such death certifi-
cate to the clerk of the county court of the county where-
in such person last resided, from which copies the clerk
shall compile a record of such deaths and shall enter the
same in a systematic and orderly way in a well-bound
register of deaths for that county, which such register
shall be a public record. The form of said death register
shall be prescribed by the state registrar of vital statistics.

§16-5-20. Fetal death registration.

a. A fetal death certificate for each fetal death which
occurs in this state after a gestation period of twenty
completed weeks shall be filed with the local registrar of
the registration district in which the delivery occurs
within three days after such delivery and prior to removal
of the fetus from the state, and shall be registered with
such registrar if it has been completed and filed in ac-
cordance with this section: Provided, That

(1) if the place of fetal death is unknown, a fetal
death certificate shall be filed in the registration district
in which a dead fetus is found within three days after
the finding; and

(2) if a fetal death occurs in a moving conveyance,
a fetal death certificate shall be filed in the registration
district in which the fetus is first removed from such
conveyance.

b. The funeral director or person acting for him who
first assumes custody of a fetus shall file the fetal death
certificate. In the absence of such a person, the physician
or other person in attendance at or after the delivery
shall file the certificate of fetal death. The person filing
such certificate shall obtain the personal data from the
next of kin or the best qualified person or source avail-
able and shall obtain the medical certification of the cause
of death from the person responsible for making such cer-
tification.

c. The medical certification shall be completed and
signed within twenty-four hours after delivery by the
physician in attendance at or after delivery except when
inquiry is required by chapter sixty-one, article twelve
or other applicable provision of this code.

d. When a fetal death occurs without medical attend-
ance for the mother at or after delivery and an in-
quiry is not required by chapter sixty-one, article twelve
or other applicable provision of this code, the local health
officer shall investigate the cause of fetal death and shall
complete and sign the medical certification within twenty-
four hours after receiving notice of the delivery.

e. When the coroner or other officer or official charged
with the legal duty of making such investigation shall
investigate a fetal death as required by chapter sixty-one,
article twelve or other applicable provision of this code,
he shall complete and sign the medical certification within
twenty-four hours after making determination of the
cause of such fetal death.

§16-5-21. Burial, transit and disinterment and reinterment
permits.

a. The funeral director or person acting for him who
first assumes custody of a dead body or of a fetus
which has died after a gestation period of twenty com-
pleted weeks shall obtain a burial or transit permit prior
to final disposition or removal from the state of the body
or fetus and within seventy-two hours after death.

b. Such burial or transit permit shall be issued by the
local registrar of the district where the certificate of death
or fetal death is filed in accordance with the requirements
of section nineteen or section twenty of this article.

c. A burial or transit permit issued under the law
of another state which accompanies a dead body or fetus
brought into this state shall be authority for final dis-
position of the body or fetus in this state.
d. A permit for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus except as authorized by rule and regulation or otherwise provided by law or by order of a court having jurisdiction with respect thereto. Such permit shall be issued by the local registrar to a licensed funeral director, embalmer, or other persons acting on their behalf, upon proper application.

e. The form and contents of burial, transit and disinterment and reinterment permits shall be prescribed by the state registrar of vital statistics in conformance with the provisions of subdivision (4), subsection a, section five of this article.

§16-5-22. No burial without permit; duty of custodian or funeral director.

No person in charge of any premises on which interment or other disposition of dead bodies is made shall inter or permit the interment or other disposition of any such body unless it is accompanied by a burial, transit or reinterment permit except as otherwise provided by order of a court having jurisdiction with respect thereto. Such person shall endorse upon the permit the date of interment or other disposition over his signature and shall return the permit, so endorsed, to the local registrar of the registration district within which the interment or other disposition of the body is made. Such return shall be made within ten days from the date of interment or other disposition. The person endorsing the permit shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, which record shall contain the name of the deceased person, place of death, date of burial or disposal, name and address of the funeral director or person acting for him, and such other information as may be required by rule and regulation duly adopted pursuant to this article. Such record shall at all times be open to official inspection: Provided, That when a body is interred or otherwise disposed of in a cemetery, burial ground, or other premises having no person in charge, the funeral director or person acting for him and making or supervising such interment or disposition shall
§16-5-23. Extension of time for filing death certificates, etc.

a. The state board of health shall, by rule and regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this article, provide for the extension of the periods prescribed in sections nineteen, twenty and twenty-one of this article for the filing of death certificates, fetal death certificates, medical certifications of the cause of death, and for the obtaining of burial or transit permits, in cases in which compliance with the applicable prescribed period would result in undue hardship.

b. Rules and regulations of the state board of health shall provide for the issuance of a burial or transit permit under section twenty-one of this article prior to the filing of a certificate of death or fetal death upon conditions designed to assure compliance with the purposes of this article in cases in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

§16-5-24. Correction and amendment of vital records.

a. A certificate or record registered pursuant to this article may be amended only in accordance with the provisions of this article and rules and regulations duly adopted thereunder.

b. A certificate that is amended under this section shall be marked “amended”, except as hereinafter provided in this subsection and in subsection d of this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The state board of health shall prescribe by rule and regulation the conditions under which additions or minor corrections shall be made.
to birth certificates within one year after the date of birth without the certificate being considered or marked as amended. The state board of health shall also prescribe by rule and regulation a simplified procedure for the correction of any certificate or record registered pursuant to this article which is deficient in any particular, including, but not limited to, the omission or misspelling of a first name, and such rule and regulation shall specify when and under what circumstances a certificate or record so corrected shall be considered or marked as amended.

c. Upon receipt of a certified copy of a court order of a court of competent jurisdiction changing the name of a person born in this state, which order was made and entered in a proceeding brought for that purpose, and upon request of such person or his parent, guardian, or legal representative, the state registrar of vital statistics shall amend the certificate of birth to reflect the new name.

d. Upon request, and upon receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the state registrar of vital statistics shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Upon request of both of the parents, the surname of the child shall be changed on the certificate to that of the father. Such certificate shall not be marked "amended."

e. When a certificate is amended under this section, the state registrar of vital statistics shall report the amendment to the custodian of any permanent local records and such record shall be amended accordingly.

§16-5-25. Reproduction of records.

1 To preserve original documents, the state registrar of vital statistics is hereby authorized to prepare typewritten, photographic, or other reproductions of original records and files in his office. Such reproductions when certified by him shall be accepted as the original record.


a. To protect the integrity of vital statistics records, to insure their proper use, and to insure the efficient and proper operation of the vital statistics system, it shall
be unlawful for any person to permit inspection of confidential information or to disclose confidential information contained in vital statistics records, or to copy or issue a copy of all or part of any such confidential information, except as authorized by law or by order of a court having jurisdiction with respect thereto or by rule and regulation duly adopted under the provisions of this article.

b. The state board of health may by rule and regulation authorize the disclosure of confidential data contained in vital statistics records for statistical research purposes.

c. Information in vital statistics records indicating that a birth occurred out of wedlock shall not be disclosed except as provided by rule and regulation duly adopted or upon order of a court having jurisdiction with respect thereto.

d. Appeals from decisions of the custodians of permanent local records refusing to disclose confidential information, or to permit inspection of or copying of confidential information under the authority of this section and rules and regulations issued hereunder shall be made to the state registrar of vital statistics, whose decisions shall be binding upon the local custodians of permanent local records.

§16-5-27. Copies of data from vital records.

In accordance with section twenty-five of this article and the rules and regulations adopted pursuant thereto:

a. The state registrar of vital statistics shall upon request issue a certified copy of all or any part of any certificate or record in his custody. Each copy issued shall show the date of registration, and copies issued from records marked “delayed”, “amended”, or “court order” shall be similarly marked and shall show the effective date of the delayed registration, amendment or court order.

b. A certified copy of a certificate or any part thereof, issued in accordance with subdivision a of this section, shall be considered for all purposes the same as the original, and shall be prima facie evidence of the facts therein stated.
c. The national office of vital statistics may be furnished such copies of or data from state vital statistics records as it may require for national statistics: Provided, That the state shall be reimbursed for the cost of furnishing such data: Provided, however, That such data shall not be used for other than statistical purposes by the national office of vital statistics unless so authorized by the state board of health.

d. Federal, state, local and other public or private agencies may, upon request, be furnished copies of or data from state vital statistics for statistical purposes upon such terms or conditions as may be prescribed by the state board of health.

e. No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, or fetal death, except as authorized by this article, or by rules and regulations duly adopted thereunder: Provided, That the foregoing provisions of this subdivision shall not be construed as in any way prohibiting or infringing upon the right and duty of a county clerk to furnish a certified copy of any records in his lawful custody.

§16-5-28. Fees for copies and searches.

a. The state board of health shall prescribe the fees, if any, to be charged and collected by the state registrar of vital statistics for certified copies of certificates or records, not to exceed two dollars per copy, or for a search of the files or records when no copy is made: Provided, That the state registrar shall, upon request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth of any child, when the same shall be necessary for admission to school, or for the purpose of securing employment: Provided, however, That the state registrar may furnish certified copies of birth and death records to the state welfare department, to county welfare departments and to organized charities, free of charge, when such certificates are needed in presenting claims to the federal government, or to the state department of welfare, and an accurate record shall be made of all such certificates so furnished.
b. Fees collected under this section by the state registrar of vital statistics shall be deposited to the state general fund.

§16-5-29. Persons required to keep records.

a. Every person in charge of an institution as defined in this article shall keep a record concerning each person admitted to or confined in such institution containing such information as is required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this article. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

b. When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, and date of removal from the institution or if finally disposed of by the institution, the date, place, and manner of disposition.

c. A funeral director, embalmer or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this article, shall keep a record which shall identify the body, and such information pertaining to his receipt, removal and delivery of such body as may be prescribed by rules and regulations duly adopted by the state board of health.

d. Records maintained under this section shall be retained for a period of not less than three years and shall be made available for inspection by the state registrar of vital statistics or his representative upon request.

§16-5-30. Duty to furnish information relative to vital events.

Any person having knowledge of any fact required to be recorded under the provisions of this article or any rules and regulations duly adopted thereunder, or knowl-
edge of which by the state registrar of vital statistics is necessary to effectuate the purposes of this article, shall furnish information of such fact to the state registrar of vital statistics upon request.

§16-5-31. Penalties.

a. (1) Any person who wilfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this article, or in an application for an amendment thereof or who wilfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record or certificate, or amendment thereof; or

(2) Any person who without lawful authority and with the intent to deceive, makes, alters, amends or mutilates any record, report, or certificate required to be filed under this article, or any certified copy of such record, report, or certificate; or

(3) Any person who wilfully and knowingly uses or attempts to use, or furnishes or attempts to furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated; or

(4) Any person who with the intention to deceive wilfully uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which related to the birth of another person; or

(5) Any person who wilfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person to whom the record of birth relates, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

b. (1) Any person who knowingly transports or accepts for transportation, interment or other disposition a dead body without an accompanying permit as provided in this article; or
(2) Any person who refuses to provide information required by this article; or

(3) Any person who wilfully neglects or violates any of the provisions of this article or refuses to perform any of the duties imposed upon him by this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.

To the end that an efficient and uniform system of registration of marriage, divorce and annulment of marriage shall be established in this state, the state division of vital statistics shall provide for the registration of each marriage, divorce, and annulment of marriage which shall occur in this state. In so doing, the state board of health shall have the authority and duty to:

a. Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage.

b. Make and amend necessary rules and regulations, give instructions, and prescribe and furnish forms, for collecting, transcribing, compiling, and preserving records and statistics of marriage, divorce and annulment of marriage.

c. Make and publish a statistical report of marriage, divorce and annulment of marriage in this state.

§16-5-33. Registration of marriages.

All marriages taking place within the state shall be registered with the state registrar of vital statistics in the following manner:

a. On or before the tenth day of each month, the county clerk of each county shall forward to the state registrar a report of all marriage records made by him during the previous month, in such form and setting forth such information as may be prescribed by rule and regulation duly adopted pursuant to this article.
b. The state registrar shall preserve and index all records thus received and shall upon request issue a certified copy of the same, which shall be prima facie evidence in all courts in the state of the facts stated therein.

§16-5-34. Registration of divorces and annulments of marriages.

a. The clerk of every court of record having jurisdiction of actions for divorce or annulment of marriage shall monthly make and deliver to the state registrar of vital statistics a report on a form prescribed by the state registrar of vital statistics, listing all of the divorces or annulments of marriages granted by such court during the preceding calendar month, showing insofar as such information appears in the complaint or final order or decree:

1. the names and ages of the parties to the action,
2. the date and place of the marriage thereby terminated,
3. the names of said parties' children under the age of eighteen years,
4. the date of the final order or decree:

Provided, That in counties where the court is not in continuous session these reports shall be forwarded within ten days following the close of the term of the court.

b. The state registrar shall search his files of reports of divorce and annulment of marriage upon receipt of written request and a fee of one dollar. If the record is found, he shall verify the facts of the divorce or annulment of marriage in writing to the applicant and shall notify the applicant of the place where the original record is found.

c. Failure of the clerk of the court to comply with the provisions of subsection a hereof shall in no way affect the validity of any final judgment, order or decree of divorce or annulment of marriage.

§16-5-35. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications
of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 62

(Senate Bill No. 208—By Mr. Brotherton)

[Passed March 7, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to the exemption of certain records under the West Virginia human rights act.

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 amended by adding thereto a new section, designated section sixteen, to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.


1 Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the department of employment security to ascertain and record the age, sex, race, religion, color, national origin or ancestry of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: Provided, That such recording of the age, sex, race, religion, color, national origin or ancestry of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.
AN ACT to amend and reenact section seven, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and six, article fifteen, chapter thirty-one of said code, relating to the issuance of bonds under the industrial development bond act; relating to the West Virginia industrial development authority; providing for alternates to attend the meetings, vote and participate in the affairs of the authority; and relating to reorganizations and receivership proceedings involving responsible buyers and responsible tenants under the West Virginia industrial development authority act.

Be it enacted by the Legislature of West Virginia:

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

Chapter 13. Public Bonded Indebtedness.


CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT BOND ACT.


1 All bonds issued by a county court or by a municipality under the authority of this article shall be limited obligations of the county, or of the municipality, the principal and interest on which shall be payable out of the revenues derived from the leasing of the plant to finance which the bonds are issued or any other revenue derived from such industrial plant. The bonds and interest coupons issued under the authority of this article shall never
constitute an indebtedness of the county, or of the munici-
ple issuing the same, within the meaning of any
constitutional provision or statutory limitation and shall
never constitute or give rise to a pecuniary liability
of the county, or of the municipality issuing the same.
Neither shall such bond and/or interest thereon be a
charge against the general credit or taxing powers of
the county, or of the municipality and such fact shall be
plainly stated on the face of each such bond. Such bonds
may be executed, issued and delivered at any time and
from time to time, may be in such form and denomina-
tion; may be of such tenor, must be negotiable but
may be registered as to the principal thereof or as to
the principal and interest thereof, may be payable in
such amounts and at such time or times; may be pay-
able at such place or places, may bear interest at such
rate or rates payable at such place or places and evidenced
in such manner, and may contain such provisions therein
not inconsistent herewith, all as shall be provided in the
proceedings of the governing body whereunder the bonds
shall be authorized to be issued. Said bonds may be
sold by the governing body at public or private sale.
The said bonds may also be issued and delivered to the
owners of an industrial plant in exchange therefor and
in payment of the purchase price thereof.

The bonds issued pursuant to this article by a county
court shall be signed by the president and attested by
the clerk of the county court under the seal of the
court and the bonds issued by a municipality shall be
signed by the mayor or other chief officer thereof and
attested by the clerk, recorder, or other official cus-
todian of the records of said municipality and under
the seal of the municipality. The coupons attached
thereto shall bear the facsimile signature of the presi-
dent of the county court or the mayor or other chief
officer of the municipality. In case any of the officials
whose signatures appear on the bonds or coupons shall
cease to be such officers before the delivery of such bonds,
such signatures shall, nevertheless, be valid and suffi-
cient for all purposes to the same extent as if they had
remained in office until such delivery.
If the proceeds of such bonds by error of calculation or otherwise, shall be less than the cost of the industrial plant, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement, mortgage, or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA INDUSTRIAL DEVELOPMENT AUTHORITY.

§31-15-5. West Virginia industrial development authority created; composition of board of members; appointment and term of members; delegation of authority by ex officio members; compensation and expenses.


§31-15-5. West Virginia industrial development authority created; composition of board of members; appointment and term of members; delegation of authority by ex officio members; compensation and expenses.

There is hereby created a body corporate and politic, constituting a public corporation and government instrumentality by the name of the "West Virginia Industrial Development Authority," the board of members of which shall be composed of the following: The commissioner of commerce, who shall serve as chairman, the state tax commissioner, the state banking commissioner and the director of the department of natural resources, and their respective successors in office, and five additional members who shall be appointed by the governor, with the advice and consent of the Senate, who shall represent the general public and the public interest. The members of the authority initially appointed by the governor shall continue in office for terms of one to five years, respectively, from the date of their appointment and until their respective successors shall be duly appointed and qualified, the term of each appointed member to be designated by the governor at the time of his appointment; but their successors shall each be appointed for a term of five years, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed
member of the authority shall be eligible for reappointment. The commissioner of commerce, the state tax commissioner, the state banking commissioner or the director of the department of natural resources may, by written memorandum filed with the secretary of the authority, delegate, from time to time, to any deputy or other subordinate in his department or office the power to be present and participate, including voting on any question that may arise, as its representative or delegate at any meeting of the authority and its vote shall have the same validity as if the official had voted in person. Said members of the authority shall be entitled to no compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.


1 The authority, as a public corporation and governmental instrumentality exercising public powers of the state, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article, including the following powers, in addition to others herein granted:

(a) To make determination and designation of critical economic areas.

(b) To cooperate with industrial development agencies in the efforts to promote the expansion of industrial and manufacturing activity in critical economic areas.

(c) To determine, upon proper application of industrial development agencies, whether the declared public purpose of this article has been accomplished or will be accomplished by the establishment by such industrial development agencies of an industrial development project in a critical economic area.

(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to determination and designation of critical economic areas and the establishment of industrial development projects therein.
(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such authority, or before one or more members of the authority appointed by it to conduct such hearings.

(f) To apply to any court, having territorial jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear.

(g) To authorize any member or members of such authority to conduct hearings and to administer oaths, take affidavits and issue subpoenas.

(h) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of moneys held in the industrial development fund for industrial development projects in critical economic areas and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter provided.

(i) To have existence for a term of fifty years.

(j) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(k) To adopt, use and alter at will a corporate seal.

(l) To make bylaws for the management and regulation of its affairs.

(m) To appoint officers, agents, employees and servants.

(n) To make contracts of every name and nature and to execute all instruments necessary or convenient for carrying on its business.

(o) Without limitation of the foregoing, accept grants from and enter into contracts or other transactions with any federal agency.

(p) To take title by foreclosure to any industrial development project where such acquisition is necessary to protect any loan previously made therefor by the authority and to sell, transfer and convey any such industrial development project to any responsible buyer; in the
event such sale, transfer and conveyance cannot be
effected with reasonable promptness, the authority may,
in order to minimize financial losses and sustain employ-
ment, lease such industrial development project to a re-
ponsible tenant or tenants; the authority shall not lease
industrial development projects except under the condi-
tions and for the purposes cited in this section: Provided,
however, That the authority shall have no power at any
time to borrow money or in any manner to pledge the
credit or taxing power of the state or any of its munic-
ipalities or political subdivisions, nor shall any of its
obligations be deemed to be obligations of the state or
any of its political subdivisions.

(q) To participate in any reorganization proceeding
pending pursuant to Title II of the United States Bank-
rupcy Act or in any receivership proceeding had in a
state or United States court for the purpose of reorgan-
ization or liquidation of a responsible buyer or respon-
sible tenant. It may file its claim against any such
responsible buyer or responsible tenant in any of the
foregoing proceedings, vote upon any question pending
therein which requires the approval of the creditors par-
ticipating in any reorganization proceeding or receiver-
ship, exchange any evidence of said indebtedness for
any property, security or evidence of indebtedness offered
as a part of the reorganization of said responsible buyer
or responsible tenant or of any other entity formed to
acquire the assets thereof, and may compromise or re-
duce the amount of any indebtedness owing to it as a
part of any such reorganization.

CHAPTER 64

(Senate Bill No. 124—By Mr. Smith, of Cabell)

[Passed February 24, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five-a, article three,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
the capital surplus requirements of licensed insurers.

Be it enacted by the Legislature of West Virginia:

That section five-a, article three, chapter thirty-three of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.
§33-3-5a. Capital or surplus required after January 1, 1968.

1 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 sec-
4 tion (May 25, 1969), shall possess paid-in capital stock
5 (if a stock insurer) or surplus (if a mutual insurer)
6 in the amount set forth below opposite the kinds of in-
7 surance for which license is requested:

<table>
<thead>
<tr>
<th>Category</th>
<th>Minimum Surplus</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Life</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>(b) Accident and Sickness</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>(c) Life and Accident and Sickness</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>(d) Fire and Marine</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>(e) Casualty</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>(f) Surety</td>
<td>$600,000.00</td>
</tr>
</tbody>
</table>

(g) Accident and Sickness together with

any one or more of the following:

Fire and Marine, Casualty $750,000.00

(h) Fire and Marine and Casualty $500,000.00

(i) Surety together with any one or more

of the following: Accident and Sick-

ness, Fire and Marine, Casualty $750,000.00

In addition, every insurer applying for said license,
after the effective date of this section, shall maintain ad-
ditional surplus funds in an amount equal to one half such
minimum capital or surplus listed above for the kinds
of insurance for which license is requested: Provided,

That insurers duly licensed to transact insurance in West
27 Virginia prior to the effective date of this section shall
28 not be subject to the capital and surplus requirements
29 of this section but shall be required to maintain capital
30 and surplus as is prescribed in section five of this article,
31 or two hundred thousand dollars capital and one hundred
32 thousand dollars surplus funds whichever be the greater.
33 All insurers duly licensed prior to the effective date of
34 this section whose capital and surplus requirements are
35 increased by virtue of the above proviso shall have until
36 June thirtieth, one thousand nine hundred seventy-one, to
37 meet such increased requirements.

CHAPTER 65

(Senate Bill No. 125—By Mr. Smith, of Cabell)

[Passed February 24, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article three,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the expiration of all licenses of insurers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-8. Expiration of license; renewal.

1 All licenses of insurers shall expire at midnight on
2 the May thirty-first next following the date of issuance.
3 The commissioner shall renew annually the licenses of
4 all insurers who qualify and make application therefor
5 upon a form prescribed by the commissioner.
CHAPTER 66

(Senate Bill No. 127—By Mr. Smith, of Cabell)

[Passed February 24, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, 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-two, requiring domestic insurers to maintain their principal place of business in this state.

Be it enacted by the Legislature of West Virginia:

That article five, 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-two, to read as follows:

ARTICLE 5. ORGANIZATION AND PROCEDURES OF DOMESTIC STOCK AND MUTUAL INSURERS.

§33-5-32. Principal place of business of domestic insurers.

1 Any domestic insurer which moves its principal office or place of business outside the state of West Virginia after June one, one thousand nine hundred sixty-nine, shall not thereafter be licensed as a domestic insurer in this state.

CHAPTER 67

(Senate Bill No. 343—By Mr. Palumbo)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reserves for accident and sickness insurance.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-7. Reserves for accident and sickness insurance.

For all accident and sickness policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and which shall not be less than the reserve according to standards set forth in regulations issued by the commissioner and which,

(a) for credit accident and sickness policies, in no event shall be less than the unearned premium reserve for such policies calculated on the sum of the digits formula, commonly known as the "Rule of 78";

(b) for all other accident and sickness policies, in no event shall be less than the pro rata gross unearned premium reserve for such policies.

CHAPTER 68

(Senate Bill No. 126—By Mr. Smith, of Cabell)

[Passed February 24, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the expiration of all licenses of agents, solicitors, brokers and excess line brokers.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-18. Expiration of license; renewal.

1 All licenses of agents, solicitors, brokers and excess line brokers shall expire at midnight on the May thirty-first next following the date of issuance. The commissioner shall renew annually the license of all such licensees who qualify and make application therefor.

CHAPTER 69

(House Bill No. 892—By Mr. Bowman and Mr. Stamp)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the limitation on amount of group life insurance.

Be it enacted by the Legislature of West Virginia:

That section six, article fourteen, 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 14. GROUP LIFE INSURANCE.

§33-14-6. Limitation on amount.

1 No such policy of group life insurance may be issued to an employer, or to a labor union, or to the trustees of a fund established in whole or in part by an employer or a labor union, which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to the employer or employers of such person or to a labor union or labor unions of which such person is a member or to the trustees of a fund or funds established in whole or in part by such employer or employers or
Such labor union or labor unions, unless two hundred percent of the annual compensation of such person from his employer or employers exceeds twenty thousand dollars, in which event all such term insurance shall not exceed fifty thousand dollars or two hundred percent of such annual compensation, whichever is the lesser.

CHAPTER 70

(Senate Bill No. 261—By Mr. Poffenbarger and Mr. Smith, of Cabell)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, 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 twenty-eight, relating to assignment of interests in group life insurance policies, including conversion privileges.

Be it enacted by the Legislature of West Virginia:

That article fourteen, 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 twenty-eight, to read as follows:

ARTICLE 14. GROUP LIFE INSURANCE.

§33-14-28. Assignment of incidents of ownership in group life insurance policies including conversion privileges.

1 No provision in this chapter or in any other law shall be interpreted so as to prohibit a person whose life is insured under any policy of group life insurance from making an assignment of all or any part of his incidents of ownership under such policy including specifically, but not by way of limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued to him in accordance with
sections sixteen and seventeen of this article. Subject to the terms of the policy relating to assignment of incidents of ownership thereunder, such an assignment by the insured, made either before or after the effective date of this section, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue in accordance with other provisions of this article prior to receipt of notice of the assignment.

CHAPTER 71

(Senate Bill No. 111—By Mr. Jackson, Mr. President, and Mr. Carrigan)

[Passed February 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, 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 three, 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.

§33-24-3. Corporations affected by article; eligibility of hospitals, physicians, dentists and chiropodists-podiatrists.

(a) Every such corporation operating within this state shall be subject to the provisions of this article.
(b) Every hospital or other health agency in this state meeting the standards prescribed by the board of directors of each such corporation shall be eligible for participation in any hospital service plan operating in this state. Every duly licensed physician, duly licensed dentist, duly licensed chiropodists-podiatrists or other health agency in this state meeting the standards prescribed by the board of directors of each such corporation shall be eligible for participation in any medical service plan operating in this state. Every duly licensed dentist or duly licensed physician in this state meeting the standards prescribed by the board of directors of each such corporation shall be eligible for participation in any dental service plan operating in this state. The board of directors of every such corporation may also prescribe standards for hospitals, physicians, dentists, chiropodists-podiatrists and other health agencies located in states adjoining this state, and all such hospitals, physicians, dentists, chiropodists-podiatrists and other health agencies meeting such standards shall be eligible for participation in such plans.

CHAPTER 72

(Senate Bill No. 223—By Mr. McCourt and Mr. Lambert)

(Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.)

AN ACT to amend article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-c, relating to price increase of intoxicating liquor with proceeds to be used for care, treatment and rehabilitation of alcoholics and related services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§ 60-3-9c. Price increase for care, treatment and rehabilitation of alcoholics.

1 For the purpose of providing revenue for care, treatment and rehabilitation of alcoholics, the commissioner in the exercise of his authority under section nine of this article is hereby directed to increase the price of alcoholic liquors in addition to the price increases provided in sections nine, nine-a and nine-b hereof on or before the last day of March, one thousand nine hundred sixty-nine, in an amount sufficient to produce an additional annual revenue of one million dollars on an annual volume of business equal to the average for the last three years. Such revenue shall be deposited in the state fund general revenue as provided in section seventeen of this article.

CHAPTER 73

(House Bill No. 752—By Mr. Shiflet)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, 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 5. FISCAL AFFAIRS.

§7-5-15. Auditing and payment of claims of justices and constables; annual statement of sheriff of fines and costs received from justices; payment into state treasury.

1 All claims by justices and constables for fees due them in misdemeanor proceedings in the county, instituted before them on and after the effective date of this section (January 17, 1935), shall be audited and examined by the county court, and if found correct and if submitted, as provided in section fourteen, article seventeen, chapter fifty of this code, the county court shall cause orders to be issued therefor on the sheriff to be paid out of the general school fund or out of the general county fund, as the court may direct. The sheriff shall annually, during the month of January, render under oath to the auditor a true statement of the account of all fines and costs collected by justices and transmitted to him and pay into the treasury of the state, the net proceeds of such fines and costs as exhibited by such account, to be appropriated as directed by the fifth section of article twelve of the constitution; failure so to do shall be deemed a breach of his official duty. For the purposes of this section, the net proceeds of such fines and costs shall be deemed to be the proceeds remaining after deducting therefrom the lawful fees of constables and justices of the peace; the cost of auditing the accounts of justices of the peace and constables by the chief inspector’s office; the expenses for operation and maintenance of the county jail; the costs of constructing, reconstructing and renovating any jail facility used for county prisoners; and periodic payments, if any, for the establishment of a jail improvement fund, in the manner provided by section nine, article one of this chapter, for constructing, reconstructing or renovating any jail facility used for county prisoners.
AN ACT to amend and reenact section four, article seven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to readmission of mental patients to hospitals.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, 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 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-4. Readmission of patients.

1 While any patient is out of the state hospital under the provisions of section two of this article, he may be at any time readmitted to the hospital on the basis of the original commitment. If there is reason to believe that it is to the best interest of the patient to be hospitalized, the superintendent of the state hospital may issue an order for the immediate rehospitalization of the patient. This order shall be sent to the mental hygiene commission or to the clerk of the court which ordered his admission, as the case may be, and to the clerk of the county court of the county of the patient’s residence. Upon receipt of such order and without further endorsement, the clerk shall authorize any health officer or police officer to take the patient into custody and transport him to the state hospital where the order originated.
AN ACT to amend and reenact sections seven-a, seven-b, eight and twenty, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one by adding thereto two new sections, designated sections seven-c and eleven-a; to amend and reenact sections one, two, five, seven, seven-a, eight, eleven, thirteen, twenty-one, twenty-eight, thirty-nine and sixty-one, article two of said chapter; and to further amend said chapter by adding thereto a new article, designated article three, all relating to mine safety instructors; mine inspectors; electrical inspectors, their duties, qualifications and salaries; mine rescue crews; engineers' reports and their contents; coal mine ventilation; mine inspection; movement of mining equipment; mine foremen; signals on haulways; fire bosses; inspection of escapeways; open pit mines, and underground limestone and sandstone mines.

Be it enacted by the Legislature of West Virginia:

That sections seven-a, seven-b, eight and twenty, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections seven-c and eleven-a; that sections one, two, five, seven, seven-a, eight, eleven, thirteen, twenty-one, twenty-eight, thirty-nine and sixty-one, article two of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three, all to read as follows:

Article
1. Administration; Enforcement.
2. Coal Mines.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-7a. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

§22-1-7b. Mine inspectors—May be appointed to fill vacancy in department; permanent tenure benefits not affected.

§22-1-7c. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

§22-1-8. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

§22-1-11a. Duties of mine electrical inspectors; findings and orders; reports.

§22-1-20. Mine rescue crews.

§22-1-7a. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

1 The department shall employ five or more mine safety instructors. To be eligible for employment as a mine safety instructor the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-five nor more than sixty years of age, and of good character, reputation and temperate habits; and (2) a person who has had at least five years' experience in first aid and mine rescue work and who has had practical experience with dangerous gases found in coal mines, and who has a practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

13 In order to qualify for appointment as a mine safety instructor an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a safety instructor and may, subject to the approval of the mine inspectors' examining board, be prepared by the director of West Virginia department of mines.

21 If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director of the department of mines. The director may then ap-
28 point one of the candidates from the three having the
greatest grade.

29 The salary for a mine safety instructor shall be not
30 less than seventy-two hundred dollars per year and shall
31 be fixed by the director of the department of mines, who
32 shall take into consideration ability, performance of
33 duty, and experience. Such instructor shall devote all
34 of his time to the duties of his office. No reimbursement
35 for traveling expenses shall be made except on an itemized
36 accounting for such expenses submitted by the instructor,
37 who shall verify upon oath that such expenses were
38 actually incurred in the discharge of his official duties.

39 Mine safety instructors serving as such on the effective
40 date of this section may continue to serve for a proba-
41 tionary period not exceeding one year and, if eligible,
42 may qualify for permanent appointment during such
43 probationary period in accordance with the provisions of
44 this section. Mine safety instructors, before entering upon
45 the discharge of their duties, shall take and subscribe
46 to the oath and shall execute a bond in the same penal
47 sum, with surety approved by the director of the depart-
48 ment of mines, all as is required by this article in the
49 case of mine inspectors.

50 Except as expressly provided in this section to the con-
51 trary, all provisions of this article relating to the eligi-
52 bility, qualification, appointment, tenure and removal of
53 mine inspectors shall be applicable to mine safety in-
54 structors.

§22-1-7b. Mine inspectors—May be appointed to fill vacancy
in department; permanent tenure benefits not affected.

1 Notwithstanding any other provisions of law, if a va-
cancy occurs in any appointive position within the de-
partment of mines any mine inspector having permanent
tenure, if qualified, may be appointed to such appointive
position without forfeiting any of the benefits which have
accrued to him because of his permanent tenure as a mine
inspector.
§22-1-7c. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The department shall employ five or more electrical inspectors. To be eligible for employment as an electrical inspector the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five nor more than fifty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had ten years' practical electrical experience in coal mines or a degree from West Virginia University or other accredited electrical engineering school.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director of the department of mines. The director may then appoint one of the candidates from the three having the highest grade.

The salary of a mine electrical inspector shall be not less than eleven thousand four hundred dollars per year and shall be fixed by the director of the department of mines, who shall take into consideration ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Mine electrical inspectors serving as such on the effective date of this section may continue to serve for a probationary period not exceeding one year and, if eligible, may qualify for permanent appointment during such probationary period in accordance with the provisions of this section. Mine electrical inspectors, before entering
upon the discharge of their duties, shall take and subscribe

39 to the oath and shall execute a bond in the same penal
40 sum, with surety approved by the director of the depart-
41 ment of mines, all as is required by this article in the case
42 of mine inspectors.
43
44 Except as expressly provided in this section to the con-
45 trary, all provisions of this article relating to the eligi-
46 bility, qualifications, appointment, tenure and removal of
47 mine inspectors shall be applicable to mine electrical in-
48 spectors.

§22-1-8. Eligibility for appointment as mine inspector; qualifi-

cations; salary and expenses; removal.

1 (a) No person shall be eligible for appointment as a
2 mine inspector after the effective date of this article
3 (July 1, 1958) unless, at the time of his probationary ap-
4 pointment he: (1) Is a citizen of West Virginia, in good
5 health, not less than thirty nor more than fifty-five years
6 of age, and of good character, reputation and temperate
7 habits; (2) has had at least ten years' practical experience
8 in coal mines, at least five years of which, immediately
9 preceding his original appointment, shall have been in
10 mines in this state: Provided, That graduation from the
11 school of mines of West Virginia University or any other
12 accredited college of mining engineering shall be consider-
13 ed the equivalent of two years' practical experience; (3)
14 has had practical experience with dangerous gases found
15 in coal mines; and (4) has a good theoretical and practical
16 knowledge of mines, mining methods, mine ventilation,
17 sound safety practices and applicable mining laws.

18 (b) In order to qualify for appointment as a mine in-
19 spector an eligible applicant shall submit to a written
20 and oral examination by the mine inspectors' examining
21 board and furnish such evidence of good health, character
22 and other facts establishing eligibility as the board may re-
23 quire. If the board finds after investigation and examina-
24 tion that an applicant: (1) Is eligible for appointment and
25 (2) has passed all written and oral examinations, with a
26 grade of at least ninety percent, the board shall add such
27 applicant's name and grade to the register of qualified
28 eligible candidates and certify its action to the director of
the department of mines. No candidate's name shall re-
main in the register for more than three years without re-
qualifying.

(c) Salaries of district inspectors shall not be less than
ten thousand four hundred dollars per annum; assistant in-
spectors-at-large not less than eleven thousand dollars per
annum; inspectors-at-large not less than twelve thousand
dollars per annum, and shall receive mileage at the rate of
not less than ten cents for each mile actually traveled in
the discharge of his official duties in a privately owned
vehicle. Within the limits provided by law, the salary of
each inspector shall be fixed by the director of the depart-
ment of mines, subject to the approval of the mine
inspectors' examining board. In fixing salaries of mine in-
spectors, the director of the department of mines shall
consider ability, performance of duty and experience. No
reimbursement for traveling expenses shall be made ex-
cept upon an itemized account of such expenses submitted
by the inspector, who shall verify, upon oath, that such
expenses were actually incurred in the discharge of his
official duties.

(d) A mine inspector, after having received a permanent
appointment shall be removed from office only for physical
or mental impairment, incompetency, neglect of duty,
drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of a mine inspector may be
initiated by the director of the department of mines
whenever he has reasonable cause to believe and does
believe that adequate cause exists, warranting removal.
Such a proceeding shall be initiated by a verified petition,
filed with the board by the director of the department
of mines, setting forth with particularity the facts alleged.
Not less than twenty reputable citizens, who are operators
or employees in mines in the state, may petition the direc-
tor of the department of mines for the removal of a mine
inspector. If such petition is verified by at least one of
the petitioners, based on actual knowledge of the affiant,
and alleges facts, which, if true, warrant the removal of
the inspector, the director of the department of mines
shall cause an investigation of the facts to be made. If,
after such investigation, the director finds that there is
substantial evidence which, if true, warrants removal of
the inspector, he shall file a petition with the board re-
questing removal of the inspector.
On receipt of a petition by the director of the depart-
ment of mines seeking removal of a mine inspector the
board shall promptly notify the inspector to appear be-
fore it at a time and place designated in said notice,
which time shall be not less than fifteen days thereafter.
There shall be attached to the copy of the notice served
upon the inspector a copy of the petition filed with the
board.
At the time and place designated in said notice, the
board shall hear all evidence offered in support of the
petition and on behalf of the inspector. Each witness shall
be sworn and a transcript shall be made of all evidence
taken and proceedings had at any such hearing. No con-
tinuance shall be granted except for good cause shown.
The chairman of the board and the director of the de-
partment of mines shall have power to administer oaths
and subpoena witnesses.
Any mine inspector who shall wilfully refuse or fail
to appear before the board, or having appeared, shall re-
fuse to answer under oath any relevant question on the
ground that his testimony or answer might incriminate
him, or shall refuse to waive immunity from prosecu-
tion on account of any relevant matter about which he
may be asked to testify at any such hearing before the
board, shall forfeit his position.
If, after hearing, the board finds that the inspector
should be removed, it shall enter an order to that effect.
The decision of the board shall be final and shall not be
subject to judicial review.
§22-1-11a. Duties of mine electrical inspectors; findings and
orders; reports.
In order that the electrical inspector may properly per-
form the duties required of him, he shall devote his whole
time and attention to the duties of his office, and he shall
have the right to enter any coal mine for the purpose of
inspecting electrical equipment, and if he finds during
his inspection any defects in the electrical equipment
which are covered by law and may be detrimental to the
lives or health of the workmen, he shall have the au-

thority to order the operator, in writing, to remedy such
defects within a prescribed time, and to prohibit the con-
tinued operation of such electrical equipment after such
time, unless such defects have been corrected.

The electrical inspector shall examine each mine in his
division at least once each year or as often as the director
may deem necessary.

It shall be the duty of the electrical inspector after
completing his examination of a mine to prepare a report
describing his findings in said mine in a manner and form
designated by the director. The original report shall be
forwarded to the operator or his representative whose
duty it shall be to post it in some conspicuous place open
to examination by any interested person or persons. The
report shall show the date of inspection, a list of equip-
ment, and any other information that the director may
deeem necessary.

§22-1-20. Mine rescue crews.

The director of the state department of mines is hereby
authorized to have trained and employed at the rescue
stations operated by that department within the state,
such rescue crews as he may deem necessary. Each mem-
ber of a rescue crew shall devote four hours each month
for training purposes, and shall be available at all times
to assist in rescue work at explosions and mine fires.
Regular members shall receive for such services the sum
of sixteen dollars per month and captains shall receive
twenty dollars per month, payable on requisition ap-
proved by the director of the department of mines. The
director of the department of mines may remove any
member of a rescue crew at any time.

To qualify for membership of a mine rescue crew an
applicant shall: (a) Be not more than fifty years of age;
(b) submit evidence of good health satisfactory to the
director of the department of mines; (c) satisfactorily
complete a course of training prescribed by the director
of the department of mines. Each person so qualifying for
mine rescue operations and passing a physical examina-
tion by a licensed physician shall receive a certificate
evidencing such qualification. Annually thereafter such
person shall submit evidence to the director that he has
been examined by a licensed physician and found phys-
ically fit for mine rescue operations.

When engaged in rescue work required by an explo-
sion, fire or other emergency at a mine, all members of
mine rescue teams assigned to rescue operations shall,
during the period of their rescue work, be employees of
the operator of the mine where the emergency exists;
shall be compensated by said operator at the rate estab-
lished in the area for such work. In no case shall this
rate be less than the prevailing wage rate in the industry
for the most skilled class of inside mine labor. During
the period of their emergency employment members of
mine rescue teams shall be protected by the workmen's
compensation subscription of such emergency employer.

ARTICLE 2. COAL MINES.
§22-2-1. Definitions.
Mine Maps
§22-2-2. Supervision by professional engineer or licensed land sur-
veyor; seal and certification; contents; extensions; avail-
ability; traversing; copies; archive; final survey and maps;
penalties.

Ventilation
§22-2-5. Ventilation of mines in general.
Classification of Mines and Examinations
§22-2-7. Examination of gassy and nongassy mines.
Movement of Equipment
§22-2-7a. Movement of mining equipment.
Mine Foreman
§22-2-8. When mine foreman to be employed; qualifications; assistants.
§22-2-11. Signals on haulways; lights at mouth and bottom of shaft;
operation of cages.
§22-2-13. Instruction of employees; annual examination of persons
using flame safety lamps; records of examination.
Fire Boss
§22-2-21. When fire boss to be employed; qualifications.

Roof—Face—Ribs
§22-2-28. Roof support; use and recovery of roof bolts; fire protection
for unattended underground permanent belt conveyor
drives.

Electricity
Miscellaneous Safety Provisions and Requirements
§22-2-61. Communication with outlets; safe roadways for emergencies;
hoisting equipment at shaft outlets; escapeways; limitation
of section.
§22-2-1. Definitions.

For the purpose of this article:

1. The term “abandoned workings” shall mean excavations, either caved or sealed, that are deserted and in which further mining is not intended, and open workings which are ventilated and not inspected regularly.

2. The term “approved” shall mean in strict compliance with mining law or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

3. The term “armored cable” shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

4. The term “assistant mine foreman” shall mean a person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

5. The term “borehole cable” shall mean a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mines.

6. The term “branch circuit” shall mean any circuit, alternating current or direct current, connected to and leading from the main power line.

7. The term “cable” shall mean a stranded conductor (single conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

8. The term “circuit breaker” shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

9. The term “delta connected” shall mean a power system in which the windings of transformers or a.c. generators are connected to form a triangular phase relationship, and with the phase conductors connected to each point of the triangle.

10. The term “drift” shall mean a horizontal or approximately horizontal opening through strata or in a coal seam and used for the same purposes as a shaft.
(11) The term “excavations and workings” shall mean any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(12) The term “effectively grounded” is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits, or systems so grounded.

(13) The term “face equipment” shall mean mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in-by the last open crosscut in an entry or room.

(14) The term “fire boss” shall mean any person designated to examine a mine for gas and other dangers. Such person shall have the qualifications required by this article.

(15) The term “flame-resistant cable, portable” shall mean a portable flame-resistant cable that has passed the flame tests of the federal bureau of mines.

(16) The term “gassy mine” shall mean any mine in which methane has been ignited, or has been detected with a permissible flame safety lamp, or by laboratory analysis of an air sample collected in active workings, in a perceptible air current, taken not less than twelve inches from the roof, face and rib, in an amount of twenty-five hundredths percent or more.

(17) The term “grounded (earthed)” shall mean that the system, circuit, or apparatus referred to is provided with a ground.

(18) The term “ground or grounding conductor (mining)” (also referred to as a safety ground conductor, safety ground, and frame ground) shall mean a metallic conductor used to connect the metal frame or enclosure of an equipment, device or wiring system, with a mine track or other effective grounding medium.

(19) The term “high voltage” shall mean voltage having a nominal value greater than six hundred fifty volts
between any two ungrounded conductors of the power system.

(20) The term “interested persons” shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers, and state mine inspectors.

(21) The term “lightning arrester” shall mean a protective device for limiting surge voltages on equipment by discharging or bypassing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(22) The term “mechanical working section” shall mean an area of a mine (1) in which coal is loaded mechanically, (2) which is comprised of a number of working places that are generally contiguous and (3) which is of such size to permit necessary supervision during the shift operation, including pre-shift and on-shift examinations and tests required by law.

(23) The term “mine” shall include the shafts, slopes, drifts or inclines connected with excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine and the surface structures or equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(24) The term “mine foreman” shall mean the person charged with the responsibility of the general supervision of the underground workings of a mine and the persons employed therein. He shall hold a certificate of competency for such position issued to him by the department of mines after taking an examination held by the department of mines.

(25) The term “mine power center or distribution center” shall mean a combined transformer and distribution unit complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(26) The term “neutral point” shall mean the connection point of transformer or generator windings from
which the voltage to ground is nominally zero, and is the point generally used for system groundings in a wye-connected a.c. power system.

(27) The term “neutral (derived)” shall mean a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally ungrounded delta power system.

(28) The term “nongassy mine” shall mean any coal mine which is not classified as gassy.

(29) The term “operator” shall mean any firm, corporation, partnership, or individual operating any coal mine or part thereof.

(30) The term “permissible” shall mean any equipment, device, or explosive, that has been approved as permissible by the United States bureau of mines, and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by said bureau.

(31) The term “portable (trailing) cable” shall mean a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(32) The term “shaft” shall mean a vertical opening through the strata that is or may be used for purposes of ventilation, drainage and the hoisting and transportation of men and material, in connection with the mining of coal.

(33) The term “shot firer” shall mean any competent person having had at least three years’ practical experience in coal mines; who has a knowledge of ventilation, mine roof and timbering; and who has demonstrated knowledge of mine gases and the use of a flame safety lamp, by examination given him by the mine foreman.

(34) The term “slope” shall mean a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(35) The term “superintendent” shall mean the person
who shall have, on behalf of the operator, immediate supervision of one or more mines.

(36) The term "supervisor" shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(37) The term "wye-connected" shall mean a power system connection in which one end of each phase winding of transformers or a.c. generators are connected together to form a neutral point, and the other ends of the windings are connected to the phase conductors. A neutral conductor may or may not be connected to the neutral point, and the neutral may or may not be grounded.

(38) The term "zig-zag transformer (grounding transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

(39) The term "return air" shall mean a volume of air that has passed through and ventilated all the working places in a mine section.

MINES AND MINERALS

§22-2-2. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; availability; traversing; copies; archive; final survey and maps; penalties.

1 The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of engineers, which exists by authority of section three, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the board of examiners of land surveyors as provided by section three, article thirteen-a, chapter thirty of this code. To each map supervised by the said engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the board of engineers, as provided in section nine, article thirteen of
the aforesaid chapter thirty of this code or board of examiners of land surveyors as provided by section eleven, article thirteen-a, chapter thirty of this code. Further, every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his seal, in the following form:

"I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this state, and covers the period ending __________________________ P. E. (Either Civil or Mining Engineer or Land Surveyor)."

The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

(1) The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations;
(2) As far as practicable the outline of existing and extracted pillars shall be designated;
(3) The direction of all air currents, using arrows;
(4) The abandoned portion or portions of the mine;
(5) The outcrop of the coal bed within the bounds of the property assigned to the mine;
(6) The boundary lines of the coal rights assigned to the mine;
(7) The known underground workings in the same coal bed on the adjoining properties within one thousand feet of such mine workings and projections;
(8) The elevation of the top and bottom of each shaft and slope, all drifts and the bottom of the coal along the haulage entries in each set of main and panel entries at horizontal intervals not exceeding two hundred feet, with contour lines at not more than twenty feet vertical intervals;
(9) The location of the principle streams and bodies of water on the surface;
(10) The location of any impounded bodies of water inside the mine;

(11) The location of all boreholes penetrating the coal bed mined;

(12) The location of all oil and gas wells, high pressure pipelines, high voltage power lines and principal roads;

and

(13) Where the overburden is less than one hundred feet, occupied dwellings shall be designated.

The operator of every underground coal mine shall extend, or cause to be extended and filed, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first day of July and the first day of January of each year.

A copy of the most recent revision of the map of such mine shall be available in the mine office for the use of the state mine inspectors and mine officials. Any employee in such mine may, in the presence of the mine foreman or an assistant, examine such map if he has reason to believe that a working place is in the proximity to other workings that may contain impounded water or noxious gases.

Surveying calculations and mapping of underground coal mines which are opened or reopened after the effective date of this section, shall be done by the rectangular coordinate traversing method and meridians carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

Underground coal mines operating on the effective date of this section, and not using the rectangular coordinate traversing method shall, within two years of the effective date of this section, convert to this procedure for survey-
ing calculations and mapping. Meridians shall be carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator’s records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

The operator of such underground coal mine shall, by reasonable proof, demonstrate to the director of the department of mines or his authorized agent, at anytime, that a diligent search was made for all existing and available maps and survey data for the workings on the adjoining properties. The operator shall further be able to show proof to the director of the department of mines or his authorized agent that a suitable method was used to insure accuracy in the methods used in transposing other workings to the map of such mine.

The operator of every underground coal mine shall, after the completion of each extension required by this section, submit by certified mail, a true copy of such coal mine map to the mine inspector for the district in which such mine is located. The mine inspector shall not copy, consent to have copied, nor use the map of any coal mine for any purpose other than that for which intended by this article.

There shall be an archive of underground coal mine maps maintained at the office of the director of the department of mines. The archive shall:

1. Be secured in a fireproof and burglarproof vault;
2. Have an appropriate map identification system;
3. Have adequate map microfilming facilities;
4. Be open to any person having a valid interest in information that mine maps may provide; and
5. At the discretion of the director, provide, at cost, a copy of any map for which a person may have a sound reason to possess.
When any underground coal mine is worked out, abandoned or closed indefinitely the operator of such mine shall, within fifteen days after the cessation of the production of coal, have completed, or cause to have completed, a final survey of such mine. Not longer than thirty days after coal production ceased, the operator shall have extended, or caused to have extended, the map of such mine to accurately show all excavations in such mine and a true copy of such mine map sent, by certified mail, to the archive of underground coal mine maps, office of the director of the department of mines, state capitol, Charleston. Final coal mine maps shall have thereon descriptions of all survey monuments.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the department of mines to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars.

VENTILATION

§22-2-5. Ventilation of mines in general.

The operator or mine foreman of every coal mine, whether worked by shaft, slope or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any set of entries shall be not less than six thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases: Provided, That the quantity of air reaching the last crosscut in pillar sections may be less than six thousand cubic feet per minute if at least six thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. All
active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than one percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

Each working section newly developed in virgin coal hereafter shall be ventilated by a separate split of air: Provided, That areas already under development and in areas where physical conditions prevent compliance with this provision the director of the department of mines may grant temporary relief from compliance until such time as physical conditions make compliance possible.

The quantity of air reaching the last crosscut shall not be less than six thousand cubic feet of air per minute and shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

As working places advance, crosscuts for air shall be made not more than eighty feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistant material so as to keep working places well vented: Provided, That in mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than two hundred feet without providing a connection that will allow the free flow of air currents. In such cases a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layout where the size and strength of pillars is important, the director of the department of
57 mines may issue a permit approving greater distances.
58 The permit shall specify the conditions under which such
59 places may 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, suffi-
63 cient 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
68 or water during pillar recovery operations, pillar oper-
69 ations may continue without reopening the bleeder re-
70 turn so long as a minimum of twelve thousand cubic
71 feet of air per minute is delivered to the intake of the
72 pillar 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 impracti-
77 cable to comply with the foregoing requirements.
78 No operator or mine foreman shall permit any person
79 to 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 em-
82 ployment 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
85 of doors on passageways where men or equipment travel
86 may be kept to a minimum. Where doors are used in a
87 gassy mine they shall be erected in pairs so as to provide
88 a ventilated airlock unless the doors are operated me-
89 chanically: Provided, That such provisions shall not ap-
90 ply to doors in or between panel or room entries. In
91 mines not classified as gassy, single doors may be used,
92 provided such doors are closed promptly after men or
93 equipment have passed through them.
94 Overcasts or undercasts shall be constructed of incom-
95 bustible material and maintained in good condition.
Where practicable, a crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

Rooms, entries, airways, or other working places shall not be driven in advance of air currents. Such provisions shall not prohibit, as the room, entry or aircourse advances, the "necking" of any place for a distance not exceeding that actually required for the installation of mining equipment in use at this location: Provided, That such room necks or entries are kept free of accumulations of methane by use of line brattice or other adequate means.

CLASSIFICATION OF MINES AND EXAMINATIONS

§22-2-7. Examination of gassy and nongassy mines.

In a gassy mine, within four hours immediately preceding the beginning of a coal-producing shift, and before any workman in such shift, other than those who may be designated to make the examinations, enters the underground areas of such mine, a certified foreman or fire boss, designated by the operator of such mine to do so, shall make an examination of such areas.

In a gassy mine, on a noncoal-producing shift, within four hours of the time when noncertified men enter the mine, the areas where they are assigned to work, and the entrances to adjacent areas shall be examined by a certified foreman or fire boss for gas and other dangerous conditions; no uncertified man shall enter any area which has not been properly examined by a certified foreman or fire boss; all energized trolley lines and bare feeder lines along haulageways shall be examined at least once every eight hours by a certified foreman or fire boss. All areas not being so examined shall have an approved danger board posted at the entrance or entrances.

In nongassy mines examinations, which shall include tests for explosive gas or oxygen deficiency made with an approved flame safety lamp, shall be made at the same times as are required for a gassy mine. The person making such examinations unless he be a certified foreman or fire boss shall be competent and certified in the same
manner as is prescribed by the director for certifying mine foremen and fire bosses.

**MOVEMENT OF EQUIPMENT**

§22-2-7a. Movement of mining equipment.

1 Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

**MINE FOREMAN**

§22-2-8. When mine foreman to be employed; qualifications; assistants.

1 In every coal mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person, holding a certificate of competency for such position issued to him by the department of mines after an examination by such department. In order to receive a certificate of competency to qualify as mine foreman, he shall at the time he takes the examination, be a citizen, resident or employed in a mine in this state, of good moral character and temperate habits, having had at least three years' experience in the underground working, ventilation and drainage of coal mines, or be a graduate of the school of mines of West Virginia University or of another accredited mining engineering school and have had one year's practical experience in coal mines: Provided, however, That in order to serve as a mine foreman he shall have had at least five years' practical experience, and if such service be at a gassy mine then at least two years of such experience shall have been in a gassy mine: Provided further, That any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman's examination held by the department, but not to exceed a maximum of ninety days.
In mines in which the operations are so extensive that all the duties devolving upon the mine foreman cannot be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman's instructions and the mine foreman shall be responsible for their conduct in the discharge of their duties under such designation.

§22-2-11. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide for a proper system of signals, and a conspicuous light or approved trip reflector on the rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of men occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of stationary character sufficient to show the landing and all surrounding objects distinctly and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which men are riding shall be lifted or lowered at a rate of speed greater than one thousand feet per minute, and that no mine cars, either empty or loaded, shall be hoisted while men are being lowered or hoisted, and no cage having an unstable self-dump platform shall be used for the carrying of workmen unless the same is provided with some device by which it may be securely locked when men are being hoisted or lowered into the mine: Provided, however, That during the initial development of a new mine persons may be permitted to ride upon cages carrying empty cars.

§22-2-13. Instruction of employees; annual examination of persons using flame safety lamps; records of examination.

The department of mines shall prescribe and establish
a course of instruction in mine safety and particularly in
dangers incident to such employment in mines and in
mining laws and rules, which course of instruction shall
be successfully completed within twelve weeks after any
person shall be first employed as a miner. It shall further
be the duty and responsibility of the department of mines
to see that such course shall be given to all persons as
above provided after their first being employed in any
mine in this state.

It shall be the duty of the mine foreman, or the assistant
mine foreman, of every coal mine in this state, to see
that every person employed to work in such mine shall,
before beginning work therein, be instructed in the parti-
cular danger incident to his work in such mine, and be
furnished a copy of the mining laws and rules of such
mine. Every inexperienced person so employed shall work
under the direction of the mine foreman, his assistant, or
such other experienced worker as may be designated by
the mine foreman or assistant, until he is familiar with the
danger incident to his work.

Persons whose duties require them to use a flame safety
lamp and other approved methane detectors shall be
examined at least annually as to their competence by a
certified man and a record that such examination was
given, together with pertinent data relating thereto, shall
be kept on file by the operator and a copy shall be furn-
ished to the department of mines.

**Fire Boss**

§22-2-21. When fire boss to be employed; qualifications.

Every operator whose mines are classified as gassy,
shall employ a fire boss, who shall hold a certificate of
competency for such position issued to him by the de-
partment of mines after taking an examination held by
the department of mines. In order to receive a certificate
of competency to qualify as a fire boss, he shall at the time
he takes the examination, be a citizen, resident or em-
ployed in a mine in this state, having had at least three
years’ experience in the underground working, ventila-
tion and drainage of coal mines, and shall have had at
least two years’ experience in mines liberating explo-
sive gas; he shall have such knowledge of methane and
other dangerous gas or gases as to be able to detect the
same with a permissible flame safety lamp; he shall
have a practical knowledge of the subject of ventilation
of mines and the machinery and appliances used for that
purpose; and he shall also be a person of good moral
character and temperate habits.

Roof—Face—Ribs

§22-2-28. Roof support; use and recovery of roof bolts; fire protection for unattended underground permanent belt conveyor drives.

1 Minimum timbering or other roof support methods suitable to the roof conditions and mining system of each mine or part of a mine shall be adopted and complied with. A copy of the adopted roof support plan shall be posted at the mine and a copy furnished to the district mine inspector. Additional timbering or supporting shall be used when and where necessary. It shall be the duty of the mine foreman or his subordinate supervisors to instruct all workmen in proper methods of setting timbers or placing roof supports; and, it shall be the duty of the workmen to comply with the instruction in setting timbers and roof supports. The roof in all underground working places, unless self-supporting, shall be secured to protect employees from falls. Safety posts, jacks, or temporary crossbars shall be set close to the face when necessary for safety before other operations are begun and as needed thereafter. Where roof supports are required at the working faces, persons shall not advance beyond supported roof, except those who are assigned to install supports. Timbering or roof support materials to be used as required in supporting the roof in underground workings shall be delivered at or near the working faces. In hand loading mines, the miner shall order timbers and roof support materials at least one day in advance in order to have in his working place a sufficient supply for his needs. He shall place his order with his supervisor stating his requirements. Roof bolts shall not be used in lieu of conventional timbering unless a permit has been issued by the state department of mines. Roof bolts shall not be recovered where complete extraction of pillars is attempted; nor shall bolts be re-
moved adjacent to clay veins; nor at the location of other irregularities that introduce abnormal hazards. Where roof bolt recovery is practiced, it shall be done only by reasonable methods approved by the director of the department of mines. Recovery of roof supports shall not be done except by experienced persons and only where adequate temporary support is provided.

All unattended underground permanent belt conveyor drives shall be provided with an automatic spray system or its equivalent for fire protection. Any equipment that has been installed for a period of one year shall be considered a permanent installation.

**ELECTRICITY**


1 Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

4 All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

10 Underground transformers purchased after the effective date of this article, shall be air cooled or cooled with noninflammable liquid or inert gas.

14 Underground stations containing transformers or circuit breakers filled with inflammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or explosion occurs, and shall be of fireproof construction.

19 Transformers shall be provided with adequate overload protection.

21 Portable or semiportable battery charging units shall be operated on a separate split of air: Provided, That such units may be operated on intake air if a minimum of fifteen thousand cubic feet per minute is circulating for one tray of batteries and five thousand cubic feet per
minute additional for each tray added. The rate of charging by such units shall not be less than four hours to fully charge a tray of batteries.

Battery charging stations, motor generator sets, rotary converters and oil filled transformers and switches, used underground shall be housed in fireproof buildings ventilated by a separate split of air direct to the main return (rectifiers excepted).

All power wires and cables entering a mine shall be provided with lightning arrestors at points of entry.

"Danger—high voltage" signs shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

Circuit breakers or other overload devices shall be provided to protect power circuits.

Insulating platforms of wood, rubber, or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

All power wires and cables in hoisting shafts, slopes and power boreholes shall be properly insulated, provided with lightning arrestors, substantially installed and well maintained.

All power wires, except training cables, especially designed cable used as electrical conductors to underground rectifier or transformer stations, portable power cables or bare or insulated ground and return wires, shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

Trolley and feeder wires shall be installed as follows: Where installed on permanent haulage, after the effective date of this article, they shall be: (1) At least six inches outside the track gauge line; (2) provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines; and (3) kept taut and not permitted to touch the roof, rib, or crossbars.

Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.
Trolley or bare feeder cables shall be guarded adequately where it is necessary for men to pass or work under them regularly unless the wires are more than six and one-half feet above the top of the rail. They shall also be guarded adequately on both sides of doors, at all stations designated for the loading and unloading of man trips, and at sandboxes.

After the effective date of this article, in new underground installations of electric face equipment in new mines the difference in potential between any two points in the electrical circuits, or between any point in the electrical circuits and the ground, shall not exceed six hundred and fifty volts. No provision of this section shall prohibit the use of higher voltages of alternating current on service lines to rectifiers, converters, transformers or switches connected thereto located in areas out by the immediate face regions: Provided, That electrically face-operated equipment used in underground mines may be operated at higher voltages if the conductor in the trailing cable is surrounded by a flexible grounded metallic sheath, ground current is limited by acceptable methods, and the ground circuit is continuously monitored in a method approved by the director of the department of mines.

In a gassy mine, trolley, feeder wires, mine power centers, rectifiers and distribution centers shall not extend beyond the last open crosscut and shall be kept at least one hundred and fifty feet from open pillar workings. Trolley wires and feeder wires shall be anchored securely, insulated, and properly identified at their ends. Metallic frames, casings, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively.

Metal frames, supporting structures and enclosures of substations or switching station apparatus shall be grounded effectively.

Lightning arrestors suitable for the voltage of the system shall be installed on each ungrounded conductor for each exposed feeder circuit entering the mine.

Capacitors used for power factor correction shall be
nonflammable liquid filled. Suitable drain-off resistors or
other means to protect workmen against electric shock
following removal of power shall be provided.
Where a.c. to d.c. conversion equipment is used to
supply direct current for shuttle cars or other face
equipment, adequate electrical protection shall be pro­
vided on either the alternating current side and/or the
direct current side of the conversion equipment.
Where both a.c. and d.c. equipment is operating in the
same mine the grounding systems shall not be inter­
connected.
The use of "jumpers," as a supplement for feeder or
trolley lines, are permitted if they are installed in the
same manner as the feeder or trolley line and are of ade­
quate capacity.
All cables shall be of the approved type and trailing
cables shall be flame resistant.
Power circuits servicing alternating current face equip­
ment shall include a neutral grounding circuit, either
direct or derived, the inby end of which shall be connected
only to the equipment machine frame.
Each individual alternating current power circuit (trail­
ing cable) furnishing power to mining equipment shall be
protected from short circuits by means of a circuit breaker
which will open all three phases of the circuit simul­
taneously.
Where electric motors are operating inside of any coal
mine they shall be provided with correct overload pro­
tection.
All unattended underground loading points where
electric driven hydraulic systems are used shall utilize a
fireproof oil or emulsion, unless the electrical wiring and
hydraulic systems are separated.
When direct current power cables enter a mine by way
of a borehole, the bottom or area around the borehole
shall be adequately fireproofed.
Before major electrical changes are made to permissible
equipment for use in a gassy mine, they shall be approved
by the director of the department of mines.
Where installed after the effective date of this section, high-voltage lines or cables entering a mine shall have circuit breakers or a similar approved protective device. Diodes or similar devices may be used as an equivalent frame grounding device.

When two or more trailing cables junction to the same power car or transformer, means shall be provided to eliminate the possibility of cross-connecting or connecting to the wrong size breaker.

All power transformers shall be provided with adequate overload protection. A visual and suitable means of disconnecting the primary line of the transformers shall be provided.

In new installations made after the effective date of this section, lightning arrestors shall be connected to a low resistance grounding medium on the surface which shall be separated from system and equipment grounds by a distance of not less than fifty feet.

At locations where cables cross regular haulage or travelways, or where equipment must pass, unless protected by sufficient height, the cables shall be installed in a trench in the roof, protected by some mechanical means, or buried at least twelve inches below combustible material and adequately protected from crushing by the weight of equipment passing over it.

Underground high-voltage main feeder cables shall extend to high-voltage distribution centers with breakers or disconnect switches supplying the branch circuits. Disconnecting devices shall be incorporated to provide visual evidence that the circuit is deenergized when the switches are opened.

Permanent high-voltage cables shall be installed only in well maintained and accessible passageways of the mine and when installed in haulageways shall be supported on hangers and/or messenger wire supported from the roof and/or buried. Extra lengths may be stored in a workmanlike manner, vertically on suitable supports, or horizontally in a protected location.

Circuit breakers and disconnecting switches on high-voltage circuits underground shall be adequately marked
for identification and location. Where work is to be done
on these circuits or equipment, a positive method shall
be provided for removing the power in a manner to pre-
vent it from returning while the men are working.

Reverse current protection shall be provided at storage
battery charging stations to prevent the storage batteries
from energizing the power circuits in the event of power
failure.

**Miscellaneous Safety Provisions and Requirements**

§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
employ any person to work in such mine, or permit any
persons to be in the mine for the purpose of working
therein, unless they are in communication with at least
two openings, or outlets, to each seam, separated by
natural strata, such openings to be not less than three
hundred feet apart, if the mine be worked by shaft; if
the mine be worked by shaft and slope, such openings
shall be separated by one hundred feet of natural strata;
and not less than fifty feet apart at the outlets, if worked
by slope or drift; but this requirement of a distance of
three hundred feet between openings or outlets to shaft
mines shall not apply where such openings or outlets
have been made prior to the effective date of this article.
To each of the outlets there shall be provided from the
interior of the mine a safe and available roadway, prop-
erly drained, which shall at all times, while the mine is
in operation, be kept free from all obstructions that might
prevent travel thereon in case of an emergency. If either
of the outlets be by shaft, it shall be fitted with safe
and available appliances, such as stairs or hoisting ma-
chinery, which shall at all times when men are under-
ground be kept in order and ready for immediate use,
whereby persons employed in the mine may readily
escape in case of accident.

There shall be at least two separate and distinct travel-
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 each week by a certified foreman,
32 fire boss or other competent person, and a written re-
33 port 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 mine;
39 neither shall it apply to any mine, or part of a mine, in
40 which a second outlet has been rendered unavailable by
41 reason of the final robbing of pillars, preparatory to
42 abandonment, so long as not more than twenty persons
43 are employed therein at any one time; but before a
44 limited number of men are so permitted to work, ap-
45 proval of the necessity therefor shall be obtained from
46 the department of mines.

ARTICLE 3. OPEN-PIT MINES, CEMENT MANUFACTURING
PLANTS AND UNDERGROUND LIMESTONE AND
SANDSTONE MINES.

§22-3-1. Definitions.
§22-3-2. Applicability of mining laws.
§22-3-3. Rules and regulations.
§22-3-4. Monthly report by operator.
§22-3-5. Inspectors.
§22-3-6. Penalties.

§22-3-1. Definitions.
1 Unless the context in which used clearly requires a
2 different meaning as used in this article:
3 (a) “Open-pit mine” means an excavation worked
4 from the surface and open to daylight.
5 (b) “Underground mine” means subterranean work-
6 ings for the purpose of obtaining a desired material or
7 materials.
8 (c) “Sand” means waterworn sandstone fragments
9 transported and deposited by water.
(d) "Gravel" means an occurrence of waterworn pebbles.

(e) "Sandstone" means a compacted or cemented sediment composed chiefly of quartz grains.

(f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.

(g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) "Iron ore" means a mineral or minerals, and gangue when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral when treated will yield manganese at a profit.

§22-3-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property shall extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

§22-3-3. Rules and regulations.

The director of the department of mines shall promulgate reasonable rules and regulations, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

§22-3-4. Monthly report by operator.

The operator of such mine shall, on or before the end of each calendar month, file with the director of the department of mines a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.
§22-3-5. Inspectors.

1 The director of the department of mines shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, have a minimum of five years of practical experience in such mining operations and at the time of his appointment is not more than fifty-five years of age. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. Inspectors serving as such on the effective date of this section may continue to serve for a probationary period not exceeding one year and, if eligible, may qualify for permanent appointment during such probationary period in accordance with the provisions of this section. No candidate's name shall remain in the register for more than three years without requalifying. Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (d), section eight, article one of this chapter and shall be paid not less than eight thousand four hundred dollars per annum.

§22-3-6. Penalties.

1 Any person who fails or refuses to discharge any provision of this article, rule and regulation promulgated or order issued pursuant to the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both.
AN ACT to amend and reenact sections one, one-a, one-f, one-g, one-h, one-i, two, two-a, seven, nine, ten, ten-a, thirteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections one-k, two-b, three-a, four-a, eight-a and twelve-a, all relating to oil and gas wells and certain other wells, defining the powers and duties of the department of mines and the deputy director for oil and gas with regard to such wells, establishing administrative procedures with regard to the drilling, fracturing and flooding of such wells, the disposal of industrial waste into such wells, the manner in which such wells shall be plugged, cased or abandoned, establishment of an oil and gas reclamation fund and providing for penalties for violations of this article.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, one-f, one-g, one-h, one-i, two, two-a, seven, nine, ten, ten-a, thirteen and seventeen, article four, chapter twenty-two 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 six new sections, designated sections one-k, two-b, three-a, four-a, eight-a and twelve-a, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.
§22-4-1a. Deputy director for oil and gas—Appointment; powers and duties generally; departmental records open to public.
§22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.
§22-4-lg. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

§22-4-lh. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.

§22-4-li. Requirements for findings, orders and notices; posting of findings and orders.

§22-4-lk. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof.

§22-4-2a. Notice to coal operators and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notices and information furnished to coal operators and chief of water resources; issuance of permits; performance bonds of security in lieu thereof.

§22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; location or conditions fixed by department of mines; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

§22-4-4a. Appeal by coal operator, well operator or chief of division of water resources from drilling location for introducing of liquids or waste fixed or approved or from conditions of converting fixed or approved; procedure.

§22-4-7. Same—Continuance during life of well; dry or abandoned wells.

§22-4-8a. Same—Installation of fresh water casings.

§22-4-9. Plugging and abandonment of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

§22-4-10. Methods of plugging well.

§22-4-10a. Introducing liquid pressure into producing strata to recover oil contained therein.

§22-4-12a. Special reclamation fund; fees.

§22-4-13. Rules and regulations; hearings before department of mines; appeals.

§22-4-17. Offenses; penalties.

§22-4-1. Definitions.

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

3 (a) “Deputy director” shall mean the deputy director for oil and gas;

5 (b) “Well” shall mean any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or
gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" shall not have included within its meaning any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(c) "Facility" shall mean any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;

(d) "Owner" when used with reference to any such well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principals, or as lessee or contractor, employee or agent of such principal;

(e) "Well operator" or "operator" shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(f) "Chief" shall mean chief of the division of water resources of the department of natural resources;

(g) "Coal operator" shall include any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(h) "Department" or "department of mines" includes the duly constituted authorities under the laws of this state having jurisdiction over coal mining operations;

(i) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(j) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(k) "Oil" and "gas" are synonyms for petroleum and natural gas respectively;

(l) "Cement" means hydraulic cement properly mixed with water only;
"Workable coal bed" means a coal bed in fact being operated commercially, or which, in the judgment of the department of mines, can, and that it is reasonably to be expected will, be so operated, and which, when operated, will require protection if wells are drilled through it.

§22-4-1a. Deputy director for oil and gas—Appointment; powers and duties generally; departmental records open to public.

There shall be an employee of the department whose title shall be "deputy director for oil and gas," who shall be appointed by the director to serve at the will and pleasure of the director. The deputy director for oil and gas shall have full charge of the oil and gas matters set out in this article and in articles five and seven of this chapter, subject always to the direct supervision and control of the director of the department of mines. As such, the deputy director for oil and gas shall have the power and duty to:

1. Supervise and direct the execution and enforcement of the provisions of this article and articles five and seven of this chapter;
2. Employ a supervising oil and gas inspector and not more than eight district oil and gas inspectors upon approval by the director, such clerks, stenographers and other employees as may be approved by the director, at compensation fixed by the director, except as otherwise provided in this article;
3. Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;
4. Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;
5. Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;
MINES AND MINERALS

30 (6) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of this article and articles five and seven of this chapter;

36 (7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

39 (8) Make annually a full and complete written report to the director of the department of mines in such form and detail as the director may from time to time request, so that the director can complete the preparation of the director's annual report to the governor of the state;

44 (9) Conduct such research and studies as the director shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

52 (10) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties assigned to him by the director of the department of mines.

All records of the department shall be open to the public.

§22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.

1 The deputy director for oil and gas of the department of mines shall have authority to visit and inspect any well or well site and any other oil and/or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil and/or gas facility. Similarly, all oil and gas inspectors and the
9 supervising inspector shall have authority to visit and
10 inspect any well or well site and any other oil and/or gas
11 facility in this state. The operator or owner of every
12 well or well site or any other oil and/or gas facility shall
13 cooperate with the deputy director for oil and gas, all oil
14 and gas inspectors and the supervising inspector in mak-
15 ing inspections or obtaining information.
16 Oil and gas inspectors shall devote their full time and
17 undivided attention to the performance of their duties,
18 and they shall be responsible for the inspection of all
19 wells or well sites or other oil and/or gas facilities in
20 their respective districts as often as may be required in
21 the performance of their duties.

§22-4-lg. Findings and orders of inspectors concerning viola-
1 tions; determination of reasonable time for abate-
2 ment; extensions of time for abatement; special
3 inspections; notice of findings and orders.
1 (a) If an oil and gas inspector, upon making an in-
2 spection of a well or well site or any other oil and/or gas
3 facility, as authorized by this article, finds that any pro-
4 vision of this article is being violated, he shall determine
5 what would be a reasonable period of time within which
6 such violation should be totally abated. Such findings
7 shall contain reference to the provisions of this article
8 which he finds are being violated, and a detailed descrip-
9 tion of the conditions which cause and constitute such
10 violation.
11 (b) The period of time so found by such oil and gas
12 inspector to be a reasonable period of time may be ex-
13 tended by such inspector, or by any other oil and gas
14 inspector duly authorized by the deputy director for oil
15 and gas, from time to time, but on not more than three
16 occasions, upon the making of a special inspection to
17 ascertain whether or not such violation has been totally
18 abated. The deputy director for oil and gas shall cause
19 a special inspection to be made: (A) Whenever an oper-
20 ator of a well or well site or any other oil and/or gas
21 facility, prior to the expiration of any such period of
22 time, requests him to cause a special inspection to be
23 made at such well or well site or any other oil and/or gas
facility; and (B) upon expiration of such period of time as originally fixed or as extended, unless the deputy director for oil and gas is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he determines that such period of time should be extended, he shall determine what a reasonable extension would be. If he determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if he also determines that such period of time should not be further extended, he shall thereupon make an order requiring the operator of such well or well site or other oil and/or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated. (c) Notice of each finding and order made under this section shall promptly be given to the operator of the well or well site or other oil and/or gas facility to which it pertains, by the person making such finding or order. (d) No order shall be issued under the authority of this section which is not expressly authorized herein.

§22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.

Any operator of a well or well site or other oil and/or gas facility notified of findings or an order made by an oil and gas inspector pursuant to section one-g of this article, may apply to the deputy director for oil and gas for annulment or revision of such order. Upon receipt of such application the deputy director for oil and gas shall make a special inspection of the well, well site or other oil and/or gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the
11 supervising inspector and one duly authorized oil and gas
12 inspector other than the oil and gas inspector who made
13 such order, to make such inspection of such well, or well
14 site or other oil and/or gas facility and to report thereon
15 to him. Upon making such special inspection himself, or
16 upon receiving the report of such special inspection, as the
17 case may be, the deputy director for oil and gas shall
18 make an order which shall include his findings and shall
19 annul, revise or affirm the order of the oil and gas in-
20 spector.
21 The deputy director for oil and gas shall cause notice of
22 each finding and order made under this section to be
23 given promptly to the operator of the well, well site or
24 other oil and/or gas facility to which such findings and
25 order pertain.
26 At any time while an order made pursuant to section
27 one-g of this article is in effect, the operator of the well,
28 well site or other oil and/or gas facility affected by such
29 order may apply to the deputy director for oil and gas
30 for annulment or revision of such order. The deputy
31 director for oil and gas shall thereupon proceed to act
32 upon such application in the manner provided in this
33 section.
34 In view of the urgent need for prompt decision of
35 matters submitted to the deputy director for oil and gas
36 under this article, all actions which he, or oil and gas in-
37 spectors, or the supervising inspector, is required to take
38 under this article, shall be taken as rapidly as practicable,
39 consistent with adequate consideration of the issues in
40 volved.

§22-4-li. Requirements for findings, orders and notices; posting of findings and orders.
1 (a) All findings and orders made pursuant to sections
2 one-g or one-h of this article, and all notices required to
3 be given of the making of such findings and orders, shall
4 be in writing. All such findings and orders shall be signed
5 by the person making them, and all such notices shall
6 be signed by the person charged with the duty of giv-
7 ing the notice. All such notices shall contain a copy of
8 the findings and orders referred to therein.
(b) Notice of any finding or order required by sections one-g or one-h of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the department of mines and by causing a copy thereof to be posted upon the drilling rig or other equipment at the well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be “addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains,” shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to “Operator of . . .,” specifying the well, well site or other oil and/or gas facility sufficiently to identify it, shall satisfy such requirement.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued.

It shall be unlawful for any well to be drilled, redrilled, deepened, fractured, pressured, converted or combined unless a permit therefor has been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

(a) The name and address of the well operator;
(b) The name and address of the owner of the surface lands upon which the well is or may be located;
(c) The name and address of the agent of the well operator, if any such agent is required to be designated under the provisions of this section;
(d) The approximate depth to which the well is to be drilled;
(e) The proposed casing program of such well including the sizes of all such casing, the depth to which all casing is to be run and the extent to which such casing is to be cemented; and,
(f) Any other information which the deputy director by rule or regulation may require.

If the well operator named in such application is a corporation, partnership or a nonresident of the state of West Virginia, then there shall be designated the name and address of an agent for such operator who shall be the attorney in fact for the operator and who shall be a resident of the state of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article five-a, chapter twenty, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

The deputy director shall issue with the permit a metal plate containing the drilling permit number as designated by him, which plate shall be permanently affixed in the manner prescribed by the deputy director to the well site upon the completion of the drilling of such well. The metal plate required to be issued by the deputy director shall be of a size and dimension and of such material as he shall establish by rule and regulation.

For the purpose of ascertaining whether or not issuance of any permit to drill, redrill, deepen, case, fracture, pressure, operate, plug, abandon, convert or combine any well will contribute to an existing pollution problem, the deputy director shall have the right and it shall be his duty to consult with the director of the department of natural resources. In the event the issuance of any such permit may reasonably be expected to contribute to any such existing pollution then the deputy director will not issue such permit.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information
furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof.

Before drilling for oil or gas, or before fracturing a well originally drilled before the fifth day of June, one thousand nine hundred twenty-nine, on any tract of land, the well operator shall have a plat prepared by a competent land surveyor or engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well (and the date of drilling completion of a well originally drilled before the fifth day of June, one thousand nine hundred twenty-nine, when it is proposed that such well be fractured), and shall forward by registered mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more workable beds of coal, copies of the plat shall be forwarded by registered mail to each and every coal operator, if any, operating said beds of coal beneath said tract of land, or within five hundred feet of the boundaries of the same, who has mapped the same and filed his maps as required by law. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered mail, pursuant to the requirements of this article. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within ten days from receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the department may forthwith issue to the well operator a permit reciting the filing of such plat, that no objec-
tions have been made by the coal operators, if any, or
found thereto by the department, and authorizing the
well operator to drill at such location, or to fracture the
well originally drilled before the fifth day of June, one
thousand nine hundred twenty-nine: Provided, That un-
less the department has objections to such proposed loca-
tion or proposed fracturing, such permit may be issued
prior to the expiration of such ten-day period upon the
obtaining by the well operator of the consent in writ-
ing of the coal operator or operators to whom copies
of the plat and notice shall have been mailed as herein
required, and upon presentation of such written consent
to the department. The notice above provided for may
be given to the coal operator by delivering or mailing
it as above to any agent or superintendent in actual
charge of mines.

A permit to drill, or to fracture an oil and/or gas well
originally drilled before the fifth day of June, one thou-
sand nine hundred twenty-nine, shall not be issued
unless the application therefor is accompanied by a
bond of the operator in the sum of one thousand dollars,
payable to the state of West Virginia, with a corporate
bonding and/or surety company authorized to do busi-
ness in this state as surety thereon, conditioned on full
compliance with all laws, rules and regulations relating
to the drilling, redrilling, deepening, casing, plugging
and abandonment of wells and for furnishing such reports
and information as may be required by the department:
Provided, however, That when such operator makes or
has made application for permits to drill a number of
wells and/or fracture a well or wells originally drilled
before the fifth day of June, one thousand nine hundred
twenty-nine, the operator may in lieu of furnishing a
separate bond furnish a blanket bond in the sum of ten
thousand dollars, payable to the state of West Virginia,
with a corporate bonding or surety company authorized
to do business in this state as surety thereon, and con-
ditioned as aforesaid: Provided further, That in lieu of
corporate surety on a separate or blanket bond, as the
case may be, the operator may elect to deposit with the
deputy director for oil and gas cash or the following
collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency thereof is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located therein, provided that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and provided that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt evidenced by its bonds; (4) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement, or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the pay-
ment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (6) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement or payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (7) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (8) bonds issued by a federal land bank or home owners' loan corporation. The cash deposit and/or market value of the collateral securities shall be equal to or greater than the penalty of the separate or blanket bond, as the case may be. Upon receipt of any such deposit or cash or collateral securities, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging and abandonment of wells and
for furnishing such reports and information as may be
required by the department. The operator making the
deposit shall be entitled from time to time to receive
from the treasurer, upon the written order of the deputy
director for oil and gas, the whole or any portion of
such securities upon depositing with the treasurer in
lieu thereof cash equal to or greater than the penalty
of the bond, or other approved securities of the classes
herein specified having a market value equal to or greater
than the penalty of the bond, or a corporate surety bond.

Any such bond shall remain in force until released by
the department and the department shall release the
same when it is satisfied the conditions thereof have
been fully performed. Upon the release of any such
bond, any cash or collateral securities deposited shall
be returned by the deputy director for oil and gas to
the operator who deposited same.

§22-4-2a. Notice to coal operators and department of mines of
intention to fracture certain other wells; contents
of such notice; permit required.

Before fracturing any well originally drilled on and
after the fifth day of June, one thousand nine hundred
twenty-nine, and before the effective date of this act,
and which is located on any tract of land known to be
underlaid with one or more workable beds of coal, the
well operator shall, by registered mail, forward a notice
of intention to fracture such well to the department of
mines and to each and every coal operator operating said
beds of coal beneath said tract of land, or within five
hundred feet of the boundaries of the same, who has
mapped the same and filed his maps as required by law.

Nothing contained in this article shall under any cir-
cumstances be construed to require any well operator to
give a notice of intention to fracture, or to obtain a
permit to fracture, a well drilled on and after the effec-
tive date of this act. The notice shall be addressed to the
department of mines and to each such coal operator at
their respective addresses, shall contain the number of
the drilling permit for such well and such other in-
formation as may be required by the department to en-
able the department and the coal operators to locate and
identify such well and shall inform them that such
notice is being mailed to them respectively by registered
mail, pursuant to the requirements of this article. (The
form for such notice of intention shall be furnished on
request by the department of mines.) If no objections are
made, or are found by the department, to such proposed
fracturing within ten days from receipt of such notice by
the department of mines, the same shall be filed and be-
come a permanent record of such fracturing, subject to
inspection at any time by any interested person, and the
department shall forthwith issue to the well operator a
permit reciting the filing of such notice, that no objections
have been made by the coal operators, or found thereto
by the department, and authorizing the well operator to
fracture such well. Unless the department has objections
to such proposed fracturing, such permit shall be issued
prior to the expiration of such ten-day period upon the
obtaining by the well operator of the consent in writing of
the coal operator or operators to whom notice of inten-
tion to fracture shall have been mailed as herein re-
quired, and upon presentation of such written consent
to the department. The notice above provided for may
be given to the coal operator by delivering or mailing
it as above to any agent or superintendent in actual
charge of mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste
into wells; preparation and contents; notices and
information furnished to coal operators and chief
of water resources; issuance of permits; per-
formance bonds of security in lieu thereof.

Before drilling a well for the introduction of liquids
for the purposes provided for in section ten-a of this
article or for the introduction of liquids for the disposal
of sewage, industrial waste or other waste or the effluent
therefrom on any tract of land, or before converting an
existing well for such purposes, the well operator shall
have a plat prepared by a competent engineer showing
the district and county in which the tract of land is
located, the name and acreage of the same, the names
of the owners of all adjacent tracts, the proposed or actual
location of the well or wells determined by a survey,
the courses and distances of such location from two
permanent points of land marked on said tract and the
number to be given to the well, and shall forward by
registered or certified mail the original and one copy of
the plat to the department of mines. In addition, the well
operator shall provide the following information on the
plat or by way of attachment thereto to the department in
the manner and form prescribed by the department's
rules and regulations: (a) The location of all wells, aban-
doned or otherwise located within the area to be affect-
ed; (b) where available, the casing records of all such
wells; (c) where available, the drilling log of all such
wells; (d) the maximum pressure to be introduced; (e)
the geological formation into which such liquid or pres-
sure is to be introduced; (f) a general description of the
liquids to be introduced; (g) the location of all water-
bearing horizons above and below the geological forma-
tion into which such pressure, liquid or waste is to be
introduced; and (h) such other information as the deputy
director by rule and regulation may require.

In the event the tract of land on which said well pro-
posed to be drilled or converted for the purposes pro-
vided for in this section is located is known to be
underlaid with one or more workable beds of coal, copies
of the plat and all information required by this section
shall be forwarded by the operator by registered or certi-
fied mail to each and every coal operator, if any, operating
said beds of coal beneath said tracts of land, or within five
hundred feet of the boundaries of the same, who has
mapped the same and filed his maps as required by law.
With each of such plats, there shall be enclosed a notice
(form for which shall be furnished on request by the de-
partment of mines) addressed to the department of mines
and to each such coal operator, if any, at their respective
addresses, informing them that such plat and notice are
being mailed to them respectively by registered or certi-
fied mail, pursuant to the requirements of this section. The
deputy director shall forward a copy of the plat, notice
and all other information required by this section to the
chief of the division of water resources of the department
of natural resources.

If no objections are made by any such coal operator or
such chief, or are found by the department to such
proposed drilling or converting of the well or wells for
the purposes provided for in this section within thirty
days from the receipt of such plat and notice by the de-
partment of mines, the same shall be filed and become a
permanent record of such location or well, subject to
inspection at any time by any interested person, and
the department shall forthwith issue to the well operator
a permit reciting the filing of such plat and notice, that
no objections have been made by the coal operators,
if any, or found thereto by the department of mines or
by the chief, and authorizing the well operator to drill
at such location or convert such existing well or wells
for the purposes provided for in this section. Such per-
mit shall be issued prior to the expiration of such
thirty-day period upon the obtaining by the well oper-
ator of the consent in writing of the coal operator or
operators to whom copies of the plat and notices must
have been mailed as herein required and upon obtaining
the consent in writing of the chief, and upon presenta-
tion of such written consent in writing of the chief,
and upon presentation of such written consent to the
department. The notices above provided for may be given
to the coal operator by delivering or mailing it as above
to any agent or superintendent in actual charge of the
mines.

A permit to drill a well or wells or convert an existing
well or wells for the purposes provided for in this sec-
tion shall not be issued until all of the bonding provi-
sions required by the provisions of section two of this
article have been fully complied with and all such bond-
ing provisions shall apply to all wells drilled or converted
for the purposes provided for in this section as if such
wells had been drilled for the purposes provided for in
section two of this article, except that such bonds shall
be conditioned upon full compliance with all laws, rules
and regulations relating to the drilling of a well or the
converting of an existing well for the purposes provided
for in said section ten-a, or introducing of liquids for the
disposal of sewage, industrial waste or other waste or the
effluent therefrom including the redrilling, deepening,
casing, plugging, or abandonment of all such wells.

§22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; location or conditions fixed by department of mines; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

In any case wherein a well is proposed to be drilled or converted for the purposes provided for in section two-b of this article and is above or in close proximity to any mine opening, shaft, entry, traveling, air, haulage, drainage or other passageway, or to any proposed extension thereof, in any operated and abandoned or operating coal mine or coal mine already surveyed and platted, but not yet being operated, so that such well or wells or the pillar of coal about such well or wells necessary to the protection of the mine and of such well itself when drilled or subjected to the introduction of liquid for the purposes provided for in section ten-a of this article or subjected to the introduction of liquid for the disposal of sewage, industrial waste or other waste or the effluent therefrom will interfere with or endanger the use of such mine opening, entries or ways, then the coal operator or operators affected may, and shall, if the drilling or introducing of any and all such liquids of or into a well at such location will cause a dangerous condition in their mines, file objections in writing (forms for which will be furnished by the department on request) within thirty days from the receipt by the department of mines of the plat and notice required by section two-b of this article to such proposed drilling or converting for the purposes provided for in section two-b of this article, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based and, in the case of drilling a well for the purposes provided for in section two-b, where necessary, such coal operator shall indicate the direction and distance from the location shown on the
plat from the location originally shown on the plat as the proposed well location is suggested as a new location where such proposed well may be drilled in order to overcome such coal operator's objections, and in the case of converting an existing well for such purposes, such objecting coal operator shall indicate the conditions for the protection of life and property under which the well or wells should be converted or liquid introduced into such well to overcome such objections.

In any case wherein a well proposed to be drilled or converted for the purposes provided for in section two-b of this article shall, in the opinion of the chief of the division of water resources of the department of natural resources, affect detrimentally the reasonable standards of purity and quality of the waters of the state, such chief shall, within thirty days from the receipt of the plats and notices required by said section two-b, file with the deputy director his objections in writing to such proposed drilling or conversion, setting out therein as definitely as is reasonably possible the ground or grounds upon which such objections are based and indicating the conditions, consistent with the provisions of this article and the rules or regulations promulgated thereunder, as may be necessary for the protection of the reasonable standards of the purity and quality of such waters under which such proposed drilling or conversion may be completed to overcome such objections.

If any objection or objections are so filed by any such coal operator or such chief or are made by the department of mines, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than ten days from the end of such thirty-day period, at which such objections will be considered, of which time and place the well operator and such chief and all coal operators to whom a copy of the plat and notice required by said section two-b was mailed, whether objecting or not objecting to the proposed drilling or conversion, shall be given at least five days' written notice by the department, by registered or certified mail, and summoned to appear, and, in the
case of coal operators, bringing with them their maps
and plans showing their mines and mine workings and,
in the case of proposed drilling to be prepared to ap­
prove or except to such location or locations as the de­
partment may, after hearing, approve or itself fix in case
no agreement is reached, and, in the case of proposed
conversion of a well for the purposes provided for in said
section two-b, to be prepared to approve or to except to
any conditions under which the conversion is to take
place as the department may, for the protection of life
and property or for the protection of reasonable standards
of purity and quality of the waters of the state, after
hearing, approve or itself fix in case no agreement is
reached. In the case of proposed drilling or converting
of a well for the purposes provided for in said section
two-b, at the time and place so fixed, the well operator
and the interested coal operators and the chief, or such
of them as are present or represented, shall proceed to
consider the objections and agree upon either the location
(in the case of drilling) as made or so moved as to
satisfy all objections and meet the approval of the de­
partment, and any change in the original location (in
case of drilling) so agreed upon and approved by the
department shall be indicated on said plat on file with
the department, and the distances and direction of the
location of the new location from the original location
shall be shown, and, as so altered, the plat shall be filed
and become a permanent record, and in the case of pro­
posed conversion, to agree upon conditions under which
the well is to be converted which will satisfy all objec­tions and meet the approval of the department, at which
time the plat and notice required by said section two-b
shall be filed and become a permanent record. Whereupon
the department shall forthwith issue to the well operator
a permit to drill or convert the well or wells, as the case
may be, for the purposes provided for in said section
two-b, reciting the filing of the plat and notice required
by said section two-b, that at a hearing duly held a loca­tion as shown on the plat or the conditions under which
the conversion is to take place for the protection of life
and property and the reasonable standards of purity and
quality of the waters of the state were agreed upon and
approved, and that the well operator is authorized to
drill at such location or to convert at the site shown on
such plat, as the case may be.

In case the well operator and the coal operator and
the chief, or such of them as are present or represented
at such hearing are unable to agree upon a drilling loca-
tion, or upon a drilling location that meets the approval
of the department of mines, then the department shall
fix a drilling location on such tract of land as near to the
original location as possible in a pillar of suitable size,
through which the well can be drilled safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances, due to the extraction of coal. Should no
such pillar exist, however, the well may be located and
drilled through open workings where, in the judgment
of the department of mines, it is practicable and safe to
do so, taking into consideration the dangers from creeps,
squeezes, or other disturbances.

In case the well operator and the coal operator and the
chief, or such of them as are present or represented at
such hearing are unable to agree upon the conditions
under which a well is to be converted so as to protect life
and property and the reasonable standards of purity and
quality of the waters of the state, or upon such conditions
of converting that meet the approval of the department
of mines, then the department shall fix the conditions
under which the well is to be converted, provided the
well can be converted safely, taking into consideration
the dangers from creeps, squeezes, or other disturbances
and taking into consideration the protection of life and
property and the reasonable standards of the purity and
quality of the waters of the state. Such new drilling
location shall be indicated on the plat on file with the
department as provided herein, and the department shall
forthwith tender to the operator a permit to drill at such
location or to convert for the purposes provided for in
section two-b of this article at the site shown on the plat,
as the case may be, which permit the well operator may
accept or refuse to accept and if it accepts such permit,
such coal operators or chief having filed objections and
appearing or being represented at such hearing may ex-
cept to such location or conversion or to the issuance of
such drilling or converting permit; and the well operator
accepting the same may require the record of the hearing
to show that it accepts such drilling permit at the location
made by the department as a new or additional location
and not in lieu of its original location, or that it accepts
such converting permit as to the conditions under which
the well is to be converted as fixed by the department
as new conditions and not in lieu of the conditions pre-
ferred by it, and that it reserved the right to appeal to
the circuit court of the county in which its original
drilling location, or its conversion site, lies for relief, and
that it excepts to the refusal of the department to ap-
prove such original location substantially as made or to
approve the conditions of converting preferred. In any
case, in addition to taking into consideration the dangers
from creeps, squeezes or other disturbances, the depart-
ment shall at all times consider the protection of life
and property and the protection of the reasonable stan-
dards of quality and purity of the waters of the state.
In any case, either the well operator or the coal operator
or the chief may reserve the right to appeal to the circuit
court of the county in which the original drilling location
or conversion site lies for relief.

The department of mines shall number and keep an
index of and docket each plat and notice mailed to it as
provided in said section two-b, entering in such docket
the name of the well operator, names of the coal operators
notified and their addresses, the date of receipt of any
such plat and notice required by said section two-b, the
date and circumstances of a forwarding of a copy of such
plat and notice to the chief of the division of water
resources, and of all objections filed, dates of hearings
and all actions taken by the department, permits issued
or refused, which docket shall be open to inspection by
the public, and, together with the papers filed, shall
constitute the record of each such proceeding before the
department.
§22-4-4a. Appeal by coal operator, well operator or chief of division of water resources from drilling location for introducing of liquids or waste fixed or approved or from conditions of converting fixed or approved; procedure.

Any coal operator or the chief of the division of water resources of the department of natural resources excepting to any drilling location for the purposes provided for in said section two-b fixed or approved or to the issuance of any drilling permit for such purposes, or other conditions under which a well is to be converted for such purposes as fixed or approved by the department of mines for the protection of life and property and the reasonable standards of quality and purity of the waters of the state or any other issuance of any such converting permit and any well operator excepting to the refusal of the department to grant any drilling permit for the purposes provided for in said section two-b at the location shown in the plat mailed to the department as provided in said section two-b, or such location so shifted as to be substantially the same or the equivalent thereof, or to the refusal of the department to grant such converting permit in accordance with the conditions of such converting preferred by the well operator, may at any time within ten days of the taking of such action by the department of mines appeal to the circuit court of the county in which such proposed drilling location or site involved lies. The procedure shall be by petition and answer, duly verified, and naming the department as one of the respondents. The petition shall briefly set forth the matter in controversy, the ruling of the department and the relief sought. The well operator, the coal operator or the chief making such appeal shall forthwith send a copy of such petition for appeal, by registered or certified mail, to the deputy director for oil and gas. Upon receipt of such copy of such petition for appeal the deputy director for oil and gas shall promptly certify and file in such court a complete transcript of the record upon which the ruling complained of was made, as well as copies of all papers filed with the department. The costs of such transcripts shall be paid by the party making
the appeal. The respondents shall be required to answer
under oath within ten days after service of copies of the
petition upon them, and the procedure shall be expedited,
as far as is reasonably possible, having regard to possible
drainage or loss of title by the well operator through its
failure to complete or convert a well or through its
failure to introduce liquids for the purposes provided
for in section ten-a of this article within the period fixed
by the terms of the lease under which it holds. The court
may, by preliminary order, upon proper proof of the
necessity therefor and the giving of proper security, stay
the drilling or converting of any well, or stay the intro-
duction of liquid for the purposes provided for in said
section ten-a or stay the disposal of sewage, industrial
waste or other waste or the effluent therefrom, until a
final decision on the appeal, and after a final hearing,
at which any competent and relevant evidence may be
introduced, may set aside any action or order of the de-
partment and enter such final order and decree as in its
judgment is just and right and will best carry out the
provisions of this article. From such final orders and
decrees of the circuit court an appeal may be taken to
the supreme court of appeals. During vacation periods
or when for any reason the circuit court is not in session,
such proceedings shall be before the judge of an adjoin-
ing circuit, who may act until the return of the regular
judge to his circuit, whereupon all further proceedings
shall be had before the regular judge or circuit court
having initial jurisdiction therein, and all proceedings in
vacation shall be of like force and effect as if before the
court in term.

§22-4-7. Same—Continuance during life of well; dry or aban-
doned wells.

1 In the event that a well becomes productive of natural
gas or petroleum, or is drilled for or converted for the
introduction of pressure, whether liquid or gas, or for
the introduction of liquid for the purposes provided for in
section ten-a of this article or for the disposal of sewage,
industrial waste or other wastes or the effluent there-
from, all coal-protecting strings of casing and all water-
protecting strings of casing shall remain in place until the well is plugged or abandoned. During the life of the well the annular spaces between the various strings of casing adjacent to workable beds of coal shall be kept open, and the top ends of all such strings shall be provided with casing heads, or such other suitable devices as will permit the free passage of gas and prevent filling of such annular spaces with dirt or debris.

Any well which is completed as a dry hole or which is not in use for a period of twelve consecutive months shall be presumed to have been abandoned and shall promptly be plugged by the operator in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the deputy director that there is a bona fide future use for such well.

§22-4-8a. Same—Installation of fresh water casings.

When a permit has been issued for the drilling of an oil or gas well or both, each well operator shall run and permanently cement a string of casing in the hole through the fresh water bearing strata in such a manner and to the extent provided for in rules and regulations promulgated by the director of the department of mines in accordance with the provisions of chapter twenty-nine-a.

§22-4-9. Plugging and abandonment of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this article shall be plugged in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the abandonment of any well, the well operator shall notify, by registered or certified mail, the department of mines and the coal operator or operators, if any, to whom notices are required to be given by section two of this article and the coal operator or operators to whom notices are required to be given by section two-a of this article of its intention to plug and abandon
any such well (using such form of notice as the depart-
ment may provide), giving the number of the well and
its location and fixing the time at which the work of
plugging and filling will be commenced, which time shall
be not less than five days after the day on which such
notice so mailed is received or in due course should be
received by the department of mines, in order that a
representative or representatives of the department and
the coal operator or operators, if any or of both, may be
present at the plugging and filling of the well. Whether
such representatives appear or do not appear, the well
operator may proceed at the time fixed to plug and fill
the well in the manner hereinafter described. Notwith­
standing the foregoing, a well operator may proceed
to plug and fill a well at any time without giving the
aforesaid notice of intention if such operator has first
obtained in writing the approval of the department of
mines and the coal operator or operators, if any, to
whom notices are required to be given by section two
of this article and the coal operator or operators to whom
notices are required to be given by section two-a of this
article. No well shall be plugged or abandoned unless
the department is furnished a bond of the operator in
the sum of one thousand dollars, payable to the state
of West Virginia, with a corporate bonding or surety
company authorized to do business in this state as surety
thereon, conditioned on full compliance with all laws,
rules and regulations relating to the casing, plugging
and abandonment of wells and for furnishing such re-
ports and information as may be required by the de-
partment. When a number of wells are involved, the
operator may in lieu of furnishing a separate bond fur-
nish a blanket bond in the sum of ten thousand dollars,
payable to the state of West Virginia, with a corporate
bonding or surety company authorized to do business
in this state as surety thereon, and conditioned as afore­
said. In lieu of corporate surety on a separate or blanket
bond, as the case may be, the operator may elect to
deposit with the deputy director for oil and gas cash or
collateral securities as specified in section two of this
article. All of the provisions of section two dealing with
cash or collateral securities in lieu of corporate surety shall be fully applicable hereto except for the condition of the bond with respect to which the operator must be in full compliance in order to be entitled to the interest and income earned on such securities. The operator shall be entitled to such interest and income under this section so long as the operator is in full compliance with all laws, rules and regulations relating to the casing, plugging and abandonment of wells and for furnishing such reports and information as may be required by the department. Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Notwithstanding the foregoing provisions, any operator who, in accordance with section two of this article, has furnished a separate bond, which has not been released by the department, for the drilling, converting or drilling for the introduction of liquids, for the disposal of sewage, industrial waste or other waste or the effluent therefrom, or introducing pressure, whether liquid or gas, or introducing liquid for the purposes provided for in section ten-a of this article or fracturing of the well it is now proposed be plugged and abandoned, or who, in accordance with the provisions of said section two of this article, has furnished a blanket bond which has not been released by the department shall not be required by this section nine to furnish any other bond. When the plugging and filling of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, in which affidavit shall be set forth the time and manner in which the well was plugged and filled. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-10. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled...
or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a of this article or for the disposal of sewage, industrial waste or other waste or the effluent therefrom the well operator, at the time of such abandonment, or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other non-porous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall either be filled, or bridged and filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, or bridged, filled and plugged with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final plug shall be anchored approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the
lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable points, but not less than twenty feet below and above the stratum shot. Or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material;

(b) Where the well has penetrated one or more workable coal beds, it shall be filled and securely plugged in the manner aforesaid, to a point forty feet below the lowest workable coal bed. If, in the judgment of the well operator, the coal operator and the department of mines, a permanent outlet to the surface is required, such outlet shall be provided in the following manner: A plug of cement, or other suitable material, shall be placed in the well at a suitable point, not less than thirty feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe not less than two inches in diameter, which shall extend to the surface. At or above the surface the pipe shall be provided with a device which will permit the free passage of gas, and prevent obstruction of the same. Following the setting of the cement plug and outlet pipe as aforesaid, the hole shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the hole shall be filled with mud, clay or other nonporous material to a point thirty...
§22-4-10a. Introducing liquid pressure into producing strata to recover oil contained therein.

The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein, and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing sand or producing stratum, above or below the producing strata into and upon which such pressure is introduced, shall be affected thereby.

§22-4-12a. Special reclamation fund; fees.

In addition to any other fees required by the provisions of this article, every applicant for a permit to drill a well shall, before the permit is issued, pay to the deputy director for oil and gas a special reclamation fee of one hundred dollars for each well to be drilled. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the deputy director and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby created within the treasury of the state of West Virginia a special fund to be known as the oil and gas reclamation fund, and the deputy director shall deposit with the state treasurer to the credit of such special fund all special reclamation fees collected. The proceeds
of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund. If at the end of any fiscal year the total amount in the oil and gas reclamation fund is in excess of two hundred thousand dollars, the amount of such excess shall be paid into the general revenue fund.

The oil and gas reclamation fund shall be administered by the director of the department of mines. The deputy director for oil and gas shall cause to be prepared plans for the plugging of abandoned wells which have not been plugged or which have been improperly plugged. The director of the department of mines, as funds become available in the oil and gas reclamation fund, shall reclaim, and properly plug all abandoned wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the plugging of wells and all rules and regulations promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the plugging of all wells, abandoned or otherwise.

The director may avail himself of any federal funds provided on a matching basis that may be made available for the purpose of plugging any wells.

The director shall make an annual report to the governor and to the Legislature setting forth the number of wells plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such plugging project, state the number of wells plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be plugged by contract entered into by the director on a competitive bid basis as provided for under the provisions of article three, chapter five-a of this code and the rules and regulations promulgated thereunder.
§22-4-13. Rules and regulations; hearings before department of mines; appeals.

Except as provided for in section eight-a of this article, the department shall prescribe rules of procedure and for offering evidence in all matters brought before it, and shall prepare and, on request, furnish to applicants copies of forms of notices and of other forms that the department may require to be used, and prescribe the manner of serving the same. The department may also promulgate such other rules and regulations as it may deem necessary or helpful in securing uniformity of procedure in the administration of this article. Any matter in controversy before the department shall, after hearing or hearings, of which all persons interested have had due notice and at which they have been given an opportunity to appear and be heard and to offer evidence and to make argument by counsel if desired, be decided by the department as may seem to it to be just and reasonable and necessary or desirable for the proper enforcement of the provisions of this article.

Whether or not it be so expressly stated, an appeal from any final decision or action by the department in administering the provisions of this article may be taken by any aggrieved person within ten days of notice of such action or decision, to the circuit court of the county in which the subject matter of such decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the department of mines, and to all such final decisions an appeal shall lie to the supreme court of appeals as now provided by law in cases in equity. Any party feeling aggrieved by the final order of the circuit court affecting him or it, may present his or its petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within twenty days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the department of mines and to all other parties of record, before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held
sooner than seven days, unless by agreement of the par-
ties, after its presentation, and notice of the time and place
of such hearing shall be forthwith given to the department
of mines and to all other parties of record. If the court or
judge, after such hearing, be of opinion that such final
order should be suspended or modified, the court or the
judge may require bond, upon such conditions and in
such penalty, and impose such terms and conditions upon
the petitioner as are just and reasonable. For such hear-
ing the entire record before the circuit court, or a certified
copy thereof, shall be filed in the supreme court, and that
court, upon such papers, shall promptly decide the matter
in controversy as may seem to it to be just and right,
and may award costs in each case as to it may seem just
and equitable.

§22-4-17. Offenses; penalties.

1 Any person or persons, firm, partnership, partnership
association or corporation violating any provision of this
article or rule or regulation promulgated by virtue of
this article, for which violation there is no penalty pre-
scribed, or any person or persons, firm, partnership,
partnership association or corporation wilfully violating
any of the provisions of this article which prescribe the
manner of drilling and casing or plugging and filling any
well, or which prescribe the methods of conserving gas
from waste, or which fix the distance from wells within
which mining operations shall not be conducted without
the approval of the department, or violating the terms of
any order of the department allowing mining operations
within a lesser distance of any well than that prescribed
by the article, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by a fine not exceed-
ing two thousand dollars, or imprisonment in jail for not
exceeding twelve months, or both, in the discretion of
the court, and prosecutions under this section may be
brought in the name of the state of West Virginia in the
court exercising criminal jurisdiction in the county in
which the violation of such provisions of the article or
terms of such order was committed, and at the instance
and upon the relation of any citizens of this state.
AN ACT to amend and reenact section one-b, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications of deputy director for oil and gas.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1b. Same—Eligibility.

The deputy director for oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and shall possess a degree in either petroleum, chemical, mechanical or civil engineering from an accredited college or university; be a registered professional engineer and shall have had at least ten years' practical experience in the oil and gas industry. A degree in geology or in mining or petroleum engineering from West Virginia University, or any similarly accredited school shall be counted as two years' practical experience. The deputy director for oil and gas shall devote all of his time to his duties, and shall not be directly or indirectly interested financially in any oil and/or gas production or drilling or in any coal mine in this state.

CHAPTER 78

(Senate Bill No. 101—By Mr. Hedrick)

[Passed February 21, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-d, article four, chapter twenty-two of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to eligibility, qualifications, salary and expenses of oil and gas inspectors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.
§22-4-1d. Same—Eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person shall be eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his probationary appointment he (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in the oil and gas industry, at least five years of which, immediately preceding his original appointment shall have been in the oil and gas industry in this state: Provided, That a diploma in geology or in mining or petroleum engineering from West Virginia University, or any similarly accredited school shall be considered the equivalent of five years' practical experience; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the deputy director for oil and gas. No candidate's name shall remain on the register for more than three years without requalifying.
(c) The salary of the supervising inspector shall be not less than seven thousand dollars per annum, nor more than eleven thousand dollars per annum, and reasonable traveling expenses. Salaries of inspectors shall not be less than six thousand dollars per annum, nor more than nine thousand four hundred dollars per annum, and reasonable traveling expenses. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the deputy director for oil and gas, subject to the approval of the director of the department of mines and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the deputy director for oil and gas shall consider ability, performance of duty, and experience. No reimbursement for traveling expenses shall be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause. Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by the deputy director for oil and gas or the director of the department of mines whenever either has reasonable grounds to believe and does believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the oil and gas inspectors' examining board by the deputy director for oil and gas or the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and/or gas drilling and production operations in the state may petition the deputy director for oil and gas or the director of the department of mines for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the
petitioners, based on actual knowledge of the affiant, and
alleges facts which, if true, warrant the removal of the
inspector or supervising inspector, the deputy director
for oil and gas or the director of the department of mines
shall cause an investigation of the facts to be made. If,
after such investigation, the deputy director for oil and
gas or the director finds that there is substantial evidence
which, if true, warrants removal of the inspector or supervis­ing inspector, he shall file a petition with the oil and
gas inspectors' examining board requesting removal
of the inspector or supervising inspector.

On receipt of a petition by the deputy director for oil
and gas or by the director of the department of mines
seeking removal of an inspector or the supervising in­
spector, the oil and gas inspectors' examining board shall
promptly notify the inspector or supervising inspector, as
the case may be, to appear before it at a time and place
designated in said notice, which time shall be not less than
fifteen days nor more than thirty days thereafter. There
shall be attached to the copy of the notice served upon
the inspector or supervising inspector a copy of the peti­tion filed with such board.

At the time and place designated in said notice, the oil
and gas inspectors' examining board shall hear all evi­
dence offered in support of the petition and on behalf of
the inspector or supervising inspector. Each witness shall
be sworn and a transcript shall be made of all evidence
taken and proceedings had at any such hearing. No con­
tinuance shall be granted except for good cause shown.

The chairman of the board, the deputy director for oil
and gas, and the director of the department of mines shall
have power to administer oaths and subpoena witnesses.

Any inspector or supervising inspector who shall wil­
fully refuse or fail to appear before such board, or having
appeared, shall refuse to answer under oath any relevant
question on the ground that his testimony or answer
might incriminate him, or shall refuse to accept a grant of
immunity from prosecution on account of any relevant
matter about which he may be asked to testify at such
hearing before such board, shall forfeit his position.
If, after hearing, the oil and gas inspectors' examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

CHAPTER 79
(Senate Bill No. 221—By Mr. Crawford)

[Passed March 6, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-seven 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 interest charges on loans repayable in installments.

Be it enacted by the Legislature of West Virginia:

That article six, chapter forty-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 five-a, to read as follows:

ARTICLE 6. MONEY AND INTEREST.

§47-6-5a. Interest charges on loans repayable in installments.

1 After the effective date of this section parties may contract for and charge for a secured or unsecured loan, repayable in installments, not in excess of six percent per annum upon the face amount of the instrument or instruments evidencing the obligation to repay the loan, for the entire period of the loan and deduct such charge in advance or add the same to the principal amount of the loan: Provided, however, That if the entire unpaid balance outstanding on the loan is paid on any installment date, prior to maturity, the lender shall make a refund or rebate of such charge in an amount computed on the aggregate installments not due, at the original contract rate of charge; and any note evidencing any such installment loan may
provide that the entire unpaid balance thereof at the op-
tion of the holder shall become due and payable upon
default in the payment of any stipulated installment with-
out impairing the negotiability of such note, if otherwise
negotiable: *Provided further,* That nothing herein con-
tained shall affect or restrict the right of parties under sec-
tion five of this article to contract in writing for the pay-
ment of interest for the loan or forbearance of money at
a rate not to exceed eight dollars upon one hundred dol-
ars a year, and proportionately for a greater or less sum,
or for a longer or shorter time, including points express-
ed as a percentage of the loan divided by the number of
years of the loan contract: *And provided further,* That
nothing herein contained or contained in said section
five of this article shall be taken or construed as authoriz-
ing any charge or charges of any kind or character, in-
cluding interest, on installment loans by the deduction
thereof in advance or by adding the same to the principal
amount of the loan which singularly or together shall
exceed the six percent maximum provided for in this
section.

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**CHAPTER 80**

*Senate Bill No. 138—By Mr. Gainer and Mr. Fanning*

(Passed March 5, 1969; in effect July 1, 1969. Approved by the Governor.)

AN ACT to amend and reenact section twenty-three, article
three, chapter seventeen-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, re-
ating to registration plates for state, county, municipal
and other governmental vehicles.

*Be it enacted by the Legislature of West Virginia:*

That section twenty-three, 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-3-23. Registration plates for state, county, municipal and other governmental vehicles.

1 Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, vehicles operated by the department of public safety, not to exceed six vehicles operated by conservation officers of the department of natural resources, and not to exceed four vehicles operated by the arson investigators of the office of state fire marshal, shall not be operated or driven by any person unless it shall have displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

Such vehicle shall also have attached to the rear a plate bearing a number and such other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top, and the words “West Virginia” on the bottom. The colors may not be reversed and shall be of reflectorized material. The commissioner is hereby authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive color-
ed plates hereunder shall be affixed to both the front and rear of such vehicles.

No other registration plate shall be issued for, or attached to, any such state-owned vehicle.

The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for such vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

It shall be the duty of each office, department, bureau, commission or institution furnished any such vehicle to have such plates affixed thereto prior to the operation of such vehicle by any official or employee.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

Justices of the peace shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.

CHAPTER 81
(House Bill No. 703—By Mr. McManus)

[Passed February 10, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the recordation of liens or encumbrances upon the face of a certificate of title to any vehicle, and increasing from five to ten years the period of validity without a refiling.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article four-a, 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 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-15. Liens or encumbrances void after ten years unless refiled; refiling for additional two-year periods; deletion from lien index.

1 The filing of any lien or encumbrance and its recordation upon the face of a certificate of title to any vehicle as provided in this article shall be valid for a period of ten years only from the date of such filing, unless the lien or encumbrance is refiled in the manner provided in this article for filing and recordation in the first instance, in which event the lien or encumbrance shall be valid for successive additional periods of two years from the date of each such refiling.

10 When the last lien or encumbrance shown on a certificate of title becomes invalid by the passage of time as provided in this section, the commissioner of motor vehicles shall not be required to maintain a lien index as to such certificate of title.

CHAPTER 82

(Senate Bill No. 287—By Mr. Bowling)

[Passed March 5, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permits for moving house trailers.

Be it enacted by the Legislature of West Virginia:

That section three, article seven, 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 7. SPECIAL STICKERS.

§17A-7-3. Operation of house trailer under special stickers; application and fees; expiration; issuance of special stickers to holders of Class K registration plates.

Upon application therefor on a form prescribed by him the commissioner may issue to the owner of a house trailer a special one-movement sticker of such design and content, as may be prescribed by him: Provided, That such special sticker shall not be issued to any house trailer dealer. Such sticker shall be valid for the movement of a house trailer one time only over the streets and highways of this state, and no more than one such sticker may be issued for the same house trailer while owned by the same person. A fee of two dollars shall be received by the department for each special sticker. In order that any holder of a Class K registration plate who is engaged in the business of moving house trailers for hire may move a house trailer at the request of the owner thereof without the delay which would be incident to such owner obtaining a special one-movement sticker, any such holder may from time to time apply to the commissioner for a supply of said special one-movement stickers, and upon proper application therefor on a form prescribed by the commissioner and payment of the fee for each such sticker hereinbefore in this section prescribed, the commissioner shall issue to such holder a supply of serially numbered stickers, not in excess of twenty-five upon any one application. Before moving any such house trailer, the holder of the Class K registration plate who has obtained a supply of such special one-movement stickers shall issue such a sticker to the owner thereof and shall make certain that such sticker is affixed to the house trailer prior to the movement thereof. No refund or credit of fees paid by the holder of any such Class K registration plate for any such special one-movement sticker shall be made or allowed.
AN ACT to amend and reenact section three, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revocation of a junior license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The department shall not issue any license hereunder:
2 (1) To any person, as an operator, who is under the age of eighteen years: Provided, That under rules and regulations to be established by the commissioner and in accordance with the provisions hereinafter set forth in this subdivision (1), a junior or probationary operator's license may be issued to any person between the ages of sixteen and eighteen years, who is not otherwise disqualified by law, upon application therefor on a form prescribed by the commissioner and successful completion of all examinations and driving tests required by law for the issuance of an operator's license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding such junior or probationary operator's license, which conditions or restrictions shall be printed on each such license. In addition to all other provisions of this chapter for which a regular operator's or chauffeur's license may be revoked, suspended or cancelled, whenever a person holding such a junior or probationary operator's license operates a motor vehicle in violation of the conditions or
restrictions set forth on such license, or has a record
of two convictions for moving violations of the traffic
regulations and laws of the road, which convictions have
become final, the junior or probationary license of
such person shall be permanently revoked, with like
effect as if such person had never held a junior or pro-
bationary operator's license: Provided, That such junior
or probationary operator's license shall be revoked upon
one final conviction for any offense specified in section
five, article three of this chapter. Under no circum-
stances shall such a license be revoked for convictions
of offenses in violation of any regulation or law govern-
ning the standing or parking of motor vehicles. A person
whose junior or probationary operator's license has been
revoked shall not thereafter receive a junior or pro-
bationary operator's license, but such person, upon attaining
the age of eighteen, shall be eligible, unless other-
wise disqualified by law, for examination and driver
testing for a regular operator's license or chauffeur's
license. No person shall receive a junior or probationary
operator's license unless the application therefor is
accompanied by a writing, duly acknowledged, con-
senting to the issuance of such junior or probationary
operator's license and executed (a) by the parents of
the applicant, or (b) if only one parent is living, then
by such parent, or (c) if the parents be living separate
and apart, by the one to whom was awarded the custody
of the applicant, or (d) if there is a guardian entitled
to the custody of the applicant, then by such guardian.
Upon attaining the age of eighteen years, a person hold-
ing an unrevoked junior or probationary operator's
license shall, upon payment of the prescribed fee, be
entitled to receive a regular operator's license or chauf-
feur's license without further examination or driver
testing. When a junior license is revoked as a result of
two convictions for moving violations of the traffic reg-
ulations and laws of the road as hereinabove stated, the
provisions of section one, article four, chapter seventeen-
shall not apply;
(2) To any person, as a chauffeur, who is under the
age of eighteen years;
64 (3) To any person, as an operator or chauffeur, whose license has been suspended, during such suspension, nor to any person whose license (other than a junior or probationary operator's license) has been revoked, except as provided in section eight, article three of this chapter;

65 (4) To any person, as an operator or chauffeur, who is an habitual drunkard, or is addicted to the use of narcotic drugs;

66 (5) To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent, upon the certificate of the superintendent of such institution that such person is competent and not then unless the commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons or property;

67 (6) To any person, as an operator or chauffeur, who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

68 (7) To any person who is required under the provisions of the motor vehicle safety responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

69 (8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

CHAPTER 84

(House Bill No. 904—By Mr. Somerville)

[Passed February 28, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter seventeen-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to extending validity of automobile operator's license free of cost to members of the armed forces.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-12. Expiration of licenses; renewal; renewal fees.

1 Any operator's license issued under any prior act of the Legislature relating to the licensing of motor vehicle operators shall expire by its own limitation four years from the date of its issuance, except that the operator's license of any person in the armed forces shall be extended to the expiration of a period of six months from date of his separation under honorable circumstances from active duty in the armed forces. Any operator's license issued subsequent to this article shall expire four years from the date of issue except as above provided. Any license so expiring may be thereafter renewable, in the discretion of the commissioner, without examination, for successive periods of four years on or before its expiration date upon application and upon payment of a fee of five dollars for such renewal. If such license has been permitted to expire, it may be renewed by complying with the regulations of this section and the payment of an additional fee of one dollar for such renewal and, in the discretion of the commissioner, without examination. The commissioner shall notify by first-class mail not less than thirty days prior to the expiration date, any person whose operator's license is about to expire, giving the expiration date and including therewith a renewal application form. The commissioner may, in his discretion, renew any license without a driving examination.

2 The commissioner shall, upon the application and upon payment of a fee of three dollars, issue a chauffeur's license to any person holding a valid chauffeur's license
issued pursuant to the provisions of any prior act of
the Legislature. The commissioner may, in his discre-
tion, issue such chauffeur's license to any such applicant
without examination. Any chauffeur's license issued
pursuant to such prior act or the provisions of this chap-
ter shall expire by its own limitation one year from
the date of its issuance, and shall be thereafter renew-
able for successive periods of one year upon application
and upon payment of the required fee as hereinbefore
provided in this section.

CHAPTER 85
(Senate Bill No. 102—By Mr. Jackson, Mr. President,
and Mr. Carrigan)

[Passed February 14, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article
sixteen, chapter seventeen-c of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
relating to fees for inspection stickers and inspection fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate
of inspection.

§17C-16-6. Assignment, transfer and posting of official inspection
station permit; issuance and record of certificate of in-
pection; inspection fee.

§17C-16-5. Permit for official inspection stations; fees for and
certificate of inspection.

1 The superintendent of the department of public safety
2 shall be responsible for the inspection as provided in this
3 article and shall prescribe requirements and qualifications
for official inspection stations. He shall select and designate such stations and shall issue permits therefor and furnish instructions and all necessary forms thereto for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station by which issued. A charge of fifty cents per sticker shall be charged by the department of public safety to the inspection station, and the funds so received shall be deposited into the state treasury and credited to the account of the department of public safety for application in the administration of the provisions of this article. Any balance remaining in the fund on the last day of June of each fiscal year, not required for operating expenses, construction, repairs or alterations of police barracks for the ensuing fiscal year, shall be transferred to the state road fund. The superintendent is authorized to exchange stickers or to make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete.

Application for permit shall be made upon an official form prescribed by the superintendent and permits shall be granted only when the superintendent is satisfied that the station is properly equipped, and has competent personnel to make such inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of such station operator or employees thereof.

The superintendent shall properly supervise and cause inspections to be made of such stations and shall revoke and require the surrender of the permit issued to a station which he finds is not properly equipped or conducted. He shall maintain and post at his office and at
such other places as he may select lists of all stations holding permits and of those whose permits have been revoked.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

No permit for an official inspection station shall be assigned or transferred or used at any location other than therein designated and every said permit shall be posted in a conspicuous place at the station location designated.

The person operating any such station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting such vehicle and determining that its equipment required hereunder is in good condition and proper adjustment, but otherwise no certificate shall be issued, except such as may be issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate so issued.

A fee of not more than three dollars fifty cents may be charged for an inspection and issuance of such certificate, but the imposition of such charge shall not be mandatory.

CHAPTER 86

(Senate Bill No. 2—By Mr. Brotherton and Mr. Carrigan)

[Passed March 6, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to repeal chapters eight and eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, chapter twenty-six, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, chapter forty-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, chapter sixty-eight, acts of the Legislature,
regular session, one thousand nine hundred thirty-five, chapters fifty-two, fifty-five and fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, chapters ninety-one, ninety-five and ninety-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, chapter ten, acts of the Legislature, regular session, one thousand nine hundred forty-three, chapters ninety and ninety-one, acts of the Legislature, regular session, one thousand nine hundred forty-five, chapters eighty-five, eighty-six, eighty-seven and ninety, acts of the Legislature, regular session, one thousand nine hundred forty-nine, chapters one hundred thirty-six, one hundred thirty-seven and one hundred forty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred fifty-three, chapters one hundred twenty-one, one hundred twenty-two and one hundred thirty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-five, chapters one hundred sixteen, one hundred seventeen and one hundred nineteen, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, chapters one hundred, one hundred three, one hundred four and one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-one, chapters one hundred twenty-three, one hundred twenty-five and one hundred twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, chapters one hundred twenty-three and one hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, and any amendments to any of the foregoing chapters and acts by chapter one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, and to enact in lieu of all of the foregoing a new chapter eight of said code; and to amend and reenact section seventeen, article ten, chapter seventeen of said code, in order to effect a recodification of the basic municipal law (including municipal home rule law) of the state of West Virginia and various statutory provisions
relating to certain intergovernmental relations involving municipalities, counties and other units of government and in this connection providing a purpose, short title and various definitions; classifying municipal corporations on the basis of population; providing for the relationship between said new chapter eight and the various special legislative charters; providing various rules and principles of construction; providing the method, manner and procedures for the creation of municipalities; providing for the framing and adopting of an original charter following the incorporation of a city; providing the methods, manner and procedures for revising or amending a charter; relating to the expenses of incorporation; providing for the framing and adopting of a charter other than immediately following incorporation; relating to various types of elections pertaining to incorporation and the framing and adopting, revising or amending of a charter and the expenses pertaining thereto; relating to the election, appointment, qualification and compensation of officers; relating to officers and employees generally; relating to various types of elections and petitions; relating to conflict of interest; relating to the annexation of additional territory by a municipality; relating to decreasing the corporate limits of a municipality; providing the method, manner and procedures for the consolidation of municipalities; relating to the proceedings of governing bodies; relating to the powers and duties of certain officers; relating to powers and duties with respect to ordinances and ordinance procedures; relating to general and specific powers, duties and allied relations of municipalities, governing bodies, officers and employees; requiring notice of injury to person or property or of wrongful death before an action therefor may be brought against a municipality; relating generally to actions against municipalities; granting various powers of taxation; relating generally to taxation and finance; granting licensing and regulatory power and authority; relating to law and order; relating to police forces and departments; providing powers, authority and duties of law-enforcement officials and policemen; relating to mayors and police or municipal court judges and their powers and jurisdiction; relating to police matrons; re-
Be it enacted by the Legislature of West Virginia:

That chapters eight and eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be re-
pealed; that chapter twenty-six, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, chapter forty-nine, acts of the Legislature, second extraordinary session, one thousand nine hundred thirty-three, chapter sixty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, chapters fifty-two, fifty-five and fifty-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, chapters ninety-one, ninety-five and ninety-seven, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, chapter ten, acts of the Legislature, regular session, one thousand nine hundred forty-three, chapters ninety and ninety-one, acts of the Legislature, regular session, one thousand nine hundred forty-five, chapters eighty-five, eighty-six, eighty-seven and ninety, acts of the Legislature, regular session, one thousand nine hundred forty-nine, chapters one hundred thirty-six, one hundred thirty-seven and one hundred forty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred fifty-three, chapters one hundred twenty-one, one hundred twenty-two and one hundred thirty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-five, chapters one hundred sixteen, one hundred seventeen and one hundred nineteen, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, chapters one hundred twenty-three, one hundred twenty-five and one hundred twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-three, chapters one hundred twenty-three and one hundred twenty-four, acts of the Legislature, regular session, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, chapter thirty-eight, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, and any amendments to any of the foregoing chapters and acts by chapter one hundred five, acts of the Legislature, regular session, one thousand nine hundred sixty-nine, be repealed; that a new chapter eight of said code be enacted in lieu of all of the foregoing; and that section seventeen, article ten, chapter seventeen of said code be amended and reenacted, all to read as follows:
Chapter 8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

17. Roads and Highways.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article 1. Purpose and Short Title; Definitions; General Provisions; Construction.

2. Creation of Municipalities.

3. Framing and Adopting an Original Charter Following Incorporation of a City; Revising or Amending a Charter; Expenses of Incorporation.

4. Framing and Adopting a Charter Other Than Immediately Following Incorporation; Revising or Amending a Charter; Elections and Expenses.

5. Election, Appointment, Qualification and Compensation of Officers; General Provisions Relating to Officers and Employees; Elections and Petitions Generally; Conflict of Interest.

6. Annexation.

7. Decrease of Corporate Limits.


11. Powers and Duties With Respect to Ordinances and Ordinance Procedures.

12. General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities.


14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone Police Officers; Civil Service for Certain Police Departments.

15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

16. Municipal Public Works; Revenue Bond Financing.

17. Low Cost Improvements.

18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.


21. Board of Park and Recreation Commissioners.

22. Retirement Benefits Generally; Policemen’s Pension and Relief Fund; Firemen’s Pension and Relief Fund; Pension Plans for Employees of Waterworks System, Sewerage System or Combined Waterworks and Sewerage System.

23. Intergovernmental Relations—Contracting and Joint Enterprises.

24. Intergovernmental Relations—Urban and Rural Planning and Zoning.

25. Intergovernmental Relations—Regional Planning.

26. Intergovernmental Relations—Interstate Regional Planning Commissions.

27. Intergovernmental Relations—Urban Mass Transportation Systems.

28. Intergovernmental Relations—Airports and Aviation.

29. Intergovernmental Relations—Regional Airports.

30. Intergovernmental Relations—Flood Control Projects.
31. Intergovernmental Relations—Franchise Obligations.
32. Intergovernmental Relations—Contributions to or Involvement
   With Nonstock, Nonprofit Corporations for Public Purposes.
33. Intergovernmental Relations—Building Commissions.
34. Judicial Review.
35. Dissolution of Municipalities.
36. Constitutionality and Severability.

ARTICLE I. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

PART I. PURPOSE AND SHORT TITLE.

§8-1-1. Purpose and short title.

PART II. DEFINITIONS.

§8-1-2. Definitions of terms.

PART III. GENERAL PROVISIONS.

§8-1-3. Classification of municipal corporations.
§8-1-4. How population determined.
§8-1-5. Existing status of municipalities confirmed; powers, authority,
   duties and responsibilities conferred by law.
§8-1-6. Application of provisions of this chapter; inconsistent or con­
   flicting special legislative charter provisions; amendment of
   special legislative charters; inconsistent or conflicting ordi­
   nance provisions; status and tenure of officers and members
   not affected; transactions already entered into not affected.
§8-1-7. Construction of powers and authority granted.
§8-1-8. References to code provisions.

PART I. PURPOSE AND SHORT TITLE.

§8-1-1. Purpose and short title.
1 The purpose of this chapter is to effect a recodification
2 of the basic municipal law of this state and of various
3 statutory provisions relating to certain intergovernmental
4 relations involving municipalities, counties and other
5 units of government, to provide as much uniformity as
6 possible between the powers, authority, duties and re­
7 sponsibilities of special legislative charter municipalities
8 and all other municipalities, and to give effect to the
9 "Municipal Home Rule Amendment" to the constitution
10 of this state, being section thirty-nine-(a), article six of
11 said constitution.
12 For convenience of reference, this chapter may be
13 known and cited as the "Municipal Code of West Vir­
14 ginia."

PART II. DEFINITIONS.

§8-1-2. Definitions of terms.
1 (a) For the purpose of this chapter:
2 (1) "Municipality" is a word of art and shall mean and
3 include any Class I, Class II and Class III city and any

ARTICLE I. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.
4 Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this state;

7 (2) "City" is a word of art and shall mean, include and be limited to any Class I, Class II and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter, (iii) general law, or (iv) any combination of the foregoing; and

20 (3) "Town or village" is a term of art and shall, notwithstanding the provisions of section ten, article two, chapter two of this code, mean, include and be limited to any Class IV town or village, as classified in section three of this article, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under (i) a special legislative charter, (ii) general law, or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

(1) "Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county court of any county or governing board of other units of government referred to in said articles;

(2) "Councilmen" shall mean the members of a governing body, by whatever name such members may be called;
(3) "Mayor" shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term "mayor" shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty or function shall be exercised, discharged or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty or function shall in fact be exercised, discharged or fulfilled in and for such municipality by the individual called mayor: Provided, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace and mayor's court functions specified in this chapter, the term "mayor" shall always mean the individual called mayor;

(4) "Recorder" shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) "Treasurer" shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) "Administrative authority" shall mean the officer, commission or person responsible for the conduct and management of the affairs of the municipality in accordance with the charter, general law and the ordinances, resolutions and orders of the governing body thereof;

(7) "Charter" shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under
the provisions of former chapter eight-a of this code or
under article four of this chapter, and although so
amended, such special legislative charter shall, for the
purposes of this chapter, remain a special legislative
charter), or a home rule charter framed and adopted
or revised as a whole or amended by a city under the
provisions of former chapter eight-a of this code or under
the provisions of article three or article four of this
chapter;

(8) "Ordinances" shall mean the ordinances and laws
enacted by the governing body of a municipality in the
exercise of its legislative power, and in one or more
articles of this chapter, ordinances enacted by a county
court;

(9) "Inconsistent or in conflict with" shall mean that
a charter or ordinance provision is repugnant to the con-
stitution of this state or to general law because such pro-
vision (i) permits or authorizes that which the constitu-
tion or general law forbids or prohibits, or (ii) forbids
or prohibits that which the constitution or general law
permits or authorizes;

(10) "Qualified elector," "elector," "qualified voter"
or "legal voter" shall mean any individual who, at the
time he offers to vote or at the time he participates in any
event or activity (such as signing a petition) under the
provisions of this chapter for which he must be a qualified
elector, elector, qualified voter or legal voter, is a resident
within the corporate limits of the municipality or within
the boundaries of a territory referred to in this chapter,
as the case may be, and who (i) has been a resident of
the state for one year and of the municipality or territory
in question for at least sixty days next preceding such
election or date pertinent to any such event or activity,
and (ii) in the case of a regular municipal election, special
municipal election, municipal public question election or
any such municipal event or activity, is duly registered
on the municipal registration books set up in the office
of the clerk of the county court of the county in which
the municipality or the major portion of the territory
thereof is located under the integration of the municipal
registration of voters with the “permanent registration system” of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he resides to vote in state-county elections, or (iii) in the case of a territory election, general election or any such territory event or activity, is duly registered in the county in which he resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election or special municipal election and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) “Public question” shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

(12) “Inhabitant” shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(13) “Resident” shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(14) “Freeholder” shall mean any person (and in the case of an individual one who is sui juris and is not under
(15) "Freehold interest in real property" shall mean any fee, life, mineral, coal or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) "County court" shall mean the governmental body created by section twenty-two, article eight of the constitution of this state, or any existing tribunal created in lieu of a county court;

(17) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended; and

(18) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

c) The term "intergovernmental relations" is used in this chapter to mean undertakings and activities which may be undertaken or engaged in by two or more units of government acting jointly, and in certain headings in this chapter to call attention to the fact that the provisions under such headings apply to units of government in addition to municipalities.

d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the phrase "charter framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code" shall include a charter framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.
§8-1-3. Classification of municipal corporations.

1 Pursuant to the mandate of the “Municipal Home Rule Amendment” to the constitution of this state, all municipal corporations are hereby classified by population into four classes, as follows:

2 (1) Every municipal corporation with a population in excess of fifty thousand shall be a Class I city;
3 (2) Every municipal corporation with a population in excess of ten thousand but not in excess of fifty thousand shall be a Class II city;
4 (3) Every municipal corporation with a population in excess of two thousand but not in excess of ten thousand shall be a Class III city; and
5 (4) Every municipal corporation with a population of two thousand or less shall be a Class IV town or village.

6 Transition from one to another class shall occur automatically when the requisite population qualification has been met, effective as of the effective date of the census, as specified in section four of this article.

7 The Legislature hereby declares its interpretation of the said “Municipal Home Rule Amendment” to be that a single classification by population of municipal corporations in this state is required which shall exclude any other classification of municipal corporations by population for any purpose. It is, therefore, the intention of the Legislature that the classification established in this section shall give effect to the constitutional mandate and shall be the only classification by population applying to municipal corporations in this state. It is the further intention of the Legislature that subsequent legislation affecting municipal corporations in this state shall treat municipal corporations differently upon the basis of population, only in accordance with the general classification established in this section.

§8-1-4. How population determined.

1 For any purpose pertinent to the provisions of this chapter, population shall be determined by reference to
§8-1-5. Existing status of municipalities confirmed; powers, authority, duties and responsibilities conferred by law.

1 The corporate being of every municipality now existing is hereby confirmed and validated. Except as otherwise provided in section six of this article, any municipality shall have all of the powers, authority, duties and responsibilities conferred by law upon a municipality of the class to which it belongs.

§8-1-6. Application of provisions of this chapter; inconsistent or conflicting special legislative charter provisions; amendment of special legislative charters; inconsistent or conflicting ordinance provisions; status and tenure of officers and members not affected; transactions already entered into not affected.

1 In furtherance of the purpose of this chapter as set forth in section one of this article, each municipality is subject to the provisions contained in this chapter and may exercise the power and authority conferred by this chapter. In this regard, it is recognized that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter, there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain
respects, certain charter provisions may be similar to
and in essential harmony with corresponding provisions
of this chapter; (4) as to any particular charter pro-
visions, there may be no counterpart of such provisions
in this chapter; and (5) as to any provisions of this
chapter, there may be no counterpart charter provisions.
In view of these possibilities, it becomes necessary for
the Legislature to set forth certain rules of construction
to be applied in addition to the usual and ordinary rules
of statutory construction, and to set forth a substantive
provision as to application in connection with possi-
ability (2).
As to possibility (1), the pertinent provisions of this
chapter shall supersede such conflicting or inconsistent
charter provisions and shall be deemed amendments to
such charters. As to possibility (2), one year from and
after the effective date of this section or the effective
date of any pertinent amendment to this chapter here-
after adopted, such provisions of this chapter shall su-
persede such charter provisions and shall be deemed
amendments to such charter, unless within such one-
year period an ordinance is adopted providing that such
charter provisions shall be applicable, in which event
such charter provisions shall be applicable so long as
said ordinance remains in full force and effect. As to
possibility (3), all such charter provisions shall be con-
strued so as to conform to and be consistent with the
pertinent provisions of this chapter. As to possibility
(4), the charter provisions shall remain in operation and
effect until amended or repealed by general law here-
after enacted or until hereafter supplanted by a new
charter or revised as a whole or amended in accordance
with the provisions of this chapter. As to possibility
(5), the applicable provisions of this chapter shall be deemed
amendments to such charter. In determining the rela-
tionship between such charter provisions and the pro-
visions of this chapter in any situation not included in
the possibilities outlined above, the relationship shall
be determined in keeping with the general concepts and
principles embodied in the rules of construction set forth
in this paragraph. The provisions set forth above in
this paragraph shall also be applicable to the relation-
ship between the pertinent provisions of various local
or special acts of the Legislature (other than special leg-
islative charters) pertaining to municipal matters and
the provisions of this chapter.

Notwithstanding any of the foregoing provisions of this
section, (1) particular provisions of this chapter shall
supersede pertinent charter provisions whenever it is
expressly provided in this chapter that such provisions
of this chapter shall govern notwithstanding any charter
provisions, that such charter provisions shall be of no
force and effect, that the provisions of this chapter are
the only applicable provisions, or that something may
be accomplished only as provided in this chapter; and
(2) charter provisions shall govern chapter provisions
in those instances where this chapter expressly authorizes
other or contrary charter provisions.

Any ordinance provision which is inconsistent or in
conflict with any provision of this chapter shall be of
no force and effect.

All individuals holding any office on the effective date
of this chapter, and all officers and members of any com-
mission, board, authority or other entity, by whatever
name called, serving on the effective date of this chapter,
and who were elected or appointed and qualified under
or pursuant to the provisions of former chapter eight
or chapter eight-a of this code, any act repealed by this
new chapter eight or any charter provision or ordinance
provision made or adopted under or pursuant to such
former chapters or acts shall continue to serve, unless
a vacancy sooner occurs, until their terms expire and
until their successors have been elected or appointed,
as the case may be, and have qualified.

Notwithstanding any of the foregoing provisions or
any other provision of this chapter (even though such
other provision is stated to be paramount), transactions
validly entered into, causes of action which arose, and civil
actions instituted, before the effective date of this chapter
and the rights, duties, obligations and interest flowing
therefrom remain valid, enforceable and maintainable
thereafter and may be terminated, completed, consummated, prosecuted, maintained or enforced (1) as required or permitted by any statute or other law (including the provisions of former chapters eight and eight-a of this code and the acts repealed by this chapter) repealed or amended by this chapter as though such repeal or amendment had not occurred, or (2) with like effect as though this chapter had not been enacted.

§8-1-7. Construction of powers and authority granted.
1 The enumeration of powers and authority granted in this chapter shall not operate to exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter; and the provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction, and particularly when the powers and authority are exercised by charter provisions framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of this chapter.

Any charter provision framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of former chapter eight-a of this code or under the provisions of this chapter which is beyond the power and authority of a city and any ordinance provision which is beyond the power and authority of a municipality shall be of no force and effect.

§8-1-8. References to code provisions.
1 Any reference in this chapter to another provision of this code and any reference elsewhere in this code or other law to a provision in this chapter shall be construed to mean the present provision or such provision as the same may be hereafter amended from time to time. Where additional provisions are added to the subject matter of any other provision so referred to, the reference shall include such additional provisions.

Wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order of a municipality, or in any order, ordinance or
ARTICLE 2. CREATION OF MUNICIPALITIES.

PART I. GENERAL.

§8-2-1. Requirements for incorporation; size and character of territory; population.

Any part of any county or counties, not within any municipality, urban in character, and containing at least one hundred inhabitants (if such part contains less than one square mile), and an average of not less than five hundred inhabitants per square mile (if such part contains one square mile or more), provided such part does not include an amount of territory disproportionate to the number of inhabitants thereof, may be incorporated, depending upon population, as a city, either a Class I, Class II or Class III city, or as a Class IV town or village, as classified in section three, article one of this chapter, upon the conditions and in the manner hereinafter pre-
scribed: Provided, That the exact extent of the territory or portions thereof to be included or excluded shall be within the reasonable discretion of the county court, taking into consideration the topography thereof, the benefits thereto from incorporation, the amount of unini-
habited land required for parks and recreational use and normal growth and development and the present and probable future uses thereof, so as to prevent hardships and inequities.

§8-2-2. Petition; survey and map.

A proceeding to incorporate any such city, town or village shall be initiated upon petition addressed to and filed with the county court of the county in which the territory is located, or if in more than one county in which the major portion of the territory is located, indicating whether the territory sought to be incorporated will be upon incorporation, depending upon population, a Class I, Class II or Class III city or a Class IV town or village. Such petition shall be signed by at least thirty percent of the freeholders of the territory to be incorporated.

Such petition shall be verified by at least one of the petitioners and shall be accompanied by a map made by a professional engineer registered under the laws of this state, which map shall be based upon an actual and accurate survey of the territory to be incorporated showing the courses, distances and the area of the territory to be incorporated.

Such map shall be verified and shall be left at the residence or place of business within the territory to be incorporated of some individual residing or some person doing business therein, and shall be subject to examination at all reasonable hours by every person interested in such application for a period of at least ten days prior to the hearing on such petition as provided for in section three of this article.

§8-2-3. Hearing on petition; notice; dismissal.

Upon the filing of such petition, the county court shall set the same for hearing not sooner than ten days and not
latter than thirty days thereafter, and the petitioners shall
cause notice of the filing of said petition and of the date,
time and place of hearing thereon to be published as a
Class II legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code, and
the publication area for such publication shall be the
territory sought to be incorporated.

Upon the date set for hearing, the county court shall
hear evidence for and against the proposed incorporation,
and if it shall determine that the requirements of sections
one and two of this article have not been met, it shall
forthwith enter an order dismissing said petition.

§8-2-4. Census; bond; appointment and duties of enumerators.

If the court shall determine after hearing that the re-
quirements of sections one and two of this article have
been met, the petitioners shall provide bond in penalty
prescribed by the court, with good and sufficient surety
thereon, conditioned to pay all costs of taking a census,
determining the qualification of electors, holding an elec-
tion and ascertaining the results thereof, in the event a
majority of the qualified electors vote against incorpora-
tion; and thereupon the court shall fix a day or days for
taking a census of the inhabitants and for determining
those who are qualified electors of said territory. For the
purpose of taking said census, and determining the qual-
fications of the electors, said court shall appoint four
two enumerators for each five hundred inhabitants of said
territory based upon the most reliable estimate obtain-
able: Provided, That if the territory contains less than
one square mile and the county court believes the terri-
tory contains fewer than five hundred inhabitants, two
two enumerators shall be appointed. It shall be the duty of
the enumerators so appointed to enumerate all of the
inhabitants of said territory and to visit each house or
dwelling therein, and to obtain the name of each known
resident thereof. It shall also be the duty of the enumer-
ators to examine the permanent registration records of
the county or counties in which the territory is situate to
determine which of such inhabitants are qualified electors
therein and to compile and file with the county court a
list of such qualified electors. Each enumerator shall receive for his services a sum per day, to be fixed by the county court, but not to exceed ten dollars per day, together with all reasonable and necessary expenses actually incurred in the discharge of such duties, which sum and expenses shall be paid by the county court and reimbursed to it by the city, town or village if and when the city, town or village shall become incorporated, as hereinafter provided; otherwise by the petitioners. The county court shall provide an opportunity for all qualified individuals residing in such territory, who have not been previously registered to vote, to become registered prior to the election hereinafter provided for. Upon the completion of said census and the listing of qualified electors, said enumerators shall make a report under oath to the county court that said enumeration and listing are correct, true and accurate, and do not contain the name of any individual who is not a resident of the territory, and that the list of qualified electors is true and correct, which report shall be filed with the county court within the following number of days after the appointment of said enumerators: Forty days if it is to be a Class I city, twenty days if it is to be a Class II city, ten days if it is to be a Class III city and ten days if it is to be a Class IV town or village.

PART II. ELECTION.

§8-2-5. Special election—Voting precincts; time for election; supplies; commissioners and clerks; notice.

1 Upon receiving such a report from said enumerators, the county court shall forthwith fix a date for a special election, not later than thirty days thereafter, on which all qualified electors of the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said court. For the purpose of holding and conducting said election, the county court shall divide the territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and
other election supplies as provided for by law in
general elections; shall appoint three commissioners of
election and two clerks from the qualified electors of said
territory for each precinct so established, dividing the
election officials as nearly as possible equally between
those favoring incorporation and those opposed to incor-
poration; and shall give notice of the date and place or
places of election and hours for voting by publication of
such notice as a Class II-0 legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such pub-
lication shall be the territory sought to be incorporated.

§8-2-6. Same—Qualified electors; form of ballot or ballot
label; election officials; certification; canvass; declar-
arion of results; recount.

On the date named in such notice for the taking of
the vote, each qualified elector of the territory sought
to be incorporated shall have the right to cast his vote
for or against such incorporation at the precinct in which
he resides, by depositing a ballot in a ballot box, or by use
of a voting machine, to be provided by the county court
for that purpose. Each ballot, or ballot label where voting
machines are used, shall be without party designation
and shall have written or printed thereon the following
words:

□ For Incorporation
□ Against Incorporation

The ballot or ballot label shall be a separate, special bal-
lot or ballot label.

Such election shall be held and conducted under the
supervision of the commissioners and clerks of election
appointed by the county court as aforesaid and shall be
conducted as nearly as may be in accordance with the
laws of this state governing general elections. The re-
results of such election shall be certified as in general elec-
tions, and the returns shall be canvassed and the results
declared by the county court. In the event any commis-
sioner or clerk designated to serve in said election shall
fail or refuse to serve, such vacancy may be filled in like
25 manner as vacancies in such positions are filled in general
26 elections under the laws of this state governing general
27 elections. A recount may be had, as in general elections,
28 upon the party or parties desiring such recount providing
29 adequate assurance to the county court that he or they
30 will pay all costs of such recount.

§8-2-7. Court order declaring boundaries of city; certificate of
incorporation of town or village; dismissal of proceeding.

1 If the proceeding be for the incorporation of a city,
2 and it appears to the county court, upon the returns being
3 canvassed, that a majority of the legal votes cast on the
4 question of incorporation were in favor of such incorpora-
5 tion and the court is satisfied that all of the applicable
6 provisions of this article have been complied with, the
7 court shall by order duly made and entered of record
8 declare that the territory in question (reciting the bound-
9 aries) shall thereby become a body corporate, and shall
10 thenceforth be known as the city of__________________ ,
11 but that until a charter shall be framed and adopted as
12 provided in article three of this chapter, such city shall
13 have and exercise no powers of a municipality except the
14 power to frame and adopt a charter as therein provided.

15 If the proceeding be for the incorporation of a town or
16 village, and it appears to the county court, upon the re-
17 turns being canvassed, that a majority of the legal votes
18 cast on the question of incorporation were in favor of
19 such incorporation and the court is satisfied that all of the
20 applicable provisions of this article have been complied
21 with, the court shall by order duly made and entered of
22 record, direct the clerk of said court to issue a certificate
23 of incorporation in form or in substance as follows:

24 “It appearing to the court that under the provisions of
25 article two, chapter eight of the code of West Virginia,
26 as amended, at an election duly held on the________ day
27 of_____________, 19_____, a majority of the legal votes
28 cast on the question of incorporation by the qualified
29 voters of the following territory, to wit: Beginning,
30 etc. (here recite the boundaries), were cast in favor of the
31 incorporation of the town or village of_________________,
32 in the County of..............., bounded as herein set
33 forth; and it appearing to the satisfaction of the court
34 that all of the provisions of article two, chapter eight of
35 the code of West Virginia, as amended, have been com-
36 plied with by the petitioners for said incorporation, said
37 town or village is hereby declared to be a body corporate,
38 duly authorized to exercise all of the corporate powers
39 conferred upon towns or villages by chapter eight of the
40 code of West Virginia, as amended, from and after the
41 date of this certificate. (Signed) -------------------------,
42 Clerk County Court.”
43 Thereupon, the first election of officers shall be held as
44 provided in sections two, three and four, article five of
45 this chapter.
46 If on the returns being canvassed on the question of
47 incorporation, a majority of the legal votes cast be against
48 incorporation, the proceeding shall be dismissed, and no
49 subsequent proceeding for incorporation of the same
50 territory or any portion thereof shall be considered or
51 election thereon had within a period of three years there-
52 after.

PART III. JUDICIAL REVIEW.

1 A writ of error shall lie to the circuit court in accord-
2 ance with the provisions of article three, chapter fifty-
3 eight of this code from any order of a county court de-
4 termining that the requirements of sections one and two
5 of this article have been met and ordering a census or
6 enumeration to be taken. Upon the filing of a petition for
7 a writ of error, all proceedings shall be suspended or
8 stayed pending final adjudication of the matters involved.

ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER
FOLLOWING INCORPORATION OF A CITY; REVIS-
ING OR AMENDING A CHARTER; EXPENSES OF
INCORPORATION.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.
§8-3-1. Charter board for cities—Number of members; qualifications of
members; nominations; ballots and ballot labels; dismissal of
proceeding.
§8-3-2. Same—Organization; journal; quorum; duties; time for draft of charter; form of city government.
§8-3-3. City charters—Approval and certification by attorney general.
§8-3-4. Same—Hearing and notice.
§8-3-5. Same—Changes; time for changes; signatures; filing.
§8-3-6. Same—Special election; time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.
§8-3-7. Same—Approval; effective date; certification; judicial notice; recordation.
§8-3-8. Same—Rejection; rewriting or altering draft; new charter board.

PART II. CONTINUING DUTIES—REVISING OR AMENDING A CHARTER.

§8-3-9. Continuing duties of charter boards; revising or amending a charter.

PART III. EXPENSES OF INCORPORATION.

§8-3-10. Expenses of incorporation.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

§8-3-1. Charter board for cities—Number of members; qualifications of members; nominations; ballots and ballot labels; dismissal of proceeding.

1 At every election on the question of incorporation of a city, under article two of this chapter, each qualified voter entitled to vote shall also be entitled to vote for a charter board consisting of eleven members if it is to be a Class I or Class II city, and of seven members if it is to be a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident of the territory sought to be incorporated for at least two years prior to the date of said election and who shall have been qualified to vote in state-county elections for at least two years prior to the date of said election shall be eligible for membership on said charter board. Nominations for said charter board shall be made by petition to the county court bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the territory. All nominating petitions shall be filed with the county court at least
twenty days prior to the date of the election on the question of incorporation. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the county court. The ballots, or ballot labels where voting machines are used, shall be prepared by or at the direction of the clerk of the county court. The ballots or ballot labels for members of the charter board shall be separate from the ballots or ballot labels on the question of incorporation. Such ballots or ballot labels for members of the charter board shall be special ballots or ballot labels without party designation. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. The ballots or voting machine directions shall bear instructions specifying the number of candidates to be voted for, and each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all of his votes for one candidate, or distribute them among several candidates as he sees fit. The ballots or voting machine directions shall bear advice to this effect. Any voter who shall vote against incorporation may, nevertheless, vote for members of the charter board, and the ballots or voting machine directions shall bear advice to this effect.

If on the returns being canvassed on the question of incorporation, such canvassing to be done by the county court, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed as specified in section seven, article two of this chapter, and no subsequent proceeding for incorporation of the same territory or any portion thereof shall be considered or election thereon had within a period of three years thereafter.

§8-3-2. Same—Organization; journal; quorum; duties; time for draft of charter; form of city government.

If on the returns being canvassed on the question of incorporation of a city, such canvassing to be done by the county court, a majority of the legal votes cast be in favor
of such incorporation, then the legal votes cast for mem-
ers of the charter board shall be counted and canvassed
by the county court, and the candidates in the number to
be chosen who received the highest number of votes shall
be declared elected. The charter board shall be convened
at a suitable place within the territory, by the member
receiving the highest number of votes, not less than five
days nor more than ten days after the canvass of the
returns. He shall notify the other members of the board
in writing of the time and place of the first meeting of the
charter board. At such first meeting, the board shall per-
defect its organization by electing a chairman and secretary
from its membership and by determining the rules to
govern its proceedings. Any vacancy in the membership
of the board occurring before a charter is approved by
the qualified voters of the incorporated territory shall be
filled by appointment by majority action of the remaining
members, and any vacancy occurring after approval of a
charter as aforesaid shall be filled as specified in section
nine of this article. A journal shall be kept by the secre-
tary, in which journal shall be entered, upon demand by
any member, the vote by ayes and nays on any question.
A majority of the members of said board shall constitute
a quorum. The board shall specify the manner for nomi-
nating and electing candidates for the first elective offices
provided for in the proposed charter at the election to be
held on the question of approval of the charter. It shall
fix the date of said election and it shall do and provide all
other things necessary for making nominations and hold-
ing and conducting such election. Any qualified voter and
any freeholder of the incorporated territory may file with
said charter board any written material bearing upon the
purposes of the board, and the board shall give such
material so filed such consideration as it may deem
proper. The charter drafting process may be carried on
through committees, but their work shall be advisory
only. The charter board shall complete its draft of a
charter within ninety days after its first meeting. It shall
be the duty of the charter board to provide in the charter
so drafted for a form of city government in accordance
with one of the following plans:
Plan I—"Mayor-Council Plan." Under this plan:
(1) There shall be a city council, elected at large or by wards, or both at large and by wards, by the qualified voters of the city; a mayor elected by the qualified voters of the city; and such other elective officers as the charter may prescribe; and
(2) The mayor and council shall be the governing body and administrative authority.

Plan II—"Strong-Mayor Plan." Under this plan:
(1) There shall be a mayor elected by the qualified voters of the city; and a city council elected at large or by wards, or both at large and by wards, by the qualified voters of the city;
(2) The council shall be the governing body;
(3) The mayor shall be the administrative authority;
and
(4) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter, but such appointments by the mayor or by his order may be made subject to the approval of the council.

Plan III—"Commission Government." Under this plan:
(1) There shall be, except as hereinafter in this plan provided, a commission of five members elected at large by the qualified voters of the city;
(2) The members of the commission shall be a commissioner of public affairs, a commissioner of finance, a commissioner of public safety, a commissioner of public works and a commissioner of streets: Provided, That a charter for a Class I or Class II city may, and a charter for a Class III city shall, provide for a commission of three members, viz., a commissioner of finance, a commissioner of public works and a commissioner of public safety;
(3) The members of the commission shall elect a mayor from among their membership;
(4) The commission shall be the governing body and administrative authority; and
(5) Officers and employees, other than members of the commission, shall be appointed in accordance with this
chapter by the commissioners or by each commissioner with respect to his department, as the charter may prescribe.

Plan IV—"Manager Plan." Under this plan:

(1) There shall be a council of not less than five nor more than eleven members, elected either at large or from such geographical districts as may be established by the charter, or partly at large and partly from such geographical districts, and the charter may empower the council to change, from time to time, such districts without amending the charter: Provided, however, That the change of such districts shall not take effect during the terms of office of the members of such council making such change;

(2) There shall be a mayor elected by the council from among its membership, who shall serve as the presiding officer of the council; and a city manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority.

He shall manage the affairs of the city under the supervision of the council and he shall be responsible to such council. He shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work he is responsible to the council.

The purpose of the provisions of this section pertaining to Plan I, Plan II, Plan III and Plan IV is to establish basic requirements of alternative plans of structure and organization of city government. The structure and organization of a city government may be specified by the charter in respects other than those enumerated, and in elaboration of the basic requirements, insofar as such charter provisions do not conflict with the purpose and the provisions of the alternative plans prescribed.

§8-3-3. City charters—Approval and certification by attorney general.

The draft of said charter shall, upon completion, be certified by the secretary of said charter board to the
attorney general of the state. It shall be his duty to
examine the draft and advise whether it is consistent in
all respects with the constitution and general law of this
state. The attorney general, if satisfied that the pro-
posed charter is consistent in all respects with the con-
stitution and general law of this state, shall so certify
to the charter board within thirty days after receipt of
such draft. If the attorney general is not satisfied that
the proposed charter is consistent in all respects with
the constitution and general law of this state, he shall
certify, within thirty days after receipt of such draft, to
the charter board in what respects the same does not
conform to the constitution or general law of this state.

§8-3-4. Same—Hearing and notice.
1 When it shall have completed its draft of a charter,
2 the charter board shall conduct a public hearing thereon.
3 The county court shall cause notice of the date, time,
place and purpose of the hearing to be given by publi-
cation thereof at least ten days prior to the date set for
the hearing as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be the incorporated territory. The notice shall
state where copies of the draft of the charter may be
obtained. The hearing may be continued by the charter
board by adjournments over a period not exceeding
fourteen days.

§8-3-5. Same—Changes; time for changes; signatures; filing.
1 A charter board shall have thirty days after the con-
clusion of the hearing required by section four of this
article or receipt of the certificate of the attorney general
required by section three of this article, whichever shall
occur later, to make any changes it may consider neces-
sary or desirable in its charter draft.

At least three copies of the completed charter draft shall
be signed by at least a majority of the members of the
board, and two copies shall be filed with the clerk of
the county court.
§8-3-6. Same—Special election; time for election; notice; voting
precincts; supplies; officials; certification; canvass;
declaration of results; recount.

The proposed charter shall be submitted to the qualified
voters of the incorporated territory for approval or rejec-
tion at a special election ordered by the county court
to be held not less than thirty days nor more than ninety
days following the date on which the two copies of the
completed charter were filed with the clerk of the county
court, at which election the officers provided for by said
proposed charter and to be elected shall be voted upon in
the manner provided in said proposed charter. The county
court shall cause notice of the date, hours, place and pur-
pose of such election to be given by publication thereof as
a Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be
the incorporated territory. The first of said publications
shall be made not less than thirty days prior to the date
fixed for the election. Each such notice of election shall
state that upon request any qualified voter and any
freeholder of the incorporated territory may obtain a
copy of the proposed charter from a designated person
at a designated place.

For the purpose of holding and conducting said elec-
tion, the county court shall divide the incorporated ter-
ritory into one or more precincts, consisting of not more
than five hundred qualified voters in each precinct; shall
arrange for and provide at its expense polling places,
registration books, challenges and other election sup-
plies as provided for by law in general elections; and
shall appoint three commissioners of election and two
clerks from the qualified voters of said incorporated
territory for each precinct so established, subject, how-
ever, to the provisions of section eleven, article four of
this chapter. Such election shall be held and conducted
under the supervision of the commissioners and clerks
of election appointed by the county court as aforesaid
and shall be conducted as nearly as may be in accordance
with the laws of this state governing general elections.
The results of such election, both as to approval or re-
jection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county court. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county court that he or they will pay all costs of such recount.

§8-3-7. Same—Approval; effective date; certification; judicial notice; recordation.

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election, if the interim exceeds sixty days; otherwise on July first of the second fiscal year after its approval. If approved as aforesaid, one of the signed copies of the charter on file with the clerk of the county court, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by the clerk of the county court to the clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions. The clerk of the county court shall certify to the county court the other signed copy of the charter previously filed with him, which copy so certified shall be spread upon the records of said court for public examination.

§8-3-8. Same—Rejection; rewriting or altering draft; new charter board.

If the proposed charter shall be rejected by a majority of the legal votes cast at the election thereon, the election of officers shall be void, except that the candidate
who shall receive the highest number of legal votes cast for the office of mayor, if a mayor is to be elected, otherwise the candidate for any city office who shall receive the highest number of legal votes cast at the election, shall, within ten days thereafter, require such charter board to reconvene for the purpose of rewriting or altering the draft of the rejected charter in such manner as to it shall seem proper. Any three hundred qualified voters of said incorporated territory may, however, within ten days after the determination of the results of the election at which such charter is rejected, petition the clerk of the county court for the election of a new charter board, in which case the court shall thereupon call a new election for members of the charter board in the same manner as the original election and with nominations to be made and any vacancies to be filled in the same manner as in the first instance, as provided in section one of this article. The duties of the new charter board shall be the same as those of the former board, and as many successive charter boards may be elected as may be necessary until a charter for such territory is framed and approved by the qualified voters of the incorporated territory. The rewritten or altered proposed charter or the charter draft of a new or any succeeding charter board, as the case may be, shall be submitted to the attorney general and the qualified voters of said incorporated territory in the same manner and with like notice and proceedings as required in the first instance, and such proceedings shall continue until the qualified voters of said incorporated territory have by a majority vote approved a charter.

PART II. CONTINUING DUTIES—REVISING OR AMENDING A CHARTER.

§8-3-9. Continuing duties of charter boards; revising or amending a charter.

1 The members of the charter board of a city elected under the provisions of this article whose draft of a charter is approved by the qualified voters of the city shall hold office for a term of six years following the approval of such charter. Any vacancy occurring during
that period shall be filled temporarily by appointment by majority action of the remaining members, and a successor shall be elected at the next regular municipal election in the same manner as elective city officers, such successor to hold office for the remainder of the term.

During such six-year period as aforesaid, the board shall make a continuing study of the functioning of the city government and may, by a two-thirds vote of its members, not less than four years after such charter shall have taken effect, require the submission to the qualified voters of the city of the question of whether the charter shall be revised as a whole, such submission to be in accordance with the pertinent provisions of article four of this chapter. In the event revision as a whole is voted pursuant to such submission, the board as then constituted shall proceed to prepare a revision of the charter as a whole and the process of revision as a whole as so initiated shall be the same as that for the framing and adoption of a charter under the pertinent provisions of said article four of this chapter. During such six-year period as aforesaid, by a two-thirds vote of its members, at any time not less than one year after such charter shall have taken effect, the board may require the submission of one or more proposed charter amendments to the qualified voters of the city, in accordance with the pertinent provisions of article four of this chapter.

**PART III. EXPENSES OF INCORPORATION.**

**§8-3-10. Expenses of incorporation.**

1 The first governing body of any municipality incorporated under the provisions of article two of this chapter shall provide for reimbursement to the county court of all costs of incorporation, including, but not limited to, the cost of publishing notices, of taking the enumeration of inhabitants, of ascertaining the qualification of electors, and of holding, conducting and superintending the elections called for thereunder and the returning, certifying and canvassing of the results thereof. The first governing body of any city incorporated under
said article two shall also provide for reimbursement of the charter board or boards and the members thereof for all reasonable and necessary expenses actually incurred in the performance of its and their duties.

ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN IMMEDIATELY FOLLOWING INCORPORATION; REVISING OR AMENDING A CHARTER; ELECTIONS AND EXPENSES.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

§8-4-1. Initiation of proceedings for framing a charter.

§8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board; effect of vote on question as to charter board.

§8-4-3. Provisions of article three made applicable; duties and responsibilities of county court under article three placed upon governing body under this article; duties and responsibilities of charter board; exceptions.

§8-4-4. Submission of proposed charter to qualified voters.

§8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection.

§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

PART II. REVISING OR AMENDING A CHARTER.

§8-4-7. Revising or amending a charter—Generally.

§8-4-8. Same—An alternate plan.

§8-4-9. Submission of alternative provisions.

PART III. ELECTIONS; EXPENSES.

§8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.

§8-4-11. Special election and special municipal election officials.

§8-4-12. Expenses.

PART I. FRAMING AND ADOPTING CHARTER—GENERAL.

§8-4-1. Initiation of proceedings for framing a charter.

(a) The governing body of a city may provide by ordinance for the submission to the qualified voters of the city at a general election or at a regular municipal election, or at a special municipal election if the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, of the question, "Shall a charter be framed by representatives of the people?".

(b) The governing body of a city shall, upon petition therefor bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters
of the city, if a Class I or Class II city, or ten percent
of the qualified voters of the city, if a Class III city,
provide by ordinance for the submission to the qualified
voters of the city at a general election or at a regular
municipal election of the question, "Shall a charter be
framed by representatives of the people?".

(c) The governing body of a city shall provide by
ordinance for a special municipal election on said question
if a petition bearing the signatures, written in their own
handwriting, of fifteen percent of the qualified voters
of the city, if a Class I or Class II city, or ten percent
of the qualified voters of the city, if a Class III city,
expressly requesting that a special municipal election
be called for the purpose be presented to the governing
body more than one hundred twenty days prior to the
date of the next general election or next regular municip-

dal election.

(d) If the question is to be submitted at a general
election or a regular municipal election and not a special
municipal election, then in determining the general elec-
tion or regular municipal election at which the question
shall be submitted, the following provisions of this sub-
section (d) shall govern and control:

(1) If the question is to be submitted under the pro-
visions of subsection (a) of this section, the question shall
be submitted at the next general election or next regular
municipal election, whichever first occurs after the ordi-
nance is adopted under the provisions of said subsection (a); or

(2) If the question is to be submitted under the pro-
visions of subsection (b) of this section, the question shall
be submitted at the next general election or next regular
municipal election, whichever first occurs after the peti-
tion is filed under the provisions of said subsection (b),
if there is at least one hundred twenty days between the
filing of the petition and the date of the election, and
otherwise, at the next general election or next regular
municipal election occurring after said interval of at least
one hundred twenty days after the filing of said petition.
(e) Any special municipal election held in accordance with the provisions of subsection (a) of this section shall be held not less than thirty nor more than sixty days after the ordinance providing for same shall have been adopted, and any special municipal election held in accordance with the provisions of subsection (b) of this section shall be held not less than thirty nor more than sixty days after the petition shall have been presented to the governing body.

§8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board; effect of vote on question as to charter board.

The ordinance providing for submission to the qualified voters of the city of the question of whether a charter shall be framed shall make provision for voting for a charter board concurrently with the voting on the question of whether a charter shall be framed. A charter board shall consist of eleven members in a Class I or Class II city and seven members in a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident and qualified voter of the city for at least two years prior to the date of election of members shall be eligible for membership on said charter board.

In the initiatory ordinance, the governing body of a Class I or Class II city may nominate five candidates, and that of a Class III city three candidates, for membership on the charter board. Other nominations, or all of the nominations if the governing body does not make any, shall be made by petition to the governing body bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the city. Nominating petitions may be filed at any time after the adoption of the initiatory ordinance and not less than twenty days prior to the date of the election. In the event of a vacancy in the nominations which shall reduce the number of candi-
Notice of any election at which the question of whether a charter shall be framed shall be voted upon shall consist of the initiatory ordinance and a brief prefatory statement setting out the date and hours of the election, naming the candidates, if any, nominated by the governing body for membership on the charter board as above provided and stating how and within what time limit other nominations may be made. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The first publication shall be made not less than thirty days prior to the date of the election.

Each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all his votes for one candidate or distribute them among the several candidates as he sees fit.

The ballots, or ballot labels where voting machines are used, pertaining to the question of framing a charter shall be separate from the ballots or ballot labels for members of the charter board. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this state. A voter who shall vote "No" on the question may, nevertheless, vote for such candidates. The ballots or voting machine directions shall bear instructions to this effect, and also instructions which shall indicate the number of candidates for which the voter may vote (which shall be the same as the number of members to be elected), and that cumulative voting is permitted. Special ballots or ballot labels without party designation shall be used at every election held under this article even though the election is held at the same time as some other election. The ballots or ballot labels shall be prepared by or at the direction of the recorder of the city.
68 After such an election, the legal votes on the question
69 shall be counted and canvassed. If a majority of the legal
70 votes cast on the question be in the negative, the proceed-
71 ing shall be at an end, and the question shall not be sub-
72 mitted again, without a petition of the qualified voters
73 as provided for in subsection (b), section one of this
74 article, for at least two years. If a majority of the legal
75 votes cast on the question be in the affirmative, the legal
76 votes cast for members of the charter board shall be
77 counted and canvassed and the candidates, in the number
78 to be chosen, who receive the highest number of votes
79 shall be declared elected.

§8-4-3. Provisions of article three made applicable; duties and
responsibilities of county court under article three
placed upon governing body under this article;
duties and responsibilities of charter board; excep-
tions.

1 All of the pertinent provisions of article three of this
2 chapter pertaining to the charter drafting and adoption
3 process for a newly incorporated city shall be as fully
4 applicable to proceedings under this article four as if such
5 provisions were set forth in extenso herein, except that
6 (1) the publication area for all notices required to be
7 published shall be the city, and (2) the duties and re-
8 sponsibilities placed upon the county court in said article
9 three shall be performed and discharged under this article
10 four by the governing body of the city. A charter board
11 elected in accordance with the provisions of this article
12 four for the purpose of framing a charter, and the mem-
13 bers thereof, shall be governed by the provisions of said
14 article three relating to a charter board for a newly in-
15 corporated city, and the members thereof, and it and the
16 members thereof shall carry out all of the duties and
17 responsibilities imposed upon a charter board, and the
18 members thereof, elected in accordance with the pro-
19 visions of said article three, except that (1) the board,
20 under the provisions of this article four, shall file one
21 signed copy of the proposed charter with the clerk of the
22 county court of the county in which the city or the major
23 portion of the territory thereof is located and two signed
copies of the proposed charter with the recorder of the city, and (2) if the proposed charter under the provisions of this article four is rejected by a majority of the legal votes cast at the election thereon, the duties and responsibilities of such board shall be at an end, nor shall a new charter board be then elected.

§8-4-4. Submission of proposed charter to qualified voters.
1 The proposed charter shall be submitted to the qualified voters of the city in like fashion and with like notice as provided for a proposed charter of a newly incorporated city as set forth in article three of this chapter, except that the proposed charter shall be submitted at the next regular municipal election instead of a special election, unless (1) the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose be presented to the governing body more than one hundred twenty days prior to the date of the next regular municipal election.

§8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection.
1 If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election, if the interim exceeds sixty days; otherwise on July first of the second fiscal year after its approval. If approved as aforesaid, one of the signed copies of the charter on file with the recorder of the city, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by such recorder to the clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the House of Delegates as an
authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

If the charter is approved as aforesaid, a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval shall be forwarded by the recorder of the city to the clerk of the county court for filing with the signed copy of the charter previously filed with him.

Rejection of the proposed charter by a majority of the legal votes cast shall have the same effect as a majority vote against the question of framing a charter as specified in section two of this article, and no further effort shall be made to have a charter approved until the question of framing a charter is again submitted to the qualified voters of the city and is approved by a majority vote, subject to the two-year limitation set forth in said section two of this article.

§8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

A new charter shall entirely supersede the prior charter of a city. All ordinances and administrative acts or rules theretofore adopted by the governing body or administrative agencies of a city which are in conflict with or are inconsistent with a new charter shall continue in force for sixty days after the effective date of the new charter, unless sooner modified or repealed by competent authority; but at the end of this period shall, to the extent of such conflict or inconsistency, be of no further force or effect.

PART II. REVISING OR AMENDING A CHARTER.

§8-4-7. Revising or amending a charter—Generally.

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, may be revised as a whole in like manner as a
A charter may be framed and adopted under the provisions of this article four, except that the question submitted shall be "Shall the charter be revised as a whole by representatives of the people?", but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in section nine, article three of this chapter or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of sections two and three of this article relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in section nine, article three of this chapter, or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if (1) such governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city,
if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than one hundred twenty days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than thirty nor more than sixty days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in section two of this article. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county court for recording in the office of such clerk of the county court. The same shall be preserved by said clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.
If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in subsection (b), section one of this article considered in pari materia with the provisions of this section seven, for at least one year.

§8-4-8. Same—An alternate plan.

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time and place for a public hearing thereon, which date shall not be less than thirty days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The notice shall state that the proposed amendment or amendments will be considered on the date and at the time and place fixed by the governing body and that any qualified voter or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than ten days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within ten days thereafter, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance and transcript of the proceedings to
be certified to the clerk of the House of Delegates, as
keeper of the rolls, and to be recorded in the office of
the clerk of the county court. The same shall be pre-
served by such clerk of the House of Delegates as an
authentic public record. The amendment or amend-
ments shall take effect on the effective date specified in
the notice aforesaid. After the effective date, all courts
shall take judicial notice of such amendment or amend-
ments.

If, on the date and at the time and place set for the
hearing, objections to the amendment or amendments
are filed and are not withdrawn then or within ten days
thereafter, the governing body may abandon the pro-
posed amendment or amendments to which objections
have been filed, or it may submit the proposed amendment
or amendments, either as a unit or separately, at the
next regular municipal election, or at a special mu-
icipal election if such governing body by the affirmative
vote of two thirds of its members shall determine and
specify that a special municipal election is necessary
and if the date of such regular municipal election shall
be more than six months from such date, for ratification
or rejection. Notice of any election at which the proposed
amendment or amendments shall be voted upon shall
state the date and hours thereof and shall set out the
proposed amendment or amendments at length or state
that copies may be obtained by any qualified voter or
any freeholder of the city from a designated person at
a stated place, upon request. The governing body shall
cause such notice to be published as a Class II-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the city. The amend-
ment or amendments approved, or such of them as may
be approved, by a majority of the legal votes cast at the
election thereon shall take effect on the date that the
declaration of the results showing approval by the voters
has been made by the governing body and entered in
the minutes of the governing body. One copy of the
amendment or amendments, together with a certified
copy of the declaration of results attached thereto, shall
be certified forthwith by the recorder of the city to the
clerk of the House of Delegates, as keeper of the rolls,
and another to the clerk of the county court for recording
in the office of such clerk of the county court. The same
shall be preserved by said clerk of the House of Dele-
gates as an authentic public record. After the effective
date of an amendment or amendments so filed, all courts
shall take judicial notice of such amendment or amend-
ments. If a majority of the legal votes cast at the elec-
tion thereon be against any proposed amendment, the
same shall not be proposed again under the provisions
of this section for at least one year.

The method of charter amendment provided for in
this section is not in lieu of but is in addition to the
other methods prescribed in this chapter.

§8-4-9. Submission of alternative provisions.

1 A charter revision as a whole or a charter amendment
or amendments may be proposed with alternative pro-
visions for submission to the qualified voters and the
same may be voted upon separately without prejudice to
the primary question of whether the proposed charter
revision as a whole or the amendment or amendments
shall be adopted and without prejudice to the other pro-
visions thereof.

PART III. ELECTIONS; EXPENSES.

§8-4-10. Conduct of elections; general provisions concerning
canvass and declaration of results; election sup-
plies; election officials.

1 The governing body of a city shall canvass the returns
within relatively the same time with reference to an
election held under the provisions of this article and in
the same manner as county courts are required to do with
respect to general elections, and shall declare the results
of any such election. This requirement shall apply to any
election held under the provisions of this article, whether
it be a special municipal election or voting conducted in
conjunction with a general election or a regular municipal
election. The canvass and declaration of results shall be
entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of section eleven of this article. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county court. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that he or they will pay all costs of such recount.

§8-4-11. Special election and special municipal election officials.

In any special election upon the question of the approval or rejection of a proposed charter to be held under the provisions of article three of this chapter and in any special municipal election to be held under the provisions of this article four, the proponents and opponents of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, shall be entitled to representation among the
10 election officials appointed to serve at each polling place.  
11 Election officials representing the proponents and oppo-
12 nents shall be designated as follows:  
13 (1) The proponents and opponents, or either, of the  
14 proposed charter, the question of framing or revising a  
15 charter, the proposed charter revision as a whole or the  
16 proposed charter amendment or amendments, as the case  
17 may be, if organized, may, not less than fifteen days prior  
18 to the date fixed for the special election or special munici-
19 pal election, as the case may be, file with the county  
20 court as to a special charter election to be held under the  
21 provisions of article three of this chapter or the governing  
22 body in all other cases a list of individuals to serve as  
23 election officials to represent their organization or organ-
24 izations and if a list is so filed the county court or govern-
25 ing body, as the case may be, shall appoint as election  
26 officials to represent such organization or organizations  
27 the individuals so nominated: Provided, That any such  
28 organization has as members at least five percent of the  
29 qualified voters of the incorporated territory or city, and  
30 any such organization, within ten days after the official  
31 notice of such special election or special municipal elec-
32 tion, as the case may be, was published for the first time,  
33 submitted to the county court or governing body, as the  
34 case may be, a statement showing the name, officers and  
35 members thereof: Provided, however, That no individual  
36 shall be a member of more than one such organization; or  
37 (2) If the proponents and opponents, or either, of the  
38 proposed charter, the question of framing or revising a  
39 charter, the proposed charter revision as a whole, or the  
40 proposed charter amendment or amendments, as the case  
41 may be, are not organized as aforesaid, or if no such list  
42 is filed as aforesaid, the county court or governing body,  
43 as the case may be, shall, not less than ten days prior to  
44 the date fixed for the special election or special municipal  
45 election, as the case may be, appoint as representatives of  
46 proponents and opponents, or either, as the case may be,  
47 an equal number of persons known to be in favor of the  
48 proposed charter, the question of framing or revising a
charter, the proposed charter revision as a whole or the
proposed charter amendment or amendments, as the case
may be, and of persons known to be opposed to the pro-
posed charter, the question of framing or revising a
charter, the proposed charter revision as a whole or the
proposed charter amendment or amendments, as the case
may be, to act as election officials at each polling place.

§8-4-12. Expenses.

1 The governing body of a city shall make full provision
2 for all expenses incurred in advertising, holding and con-
ducting any election or voting under the provisions of
3 this article and all other proper expenses incurred in
4 complying with the provisions of this article, including
5 the expenses of a charter board and the members thereof,
6 as specified in section two of this article.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND
COMPENSATION OF OFFICERS; GENERAL PROVI-
SIONS RELATING TO OFFICERS AND EMPLOYEES;
ELECTIONS AND PETITIONS GENERALLY; CON-
FLICT OF INTEREST.

PART I. FIRST ELECTION OF OFFICERS.

§8-5-1. First election of officers of a city; terms of first officers.
§8-5-2. First election of officers of a town or village; commissioners of election.
§8-5-3. When first election of officers of a town or village held; notice.
§8-5-4. Conducting first election of officers of a town or village; cer-
tificate of election; terms of first officers.

PART II. REGULAR ELECTION OF OFFICERS.

§8-5-5. Regular election of officers; establishment of longer terms.

PART III. CHARTER PROVISIONS PERTAINING TO
ELECTION OF OFFICERS.

§8-5-6. Charter provisions concerning officers and elections, etc.; pro-
visions of general law concerning same.

PART IV. OFFICERS TO BE ELECTED; WARD OR
ELECTION DISTRICT REPRESENTATION.

§8-5-7. Certain officers; wards or election districts; residency and other
requirements.
PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.

§8-5-8. Oath of office.
§8-5-9. Terms of office.
§8-5-10. Vacancies in elective offices; how filled.

PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-11. Municipal officers and employees generally.
§8-5-12. Compensation of officers and employees.

PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.
§8-5-14. Municipal executive committees; expenses of municipal primary and regular municipal elections; applicability of state primary and general election law to municipal primary and regular municipal elections; when municipal primary elections to be held.
§8-5-15. Tie vote.
§8-5-17. Canvassing of elections; contested elections.
§8-5-18. Determination as to sufficiency of a petition filed under this chapter.

PART VIII. CONFLICT OF INTEREST.

§8-5-19. Charter or ordinance provisions pertaining to conflict of interest; penalties for violation thereof.

PART I. FIRST ELECTION OF OFFICERS.

§8-5-1. First election of officers of a city; terms of first officers.

1 The first election of officers of a city shall be held, conducted, superintended, returned, certified and canvassed in such manner as is provided in article three of this chapter for the first charter election of such city. All officers elected at such first charter election, which first charter election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second or fourth year following such election, as the charter may provide.

§8-5-2. First election of officers of a town or village; commissioners of election.

1 At the time of ordering the issuance of the certificate of incorporation of a town or village as specified in section seven, article two of this chapter, the county court shall
state who shall act as commissioners of election at the
first election of officers to be held in such town or village,
as hereinafter provided, and, in case they shall fail or
refuse to act, such election may be held, conducted, super-
intended, returned and certified by any three qualified
voters of such incorporated territory appointed for that
purpose by the qualified voters present.

§8-5-3. When first election of officers of a town or village held; notice.

1 The first election of officers of a town or village shall be
2 held within sixty days from the date of the certificate of
3 incorporation issued in accordance with the provisions
4 of section seven, article two of this chapter, and the com-
5 missioners of election appointed at the time the order is
6 entered directing issuance of such certificate shall cause
7 notice to be given of the date, time and place of holding
8 such election, which notice shall specify the officers to be
9 voted for, and shall be published within fourteen con-
10 secutive days next preceding the date appointed for such
11 election, as a Class II-0 legal advertisement in compliance
12 with the provisions of article three, chapter fifty-nine of
13 this code, and the publication area for such publication
14 shall be such town or village.

§8-5-4. Conducting first election of officers of a town or village; certificate of election; terms of first officers.

1 Such commissioners, or the individuals acting as such,
2 shall preside and act as commissioners of such election,
3 and all of the laws applicable to the election of district
4 officers shall apply to such election, if not inconsistent
5 with the provisions of this article. Such commissioners
6 shall, within five days after such election, issue a cer-
7 tificate to the individuals elected, which certificate
8 shall be recorded among the records of such town or
9 village. All officers elected at the first election of offi-
10 cers held by a town or village, which first election is
11 held after the effective date of this article, shall be elected
12 for a term which shall expire on the thirtieth of June
13 of the second year following such election.
PART II. REGULAR ELECTION OF OFFICERS.

§8-5-5. Regular election of officers; establishment of longer terms.

1 After the first election of officers of a city, the regular election of officers thereof shall be held on the first Tuesday in June of the appropriate year, unless otherwise provided in the charter thereof, at which election officers shall be elected for a two-year or four-year term, as the charter may provide, unless some other term is provided in the charter. Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision as a whole or charter amendment, as the case may be, is approved as aforesaid.

2 After the first election of officers of a town or village, the regular election of officers thereof shall be held on the first Tuesday in June of the appropriate year, unless otherwise provided in the special legislative charter thereof, at which election officers shall be elected for a two-year term, unless some other term is provided in such special legislative charter: Provided, That officers of a town or village may be elected for a four-year term upon submission to the qualified voters of the town or village at a regular municipal election of a proposition calling for four-year terms and approval of such proposition by a majority of the legal votes cast with respect thereto. Officers of a town or village may be elected for a four-year term at the same election at which the proposition calling for four-year terms is voted upon and approved by a majority of the legal votes cast, but the ballots, or ballot labels where voting machines are used, for the election of officers must bear information to the effect that the officers are being elected for four-
38 year terms in the event the proposition is approved as aforesaid.

**PART III. CHARTER PROVISIONS PERTAINING TO ELECTION OF OFFICERS.**

§8-5-6. Charter provisions concerning officers and elections, etc.; provisions of general law concerning same.

1 The charter of every city framed and adopted or revised as a whole under the provisions of article three or article four of this chapter, as the case may be, shall provide a method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections. Except as otherwise provided in the charter of any municipality, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections, so far as applicable, shall apply to municipal elections:

Provided, That the provisions of section thirteen of this article shall be construed as mandatory.

**PART IV. OFFICERS TO BE ELECTED; WARD OR ELECTION DISTRICT REPRESENTATION.**

§8-5-7. Certain officers; wards or election districts; residency and other requirements.

1 (a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor and councilmen, who together shall form the governing body of the municipality, and a recorder.

5 (b) When a municipality has not been divided into wards or election districts, there shall be at least five councilmen, but when the municipality has been divided into wards or election districts, the governing body may, by ordinance, determine the number of councilmen to be elected from each ward or election district. When it is deemed necessary, the governing body may, by ordinance, increase the number of wards or election districts and change the boundaries thereof, such wards or election
districts to be made as nearly equal as may be, in population, and when the municipality shall be divided into wards or election districts, or there shall be an increase in the number of wards or election districts as aforesaid, the governing body may increase the number of councilmen and direct an election to be held at the next regular municipal election in such ward or wards or election district or districts so that each ward or election district may have its full number of councilmen residing therein and may have equal representation on the governing body. When a municipality has been divided into wards or election districts, the governing body may, by ordinance, also provide for the election of councilmen at large in addition to the councilmen to be elected from each ward or election district. The provisions of this subsection (b) shall be applicable to any municipality except to the extent otherwise provided in the charter of such municipality.

(c) Unless otherwise provided by charter provision or ordinance, the mayor, recorder and councilmen must be residents of the municipality, must be qualified voters entitled to vote for members of its governing body, and for the year preceding their election must have been assessed with and paid real or personal property taxes to the municipality upon at least one hundred dollars' worth of property therein, except that the city manager in a manager form of government need only be a resident of the city at the time of his appointment: Provided, That for two years after the date of his discharge, the eligibility of any honorably discharged veteran of the armed forces of the United States for any of such offices in any municipality shall not be affected or impaired by reason of his not having been assessed with or paid such taxes.

PART V. OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES.

§8-5-8. Oath of office.

1 Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the
MUNICIPALITIES

§8-5-9. Terms of office.

1 Except as otherwise provided in the charter of any municipality, the terms of all officers elected after the first election in municipalities holding biennial elections shall commence on the first day of July following their election and shall be for two years, and in municipalities holding quadrennial elections the terms of all elected officers shall commence on the first day of July following their election and shall be for four years.

2 All municipal officers, whether elected at the first election of officers or at regular municipal elections, or appointed, shall hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law.

§8-5-10. Vacancies in elective offices; how filled.

1 Unless otherwise provided by charter provision or ordinance, when a vacancy shall occur from any cause in any municipal elective office, the vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by the governing body from among the residents of the municipality eligible under this article.
PART VI. GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES.

§8-5-11. Municipal officers and employees generally.

Subject to the provisions of the constitution of this state, the provisions of this article, and other applicable provisions of this chapter, any city may by charter provision, and the governing body of any municipality, consistent with the provisions of its charter, if any, may by ordinance, determine and prescribe the officers or positions which are to be filled by election, appointment or employment, the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees, and the method of filling any vacancies which may occur.

§8-5-12. Compensation of officers and employees.

Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term.

The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness, as additional consideration for their services and employment.

PART VII. ELECTIONS AND PETITIONS GENERALLY.

§8-5-13. Integration of municipal elections with system of permanent registration.

Notwithstanding any charter provision to the contrary, it shall be the duty of each city by charter provision or each municipality by ordinance to make provision for integrating the conduct of all municipal elections with the system of "permanent registration of voters." Such charter provision or ordinance shall, to the extent reasonably applicable, parallel the provisions of chapter three of this code which integrate county-state elections with the "permanent registration system."
§8-5-14. Municipal executive committees; expenses of municipal primary and regular municipal elections; applicability of state primary and general election law to municipal primary and regular municipal elections; when municipal primary elections to be held.

Except as otherwise provided by charter provision or ordinance or this code, municipal executive committees shall exercise similar functions and be governed by the same laws in regard to municipal primary elections and regular municipal elections as county executive committees in regard to county-state primary and general elections, so far as the same may be applicable. All expenses of conducting municipal primary elections and regular municipal elections shall be paid by the municipality. The provisions of chapter three of this code, referring more particularly to primary elections and general elections, shall, so far as the same can be applied and so far as not otherwise provided by charter provision or ordinance, govern the conduct of municipal primary elections and regular municipal elections, as the case may be. No municipal primary election shall be held on the day of the county-state primary election nor less than twenty-five days immediately preceding the regular municipal election, unless a shorter period of time is established by charter or ordinance.

§8-5-15. Tie vote.

Whenever two or more individuals shall receive an equal number of legal votes for the same office, if such number be the highest cast for such office, the individuals under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly.


A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court ordering an election to be held under the provisions of this chapter. Upon the filing of a petition for a writ of error,
all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

The order of any municipality ordering an election to be held under the provisions of this chapter shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof is located upon certiorari to the governing body thereof, in accordance with the provisions of article three, chapter fifty-three of this code. Upon the filing of a petition for a writ of certiorari, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

§8-5-17. Canvassing of elections; contested elections.

All elections ordered and held by a county court under the provisions of this chapter shall be canvassed by such county court. All elections ordered and held by a municipality under the provisions of this chapter shall be canvassed by the governing body of such municipality.

Any contest of a public question election ordered and held by a county court, or by a municipality, under the provisions of this chapter, shall be heard and decided by the county court or governing body of the municipality, as the case may be, and any such contest shall be conducted in the manner to be provided in article seven, chapter three of this code for contests of an election on a public question. Any such election may be contested by a qualified elector or voter or by a freeholder interested therein.

Any contest by any candidate or candidates of an election of charter board members or of the first officers of a city, which election is held under the provisions of article three of this chapter, shall be heard and decided by the county court, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

Any contest by any candidate or candidates of an election of charter board members, which election is held under the provisions of article four of this chapter, or of officers of a municipality (other than the first officers of
a city) shall be heard and decided by the governing body thereof, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

§8-5-18. Determination as to sufficiency of a petition filed under this chapter.

It shall be the right and duty of the county court, the governing body of a municipality, or other body or officer, to which or to whom any petition is presented under the provisions of this chapter, as the case may be, to determine the sufficiency of any such petition, and where no time limit is prescribed for the making of such determination, the same shall be accomplished within a reasonable period of time. Any such determination, where there is no other express right of judicial review provided, shall be reviewable by the circuit court of the county upon certiorari to the county court, governing body, or other body or officer, as the case may be, in accordance with the provisions of article three, chapter fifty-three of this code; and in the case of a governing body, the appropriate circuit court shall be the circuit court of the county in which the municipality or the major portion of the territory thereof is located.

PART VIII. CONFLICT OF INTEREST.

§8-5-19. Charter or ordinance provisions pertaining to conflict of interest; penalties for violation thereof.

Every city shall have plenary power and authority to provide by charter provision, and every municipality shall have plenary power and authority to provide by ordinance, that it shall be unlawful for the governing body, or any member thereof, or other officer or officers thereof, to be interested personally, either directly or indirectly, or as a member, manager, officer or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the municipality, or to any contractor, or workmen for the municipality, or in any manner whatsoever, whereby the taxpayers of such municipality shall become
the paymaster, either directly or indirectly, or to adopt
any other provisions, deemed appropriate, pertaining
to conflict of interest or possible conflict of interest. Any
violation of any such charter or ordinance provision by
any member of the governing body or other officer or
officers thereof, shall be a misdemeanor, and, upon con-
viction thereof, such member or officer shall be fined not
less than fifty nor more than five hundred dollars, and
shall automatically be removed from office.

ARTICLE 6. ANNEXATION.

PART I. GENERAL.
§8-6-1. Annexation of unincorporated territory.

PART II. ANNEXATION BY ELECTION.
§8-6-2. Petition for annexation.
§8-6-3. Governing body of municipality to certify annexation; order.

PART III. ANNEXATION WITHOUT ELECTION.
§8-6-4. Annexation without an election.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.
§8-6-5. Annexation by minor boundary adjustment.

PART V. DUTIES AS TO AD VALOREM TAXES FOR MUNICIPAL
PURPOSES ON PROPERTIES IN NEWLY ANNEXED AREAS.
§8-6-6. Duties as to ad valorem taxes for municipal purposes on prop­
erties in newly annexed areas.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.
1 Unincorporated territory may be annexed to and be-
2 come part of a municipality contiguous thereto only in
3 accordance with the provisions of this article.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.
1 Five percent or more of the freeholders of a munici-
2 pality desiring to have territory annexed thereto may
3 file their petition in writing with the governing body
4 thereof, setting forth the change proposed in the metes
5 and bounds of the municipality, and asking that a vote
6 be taken upon the proposed change. Such petition shall
7 be verified and shall be accompanied by an accurate sur-
vey map showing the territory which would be annexed to the corporate limits by the proposed change. The governing body, upon bond in penalty prescribed by the governing body with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters of such municipality to be taken upon the proposed change on a date and 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. The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory, and of all of the freeholders of such additional territory, whether they reside or have a place of business therein or not, to be taken upon the question on the same day, at some convenient place in or near such additional territory: Provided, That the additional territory to be included shall conform to the requirements of section one, article two of this chapter, and the determination that the additional territory does so conform shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed, is located upon certiorari to the governing body, in accordance with the provisions of article three, chapter fifty-three of this code. The governing body shall cause the order to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order so published shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, and, if practicable, shall also contain a popular description of such additional territory. The election shall be held, superintended and conducted, and the results thereof ascertained, certified,
returned and canvassed in the same manner and by the
same individuals as elections for municipal officers. The
ballots, or ballot labels where voting machines are used,
shall have written or printed on them the words:

☐ For Annexation
☐ Against Annexation

Any freeholder which is a firm or corporation may vote
by its manager, president, or executive officer duly design-
nated in writing by such firm or corporation. Even though
an individual who is a qualified voter of the municipality
or the territory is also a freeholder of the territory, such
person shall be entitled to vote only once.

When an election is held in any municipality in ac-
cordance with the provisions of this section, another
such election relating to the same proposed change or
any part thereof shall not be held for a period of one
year.

If a majority of all of the legal votes cast both in the
municipality and in the territory are in favor of the
proposed annexation, then the governing body shall pro-
ceed as specified in the immediately succeeding section
of this article.

§8-6-3. Governing body of municipality to certify annexation;
order.

The governing body of such municipality shall enter
the results of such election in its minutes, and, when the
annexation proposed is adopted, as provided in the im-
mediately preceding section of this article, shall forward
a certificate to such effect to the county court of the
county wherein the municipality or the major portion of
the territory thereof, including the annexed territory, is
located; and such court shall thereupon enter an order in
substance as follows:

“A certificate of the governing body of the municipality
of ........................................ was this day filed showing that an
annexation has been made, in the manner required by
law, to the corporate limits thereof, and that by such
annexation the said corporate limits are as follows:
"Beginning at (here recite the boundaries as changed).

It is, therefore, ordered that such annexation to said cor-
porate limits be, and the same is hereby approved and
confirmed, and the clerk of this court is directed to de-
deliver to the said governing body a certified copy of this
order as soon as practicable after the rising of this court."

After the date of such order, the corporate limits of the
municipality shall be as set forth therein.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

1 The governing body of a municipality may by ordinance
provide for the annexation of additional territory without
ordering a vote on the question if (1) sixty percent of the
qualified voters of such additional territory file with the
governing body their petition to be annexed, and (2)
sixty percent of all freeholders of such additional terri-
tory, whether they reside or have a place of business
therein or not, file with the governing body their petition
to be annexed: Provided, That the additional territory
shall conform to the requirements of section one, article
two of this chapter, and the determination that the addi-
tional territory does so conform or that the requisite
number of petitioners have filed the required petitions
shall be reviewable by the circuit court of the county in
which the municipality or the major portion of the terri-
tory thereof, including the area proposed to be annexed,
is located upon certiorari to the governing body, in ac-
cordance with the provisions of article three, chapter fifty-
three of this code. A qualified voter of the additional terri-
tory who is also a freeholder of the additional territory
may join only in the voters' petition of such additional ter-

22   It shall be the responsibility of the governing body
to enumerate and verify the total number of eligible peti-
tioners, in each category, from the additional territory. In
determining the total number of eligible petitioners, in
each category, a qualified voter of the additional territory
who is also a freeholder of the additional territory shall
be counted only as a qualified voter and if all of the
eligible petitioners are qualified voters, then only a voters'
petition shall be required. If satisfied that the additional
31 territory conforms to the requirements of section one, 32 article two of this chapter and that the petition is suffi- 33 cient in every respect, the governing body shall enter 34 such fact upon its journal and forward a certificate to 35 that effect to the county court of the county wherein the 36 municipality or the major portion of the territory thereof, 37 including the additional territory, is located. The county 38 court shall thereupon enter an order along the lines of 39 the order described in the immediately preceding section 40 of this article. After the date of such order, the corporate 41 limits of the municipality shall be as set forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

1 In the event a municipality desires to increase its cor- 2 porate limits by making a minor boundary adjustment, 3 the governing body of such municipality may apply to 4 the county court of the county wherein the municipality 5 or the major portion of the territory thereof, including 6 the territory to be annexed, is located for permission to 7 effect such annexation by minor boundary adjustment.

8 Such application shall disclose the number of persons 9 residing in the territory to be annexed to the corporate 10 limits by the proposed change, and shall have attached 11 thereto an accurate map showing the metes and bounds 12 of such additional territory.

13 If satisfied that the proposed annexation is only a minor 14 boundary adjustment, the county court shall order publi- 15 cation of a notice of the proposed annexation to the cor- 16 porate limits and of the date and time set by the court for 17 a hearing on such proposal. Publication shall be as in the 18 case of an order calling for an election, as set forth in 19 section two of this article. A like notice shall be promi- 20 nently posted at not less than five public places within 21 the area proposed to be annexed.

22 If the freeholders of the area proposed to be annexed 23 who are present or are represented at the hearing are not 24 substantially opposed to the proposed boundary change, 25 the court may enter an order changing the corporate 26 limits of the municipality as requested, which order may
be reviewed by the circuit court as an order of a county
court ordering an election may be reviewed under section
sixteen, article five of this chapter. After the date of
such order, the corporate limits of the municipality shall
be as set forth therein, unless judicial review is sought
under the provisions of said section sixteen. If the pro-
posed change is substantially opposed at the hearing by
any such freeholder, the court shall dismiss the applica-
tion. Dismissal of any such application shall not preclude
proceedings in accordance with the provisions of sec-
tions two and three or section four of this article. The
municipality shall pay the costs of all proceedings under
this section.

PART V. DUTIES AS TO AD VALOREM TAXES FOR MUNICIPAL
PURPOSES ON PROPERTIES IN NEWLY ANNEXED AREAS.

§8-6-6. Duties as to ad valorem taxes for municipal purposes
on properties in newly annexed areas.

1 Upon the effective date of any annexation under the
provisions of this article, it shall be the duty of the gov-
erning body of the municipality to notify the county
assessor of such annexation, and upon being so notified,
it shall be the duty of such assessor to see to it that the
properties situate within the newly annexed area are
assessed with the municipal ad valorem taxes for the
current fiscal year and subsequent fiscal years or the
ensuing and subsequent fiscal years, depending upon the
date of notification to such assessor.

ARTICLE 7. DECREASE OF CORPORATE LIMITS.

PART I. GENERAL

§8-7-1. Decrease of corporate limits.

PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.

§8-7-2. Procedure to decrease corporate limits.
§8-7-3. Governing body of municipality to certify decrease in corporate
limits; order.

PART III. DECREASE OF CORPORATE LIMITS BY MINOR
BOUNDARY ADJUSTMENT.

§8-7-4. Decreasing corporate limits by minor boundary adjustment.
§8-7-1. Decrease of corporate limits.

1 The corporate limits of a municipality may be decreased only in accordance with the provisions of this article.

PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.

§8-7-2. Procedure to decrease corporate limits.

1 Five percent or more of the freeholders of a municipality desiring to decrease the corporate limits thereof may file their petition in writing with the governing body thereof, setting forth the change proposed in the metes and bounds of the municipality, and asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied by an accurate survey map showing the territory which would be eliminated from the corporate limits by the proposed change.

The governing body, upon bond in penalty prescribed by the governing body with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters of such municipality to be taken upon the proposed change on a date and 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. The governing body shall cause the order to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order so published shall contain an accurate description by metes and bounds of the territory which would be eliminated from the corporate limits by the proposed change, and, if practicable, shall also contain a popular description of such territory.
The election shall be held, superintended and conducted, and the results thereof ascertained, certified, returned and canvassed in the same manner and by the same individuals as elections for municipal officers. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

- For Decrease of Corporate Limits
- Against Decrease of Corporate Limits

When an election is held in any municipality in accordance with the provisions of this section, another such election relating to the same proposed change or any part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast within such municipality are in favor of the proposed change, then the governing body shall proceed as specified in the immediately succeeding section of this article.

§8-7-3. Governing body of municipality to certify decrease in corporate limits; order.

The governing body of such municipality shall enter the results of such election in its minutes, and, when the decrease proposed is adopted, as provided in the immediately preceding section of this article, shall forward a certificate to such effect to the county court of the county wherein the municipality or the major portion of the territory thereof is located; and such court shall thereupon enter an order in substance as follows:

“A certificate of the governing body of the municipality of _______ was this day filed showing that a decrease has been made, in the manner required by law, in the corporate limits thereof, and that by such decrease the said corporate limits are as follows:

“Beginning at (here recite the boundaries as changed). It is, therefore, ordered that such decrease in said corporate limits be, and the same is hereby approved and confirmed, and the clerk of this court is directed to deliver to the said governing body a certified copy of this order as soon as practicable after the rising of this court.”

After the date of such order, the corporate limits of the municipality shall be as set forth therein.
PART III. DECREASE OF CORPORATE LIMITS BY MINOR BOUNDARY ADJUSTMENT.

§8-7-4. Decreasing corporate limits by minor boundary adjustment.

1. In the event a municipality desires to decrease its corporate limits by making a minor boundary adjustment, the governing body of such municipality may apply to the county court of the county wherein the municipality or the major portion of the territory thereof is located for permission to effect such decrease in the corporate limits by minor boundary adjustment.

2. Such application shall disclose the number of individuals residing in the territory which would be eliminated from the corporate limits by the proposed change, and shall have attached thereto an accurate map showing the metes and bounds of such territory.

3. If satisfied that the change sought is only a minor boundary adjustment, the county court shall order publication of a notice of the proposed decrease in the corporate limits and of the date and time set by the court for a hearing on such proposal. Publication shall be as in the case of an order calling for an election, as set forth in section two of this article. A like notice shall be prominently posted at not less than five public places within the territory which would be eliminated from the corporate limits by the proposed change.

4. If the freeholders of such territory who are present or are represented at the hearing are not substantially opposed to the proposed boundary change, the court may enter an order decreasing the corporate limits of the municipality as requested, which order may be reviewed by the circuit court as an order of a county court ordering an election may be reviewed under section sixteen, article five of this chapter. After the date of such order, the corporate limits of the municipality shall be as set forth therein, unless judicial review is sought under the provisions of said section sixteen. If the proposed change is substantially opposed at the hearing by any such freeholder, the court shall dismiss the application. Dismissal of any such application shall not preclude proceedings
in accordance with the provisions of sections two and three of this article. The municipality shall pay the costs of all proceedings under this section.

ARTICLE 8. CONSOLIDATION OF MUNICIPALITIES.

PART I. GENERAL.

§8-8-1. Authority to consolidate.
§8-8-2. Petition and resolution.
§8-8-3. Order for elections.
§8-8-4. How special elections are held; limitation on submission of question again.
§8-8-5. Ballots or ballot labels; expenses of special elections.
§8-8-6. Counting and canvassing by county court; certificate of results.
§8-8-7. Endorsement of certificate; filing; publication.
§8-8-8. Effective date of consolidation.

PART II. APPLICABLE CHARTER AND ORDINANCES.

§8-8-9. New municipality; charter and ordinances of new municipality.
§8-8-10. Ward representation.

PART III. COMMISSION ON WARDS AND ELECTION DISTRICTS.

§8-8-11. Commission on wards and election districts.

PART IV. ELECTION OF NEW OFFICERS.

§8-8-12. Election of new officers.

PART V. OFFICERS AND EMPLOYEES.

§8-8-13. Officers and employees of old municipalities.

PART VI. RIGHTS, PROPERTIES, FUNDS, TAXES, OBLIGATIONS, PERMITS, LICENSES, ETC.

§8-8-14. Succession to rights and properties of superseded municipalities.
§8-8-15. Taxes and obligations of superseded municipalities.
§8-8-16. Transfer of funds and property.
§8-8-17. Permits and licenses issued by superseded municipalities.
§8-8-18. Legal proceedings pending at time of consolidation.

PART I. GENERAL.

§8-8-1. Authority to consolidate.
1 Any two or more adjoining municipalities in this state may consolidate and become one municipality only in the manner provided in this article.

§8-8-2. Petition and resolution.
1 Upon the presentation to the governing body of a municipality of a petition, signed in their own handwriting by twenty percent of the qualified voters thereof, requesting consolidation with one or more municipalities
and setting forth the name by which it is proposed the consolidated municipality be known, the governing body shall forthwith adopt a resolution proposing such consolidation.

§8-8-3. Order for elections.

The governing body shall forthwith present a copy of the resolution to the county court of the county wherein the municipality or the portion thereof greatest in population is located. If the court receives a copy or copies of a like resolution or resolutions from the governing body or bodies of one or more municipalities also proposing such consolidation, it shall be the duty of the court to call, by written order, a special election to be held within such municipalities for a determination, by the qualified voters of the respective municipalities, upon the question of consolidation. When two or more adjoining municipalities in different counties in this state desire to consolidate and become one municipality, the county court or clerk thereof referred to in this article shall be the court or clerk of the county wherein the consolidating municipality having the greatest population is located or if such consolidating municipality is itself located in more than one county, the county wherein the portion thereof greatest in population is located. The order shall set the date for the special elections, which date shall be not less than thirty nor more than sixty days from the date of the order, and shall be the same date in each of the municipalities concerned.

The order shall state the names of the municipalities, the object of the special elections, and the name by which it is proposed the consolidated municipality be known.

The order shall forthwith be filed in the office of the clerk of the county court, and true copies shall at once be served upon the recorder of each of the municipalities concerned.

§8-8-4. How special elections are held; limitation on submission of question again.

Except as otherwise provided in this article, the special elections shall be held as are regular municipal elections,
3 and the provisions of law governing regular municipal
4 elections shall apply to those held under this article.
5 The question of the consolidation of the same munici-
6 palities shall not be submitted to the voters thereof more
7 often than once in two years.

§8-8-5. Ballots or ballot labels; expenses of special elections.
1 The ballots, or ballot labels where voting machines are
2 used, shall be in substantially the following form:
3 Shall _____________________ (name the municipalities)
4 be consolidated and become one municipality, to be
5 known as ____________________? (name of the proposed
6 new municipality).
7 □ For Consolidation
8 □ Against Consolidation
9 The expenses of the elections shall be borne by the
10 separate municipalities.

§8-8-6. Counting and canvassing by county court; certificate
of results.
1 The county court shall furnish sealed ballot boxes or
2 voting machines to the proper officers of the municipali-
3 ties wherein the special elections are to be held. The
4 municipal officers responsible for the custody of the bal-
5 lots or voting machines shall, immediately upon the
6 closing of the polls, transmit the ballot boxes, sealed
7 and unopened, or the voting machines to the county
8 court. The county court shall proceed to count and
9 canvass the votes cast, and shall forthwith certify over
10 their signatures the results of the canvass, showing dis-
11 tinctly in their certificate the number of votes for and
12 the number of votes against the consolidation in each
13 of the municipalities, and also the number of qualified
14 voters in each municipality who voted on the question.

§8-8-7. Endorsement of certificate; filing; publication.
1 If a majority of the legal votes cast by the qualified
2 voters of each of the municipalities are shown by such
3 certificate to have been cast in favor of the consolida-
4 tion, the county court shall endorse said certificate to
5 that effect and shall cause the same to be filed forth-
6 with in the office of the clerk of the county court, and
to be published as a Class I legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be each of the municipalities so voting.

§8-8-8. Effective date of consolidation.
1 The consolidation shall be effective on the first day of
2 the fiscal year next succeeding the date of the special
elections unless the first day of such fiscal year is less than
4 ninety days from and after the date of such special elec-
tions, in which event the consolidation shall be effective
6 on the first day of the second fiscal year succeeding the
7 date of such special elections.

PART II. APPLICABLE CHARTER AND ORDINANCES.

§8-8-9. New municipality; charter and ordinances of new munici-
pality.
1 When the consolidation becomes effective, the consoli-
dated municipalities shall constitute and be one munici-
3 pality under the name set forth in the initiatory petitions
4 and the special election order.
5 The charter, if any, of the consolidating municipality
6 having the greatest population shall, when the consolida-
tion becomes effective, be and remain the charter for the
8 whole of the consolidated territory, until supplanted.
9 The ordinances, resolutions, orders, rules and regula-
tions in force in the consolidating municipality having the
11 greatest population when the consolidation becomes effec-
tive, shall extend to and be in force throughout the new
13 municipality, until they are supplanted, and the ordi-
nances, resolutions, orders, rules and regulations of the
15 other municipalities shall cease to be operative.

§8-8-10. Ward representation.
1 If the charter, if any, applying to the new municipality
2 provides for ward or other territorial representation, in
3 whole or in part, in the membership of the governing
4 body, every ward or similar division in the new munici-
pality shall be entitled to representation upon the gov-
6 erning body of the new municipality.
ART. III. COMMISSION ON WARDS AND ELECTION DISTRICTS.

§8-8-11. Commission on wards and election districts.

1 Within one week after the filing and publication provided for in section seven of this article, a joint commission shall be formed consisting of the mayor and the recorder of each municipality, and three inhabitants of each municipality appointed by the governing body thereof.

The commission shall be called together by the mayor of the consolidating municipality greatest in population, on a date and at a time and place fixed by him, but not later than ten days from the formation of the commission. The commission shall organize by selecting a chairman and clerk. The clerk shall keep a record of all proceedings and expenses and shall file the same, not more than fourteen days after the commission has filed its report and certificate hereinafter prescribed, in the office of the clerk of the county court, together with an affidavit as to the truth and correctness thereof.

The commission shall fix and determine the ward lines (if the municipality with the greatest population is so divided) and election districts of the new municipality. The commission shall, within forty-five days from the date of its organization, make a report and certificate over the signatures of a majority of its members, and shall file the same in the office of the clerk of the county court. The certificate shall set forth and accurately describe the ward lines, if any, and election district lines fixed by the commission, and shall contain a proper map of the new municipality with such lines set out thereon. The clerk of the commission shall cause a copy of the certificate to be filed in the office of the secretary of state.

The lines fixed and determined by the commission shall be those of the new municipality until changed in accordance with law. Wards, if any, shall be formed of contiguous territory. No election district shall be in more
than one ward. In dividing the new municipality into wards and election districts, the commission shall have regard for, and shall take into consideration, the election laws of this state, as well as the population in all wards and election districts, and shall divide and arrange the same so that each will contain, as nearly as possible, an equal number of inhabitants.

A notice setting forth the ward lines, if any, and election district lines as fixed by the commission shall be published by the clerk thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each of the municipalities concerned. The notice shall be published within seven consecutive days next succeeding the filing of the certificate with the clerk of the county court. The expenses of the publication shall be paid by the new municipality.

Upon the completion of the publication, the wards, if any, and election districts of the consolidating municipalities shall be superseded. The commission shall appoint, in accordance with the charter of the new municipality, if any, election officials to serve at the election provided for by section twelve of this article.

The commission may employ an engineer and an attorney to assist in performing its duties. The commission may provide for compensation to be allowed to its clerk, engineer and attorney, which shall be paid by the new municipality. The commission members shall not receive compensation for their services, but all reasonable and necessary expenses actually incurred by them in the performance of their duties, when itemized and sworn to by the chairman and clerk, shall be paid by the new municipality.

**PART IV. ELECTION OF NEW OFFICERS.**

§8-8-12. Election of new officers.

1 Notwithstanding any provision to the contrary in the charter, if any, which shall apply to the new municipality, an election shall be held on the first Tuesday in June next preceding the date when the consolidation becomes
 effective for the election of officers for the new municipality. The officers shall be elected and the election shall be conducted otherwise in accordance with the charter, if any, which shall apply to the new municipality and as though the consolidation had become effective and if there be no charter, then in accordance with the provisions of article five of this chapter governing regular municipal elections.

Individuals elected to office at the election held under the provisions of this section shall take office upon the day the consolidation becomes effective, for the term specified by the charter, if any, applying to the new municipality, and if there be no charter, then for such term as may be permitted under said article five of this chapter.

PART V. OFFICERS AND EMPLOYEES.

§8-8-13. Officers and employees of old municipalities.

1 When the consolidation becomes effective, the terms of office of all officers and officials of the consolidating municipalities, elected or appointed, shall, except as herein otherwise provided, cease and be at an end.

5 Policemen and firemen of the consolidating municipalities shall, when the consolidation becomes effective, continue as policemen and firemen of the new municipality. They shall be subject to the orders and control of the mayor of the new municipality, until the heads of the police and fire departments are chosen and placed in charge thereof.

12 Tenure of office and pension laws applicable to the employees of the consolidating municipalities shall not be affected by the provisions of this article.

PART VI. RIGHTS, PROPERTIES, FUNDS, TAXES, OBLIGATIONS, PERMITS, LICENSES, ETC.

§8-8-14. Succession to rights and properties of superseded municipalities.

1 The new municipality shall, when the consolidation becomes effective, be vested with all the rights and properties of the municipalities of which it was formed, and shall be responsible and liable for all contracts, debts
and obligations of such municipalities. However, the
lands and property in a municipality superseded under
this article shall not be taxed or assessed for the debts
or obligations of another municipality thus superseded.
The lands and properties in each of the constituent and
superseded municipalities shall be taxed and assessed
for the debts and obligations of its superseded govern-
ment until the same shall be paid and satisfied.

§8-8-15. Taxes and obligations of superseded municipalities.
The taxes and assessments levied or imposed by one
of the superseded municipalities and remaining out-
standing and unpaid, and all other moneys due and
owing such municipality, when the consolidation becomes
effective shall be collected by the new municipality and
shall be applied to the purposes for which raised or
owing, and if not raised or owing for a specific purpose,
shall be applied to the reduction or payment of the
bonded or other indebtedness, if any, of the superseded
municipality.
Proceedings pending to enforce the payment or col-
clection of taxes and assessments in any of the super-
seded municipalities shall be carried to completion by
the proper officers of the new municipality; and all taxes
and assessments theretofore levied and assessed by any
of the superseded municipalities shall be valid and ef-
fectual as if originally levied and assessed by the new
municipality. The governing body of the new munici-
pality is authorized to perform all necessary acts to con-
firm and effectuate such levies and assessments.

§8-8-16. Transfer of funds and property.
Immediately upon the installation of the new municipal
government, the officers having custody of the funds of
the superseded municipalities shall deliver all funds in
their possession into the custody of the proper fiscal
officer of the new municipality, who shall acknowledge
delivery by giving his receipt therefor.
The mayor of the new municipality shall supervise and
direct the transfer of all personal property, books, papers,
vouchers or other documents belonging to the superseded
10 municipalities, to the proper officers of the new govern-
11 ment. He shall also cause a complete inventory to be
12 made of all assets, real and personal, received by the new
13 government.
14 The tax commissioner shall cause an audit and settle-
15 ment of the accounts of the officers of the superseded
16 municipalities to be made forthwith.

§8-8-17. Permits and licenses issued by superseded munici-
1 Palities.
2 Permits and licenses granted to any place or person by
3 any of the superseded municipalities shall, subject to
4 their conditions, remain in full force and effect and be
5 recognized by the new municipality until the expiration
6 of the term for which they were granted. However, this
7 section shall not be construed to prevent the revocation
8 of any such permit or license before its expiration in any
9 manner provided by law.

§8-8-18. Legal proceedings pending at time of consolidation.
1 No suit, action or proceeding pending in any court or
2 before any board or department, wherein one of the
3 superseded municipalities is a party, or in which it is
4 interested, or by the determination of which it might be
5 affected, shall abate by reason of the consolidation, but
6 the new municipality shall be substituted in the place
7 and stead of such superseded municipality, and the suit,
8 action or proceeding shall continue as if the consolidation
9 had not taken place.

ARTICLE 9. PROCEEDINGS OF GOVERNING BODIES.

§8-9-1. Who to preside at meetings of governing body; quorum; inter-
1 ested member of governing body not to vote.

§8-9-2. Mayor and recorder may vote; tie vote.

§8-9-3. Governing body to keep records; minutes of proceedings; voting.

§8-9-1. Who to preside at meetings of governing body; quorum; inter-
1 ested member of governing body not to vote.
2 Unless otherwise provided by charter provision, the
3 governing body of every municipality shall be presided
4 over at its meetings by the mayor, or, in his absence, by
5 the recorder, or, in the absence of both the mayor and the
6 recorder, by one of its members selected by a majority of
the members of the governing body present. A majority of the members of the governing body shall be necessary to constitute a quorum for the transaction of business. No member of the governing body of any municipality shall vote upon any ordinance, order, measure, resolution or proposition, in which he may be interested other than as a citizen of such municipality.

§8-9-2. Mayor and recorder may vote; tie vote.
1 The mayor and recorder shall, unless otherwise provided by charter provision, have votes as members of the governing body, and, in case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted.

§8-9-3. Governing body to keep records; minutes of proceedings; voting.
1 The governing body of every municipality shall cause to be kept, in a well-bound book, an accurate record of all of its proceedings, ordinances, orders, bylaws, acts, resolutions, rules and regulations which shall be fully indexed and open to inspection by anyone who is required to pay taxes to such municipality.

At each meeting of the governing body, a journal of the proceedings of the last meeting shall be read, and corrected, if erroneous, and signed by the presiding officer for the time being: Provided, That the reading of the journal of the proceedings of the last meeting may be dispensed with by majority vote of the governing body if the members thereof have received and examined a copy of the journal or a synopsis thereof prior to the meeting at which the journal is signed. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the journal.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART I. MAYOR.

§8-10-1. Powers and duties of mayor.

PART II. POLICE COURT OR MUNICIPAL JUDGE.

§8-10-2. Police court or municipal judge for cities.

PART III. RECORDER.

§8-10-3. Powers and duties of recorder.
§8-10-1. Powers and duties of mayor.

When not otherwise provided by charter provision or general law, the mayor of every municipality shall be the chief executive officer of such municipality, shall have the powers and authority granted in this section, and shall see that the ordinances, orders, bylaws, acts, resolutions, rules and regulations of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor. He shall also be ex officio a justice and conservator of the peace within the municipality, and shall, within the same, have and exercise all of the powers, both civil and criminal, and perform all duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases or causes of action arising without the corporate limits of the municipality. He shall have the same power to issue attachments in civil suits as a justice of his county has, though the cause of action arose without the corporate limits of his municipality, but he shall have no power to try the same and such attachments shall be returnable and be heard before some justice of his county. Upon complaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within the county or counties in which the municipality is located. He shall have control of the police of the municipality and may appoint special police officers whenever he deems it necessary, except when otherwise provided by law, and subject to the police civil service provisions of article fourteen of this chapter if such civil service provisions are applicable to his municipality, and it shall be his duty especially to see that the peace and good order of the municipality are preserved, and that persons and property therein are protected; and to this end he
may cause the arrest and detention of all riotous and
disorderly individuals in the municipality before issuing
his warrant therefor. He shall have power to issue
executions for all fines, penalties and costs imposed by
him, or he may require the immediate payment thereof,
and, in default of such payment, he may commit the
party in default to the jail of the county or counties in
which such municipality is located, or other place of
imprisonment within the corporate limits of such mu-
nicipality, if there be one, until the fine or penalty and
costs shall be paid, but the term of imprisonment in
such case shall not exceed thirty days. He shall, from
time to time, recommend to the governing body such
measures as he may deem needful for the welfare of
the municipality. The expense of maintaining any indi-
vidual committed to a county jail by him, except it be
to answer an indictment, or be under the provisions of
sections eight and nine, article eighteen, chapter fifty
of this code, shall be paid by the municipality and taxed
as part of the costs of the proceeding. The mayor shall
not receive any money belonging to the state or to indi-
viduals, unless he shall give the bond and security re-
quired of a justice of the peace and all of the provisions
of article one, chapter fifty of this code relating to moneys
received by justices shall apply to like moneys received
by such mayor.

PART II. POLICE COURT OR MUNICIPAL JUDGE.

§8-10-2. Police court or municipal judge for cities.

Any city may provide by charter provision or ordi-
nance for the creation and maintenance of a police or
municipal court, for the appointment or election of an
officer to be known as police court judge or municipal
court judge, and for his compensation, and authorize the
exercise by such court or judge of such of the jurisdiction,
powers, authority and duties set forth in section one of
this article and similar or related powers, authority and
duties enumerated in any applicable charter provisions,
as set forth in the charter or ordinance. Such court or
judge shall in all events have the criminal jurisdiction
of a justice of the peace.
PART III. Recorder.

§8-10-3. Powers and duties of recorder.
1 It shall be the duty of the recorder of every municipality to keep the journal of the proceedings of the governing body thereof, and he shall have charge of and preserve the records of the municipality. Unless otherwise provided by charter provision or general law, whenever the mayor is unable because of illness or absence from the municipality to perform the duties of his office, and during any vacancy in the office of mayor, the recorder shall perform the duties of the mayor and be invested with all of his power and authority.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief.

§8-11-2. Validity of ordinances delegating discretion.

§8-11-3. Cases requiring enactment of ordinance.

§8-11-4. Ordinance procedures.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief.
1 To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter or any past or future act of the Legislature of this state, the governing body shall have plenary power and authority to make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations, not contrary to the constitution and laws of this state; and, for a violation thereof, to prescribe reasonable penalties in the form of fines, forfeitures and imprisonment in the county jail or the place of imprisonment in such municipality, if there be one, for a term not exceeding thirty days. Such fines, forfeitures and imprisonment shall be recovered, imposed or enforced under the judgment of the mayor of such municipality or the individual lawfully exercising his functions, or the police court judge or municipal court judge of a city, if there be one, and may be suspended upon such reasonable conditions as may be imposed by such mayor, other authorized
individual or judge. Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory thereof is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of such municipality, and such circuit court shall have jurisdiction to grant the relief sought.

§8-11-2. Validity of ordinances delegating discretion.

The fact that an ordinance vests in the governing body or some other body or officer a discretion to do, or refuse to do, a given thing, shall not invalidate such ordinance when it would be impractical to lay down by ordinance for all cases a uniform guide for exercising such discretion. This section shall not be construed to mean that a delegation of discretion in any other case shall necessarily invalidate an ordinance. However, if, in any case, a delegated discretion is exercised in an arbitrary or discriminatory manner, such ordinance, as so applied, shall be unlawful and void.

§8-11-3. Cases requiring enactment of ordinance.

In the following enumerated cases, the action of a governing body shall, except where otherwise provided in this code, be by ordinance:

1. Levying taxes or providing for the collection of fees of any kind;
2. Requiring a license to do business;
3. Relating to offenses and penalties;
4. Authorizing the issuance of bonds or other forms of indebtedness;
5. Providing for a public improvement;
6. Providing for the purchase of private property by the municipality or for the sale of property belonging to the municipality;
7. Laying out or vacating a public street, avenue, road, alley or way;
8. Relating to planning and zoning;
9. Granting franchises to public utilities;
18 (10) Providing for a contractual or other agreement
19 with another jurisdiction; and
20 (11) Relating to such other matters as the charter may
21 require.
22 The action of a governing body shall also be by ordi-
23 nance in any other case in which an ordinance is required
24 by the provisions of this code.

§8-11-4. Ordinance procedures.

1 (a) Notwithstanding any charter provision to the con-
2 trary, which charter provision was in effect on the effec-
3 tive date of this section, it shall not be necessary, except
4 where otherwise provided in this code, for the governing
5 body of any municipality to publish in a newspaper any
6 proposed ordinance prior to the adoption thereof or any
7 enacted ordinance subsequent to the adoption thereof,
8 and any and all ordinances of every municipality shall be
9 adopted in accordance with the following requirements,
10 except where different or additional requirements are
11 specified in other provisions of this code, in which event
12 such other different or additional requirements shall be
13 applicable:
14 (1) A proposed ordinance shall be read by title at
15 not less than two meetings of the governing body with at
16 least one week intervening between each meeting, unless
17 a member of the governing body demands that the ordi-
18 nance be read in full at one or both meetings. If such
19 demand is made, the ordinance shall be read in full as
20 demanded.
21 (2) At least five days before the meeting at which a
22 proposed ordinance, the principal object of which is the
23 raising of revenue for the municipality, is to be finally
24 adopted, the governing body shall cause notice of the
25 proposed adoption of said proposed ordinance to be pub-
26 lished as a Class I-0 legal advertisement in compliance
27 with the provisions of article three, chapter fifty-nine of
28 this code, and the publication area for such publication
29 shall be the municipality. The notice shall state the sub-
30 ject matter and general title or titles of such proposed
31 ordinance, the date, time and place of the proposed final
vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted.

(b) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection (b). Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising
73 of revenue for the municipality, which notice shall also
74 state where, within the municipality, the code or codes
75 will be available for public inspection.
76 (c) By a charter framed and adopted, revision of a
77 charter as a whole, or a charter amendment or amend-
78 ments, as the case may be, subsequent to the effective
79 date of this section, a city may require any or all ordi-
80 nances to be published in a newspaper prior to the adop-
81 tion thereof, may expressly adopt the provisions of this
82 section, may specify other additional requirements for the
83 enactment of ordinances, or may prescribe a procedure
84 for the enactment of ordinances in greater detail than
85 prescribed in this section, but a city shall not, except
86 in an emergency as specified in subsection (d) of this
87 section or except as otherwise provided in this code, have
88 the power and authority to lessen or reduce the require-
89 ments of this section.
90 (d) The governing body of a municipality may enact
91 an ordinance without complying with the rules prescribed
92 in this section only (1) in the case of a pressing public
93 emergency making procedure in accordance with the
94 provisions of this section dangerous to the public health,
95 safety or morals, and by affirmative vote of two thirds
96 of the members elected to the governing body, or (2)
97 when otherwise provided in this code. The nature of any
98 such emergency shall be set out in full in the ordinance.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND
ALLIED RELATIONS OF MUNICIPALITIES, GOV-
ERNING BODIES AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART I. GENERAL CORPORATE POWERS OF MUNICIPALITIES.
§8-12-1. General corporate powers of all municipalities.

PART II. HOME RULE POWERS FOR CITIES.
§8-12-2. Home rule powers for all cities.
§8-12-3. Creation by charter provision of certain independent city
boards.
§8-12-4. Power to provide by charter for initiative referendum and
recall.

PART III. GENERAL POWERS OF MUNICIPALITIES AND
GOVERNING BODIES.
§8-12-5. General powers of every municipality and the governing body
thereof.
PART IV. CERTAIN SPECIFIC POWERS OF MUNICIPALITIES
AND GOVERNING BODIES.

§8-12-6. Membership in association or league.
§8-12-7. Power and authority to purchase insurance and to indemnify officers, agents and employees.
§8-12-8. Group insurance programs authorized.
§8-12-9. Power and authority to enact ordinance prohibiting discrimination with respect to housing accommodations.
§8-12-10. Purchasing; competitive bidding.
§8-12-11. Lease agreements for equipment or materials with option to cancel or renew for one year authorized.
§8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.
§8-12-13. Building regulation; general and special codes.
§8-12-14. Permits for construction and alteration.
§8-12-15. Municipal inspection.
§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

PART V. SALE OR LEASE OF MUNICIPAL PUBLIC UTILITY.

§8-12-17. Sale or lease of municipal public utility.

PART VI. SALE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale or disposition of other municipal property.

PART VII. EXTRATERRITORIAL EXERCISE OF POWERS
AND AUTHORITY.

§8-12-19. Extraterritorial exercise of powers and authority.

PART VIII. SUITS AGAINST MUNICIPALITIES.

§8-12-20. Notice to be given of claims for damages due to alleged negligence; waiting period.

PART I. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

§8-12-1. General corporate powers of all municipalities.

1 Except as otherwise provided in this chapter, every municipality shall have plenary power and authority:
2 (1) To have and use a common seal;
3 (2) To contract and be contracted with;
4 (3) To institute, maintain and defend any civil action or other proceeding in any court;
5 (4) To take, purchase, hold and lease as lessee (on
6 an annual fiscal year basis where tax revenues are to be
7 used to make the rental payments required under any
such lease, with or without an option to renew such lease each year for another such period), for any muni-
cipal purpose, real or personal property within or without the corporate limits of the municipality, and to acquire by condemnation real or personal property within or without the corporate limits of the municipality for the purposes set forth in and in accordance with the pro-
visions of chapter fifty-four of this code, subject, however, to any limitations or qualifications set forth in this chap-
ter eight; and

(5) To take by gift, donation, grant, bequest or devise and to hold and administer, real or personal property within or without the corporate limits of the munici-
pality, absolutely, in trust or otherwise, for any public, charitable or municipal purpose, and to do all things necessary, useful, convenient or incidental to carry out the purpose of such gift, donation, grant, bequest, devise or trust, and to manage, sell, lease or otherwise dispose of the same in accordance with such terms and condi-
tions as may be prescribed by the donor, grantor or testator and accepted by the municipality.

PART II. HOME RULE POWERS FOR CITIES.

§8-12-2. Home rule powers for all cities.

(a) In accordance with the provisions of the “Mu-
nicipal Home Rule Amendment” to the constitution of this state, and in addition to the powers and authority granted by (i) such constitution, (ii) other provisions of this chapter, (iii) other general law, and (iv) any existing charter, any city shall have plenary power and authority by charter provision not inconsistent or in conflict with such constitution, other provisions of this chapter or other general law, or by ordinance not in-
consistent or in conflict with such constitution, other provisions of this chapter, other general law or any existing charter, to provide for the government, regu-
lation and control of the city’s municipal affairs, includ-
ing, but not limited to, the following:

(1) The creation or discontinuance of departments of the city’s government and the prescription, modification or repeal of their powers and duties;
MUNICIPALITIES

(2) The transaction of the city's business;
(3) The incurring of the city's obligations;
(4) The presentation, ascertainment, disposition and
discharge of claims against the city;
(5) The acquisition, care, management and use of the
city's streets, avenues, roads, alleys, ways and prop-
erty;
(6) The levy, assessment, collection and administra-
tion of such taxes and such special assessments for bene-
fits conferred, as have been or may be specifically au-
thorized by the Legislature;
(7) The operation and maintenance of passenger
transportation services and facilities, if authorized
by the public service commission, and if so autho-
rized, such transportation system may be operated
without the corporate limits of such city, but may
not be operated within the corporate limits of another
municipality without the consent of the governing body
thereof;
(8) The furnishing of all local public services;
(9) The government, protection, order, conduct, safety
and health of persons or property therein;
(10) The adoption and enforcement of local police, san-
tary and other similar regulations; and
(11) The imposition and enforcement of penalties for
the violation of any of the provisions of its charter or
any of its ordinances.
(b) By charter provision, a civil service system may
be provided for all or any class of city employees in
addition to those classes for which a civil service system
is made mandatory by general law.
(c) Any city is hereby authorized and empowered to
require, for the purpose of inquiring into and investi-
gating matters of concern to the city or its inhabitants,
the attendance and testimony of witnesses and the pro-
duction of evidence. In case of the failure or refusal of
a witness to appear and testify or to produce evidence,
the governing body may invoke the aid of the circuit
court of the county in which the city or the major
portion of the territory thereof is located. Upon proper
showing, the circuit court shall issue an order requiring
the witness to appear and give testimony and produce
evidence concerning the matter in question. A person
who fails or refuses to obey the order of the circuit court
may be punished by the court as for contempt. A claim
that any such testimony or evidence may tend to in-
criminate the person giving the testimony or evidence
shall not excuse the witness, but such testimony or evi-
dence shall not be used against the witness in any
criminal prosecution.

(d) Any city is hereby authorized and empowered
to provide for a sealer of weights and measures who
shall exercise his powers in accordance with the pro-
visions of article one, chapter forty-seven of this code.

§8-12-3. Creation by charter provision of certain independent
city boards.

In selecting or changing to a form of government based
on any of the four plans set forth in section two, article
three of this chapter, a city may by charter provision
withdraw from the governing body and administrative
authority of the city the municipal powers and authority
and duties pertaining to a city gas system, city electric
system, any municipal public works in accordance with
the provisions of article sixteen of this chapter, a city
waterworks system in accordance with the provisions of
article nineteen of this chapter, a city sewage treatment
and disposal works, or a combined city waterworks and
sewerage system in accordance with the provisions of
article twenty of this chapter, or any combination of the
foregoing, and confer such powers and authority and
duties upon one or more independent boards created by
charter provision, whose members shall be elected by the
qualified voters of the city, or appointed, in the manner
provided by charter provision. Unless and until abolished
by other charter provision, such board or boards so
created shall have complete and exclusive jurisdiction of
the exercise and discharge of the municipal powers and
authority and duties so conferred upon it or them, inde-
pendent of control by the governing body and adminis-
trative authority of the city. Such boards shall have the
powers and authority and perform the duties conferred
and required by general law.

The provisions of this section shall be construed as
conferring additional powers and authority upon cities,
and shall not be construed as affecting any powers and
authority heretofore conferred upon any city by general,
special or local law or by special legislative charter, or
parts thereof; however, whenever a board is established
by charter provision in accordance with the provisions of
this section in connection with a municipal public works,
a city waterworks system, or combined city waterworks
and sewerage system, as aforesaid, such board shall act
in lieu of the governing body of the city with respect
thereto, and the provisions of said articles sixteen, nineteen and twenty of this chapter authorizing the establish-
ment of a board with respect to any such public works,
waterworks system or combined waterworks and sewer-
age system shall not be applicable.

§8-12-4. Power to provide by charter for initiative, referendum
and recall.

Any city may by charter provision provide for any or
all of the following:

(1) The initiation of ordinances by petition bearing
the signatures, written in their own handwriting, of not
less than ten percent of the qualified voters of such city;

(2) The submission to the qualified voters of such city
of a proposed ordinance at a regular municipal election
or special municipal election upon petition bearing the
signatures, written in their own handwriting, of not less
than ten percent of the qualified voters of such city or
upon resolution of the governing body of such city; and

(3) The holding of a special municipal election to sub-
mit to the qualified voters of such city the question of the
recall of an elected officer upon petition bearing the
signatures, written in their own handwriting, of not less
than twenty percent of the qualified voters of such city.
Not more than one recall election shall be held with
respect to an officer during his term of office.
PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by
2 (i) the constitution of this state, (ii) other provisions of
3 this chapter, (iii) other general law, and (iv) any charter,
4 and to the extent not inconsistent or in conflict with any
5 of the foregoing except a special legislative charter, every
6 municipality and the governing body thereof shall have
7 plenary power and authority therein by ordinance or
8 resolution, as the case may require, and by appropriate
9 action based thereon:

10 (1) To lay off, establish, construct, open, alter, curb,
11 recurb, pave or repave and keep in good repair, or vacate,
12 discontinue and close, streets, avenues, roads, alleys,
13 ways, sidewalks, crosswalks, drains and gutters, for the
14 use of the public, and to improve and light the same, and
15 have them kept free from obstructions on or over them;

16 (2) To provide for the opening and excavation of
17 streets, avenues, roads, alleys, ways, sidewalks, cross-
18 walks and public places belonging to the municipality
19 and regulate the conditions under which any such open-
20 ing may be made;

21 (3) To prevent by proper penalties the throwing, de-
22 positing or permitting to remain on any street, avenue,
23 road, alley, way, sidewalk, square or other public place
24 any glass, scrap iron, nails, tacks, wire, other litter, or any
25 offensive matter or anything likely to injure the feet of
26 individuals or animals or the tires of vehicles;

27 (4) To regulate the use of streets, avenues, roads,
28 alleys, ways, sidewalks, crosswalks and public places
29 belonging to the municipality;

30 (5) To regulate the width of sidewalks on the streets,
31 avenues and roads, and, subject to the provisions of
32 article eighteen of this chapter, to order the sidewalks,
33 footways and crosswalks to be paved, repaved, curbed or
34 recurbed and kept in good order, free and clean, by the
35 owners or occupants thereof or of the real property next
36 adjacent thereto;
(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, wastes, ashes, trash and other similar matters;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;
(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or under his control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming table, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license
to operate a pool or billiard room, mandamus shall not
lie to compel such municipality to grant such license,
unless it shall clearly appear that the refusal of the
municipality to grant such license is discriminatory or
arbitrary; and in the event that the municipality deter-
mines to license any such business, the municipality shall
have plenary power and authority, and it shall be the
duty of its governing body, to make and enforce reason-
able ordinances regulating the licensing and operation of
such businesses;

(25) To protect places of divine worship and to preserve
peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or
fowls and to provide for the impounding, sale or destruc-
tion of animals or fowls kept contrary to law or found
running at large;

(27) To arrest, convict and punish any person for cruel-
ly, unnecessarily or needlessly beating, torturing, muti-
lating, killing or overloading or overdriving, or wilfully
depriving of necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or
other structures, for the making of division fences by the
owners of adjacent premises and for the drainage of lots
by proper drains and ditches;

(29) To provide for the protection and conservation of
shade or ornamental trees, whether on public or private
property, and for the removal of trees or limbs of trees
in a dangerous condition;

(30) To prohibit with or without zoning the location
of occupied house trailers or mobile homes in certain
residential areas;

(31) To regulate the location and placing of signs,
billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve,
maintain and operate a gas system, an electric system, a
waterworks system, or sewer system and sewage treat-
ment and disposal system, or any combination of the
foregoing (subject to all of the pertinent provisions of
articles nineteen and twenty of this chapter and particu-
larly to the limitations or qualifications on the right of eminent domain set forth in said articles nineteen and twenty), within or without the corporate limits of the municipality, or partly within and partly without the corporate limits of the municipality, except that the municipality shall not erect any such system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed, and where such system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality shall have the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality, and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, right-of-ways and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets, and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots, or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use, and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;
(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state department of health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitariums and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by the governing body, and, in order to carry into effect such authority the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;

(46) Except as otherwise provided, to require and take such bonds from such officers, when deemed necessary, payable to the municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from such employees and contractors such bonds in such penalty, with such sureties and with such conditions, as the governing body may see fit;
(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may deem necessary or appropriate for the public interest;

(50) To create, maintain and operate a system or systems for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or such classes thereof as may be deemed advisable;

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses; and

(55) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations.

PART IV. CERTAIN SPECIFIC POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-6. Membership in association or league.

1 Every municipality is hereby empowered and authorized to become a member of an association or league having for its general purpose the exchange and dissemination of information and ideas designed for the
more efficient administration and conduct of municipal
government and affairs. In order to finance the main-
tenance of such an organization, each municipality is
hereby empowered and authorized to pay into such an
organization annual dues or membership fees in an
amount to be fixed by the members thereof at the annual
meeting of such organization. Such dues or member-
ship fees may be appropriated by the governing body
as a current expense item and included in the annual
budget.

§8-12-7. Power and authority to purchase insurance and to
indemnify officers, agents and employees.

(a) Every municipality shall have plenary power and
authority to contract and expend public funds for the
purchase of one or more policies of public liability in-
surance, with or without a sharing in the cost thereof
by the officers, agents and employees of such munici-
pality, providing the municipality and its officers, agents
and employees insurance coverage for legal liability of
said municipality and its officers, agents and employees
for bodily injury, personal injury or damage (including,
but not limited to, false arrest and false imprisonment)
and property damage, and affording said municipality
and its officers, agents and employees insurance coverage
against any and all legal liability arising from, growing
out of, by reason of or in any way connected with, any
acts or omissions of said municipality, or its officers,
agents or employees in the performance of their official
duties. So long as the coverage aforesaid is obtained
and remains in full force and effect as to the police offi-
cers of a municipality, the bond specified in section five,
article seven, chapter sixty-one of this code shall not
be required as to such police officers.

(b) Every municipality shall also have plenary power
and authority to provide for the indemnification of its
officers, agents and employees against any and all lia-
bility, losses, damages, expenses and costs, including court
costs and reasonable and necessary attorney fees, arising
from, growing out of, by reason of or in any way con-
ected with any acts or omissions of said officers, agents
or employees in the performance of their official duties. Such indemnification may be provided by a self-funding program, by expenditures from the general fund, or by the purchase of insurance as provided in subsection (a) of this section, with or without financial contribution or participation by such officers, agents and employees. Prior to the expenditure of any public funds pursuant to the power and authority conferred by the provisions of this subsection (b), the governing body shall determine by ordinance applicable to an entire class or classes of officers, agents or employees the manner in which such power and authority shall be exercised.

§8-12-8. Group insurance programs authorized.

Every municipality shall have plenary power and authority to negotiate for, secure and adopt for the regular employees thereof (other than provisional, temporary, emergency and intermittent employees) who are in employee status with such municipality on and after the effective date of this section, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this state and covering life; health; hospital care; surgical or medical diagnosis, care, and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; and any other policy or policies of group insurance which in the discretion of the governing body bear a reasonable relationship to the foregoing coverages. The provisions and terms of any such group plan or plans of insurance shall be approved in writing by the insurance commissioner of this state as to form, rate and benefits.

The municipality is hereby authorized and empowered to pay the entire premium cost, or any portion thereof, of said group policy or policies. Whenever the above-described regular employees shall indicate in writing that they have subscribed to any of the aforesaid insurance plans on a group basis and the entire cost thereof is not paid by the municipality, the municipality is hereby authorized and empowered to make periodic premium deductions of the amount of the contribution each such
28 subscribing employee is required to make for such par-
29 ticipation from the salary or wage payments due each
30 such subscribing employee as specified in a written as-
31 signment furnished to the municipality by each such
32 subscribing employee.

33 When a participating employee shall retire from his
34 employment, he may, if he so elects and the insurance
35 carrier or carriers agree, remain a member of the group
36 plan by paying the entire premium for the coverage
37 involved.

§8-12-9. Power and authority to enact ordinance prohibiting
discrimination with respect to housing accommodations.

1 Notwithstanding any statutory or charter provision
2 to the contrary, the governing body of every municipality
3 shall have plenary power and authority, by ordinance,
4 to prohibit discrimination on the basis of race, creed,
5 color or national origin in the sale, purchase, lease or
6 rental of housing accommodations within the corporate
7 limits of such municipality, and to impose fines for the
8 violation of the provisions of any such ordinance.

§8-12-10. Purchasing; competitive bidding.

1 (a) Every municipality may provide for the cen-
2 tralized purchasing of materials, supplies and equipment;
3 and the term “equipment,” for the purposes of this sec-
4 tion, shall include, but not be limited to, motor vehicles.
5 Every municipality may, by agreement with the state
6 director of the division of purchases of the department
7 of finance and administration, purchase the same through
8 such department, or may enter into agreements with
9 one or more other municipalities, counties or county
10 boards of education, or any combination thereof, for
11 centralized purchasing for all governmental units which
12 are parties to such agreement.

13 (b) Every municipality is hereby empowered and
14 authorized to provide by ordinance whether competitive
15 bidding is to be required in the purchase of materials,
16 supplies and equipment and if so the type or types of
purchases with respect to which the same shall be re-
required and the method and manner in which bids shall
be obtained. Any ordinance adopted by any municipality
in accordance with the provisions of this subsection (b)
shall supersede any provision pertaining to competitive
bidding contained in the special legislative charter of
such municipality.

§8-12-11. Lease agreements for equipment or materials with
option to cancel or renew for one year authorized.

Notwithstanding any other provision of this code or
any charter provision to the contrary, the governing
body of every municipality shall have plenary power
and authority to enter into and execute a lease agreement
for the obtaining of equipment or material. Any such
lease agreement shall not be void or voidable because
it also provides (a) that title to the equipment or ma-
terial shall vest in the municipality at or before the
expiration of the leasehold term upon fulfillment of the
terms and conditions stipulated in such lease agreement;
(b) for application of the annual rental payments made
thereunder toward the purchase price of such equip-
ment or material, although such total rental payments
under any such agreement are in excess of the cash price
of the equipment or material described therein, whether
such excess be by way of interest or a time-price dif-
ferential; and (c) that the risk of loss of the equipment
or material shall be borne by the municipality. Any
such lease agreement shall be void, however, unless such
agreement provides that the municipality shall have the
following options thereunder during each fiscal year of
the agreement: (1) The option to terminate the agree-
ment and return the equipment or material without any
further obligation on the part of the municipality; (2)
the option to continue the agreement for an additional
rental period not to exceed one year in length; and, when
the agreement contains the provisions described in (a),
(b) and (c) above, (3) the option to pay in advance at
any time during any fiscal year the balance due under
such agreement, with an appropriate rebate of the un-
earned interest or time-price differential.
The funds for the initial rental payment under any such agreement must be legally at the disposal of the municipality for expenditure in the fiscal year in which such agreement is executed, and in the event the municipality elects during any subsequent fiscal year to continue the agreement for any additional rental period or to pay in advance the balance due, the funds for the additional rental period or the funds to be used to pay the balance in advance must be legally at the disposal of the municipality for expenditure in the fiscal year in which the municipality elects to continue the agreement or to pay in advance the balance due, as the case may be.

§8-12-12. Power and authority to lease, establish, maintain and operate off-street parking facility.

Every municipality shall have plenary power and authority to enter into a lease with the owner or owners of any real property situate within the corporate limits of such municipality by which such real property is demised, leased and let to such municipality for an off-street parking facility (including parking lots, buildings, ramps, parking meters and other appurtenances deemed necessary, appropriate or incidental to the regulation, control and parking of motor vehicles), which off-street parking facility is hereby declared to be a municipal public work, and every such municipality shall have plenary power and authority to establish, maintain and operate such parking facility. Every such lease shall be authorized by an ordinance adopted by the municipality. Every municipality shall have this power and authority whether such real property is at the time of the execution of such lease already equipped, maintained and operated, in whole or in part, as a parking facility or whether such real property is at such time unimproved and is to be, under the terms of the lease, improved by the installation of parking meters, lighting equipment, pavement or other equipment necessary, appropriate, useful, convenient or incidental to the use of such property for such purpose.
Any such ordinance may provide that the police force
or department of such municipality shall police the
parking facility; and that overtime parking at the facility
or other violations of the ordinance shall be a misde-
meanor punishable as provided in said ordinance. Any
such ordinance shall also provide for the collection of
reasonable charges for the use of such parking facility
by the public generally, and any such ordinance may
be amended from time to time. Any lease entered into
by and between any such municipality and the owner
or owners of any such real property may contain such
terms and conditions as may be agreed upon between
the parties, not inconsistent with any of the provisions
of this section or other provisions of law. The ordinance
authorizing any such lease may also specify terms and
conditions which must be contained in such lease.

Under no circumstances whatever shall any obligation
incurred under the provisions of this section or any
such lease be deemed to be or create an indebtedness of
the municipality, the governing body or any member
thereof, any officer thereof, or other municipal official,
and all of the expenses of whatever kind, nature or
character incident to the establishment, maintenance and
operation of such parking facility, including, but not
limited to, such rental payments as are provided for in
the lease and the cost of policing the facility, shall be
paid solely from revenues derived from such parking
facility, and from revenues derived from other parking
facilities or meters not pledged to pay for such other
parking facilities or meters. No member of the governing
body of any such municipality, or any officer thereof,
or other municipal official, shall under any circumstances
be personally liable under any such lease or upon any
obligation of any kind, nature or character arising under
the provisions of this section.

The power and authority herein granted shall be in
addition to and not in derogation of any power and
authority vested in any municipality under any consti-
tutional, statutory or charter provision now or hereafter
in effect. This section shall, without reference to any
other provisions of this code or any other statute or any
The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:

1. Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

2. Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair thereof; and

3. Regulate plumbing by prescribing the minimum specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.

The governing body of every municipality shall have plenary power and authority to require a permit as a condition precedent to the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance.
§8-12-15. Municipal inspection.

1 The governing body of every municipality shall have plenary power and authority to provide for the entering and inspection of private premises to aid in the enforcement of any state law or municipal ordinance: Provided, That this section shall not be construed as purporting to authorize an unreasonable search and seizure prohibited by section six, article three of the constitution of this state.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

1 Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public welfare.

13 The governing body in formally adopting such ordinances shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio members of such enforcement agency.

20 Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in conducting hearings: Provided, That any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession.
Any ordinance adopted pursuant to the provisions of this section shall provide for the assessment of the costs of such repairs, alterations or improvements, or such vacating and closing or removal or demolition, or any combination thereof, by order of the enforcement agency, and said costs, after the sale of any and all salvaged material is credited to the account, shall be a lien against the real property upon which such costs were incurred.

All complaints or orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order: Provided, however, That no ordinance shall be adopted without providing therein for the right to apply to the circuit court for a temporary injunction restraining the enforcement agency pending final disposition of the cause. In the event such application is made, a hearing thereon shall be had within twenty days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require. Costs shall be imposed in such manner as in the discretion of the court shall seem meet and proper.

PART V. SALE OR LEASE OF MUNICIPAL PUBLIC UTILITY.

§8-12-17. Sale or lease of municipal public utility.

In any case where a municipality shall own a gas system, an electric system, a waterworks or other public utility, and the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, it shall be lawful for the governing body, by ordinance legally adopted, to submit to the qualified voters of such municipality, at any regular municipal election or at any special municipal election called for that purpose, the question of making or effecting such sale or lease. In such case the governing body shall, in the ordinance submitting such question to a vote, set forth in full the terms of such proposed sale or lease, the name of the proposed purchaser or lessee and the date of such election, and a notice containing this information
shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. Such election shall be held in all respects in compliance with the provisions of chapter three of this code, so far as the same are applicable and not inconsistent herewith, and the provisions of article five of this chapter. If a majority of the legal votes cast at such election upon such question be in favor of the proposed sale or lease of such utility, the governing body, upon the ascertainment of the result of such election, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance as aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, That if at any time after such election and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy such public utility at a greater price than the sale price which shall have been so voted upon and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been authorized by vote as aforesaid, the governing body shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, without resubmitting the question to a vote; but, if a sale shall have been authorized by vote as aforesaid, and such subsequent proposition be for a lease, or, if a lease shall have been so authorized, and the subsequent proposition shall be for a sale, the governing body shall have no power to accept the same without submitting the question thereof to a vote of the people as first above provided. Before any such second or subsequent proposition shall be submitted to a vote, after a sale or lease shall have been authorized at an election held hereunder, the person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if
the same shall be approved at the election to be called thereon. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any bonded indebtedness created in respect to such public utility, and in case there be no bonded indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of fire-fighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such bonded indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

PART VI. SALE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale or disposition of other municipal property.

Every municipality may sell or dispose of any of its real or personal property (other than a public utility which shall be sold or leased in accordance with the provisions of section seventeen of this article) as authorized in article five, chapter one of this code, or to the United States of America or any agency or instrumentality thereof for a public purpose for an adequate consideration, without considering alone the present commercial or market value of such property. In all other cases, any municipality is hereby empowered and authorized to sell any of its real or personal property for a fair and adequate consideration, such property to be sold at public auction at a place designated by the governing body, but before
making any such sale, notice of the time, terms and place
of sale, together with a brief description of the property to
be sold, shall be published as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the municipality: Provided,
That the requirements of notice and public auction shall
not apply to the sale of any one item or piece of property
of less value than one thousand dollars, and under no cir-
cumstances shall the provisions of this section be con-
strued as being applicable to any transaction involving the
trading in of municipally owned property on the pur-
chase of new or other property for the municipality, and
every municipality shall have plenary power and author-
ity to enter into and consummate any such trade-in
transaction.

PART VII. EXTRATERRITORIAL EXERCISE OF POWERS
AND AUTHORITY.

§8-12-19. Extraterritorial exercise of powers and authority.

1 Wherever the powers and authority granted in this
2 chapter cannot be reasonably and efficiently exercised by
3 confining the exercise thereof within the corporate limits
4 of the municipality, the powers and authority of the
5 municipality shall extend beyond the corporate limits to
6 the extent necessary to the reasonably efficient exercise of
7 such powers and authority within the corporate limits.
8 Such powers and authority, unless otherwise provided in
9 this code or elsewhere in law, shall not, however, extend
10 more than one mile beyond the corporate limits, and such
11 powers and authority shall not extend into the corporate
12 limits of another municipality without the consent of the
13 governing body thereof.

PART VIII. SUITS AGAINST MUNICIPALITIES.

§8-12-20. Notice to be given of claims for damages due to al-
leged negligence; waiting period.

1 Notwithstanding any other provision of this code or any
2 charter provision to the contrary, no action shall be main-
3 tained against any municipality for injury to any person
4 or property or for wrongful death alleged to have been
sustained by reason of the negligence of the municipality, or of any officer, agent or employee thereof, unless a written verified statement by the claimant, his agent, attorney or representative of the nature of the claim and of the time and place at which the injury is alleged to have occurred or been received shall have been filed with the mayor, recorder or municipal attorney within thirty days after such cause of action shall have accrued. The cause of action shall be deemed to have accrued on the date of the sustaining of the injury, except that where death results therefrom the time for the personal representative to give notice shall run from the date of death. An action at law for damages for injury to any person or property or for wrongful death shall not be commenced until the expiration of thirty days after the filing of the notice provided for in this section.

ARTICLE 13. TAXATION AND FINANCE.

PART I. POWERS OF TAXATION.

§8-13-1. General property and benefit taxes.
§8-13-2. Correcting erroneous tax levy.
§8-13-4. Municipal license and tax thereon when state license required.
§8-13-5. Business and occupation or privilege tax.
§8-13-6. Amusement tax.
§8-13-7. Tax on purchases of intoxicating liquors in municipalities; private club fees.
§8-13-8. License tax on horse racing.
§8-13-10. Domestic animal tax.

PART II. BORROWING POWER.

§8-13-12. Borrowing power.

PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

PART IV. PENALTIES.


PART V. COLLECTION OF MUNICIPAL TAXES, FINES AND ASSESSMENTS.

§8-13-16. Remedies for failure to collect, account for or pay over moneys.
PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.

§ 8-13-17. Reports, etc., to conform to fiscal year.
§ 8-13-20. Balances in sinking fund may be transferred to general fund where bonded indebtedness has been paid; application of remitted funds.
§ 8-13-21. Disposition of funds for public works when materials etc., not available.
§ 8-13-22. Payment of money out of municipal treasury must be by order; signing of orders by mechanical or electrical devices; officers jointly and severally liable for neglect; forgery; penalty.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§ 8-13-23. Preparation, publication and disposition of financial statements.

PART I. POWERS OF TAXATION.

§ 8-13-1. General property and benefit taxes.

1  Every municipality shall have plenary power and authority:
3  (1) To levy and collect taxes on real and personal property for any municipal purpose within the limitations and subject to the classifications prescribed by the constitution and the general law of this state; and the assessment, levy and collection of such taxes shall be governed by the provisions of chapters eleven and eleven-a of this code; and
10 (2) To finance public improvements by the levy and collection of special assessments or other benefit taxes in the manner and to the extent permitted by article eighteen of this chapter and by any other general law.
14 The entire cost of sidewalk construction, including curbing, may be imposed upon the owners of abutting property and made a lien thereon which shall have priority over all other liens except tax liens.

§ 8-13-2. Correcting erroneous tax levy.

1  Upon the petition of interested persons, as provided in chapter eleven of this code for superseding levies, the circuit court of the county in which the municipality or the major portion of the territory thereof is located may supersede a levy made by such municipality, in the same manner, and to the same effect, as provided in said chapter. The court, if it deem proper to do so, may require security for costs.

1 Every municipality shall have plenary power and authority to levy and collect an annual capitation tax upon all inhabitants of the municipality who have attained the age of twenty-one years. The governing body may exempt from such tax all individuals who are dependent in whole or in part upon public assistance for their support. The rate of such tax shall not exceed two dollars per individual and the revenue so produced shall be applied primarily to the maintenance and repair of streets, avenues, roads, alleys, ways and other public places.

§8-13-4. Municipal license and tax thereon when state license required.

1 Whenever anything, for which a state license is required, is to be done within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to require a municipal license therefor and for the use of the municipality to impose a reasonable tax thereon which may not exceed the amount of the state license tax. Upon proper application for such municipal license and payment of the prescribed reasonable tax by any person who has a valid and subsisting state license, such municipal license shall be issued.

§8-13-5. Business and occupation or privilege tax.

1 Whenever any business or occupation, upon which the state imposes an annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation or privilege tax thereon for the use of the municipality: Provided, That in no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the rate imposed by the state, exclusive of surtaxes, and the ordinance imposing such tax shall conform with the provisions of said article
thirteen as to the waiver of penalties: Provided, however,
That no municipality shall impose a business and occupa-
tion or privilege tax upon any businesses, occupations or
privileges taxed under sections two-a, two-b, two-c, two-d,
two-e, two-g, two-h, two-i and two-j of said article thir-
teen, chapter eleven in excess of the rates in effect under
said article thirteen on January one, one thousand nine
hundred fifty-nine.

Any taxes levied pursuant to the authority of this sec-
tion may be made operative as of the first day of the
current fiscal year and each year thereafter.

§8-13-6. Amusement tax.

Every municipality shall have plenary power and
authority to levy and collect an admission or amusement
tax upon any public amusement or entertainment con-
ducted within the corporate limits thereof for private
profit or gain. The tax shall be levied upon the pur-
chaser and added to and collected by the seller with the
price of admission, or other charge for the amusement
or entertainment. The tax shall not exceed two percent
of the admission price or charge, but a tax of one cent
may be levied and collected in any case.

Any ordinance imposing such tax shall contain rea-
sonable rules and regulations governing the collection
thereof by the seller and the method of his payment
and accounting therefor to the municipality.

§8-13-7. Tax on purchases of intoxicating liquors in munici-
palities; private club fees.

Every municipality shall have plenary power and
authority to levy and collect a tax upon all purchases
of intoxicating liquors from the alcohol beverage control
commissioner within such municipality: Provided, That
no municipality shall have authority to levy or collect
any such tax on the intoxicating liquors sold by or pur-
chased from holders of a license issued under the pro-
visions of article seven, chapter sixty of this code. The
tax shall be levied upon the purchaser and shall be added
to and collected with the price of purchase. The tax shall
not exceed three percent of the purchase price.
A copy of any ordinance imposing the tax authorized by this section shall be certified by the mayor of the municipality to the West Virginia alcohol beverage control commissioner. The commissioner by appropriate rules and regulations shall provide for the collection of such tax and for distribution thereof to the respective municipalities for which the same shall be collected. Such rules and regulations shall provide that all such taxes shall be deposited with the state treasurer and distributed quarterly by the treasurer upon warrants of the auditor payable to the municipality.

Every municipality shall have plenary power and authority to levy and collect a fee from any private club licensee whose premises are situate therein, as authorized in section seven, article seven, chapter sixty of this code.

§8-13-8. License tax on horse racing.

Every municipality within the corporate limits of which a horse race track is located in whole or in part shall have plenary power and authority to impose upon the operator of the track a daily license tax for the privilege of conducting horse racing within the corporate limits of the municipality. Such daily license tax shall not exceed the amount of the daily license tax due from such operator to the state under the provisions of article twenty-three, chapter nineteen of this code. The daily license tax hereby authorized shall not be applicable to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days. A municipal license tax on horse racing may be imposed under the provisions of this section but not under the provisions of section four of this article.


Every municipality shall have plenary power and authority to levy and collect an annual motor vehicle operator's license tax not to exceed two dollars. The tax shall apply only to inhabitants of the municipality.
§8-13-10. Domestic animal tax.

1 Every municipality shall have plenary power and authority to levy and collect an annual license tax upon the privilege of keeping a domestic animal within the corporate limits of the municipality.


1 Any city may include by charter provision, and may continue to exercise, all powers of taxation, other than property taxation, which were set forth in the special legislative charter of such city in effect on the date of the ratification of the municipal home rule amendment to the constitution of this state, being section thirty-nine-a, article six of said constitution, and which are not in conflict with general law.

PART II. BORROWING POWER.

§8-13-12. Borrowing power.

1 Every municipality shall have plenary power and authority to borrow money on the general faith and credit of the municipality for any municipal purpose, in the manner and subject to the limitations provided by law for the issuance of general obligation bonds.

PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

1 Notwithstanding any charter provision to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash and any other similar matter, shall have plenary power and authority to provide by ordinance for the installation, continuance, maintenance or improvement of such service, to make reasonable regulations with respect thereto, and to impose by ordinance upon the users of such service, subject to the provisions of
chapter twenty-four of this code, reasonable rates, fees and charges to be collected in the manner specified in the ordinance. The municipality shall not, however, have a lien on any property as security for payments due under such ordinance. Notwithstanding the provisions of section four, article eleven of this chapter, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. In the event thirty percent of the qualified voters of the municipality by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within fifteen days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance shall not become effective until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of such municipality at a regular municipal election or special municipal election, as the governing body shall direct. Voting thereon shall not take place until after notice of such submission shall have been given by publication as above provided for the publication of the ordinance after it is adopted or substantially amended. The powers and authority hereby granted to municipalities and to the governing bodies thereof are in addition and supplemental to the powers and authority named in any charters thereof. Notwithstanding any other provisions of this section, in the event rates, fees and charges herein provided for shall be imposed by the governing body of any municipality for the purpose of replacing and in amounts approximately sufficient to replace in its general fund such amounts as shall be appropriated to be paid out of ad valorem taxes upon property within the municipality pursuant to an election duly called and held under the constitution and laws of the state to authorize the issuance and sale of general obligation bonds of the municipality for public improvement purposes, in the call for which election it shall be stated that the governing body of the munici-
pality proposes to impose rates, fees and charges in
specified amounts under this section for the use of one
or more of the services above specified, which shall be
related to the public improvement proposed to be made
with the proceeds of the bonds, no notice, publication of
notice, or referendum or election or other condition or
prerequisite to the imposition of such rates, fees and
charges shall be required or necessary other than the
legal requirements for issuance and sale of such general
obligation bonds.

PART IV. PENALTIES.


1 Every municipality shall have plenary power and au-
2 thority to provide, by ordinance, penalties for the viola-
3 tion of any ordinance enacted pursuant to the provisions
4 of this article.

PART V. COLLECTION OF MUNICIPAL TAXES, FINES AND
ASSESSMENTS.


1 Unless otherwise provided, it shall be the duty of the
treasurer of the municipality, or other individual who
may be designated by general law, by charter provision
or by the governing body, to collect and promptly pay
into the municipal treasury all taxes, fines, special assess-
ments and other moneys due the municipality. All such
taxes, fines, special assessments (except assessments for
permanent or semipermanent public improvements) and
other moneys due the municipality are hereby declared
to be debts owing to the municipality, for which the
debtor shall be personally liable, and the treasurer, or
other individual so designated, may enforce this liability
by appropriate civil action in any court of competent
jurisdiction, and is hereby vested with the same rights to
distrain for the same as is vested in the sheriff for the
collection of taxes. Such treasurer or other individual
shall give bond, conditioned according to law, in such
penalty and with such security as the governing body
may require.
§8-13-16. Remedies for failure to collect, account for or pay over moneys.

1 If the treasurer, or other individual designated, shall fail to collect, account for or pay over all or any of the moneys with which he may be chargeable, belonging to the municipality, according to the conditions of his bond and the orders of the governing body, it shall be lawful for the governing body to recover the same, in the name of the municipality, by civil action in the circuit court of the county in which the municipality or the major portion of the territory thereof is located, or, where the sum does not exceed three hundred dollars, by suit before a justice of the district in which the municipality or the major portion of the territory thereof is located, against the treasurer, or other designated individual, or his sureties, or any or either of them, or his or their executors or administrators.

PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.

§8-13-17. Reports, etc., to conform to fiscal year.

1 All reports, settlements, accounts and statements of municipalities which are now, or which may hereafter be, required by law shall be kept and made to conform to the fiscal year.


1 The provisions of article nine, chapter six of this code shall apply to every municipality. By charter provision or ordinance, provision may be made for a system of budgeting, accounting and record keeping, and for the conduct of the transactions of the municipality, but any such provision shall not conflict with said article nine, chapter six or with the regulations or orders promulgated thereunder by the state tax commissioner.


1 The governing body of every municipality shall have plenary power and authority to establish a special fund to be known as the "capital reserve fund." The fund shall consist of unexpended balances of other funds which may be transferred to the fund, with the approval of the state
The fund shall be used, from time to time, for the construction, reconstruction, purchase or replacement of, or addition to, municipal buildings, public works, equipment, machinery, motor vehicles or other capital assets. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget.

If a municipality accumulates its capital reserve fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of September of each year. The proceeds of the fund may be withdrawn by the municipality upon reasonable notice in writing to the state sinking fund commission.

§8-13-20. Balances in sinking fund may be transferred to general fund where bonded indebtedness has been paid; application of remitted funds.

Every municipality shall have plenary power and authority to transfer to the general fund of such municipality any unexpended balances of funds raised to pay the interest on and create sinking funds for any bonded indebtedness where said bonded indebtedness has been fully paid off and discharged, or where there remains no other bonded debt within such taxing district to which such unexpended balances might be applied, as well as any balance remaining in any fund levied and collected under authority of any special levy election.

The state sinking fund commission is authorized in any such case to remit any balances under its supervision or control to such municipality to be credited to its general fund.

In any case where such funds are transferred from sinking funds, or are remitted from the state sinking fund commission, as hereinabove provided, no part of the moneys so refunded or remitted shall be applied to the payment of current expenses of the municipality, but
20 such funds shall be applied, first, to the liquidation of
21 existing nonbonded indebtedness of such municipality;
22 second, for capital improvements; and third, for the
23 liquidation of bonded indebtedness of such municipality.

§8-13-21. Disposition of funds for public works when materials
etc., not available.

1 Every municipality which has raised, or which shall
2 hereafter raise, by taxation or otherwise, any funds for
3 any municipal public works, and is unable to obtain the
4 necessary materials and equipment on account of priority
5 restrictions imposed by the federal government on the
6 sale of such materials and equipment, or for any other
7 reason, shall have plenary power and authority, by proper
8 resolution of its governing body, to place said funds in a
9 special fund until such time as such materials and equip-
10 ment shall become available to said municipality. When
11 such materials and equipment shall become available to
12 said municipality, it shall, by proper resolution of its
13 governing body, direct the use of said funds for the pur-
14 pose or purposes for which the same were raised.

§8-13-22. Payment of money out of municipal treasury must
be by order; signing of orders by mechanical or
electrical devices; officers jointly and severally
liable for neglect; forgery; penalty.

1 No money shall be paid out of any municipal treasury
2 except upon an order duly signed by the municipal off-
3 cers authorized to sign such order: Provided, That such
4 signatures may be made by means of such mechanical or
5 electrical device as the governing body may select. Such
6 mechanical or electrical device for the making of such
7 signatures shall be safely kept in the office of the trea-
8 surer or recorder so that no one shall have access thereto
9 except the municipal officers authorized to sign such
10 orders, the treasurer or recorder and such of their respec-
11 tive employees as may be authorized to have access
12 thereto.
13 If the municipal officer or officers charged with the
14 responsibility of keeping the aforementioned mechanical
15 or electrical device wilfully or by neglect permit or make
16 it possible for an unauthorized individual to sign the
name of any municipal officer authorized to sign such order by the use of any such mechanical or electrical device upon any warrant, order or check, such municipal officer or officers shall be personally liable, jointly and severally, for the amount of any loss resulting to the municipality.

If any individual other than the individuals authorized so to do shall sign the name of any municipal officer authorized to sign such order by the use of any such mechanical or electrical device, or otherwise, upon any warrant, order or check, he shall be guilty of forgery; and if any individual shall utter or attempt to employ as true such forged warrant, order or check, knowing the same to be forged, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than two nor more than ten years.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§8-13-23. Preparation, publication and disposition of financial statements.

Every city, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and cause to be published a sworn statement revealing (a) the receipts and expenditures of the city during the previous fiscal year arranged under descriptive headings, (b) the name of each person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the city, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. Every city shall transmit to any resident of such city requesting the same a copy of any published statement for the fiscal year designated, supplemented by a document listing the names of each person who received less than fifty dollars from any fund during such fiscal year.
and showing the amount paid to each and the purpose for which paid.

Every town or village, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing (a) the receipts and expenditures of the town or village during the previous fiscal year arranged under descriptive headings, (b) the name of each person who received money from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the town or village, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

Every town or village shall transmit to any resident of such town or village requesting the same a copy of any such statement for the fiscal year designated. Any such town or village may, if the governing body thereof so elects, also publish such statement as a Class I legal advertisement in compliance with the provisions of said article three, chapter fifty-nine, and in such event, the publication area for such publication shall be the town or village.

The statement required by the first paragraph of this section and the statement required by the third paragraph of this section shall be sworn to by the recorder of the municipality and the mayor thereof and two members of the governing body of such municipality. As soon as practicable following the close of the fiscal year, a copy of any statement herein required shall be filed by the municipality with the state tax commissioner, and the clerk of the county court of the county, and the clerk of the circuit court of the circuit, in which the municipality or the major portion of the territory thereof is located. If the governing body fail or refuse to perform any of the duties set forth in this section, every member of such governing body and the recorder thereof concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars. If any of the
provisions of this section are violated, it shall be the duty of the prosecuting attorney of the county in which the municipality or the major portion of the territory thereof is located to immediately present the evidence thereof to the grand jury if in session, and if not in session, he shall cause such violations to be investigated by the next succeeding grand jury.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

PART I. LAW AND ORDER AND POLICE FORCE OR DEPARTMENTS.

§8-14-1. Power and authority with respect to the preservation of law and order; police force or departments.

§8-14-2. Hours of duty for policemen in a paid police department under civil service; overtime compensation or time off; municipal emergencies.

PART II. POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN.

§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.

PART III. POLICE MATRONS.

§8-14-4. Police matrons.

PART IV. SPECIAL SCHOOL ZONE POLICE OFFICERS.

§8-14-5. Special school zone police officers.

PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-6. Qualifications for appointment or promotion to positions in certain paid police departments to be ascertained by examination; provisions exclusive as to appointments, etc., definitions.

§8-14-7. Policemen’s civil service commission generally.

§8-14-8. Recorder’s ex officio clerk of commission; clerical and stenographic services.

§8-14-9. Rooms, stationery, etc., to be furnished by city; appropriations required.

§8-14-10. Powers, authority and duties of policemen’s civil service commission.

§8-14-11. Rules and regulations for all examinations; probationary appointments.

§8-14-12. Form of application; age and residency requirements; exceptions.

§8-14-13. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.

§8-14-14. Refusal to examine or certify; review thereof.
§8-14-15. Appointments from list of eligibles.
§8-14-16. Noncompetitive examination for filling vacancy; provisional appointment.
§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.
§8-14-18. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.
§8-14-19.Political activity of members of certain paid police departments prohibited; petition for vacating appointment; action on petition; appeal.
§8-14-20. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.
§8-14-21. Election to determine if civil service provisions of article shall apply to Class III city or Class IV town or village; existing police civil service not affected; certain regular members automatically covered.
§8-14-22. Offenses and penalties.
§8-14-23. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected; certain members automatically covered; continuance of police civil service systems.

PART I. LAW AND ORDER AND POLICE FORCE OR DEPARTMENTS.

§8-14-1. Power and authority with respect to the preservation of law and order; police force or departments.

1 Every municipality shall have plenary power and authority to protect persons and property within the municipality and preserve law and order therein, and, for this purpose, to provide for, establish, equip and maintain a police force or department. The police force or department in each municipality shall be subject to the authority, control and discipline of the administrative authority.

9 For the purposes of this article, the term "paid police department" shall be taken to mean only a municipal police department maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean a department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

§8-14-2. Hours of duty for policemen in a paid police department under civil service; overtime compensation or time off; municipal emergencies.

1 In any paid police department of any municipality now or hereafter operated under police civil service as
provided in subsequent sections of this article, the members of any such department subject to and under civil service shall not be required to be on duty more than five days in any calendar week, nor more than eight hours in any one day, unless they shall be compensated as hereinafter in this section provided. For any time spent on duty by any member of a paid police department under civil service in excess of eight hours in any one day or in excess of forty hours in any one week, such member shall, notwithstanding any other provisions of this code to the contrary, be paid, at a rate not less than his regular rate of pay, for each full hour or allowed equal time off: Provided, That in time of municipal emergency as hereinafter in this section defined, the foregoing provisions with respect to additional pay or time off shall not apply. A municipal emergency for purposes of this section shall mean an unusual or abnormal condition beyond the municipality's control and a condition beyond its reasonable power to remove or overcome.

PART II. POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN.

§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.

The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a constable of a district within the same. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of any chief, policeman or sergeant shall extend anywhere within the county or counties in which the municipality is located, and any such chief, policeman or sergeant shall have the same authority of pursuit and arrest beyond his normal juris-
diction as has a sheriff. For an offense committed in his presence, any such officer may arrest the offender without a warrant and take him before the mayor or police court or municipal court to be dealt with according to law. He and his sureties shall be liable to all the fines, penalties and forfeitures which a constable of a district is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties and forfeitures are recovered against a constable.

In addition to the mayor, or police court judge or municipal court judge, if any, of a city, the chief of police of any municipality and in the absence from the station house of the chief of police the captains of police and lieutenants of police shall each have authority to administer oaths to complainants and to issue arrest warrants thereon for all violations of the ordinances of such municipality.

It shall be the duty of the mayor and police officers of every municipality and any municipal sergeant to aid in the enforcement of the criminal laws of the state within the municipality, independently of any charter provision or any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of or arrest any offender and take him before a regular or ex officio justice of the peace of the county to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a justice of the peace, and the same authority to arrest without a warrant for offenses committed in his presence, as a constable.

PART III. POLICE MATRONS.

§8-14-4. Police matrons.

1 The mayor of every city may appoint one or more reputable women as police matrons. Upon the death, resignation or removal of a police matron, any successor shall be appointed by the mayor as aforesaid.
Each police matron shall have, subject to the general
control of the head of the police department, the entire
care and control of all women under arrest in the police
station for which she serves, and she may, at any time,
call upon any police officer connected with such police
station for assistance.

Whenever a woman is arrested and taken to a police
station to which a matron is attached and when a matron
is not present, it shall be the duty of the officer in
charge of such police station to cause a matron to be
immediately summoned, and it shall be the duty of the
police matron to hold herself in readiness at all hours
of the day and night to answer any and all calls from
such police station whenever and so long as any woman
is or remains confined therein.

The police matron herein provided for shall attend all
sessions of the mayor's court, police court or municipal
court, at any and all times, when any woman is to be
there arraigned, and the police matron shall have charge
of all women there in attendance awaiting trial or await-
ing transfer to any other place of detention.

In every station to which a police matron is attached,
sufficient and proper accommodations shall be provided
by those having charge of the police and fiscal affairs of
the city, for all women confined therein, under arrest,
and in case such accommodations shall be insufficient
and improper, the matron shall notify the mayor, and
it shall be the duty of the mayor promptly to lay the
matter before the governing body and it shall be the
duty of such governing body to provide, at the expense
of the city, all such sufficient and proper accommodations.

PART IV. SPECIAL SCHOOL ZONE POLICE OFFICERS.

§8-14-5. Special school zone police officers.

1 Every municipality shall have plenary power and au-
thority to provide by ordinance for the appointment of
special school zone police officers, who shall have the
duty of controlling and directing traffic upon designated
parts of the streets, avenues, roads, alleys or ways at
or near schools, and who, in the performance of such
7 duty, shall be vested with all the powers of local police
8 officers. Such special school zone police officers shall
9 be in uniform, shall display a badge or other sign of
10 authority, shall serve at the will and pleasure of the
11 appointing authority, and shall not come within the
12 civil service provisions of this article or the policemen's
13 pension and relief fund provisions of article twenty-two
14 of this chapter. The governing body of the municipality
15 may require such special school zone police officers to
16 give bond, payable to the municipality, in its corporate
17 name, with such sureties and in such penalty as the gov-
18 erning body may see fit, conditioned for the faithful per-
19 formance of their duties.

PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-6. Qualifications for appointment or promotion to posi-
1 tions in certain paid police departments to be as-
2 certained by examination; provisions exclusive as
3 to appointments, etc.; definitions.

1 All appointments and promotions to all positions in
2 all paid police departments of Class I and Class II cities
3 shall be made only according to qualifications and fitness
4 to be ascertained by examinations, which, so far as prac-
5 ticable, shall be competitive, as hereinafter provided.
6 No individual except the chief of police shall be appointed,
7 promoted, reinstated, removed, discharged, suspended or
8 reduced in rank or pay as a paid member of any paid
9 police department, regardless of rank or position, of any
10 Class I or Class II city in any manner or by any means
11 other than those prescribed in the following sections
12 of this article.

13 The term "member of a paid police department," when-
14 ever used in the following sections of this article, shall
15 mean and include any individual employed in a paid
16 police department who is clothed with the police power of
17 the state in being authorized to carry deadly weapons,
18 make arrests, enforce traffic and other municipal ordi-
19 nances, issue summons for violations of traffic and other
20 municipal ordinances, and perform other duties which are
21 within the scope of active, general law enforcement.
The term “appointing officer,” as used in the following sections of this article, shall be construed to mean the Class I or Class II city officer in whom the power of appointment of members of a paid police department is vested by charter provision or ordinance of the city.

§8-14-7. Policemen's civil service commission generally.

1 In every Class I and Class II city having a paid police department, there shall be a “Policemen's Civil Service Commission.” The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the city; one of whom shall be appointed by the local fraternal order of police; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen's association. The individuals appointed commissioners shall be qualified voters of the city for which they are appointed; and at least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each city, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local fraternal order of police and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen's association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen's association at the time any appointment is to be made by it, such appointment shall be made by the other two commissioners by mutual agreement. After the original appointments, all appointments shall be made for periods of four years each by the appointing authority hereinbefore designated. In the event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner shall be appointed to fill the unexpired term of said commissioner within ten days after said ex-
commissioner shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission, except that in the case of a vacancy in an appointment made by the governor, which vacancy occurs after the effective date of this article, the appointment for the unexpired term shall be made by the mayor. Each year the three members of the commission shall, together, elect one of their number to act as president of the commission, who shall serve as president for one year. The mayor may, at any time, remove any commissioner or commissioners for good cause, which shall be stated in writing and made a part of the records of the commission: Provided, That once the mayor has removed any commissioner, the mayor shall within ten days thereafter file in the office of the clerk of the circuit court of the county in which the city or the major portion of the territory thereof is located a petition setting forth in full the reason for said removal and praying for the confirmation by said circuit court of the action of the mayor in so removing the said commissioner. A copy of said petition shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of said court and shall be heard by said court as soon as practicable upon the request of the removed commissioner or commissioners. All rights herein vested in said circuit court may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time of the filing of said petition, and the judge thereof cannot be reached in the county wherein the petition was filed, said petition shall be heard at the next succeeding term of said circuit court, whether regular or special, and the commissioner or commissioners so removed shall remain removed until a hearing is had upon the said petition of the mayor. The court or the judge thereof in vacation shall hear and decide the issues presented by said petition. The mayor or commissioner or commissioners, as the case may be, against whom the decision of the court or the judge thereof in vacation shall
MUNICIPALITIES

be rendered, shall have the right to petition the supreme

court of appeals for a review of the decision of the circuit
court or the judge thereof in vacation as in other civil
cases. In the event that the mayor shall fail to file his
petition in the office of the clerk of the circuit court, as
hereinbefore provided, within ten days after the removal
of said commissioner or commissioners, such commis-
sioner or commissioners shall immediately resume his or
their position or positions as a member or members of the
policemen’s civil service commission.

Any resident of the city shall have the right at any time
to file charges against and seek the removal of any mem-
ber of the policemen’s civil service commission of such
city. Such charges shall be filed in the form of a petition
in the office of the clerk of the circuit court of the county
in which the city or the major portion of the territory
thereof is located, and a copy of said petition shall be
served upon the commissioner or commissioners sought
to be removed. Said petition shall be matured for hearing
and heard by said circuit court or the judge thereof in
vacation in the same manner as civil proceedings in the
circuit courts of this state are heard, and the party against
whom the circuit court’s decision is rendered shall have
the right to petition the supreme court of appeals for a
review of the action of the circuit court, as in other civil
cases.

No commissioner shall hold any other office (other than
the office of notary public) under the United States, this
state, or any municipality, county or other political sub-
division thereof; nor shall any commissioner serve on
any political committee or take any active part in the
management of any political campaign.

§8-14-8. Recorder ex officio clerk of commission; clerical and
stenographic services.

The recorder of the city shall be ex officio clerk of the
policemen’s civil service commission and shall supply
to the commission without extra compensation all neces-
sary clerical and stenographic services for the work of
the commission.
§8-14-9. Rooms, stationery, etc., to be furnished by city; appropriations required.

1 It shall be the duty of the mayor and the heads of the departments of government of every Class I and Class II city having a paid police department to cause suitable and convenient rooms and accommodations to be assigned and provided, furnished, heated and lighted for carrying on the work and examinations of the commission. The commission may order from the proper authorities the necessary stationery, postage stamps, official seal and other articles to be supplied, and the necessary printing to be done, for its official use. It shall be the duty of the officers of every such city to aid the commission in all proper ways in carrying out the civil service provisions of this article, and to allow the reasonable use of public buildings, and to heat and light the same, for holding examinations and investigations, and in all proper ways to facilitate the same.

All Class I and Class II cities subject to the civil service provisions of this article are hereby required to appropriate sufficient funds for the purpose of carrying out such provisions.

§8-14-10. Powers, authority and duties of policemen’s civil service commission.

1 The policemen’s civil service commission in each Class I and Class II city shall:

(1) Prescribe and enforce rules and regulations for carrying into effect the civil service provisions of this article. All rules and regulations so prescribed may, from time to time, be added to, amended or rescinded: Provided, That all rules and regulations shall be approved by the mayor and the governing body before they go into effect, but when so approved shall not be changed or rescinded except by the commission with the approval of the mayor and the governing body: Provided, however, That if the mayor and governing body take no action on a proposed rule and regulation or a proposed change or rescission submitted to them within a period of twenty days from the date of submission, then the same shall
MUNICIPALITIES

become effective as though approved by the mayor and governing body.

(2) Keep minutes of its own proceedings, and records of its examinations and other official actions. All recommendations of applicants for office, received by the said commission or by any officer having authority to make appointments to office, shall be kept and preserved for a period of ten years, and all such records, recommendations of former employees excepted, and all written causes of removal, filed with it, shall, subject to reasonable regulation, be open to public inspection.

(3) Make investigations, either sitting as a body or through a single commissioner, concerning all matters touching the enforcement and effect of the civil service provisions of this article and the rules and regulations prescribed hereunder or concerning the action of any examiner or subordinate of the commission or any individual in the public service with respect to the execution of the civil service provisions of this article; and, in the course of such investigations, each commissioner shall have the power to administer oaths and affirmations, and to take testimony.

(4) Have the power to subpoena and require the attendance of witnesses, and the production thereby of books and papers pertinent to the investigations and inquiries herein authorized, and examine them and such public records as it shall require, in relation to any matter which it has the authority to investigate. The fees of such witnesses for attendance and travel shall be the same as for witnesses before the circuit courts of this state, and shall be paid from the appropriation for the incidental expenses of the commission. All officers in the public service, and their deputies, clerks, subordinates and employees shall attend and testify when required to do so by said commission. Any disobedience to, or neglect of, any subpoena issued by the said commissioners, or any one of them, to any person, shall be held a contempt of court, and shall be punished by the circuit court of the county in which the city or the major portion of the territory thereof is located, or the judge
thereof in vacation, as if such subpoena had been issued therefrom. The judge of such court shall, upon the application of any one of said commissioners, in any such case, cause the process of said court to issue to compel such person or persons disobeying or neglecting any such subpoena to appear and to give testimony and produce evidence before the said commissioners, or any one of them, and shall have the power to punish any such contempt.

(5) Make an annual report to the mayor showing its own actions, and its rules and regulations, and all of the exceptions thereto in force, and the practical effects thereof, and any suggestions it may have for the more effectual accomplishment of the purposes of the civil service provisions of this article. Such report shall be made available for public inspection within five days after the same shall have been delivered to the mayor of the city.

§ 8-14-11. Rules and regulations for all examinations; probationary appointments.

1 The policemen's civil service commission in each Class I and Class II city shall make rules and regulations providing for both competitive and medical examinations for appointments and promotions to all positions in the paid police department in such city, and for such other matters as are necessary to carry out the purposes of the civil service provisions of this article. Any such commission shall have the power and authority to require by rules and regulations a physical fitness examination as a part of its competitive examination or as a part of its medical examination. Due notice of the contents of all such rules and regulations and of any modifications thereof shall be given, by mail, in due season, to the appointing officer; and said rules and regulations and any modifications thereof shall also be printed for public distribution. All original appointments to any positions in a paid police department subject to the civil service provisions of this article shall be for a probationary period of one year: Provided, That at any time during the probationary period the probationer may be discharged for just cause,
in the manner provided in section twenty of this article.

If, at the close of this probationary term, the conduct or
capacity of the probationer has not been satisfactory to the
appointing officer, the probationer shall be notified, in
writing, that he will not receive absolute appointment,
whereupon his employment shall cease; otherwise, his re-
tention in the service shall be equivalent to his final ap-
pointment.

§8-14-12. Form of application; age and residency requirements;
exceptions.

1 The policemen's civil service commission in each Class
I and Class II city shall require individuals applying for
admission to any competitive examination provided for
under the civil service provisions of this article or under
the rules and regulations of said commission to file in its
office, within a reasonable time prior to the proposed ex-
amination, a formal application in which the applicant
shall state under oath or affirmation:
(1) His full name, residence and post-office address;
(2) His United States citizenship, age and the place
and date of his birth;
(3) His state of health and his physical capacity for the
public service;
(4) His business and employments and residences for
at least three previous years; and
(5) Such other information as may reasonably be re-
quired, touching upon the applicant's qualifications and
fitness for the public service.

Blank forms for such applications shall be furnished by
the commission, without charge, to all individuals re-
questing the same. The commission may require, in con-
nection with such application, such certificates of citizens,
physicians and others, having pertinent knowledge con-
cerning the applicant, as the good of the service may re-
quire.

No application for original appointment shall be re-
ceived if the individual applying is less than twenty-one
years of age or more than thirty-five years of age at the
date of his application: Provided, That in the event any
applicant formerly served upon the paid police department of the city to which he makes application, for a period of more than probationary period, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against such applicant, within a period of two years next preceding the date of his application, and at the time of his application resides within the corporate limits of the city in which the paid police department to which he seeks appointment by reinstatement is located, then such individual shall be eligible for appointment by reinstatement in the discretion of the policemen's civil service commission, even though such applicant shall be over the age of thirty-five years, and such applicant, providing his former term of service so justifies, may be appointed by reinstatement to the paid police department without a competitive examination, but such applicant shall undergo a medical examination; and if such individual shall be so appointed by reinstatement to the paid police department, he shall be the lowest in rank in the department next above the probationers of the department.

Any applicant for original appointment must have been a resident for one year, during some period of time prior to the date of his application, of the city in which he seeks to become a member of the paid police department: Provided, That if the commission deems it necessary it may consider for original appointment applicants who are not residents of the city but who have been residents of the county in which the city or any portion of the territory thereof is located for a period of at least one year.

§8-14-13. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.

1 All competitive examinations for appointments or promotions to all positions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative
merit and fitness of the individual or individuals examined to discharge the duties of the employment sought by him or them. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in the other civil service provisions of this article.

Adequate public notice of the date, time and place of every competitive examination together with information as to the kind of position to be filled, shall be given at least one week prior to such competitive examination. The said commission shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examination. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed such competitive examinations for positions in the paid police department, and shall indicate thereon such appointments as may be made from said list.

All applicants for appointment or promotion to any position in a paid police department of a Class I or Class II city who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the appointing officer of the city. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

§8-14-14. Refusal to examine or certify; review thereof.

1. The commission may refuse to examine an applicant, or after examination to certify as eligible one, who is found...
to lack any of the established preliminary requirements
for the examination or position for which he applies; or
who is physically so disabled as to be rendered unfit for
the performance of the duties of the position desired; or
who is addicted to the habitual use of intoxicating liquors
or drugs; or who has been guilty of any crime or of in-
famous or notoriously disgraceful conduct; or who has
been dismissed from public service for delinquency or
misconduct; or who has made a false statement of any ma-
terial fact, or practiced or attempted to practice any decept-
don or fraud, in his application, in any such examination,
or in securing his eligibility; or who refuses to comply
with the rules and regulations of the commission.

If any applicant feels aggrieved by the action of the
commission in refusing to examine him, or after exami-
nation in refusing to certify him as eligible, the commis-
sion shall, at the request of such applicant, appoint a date,
time and place for a public hearing; at which time such
applicant may appear, by himself or counsel, or both, and
the commission shall then review its refusal to make
such examination or certification, and testimony shall be
taken. The commission shall subpoena, at the expense
of the applicant, any competent witnesses requested by
him. After such review, the commission shall file in its
records the testimony taken and shall again make a de-
cision, which decision shall be final and not subject to
judicial review, but under no circumstances shall the
provisions of this article be construed, in the case of a
refusal to examine an applicant for promotion or to cer-
tify an applicant as eligible for promotion, as depriving
such applicant of his right to seek a writ of mandamus,
if the application for such writ is made within twenty
days from the date of the decision refusing to examine
or to certify him as eligible for promotion.

§8-14-15. Appointments from list of eligibles.

Every position, unless filled by promotion, reinsta-

ment or reduction, shall be filled only in the manner
specified in this section. The appointing officer shall notify
the policemen's civil service commission of any vacancy
in a position which he desires to fill, and shall request
the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three individuals thereon who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three names so certified: Provided, That should he make objection, to the commission, to one or more of these individuals, for any of the reasons stated in section fourteen of this article, and should such objection be sustained by the commission, after a public hearing along the lines of the hearing provided for in said section fourteen of this article, if any such hearing is requested, the commission shall thereupon strike the name of any such individual from the eligible list, and certify the next highest name for each individual so stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: Provided, however, That after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the said name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the foregoing provisions. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of one year, as provided in section eleven of this article.

§8-14-16. Noncompetitive examination for filling vacancy; provisional appointment.

1 Whenever there are urgent reasons for filling a vacancy in any position in a paid police department of a Class I or Class II city and there is no list of individuals eligible for appointment after a competitive examination, the appointing officer may nominate an individual to the policemen's civil service commission for noncompetitive examination; and if such nominee shall be certified by the
s said commission as qualified, after such noncompetitive
examination and a medical examination, he may be ap-
pointed provisionally, to fill such vacancy until a selection
and appointment can be made after competitive examina-
tion, in the manner prescribed in section fifteen of this
article; but such provisional appointment shall not con-
tinue for a longer period than three months, nor shall
successive provisional appointments be made to the same
position, under the provisions of this section.

§8-14-17. Vacancies filled by promotions; eligibility for promo-
tion; rights of chief.

Vacancies in positions in a paid police department of a
Class I or Class II city shall be filled, so far as practicable,
by promotions from among individuals holding positions
in the next lower grade in the department. Promotions
shall be based upon merit and fitness to be ascertained by
competitive examinations to be provided by the police-
men's civil service commission and upon the superior
qualifications of the individuals promoted, as shown by
their previous service and experience: Provided, That
except for the chief of police, no individual shall be eligi-
ble for promotion from the lower grade to the next higher
grade until such individual shall have completed at least
two years' service in the next lower grade in the depart-
ment: Provided, however, That notwithstanding the
provisions of section six of this article, any member of a
paid police department of a Class I or Class II city now
occupying the office of chief of such paid police depart-
ment, or hereafter appointed to such office, shall, except
as hereinafter provided in this section, be and shall con-
tinue to be entitled to all of the rights and benefits of the
civil service provisions of this article, except that he
may be removed from such office of chief of police with-
out cause, and the time spent by such member in the
office of such chief of police shall be added to the time
served by such member during the entire time he was a
member of said paid police department prior to his ap-
pointment as chief, and shall in all cases of removal,
except for removal for good cause, retain the regular
rank within said paid police department which he held
at the time of his appointment to the office of chief of
police or which he has attained during his term of service
as chief of police. The provisions of this section shall be
construed to apply and to inure to the benefit of all indi-
viduals who have ever been subject to the provisions of
this article. The commission shall have the power to
determine in each instance whether an increase in salary
constitutes a promotion.

§8-14-18. No inquiry shall be made concerning political or
religious opinions or affiliations of applicants, etc.

No question in any form of application or in or during
any examination shall be so framed as to elicit informa-
tion concerning the political or religious opinions or affili-
ations of any applicant; nor shall inquiry be made con-
cerning such opinions or affiliations; and all disclosures
thereof shall be discountenanced. No discrimination
shall be exercised, threatened or promised by any indi-
vidual in a paid police department of a Class I or Class
II city against, or in favor of, an applicant, eligible, or
member of such a paid police department because of his
political or religious opinions or affiliations.

§8-14-19. Political activity of members of certain paid police
departments prohibited; petition for vacating ap-
pointment; action on petition; appeal.

(a) No member of any paid police department of a
Class I or Class II city shall engage in any political
activity of any kind, character or nature whatsoever,
except to cast his vote at any election, or shall act as
an election official in any election, municipal, county
or state. Any member of any such paid police depart-
ment violating the provisions of this section shall have
his appointment vacated and he shall be removed, in
accordance with the pertinent provisions of this section.

(b) Any three residents of any such city may file
their written petition with the policemen's civil service
commission thereof setting out therein the grounds upon
which a member of the paid police department of such
city should be removed for a violation of subsection
(a) of this section. Notice of the filing of such petition shall be given by said commission to the accused member, which notice shall require the said member to file a written answer to the charges set out in the petition within thirty days of the date of said notice. The said petition and answer thereto, if any, shall be entered upon the records of the commission. If such answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, an order shall be entered by the commission declaring the appointment of said member vacated; if such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, the accused member may demand within such period a public hearing on the charges, or the commission may, in its discretion and without demand therefor, set a time for a public hearing on said charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the commission be granted. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining in whole or in part the charges made, or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of said member to be vacated and thereupon the proper municipal authorities shall immediately remove said member from the police force and from the payroll of said city. Notice of the action of the commission shall be given by registered letter to the mayor and chief of police of the city; and for failure to immediately comply with the order of the commission such officer or officers shall be punished for contempt, upon application of the commission to the circuit court of the county in which the city or the major portion of the territory thereof is located.
(c) An appeal from the ruling of the commission may be had in the same manner and within the same time as specified in section twenty of this article for an appeal from a ruling of a commission after hearing held in accordance with the provisions of said section twenty.

§8-14-20. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid police department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section nineteen of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term “suspension” shall mean only (1) a suspension in excess of ten days, or (2) a suspension in any calendar year which when added to any previous suspension or suspensions within the same calendar year results in a total period of suspension in excess of ten days within such same calendar year, and for the purpose of the remainder of this subsection and said subsections (b) and (c), a member shall not be considered to be suspended or sought to be suspended unless his suspension meets the foregoing definition of said term. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the policemen’s civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall
last occur. At such hearing the burden shall be upon the
removing, discharging, suspending or reducing officer,
hereinafter in this section referred to as "removing of-
fer," to justify his action, and in the event the removing
officer fails to justify his action before the commission,
then the member removed, discharged, suspended or re-
duced shall be reinstated with full pay, forthwith and
without any additional order, for the entire period during
which he may have been prevented from performing his
usual employment, and no charges shall be officially re-
corded against his record. A written record of all testi-
mony taken at such hearing shall be kept and preserved
by the commission, which record shall be sealed and not
be open to public inspection, if no appeal be taken from
the action of the commission.

(b) In the event that the commission shall sustain the
action of the removing officer, the member removed, dis-
charged, suspended or reduced shall have an immediate
right of appeal to the circuit court of the county wherein
the city or the major portion of the territory thereof is
located. In the event that the commission shall reinstate
the member removed, discharged, suspended or reduced,
the removing officer shall have an immediate right of
appeal to said circuit court. Any appeal must be taken
within ninety days from the date of entry by the commis-
sion of its final order; upon an appeal being taken and
docketed with the clerk of the circuit court of said county,
the circuit court shall proceed to hear the appeal upon
the original record made before the commission and no
additional proof shall be permitted to be introduced. The
circuit court's decision shall be final, but the member or
removing officer, as the case may be, against whom the
decision of the circuit court is rendered shall have the
right to petition the supreme court of appeals for a review
of the circuit court's decision, as in other civil cases. Such
member or removing officer shall also have the right,
where appropriate, to seek in lieu of an appeal, a writ of
mandamus.

(c) The removing officer and the member sought to
be removed, discharged, suspended or reduced shall at all
times, both before the commission and upon appeal, be
given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall
be deemed necessary by any Class I or Class II city to
reduce the number of paid members of its paid police
department, said city shall follow the procedure set forth
in this subsection (d). The reduction in members of the
said paid police department of said city shall be effected
by suspending the last man or men, including probation-
ers, who have been appointed to said paid police depart-
ment. Such removal shall be accomplished by suspending
the number desired in the inverse order of their appoint-
ment: Provided, That in the event the said paid police
department shall again be increased in numbers to the
strength existing prior to such reduction of members the
said members suspended under the terms of this subsec-
tion shall be reinstated in the inverse order of their sus-

cension before any new appointment to said paid police
department shall be made.

§8-14-21. Election to determine if civil service provisions of
article shall apply to Class III city or Class IV
town or village; existing police civil service not
affected; certain regular members automatically
covered.

Any Class III city or Class IV town or village having
a paid police department and which has not prior to
the effective date of this article established a police civil
service system, may, by ordinance, provide for an elec-
tion to determine whether the civil service provisions
of this article shall apply to such city, town or village.
Such election shall be held at the first regular municipal
or general election held therein after the adoption of said
ordinance and shall be conducted and the results thereof
ascertained as provided by law for other elections. The
ballots, or ballot labels where voting machines are used,
shall have printed thereon:

☐ For Police Civil Service
☐ Against Police Civil Service

If a majority of all of the legal votes cast on this
question be against police civil service, then none of the
civil service provisions of this article shall apply within such city, town or village. If a majority of all of the legal votes cast on this question be for police civil service, then all of the civil service provisions of this article shall apply within such city, town or village with like effect as if such Class III city or Class IV town or village were a Class I or Class II city: Provided, That all members of the paid police department of such city, town or village who were so employed by such city, town or village on the date of the election and who, as of such date, have had four or more years' service as members of any paid police department (including the years any member occupied the office of chief of any such paid police department) shall be considered to have been appointed as members under the civil service provisions of this article and shall hold their positions as members in accordance therewith. All members of the paid police department of such city, town or village who do not have, as of the date of such election, four or more years' service as members of a paid police department (including the years any member occupied the office of chief of any such paid police department) shall be subject to all examinations provided for in the civil service provisions of this article for members, except that if any such individual has sustained an injury or injuries in the line of duty while in police service, such injury or injuries shall not disqualify such individual under the medical examination required under the civil service provisions of this article.

The provisions of this section shall not apply to any such city, town or village operating under police civil service on the effective date of this article.

§8-14-22. Offenses and penalties.

Any individual who makes an appointment or promotion to any position, or selects an individual for employment, contrary to the civil service provisions of this article, or willfully refuses or neglects otherwise to comply with, or to conform to, any of the civil service provisions of this article, or violates any of such provisions, shall be deemed guilty of a misdemeanor.
Any commissioner or examiner, or any other individual, who shall wilfully, by himself or in cooperation with one or more persons, defeat, deceive or obstruct any individual with respect to his right of examination or registration according to the civil service provisions of this article, or to any rules and regulations prescribed pursuant thereto, or who shall wilfully or corruptly, falsely mark, grade, estimate, or report upon any such examination or proper standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aid in so doing, or who shall wilfully or corruptly furnish to any individual any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment or promotion to any position of any individual so examined, registered or certified, or to be so examined, registered or certified, or who shall impersonate any other individual, or permit or aid in any manner any other individual to impersonate him, in connection with any such examination or registration, or application or request to be examined or registered, shall, for each offense, be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense shall be punished by a fine of not less than fifty dollars, nor more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

§8-14-23. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected; certain members automatically covered; continuance of police civil service systems.

All acts, whether general, special, local or special legislative charters, or parts thereof, in relation to any civil service measure affecting any paid police department inconsistent with the civil service provisions of this article shall be, and the same are, hereby repealed insofar as such inconsistencies shall exist. It is intended by the civil service provisions of this article to furnish a complete and exclusive system for the appointment, promotion, reinstatement, removal, discharge, suspension and
reduction of all members of all paid police departments subject to the civil service provisions of this article.

The status or tenure of all members of any paid police department subject to the civil service provisions of this article, which members were employed on the effective date of this article, shall not be affected by the enactment of this article, but all such members shall be subject to all of the civil service provisions of this article with like effect as if they had been appointed members hereunder.

When a Class III city which does not have a police civil service system becomes a Class II city for which police civil service is made mandatory by the provisions of this article, all members of the paid police department of such city who were employed by such city on the effective date of the transition of such city to a Class II city and who, as of such date, have had four or more years' service as members of any paid police department (including the years any member occupied the office of chief of any such paid police department) shall be considered to have been appointed as members under the civil service provisions of this article and shall hold their positions as members in accordance therewith. All members of the paid police department of such city who do not have, as of such date, four or more years' service as members of a paid police department (including the years any member occupied the office of chief of any such paid police department) shall be subject to all examinations provided for in the civil service provisions of this article for members, except that if any such individual has sustained an injury or injuries in the line of duty while in police service, such injury or injuries shall not disqualify such individual under the medical examination required under the civil service provisions of this article.

Any police civil service system established in accordance with the provisions of former article five-a of this chapter or this article fourteen shall be or remain mandatory and shall be governed by the provisions of this article fourteen (with like effect, in the case of a Class
MUNICIPALITIES

50 III city or Class IV town or village, as if such Class III
51 city or Class IV town or village were a Class I or Class
52 II city), and shall not be affected by the transition from
53 one class of municipal corporation to a lower class as
54 specified in section three, article one of this chapter.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.

PART I. FIRE FIGHTING GENERALLY.

§8-15-1. Power and authority of governing body with respect to fires.
§8-15-2. Liability for property pulled down or destroyed to prevent spread of fire.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recordation of statement; organization.
§8-15-5. Duties of company members; meetings to inspect equipment; report; penalty for noncompliance.
§8-15-7. Incorporation of volunteer fire companies; duties and obligations; dissolution.

PART III. PAID FIRE DEPARTMENTS.


PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; “appointing officer” defined.
§8-15-12. Firemen’s civil service commission generally.
§8-15-14. Rooms, stationery, etc., to be furnished by municipality; appropriations required.
§8-15-15. Powers, authority and duties of firemen’s civil service com-
mission.
§8-15-17. Form of application; age and residency requirements; exceptions.
§8-15-18. Character and notice of competitive examinations; qualifi-
cations of applicants; press representatives; posting eligible list; medical examinations.
§8-15-19. Refusal to examine or certify; review thereof.

§8-15-20. Appointments from list of eligibles; special examinations for electricians or mechanics.


§8-15-22. Vacancies filled by promotions; eligibility for promotion.

§8-15-23. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.


§18-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.


§18-25-27. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected.

**PART I. FIRE FIGHTING GENERALLY.**

§8-15-1. Power and authority of governing body with respect to fires.

1 The governing body of every municipality shall have
2 plenary power and authority to provide for the prevention and extinguishment of fires, and, for this purpose,
3 it may, among other things, regulate how buildings shall
4 be constructed, procure proper engines and implements,
5 provide for the organization, equipment and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of such companies or department and of the several officers, provide for the appointment of officers to have command of fire fighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of such officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any such officer or officers to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.

§8-15-2. Liability for property pulled down or destroyed to prevent spread of fire.

1 The owner of any property pulled down or destroyed to prevent the spreading of a fire, as specified in section one of this article, shall be entitled to recover from the
municipality the actual property damage which he may have sustained by reason of the same having been pulled down or destroyed: Provided, That no one shall recover compensation for property which would have been destroyed by fire, if the same had not been pulled down or destroyed under direction as specified in section one of this article, but recovery may be had only for what could have been saved with ordinary care and diligence had no such direction been given.


1 Any municipality shall have plenary power and authority to contract to render services in the prevention and extinguishment of fires upon property located within three miles of its corporate limits: Provided, That no contract entered into under the authority of this section shall operate to impose any greater or different obligation or liability upon the municipality than that with respect to property within its corporate limits: Provided, however, That nothing contained in this section shall be construed as requiring any municipality to contract to render such services, but if a municipality shall elect to make such contract with any property owner, the same shall not be cancelled or annulled without the consent of such property owner, or such owner's successor, so long as the latter shall not be in default: Provided further, That if a municipality shall elect to contract with respect to any property, it shall, if requested, contract on the basis and terms contracted with respect to other property located at approximately the same distance from fireplugs, or other fixed fire apparatus of said municipality. Any contract entered into under the authority of this section shall require the property owner to pay as consideration for said services an annual payment equivalent to eighty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. No contract entered into under the authority of this section, and nothing herein contained, shall be construed as requiring
or permitting any municipality to install or maintain any
special or additional apparatus or equipment beyond that
necessary for the protection of property within its cor-
porate limits.

The annual payments due under any such contract shall
be payable on or before the first day of October of each
calendar year in which such contract shall remain in
effect, or upon such day as may be hereafter provided as
the due date of the first installment of ad valorem taxes.
If any annual payment shall be in default for a period of
more than thirty days it shall bear interest at the same
rate as that provided for delinquent property taxes, and
shall be a lien upon the property subject to contract, pro-
vided a notice of such lien is recorded in the proper deed
of trust book in the office of the clerk of the county court
of the county in which such property or the major portion
thereof is located. Such lien shall be void at the expira-
tion of one year after such defaulted annual payment
shall have become due, unless within such year a civil
action seeking equitable relief to enforce the same shall
have been instituted by said municipality. The munici-
pality may by civil action collect any annual payment
and the interest thereon at any time within five years
after such payment shall have become due; and upon
default in any annual payment, the municipality may
cancel the contract involved.

Any contract made under the authority of this section
shall inure to the benefit of and be binding upon the suc-
cessors in title of the person making the same; and such
person, upon conveying the property subject to such con-
tract, shall no longer be liable under such contract, except
as to annual payments due prior to said conveyance and
remaining unpaid.

Any property owner may cancel any such contract with
respect to the property of such owner upon giving a
thirty-day written notice to the municipality, if such
owner is not in default with respect to any annual pay-
ment due thereunder, except that if such notice be given
subsequent to July first of any calendar year, the next
succeeding annual payment shall be made by said prop-
erty owner as soon as the amount thereof is ascertainable.
Upon cancellation as aforesaid, the municipality shall deliver to the property owner a recordable release discharging such owner and such property from any further lien or obligation with respect to said annual payments. The annual payments due under any such contract shall be made to such officials as the municipality, in such contract, shall designate to receive them, who shall likewise have authority to receive notice of cancellation, and execute upon behalf of such municipality the release for which provision is hereinbefore made.

PART II. VOLUNTEER FIRE COMPANIES.

§8-15-4. Power and authority to form fire companies; recording of statement; organization.

Any number of persons, not less than twenty nor more than sixty-four, residing within the corporate limits of a municipality without a paid fire department may form themselves into a company for extinguishing fires therein. A writing stating the formation of such company, with the names of the members thereof subscribed thereto, shall be recorded in the office of the clerk of the county court of the county wherein such municipality or the major portion of the territory thereof is located, after which the members of the company shall elect its officers, including a commander, and make rules and regulations for effecting its object consistent with the laws of the state and the ordinances of such municipality. A volunteer fire company shall be subject to the authority of the governing body.

§8-15-5. Duties of company members; meetings to inspect equipment; report; penalty for noncompliance.

Every member of a volunteer fire company shall, upon any alarm of fire, attend, according to the ordinances of the municipality and the company's rules and regulations, and endeavor to extinguish the fire. In addition to the meetings required by the ordinances of the municipality and the rules and regulations of the company, semiannual meetings of the company shall be held in April and October, on such days as the commander thereof may appoint, to examine the state of the
engine, hose and other equipment, practice therewith and see that the same are in good condition. Within one month after any such semiannual meeting the commander of such company shall make to the governing body a written report of the names of those attending such meeting, together with a written report of the condition of the engine, hose and other equipment. For any failure to comply with the provisions of this section, the commander shall be fined not less than ten nor more than twenty-five dollars.


Whenever the governing body shall ascertain that such company has failed, for three months successively, to consist of twenty effective members, or shall ascertain that it has failed for a like period of time to have and keep in good, serviceable condition an engine, hose or other proper equipment, such governing body shall declare such failure and by order dissolve the company.

A fire company may also be dissolved at any time by order of the governing body of the municipality or in such manner as the ordinances thereof may prescribe. Whenever a company is dissolved, the order of dissolution shall be recorded in the office of the clerk of the county court of the county wherein such municipality or the major portion of the territory thereof is located.

§8-15-7. Incorporation of volunteer fire companies; duties and obligations; dissolution.

In lieu of forming a company as specified in section four of this article, interested persons may cause the incorporation of a volunteer fire company as a nonstock, nonprofit corporation under the general corporation laws of this state. The corporation and the members thereof shall have all of the duties and obligations imposed upon unincorporated volunteer fire companies and the members thereof by the provisions of sections four and five of this article. The provisions of section six of this article shall be applicable to any such corporation, except that instead of entering an order of dissolution, the governing body shall enter an order directing the members of the corporation to
13 take the necessary action under the general corporation
14 laws of this state to bring about the dissolution of such
15 corporation. Upon the entry of any such order, it shall be
16 the duty of the members of such corporation to comply
17 therewith.

§8-15-8. Support of volunteer fire company; return of property
upon dissolution.

1 Any municipality may contribute to the support of its
2 volunteer fire company by providing a firehouse, fire-fight-
3 ing equipment, necessary paid personnel and incidental
4 requirements to maintain such company upon an efficient
5 basis. Upon the dissolution of any such company, all of the
6 property contributed by the municipality shall become
7 the property of and be returned to such municipality.

PART III. PAID FIRE DEPARTMENTS.

§8-15-9. Establishment and maintenance of paid fire depart-
ment.

1 Any municipality may provide for, establish, equip and
2 maintain a full-time paid fire department. A paid fire de-
3 partment shall be subject to the authority, control and
4 discipline of the administrative authority. For the pur-
5 poses of this article, the term “paid fire department”
6 shall be taken to mean only a municipal fire department
7 maintained and paid for out of public funds and whose
8 employees are paid on a full-time basis out of public funds.
9 The term shall not be taken to mean a department whose
10 employees are paid nominal salaries or wages or are only
11 paid for services actually rendered on an hourly basis.


1 The members of a paid fire department shall not be re-
2 quired to remain on duty in excess of one hundred twenty
3 hours during any fourteen consecutive days' period. The
4 members of any such paid fire department shall, by major-
5 ity vote, determine the schedule of hours to be worked in
6 any twenty-four hour period: Provided, That the mem-
7 bers of any paid fire department shall not remain on duty
8 for more than twenty-four consecutive hours except in
9 case of a conflagration requiring the service of more than
PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-11. Qualifications for appointment or promotion to positions in paid fire departments to be ascertained by examination; provisions exclusive as to appointments, etc.; rights of certain chiefs; "appointing officer" defined.

1. All appointments and promotions to all positions in all paid fire departments shall be made only according to qualifications and fitness to be ascertained by examinations, which, so far as practicable, shall be competitive, as hereinafter provided. No individual shall be appointed, promoted, reinstated, removed, discharged, suspended or reduced in rank or pay as a paid member of any paid fire department, regardless of rank or position, in any manner or by any means other than those prescribed in the following sections of this article: Provided, That in all municipalities in which the office of fire chief of a paid fire department was not covered by the provisions of former article six-a of this chapter on the first day of January, one thousand nine hundred forty-nine, such office in such municipality shall be excepted from the civil service provisions of this article fifteen until such time as the governing body of said municipality shall, by appropriate ordinance or resolution adopted by a majority of its members, elect to place the office of fire chief under the civil service provisions of this article; but until the office of any such fire chief is placed under the civil service provisions of this article by said governing body as aforesaid, the member of any such paid fire department now occupying such office or hereafter appointed to such office shall in all cases of removal, except for removal for good cause, revert to the status he held in such paid fire department at the time of his appointment to the office of such fire chief. The term "appointing officer" as used in the following sections of this article shall be construed to mean the municipal officer in whom the power of appoint-
ment of members of a paid fire department is vested by charter provision or ordinance of the municipality.

§8-15-12. Firemen’s civil service commission generally.

1 In every municipality having a paid fire department, there shall be a “Firemen’s Civil Service Commission.”
2 The commission shall consist of three commissioners, one of whom shall be appointed by the mayor of the municipality; one of whom shall be appointed by the local trades board in the event that said board shall exist in the municipality, or in case no such board exists in the municipality, then by the paid international association of fire fighters; and the third shall be appointed by the local chamber of commerce, or if there be none, by a local businessmen’s association. The individuals appointed commissioners shall be qualified voters of the municipality for which they are appointed; and at least two of said commissioners shall be individuals in full sympathy with the purposes of the civil service provisions of this article. Not more than two of the said commissioners, at any one time, shall be adherents of the same political party. Of the three original appointments in each municipality, the first commissioner shall be appointed by the mayor and shall serve for six years from the date of his appointment; the second commissioner shall be appointed by the local trades board, or in the absence of such board, by the international association of fire fighters, and shall serve for four years from the date of his appointment; and the third commissioner shall be appointed by the local chamber of commerce or local businessmen’s association and shall serve for two years from the date of his appointment. In the event there is no local chamber of commerce or local businessmen’s association at the time any appointment is to be made by it, such appointment shall be made by the other two commissioners by mutual agreement. After the original appointments, all appointments shall be made for periods of four years each by the appointing authority hereinbefore designated. In the event that any commissioner of said civil service commission shall cease to be a member thereof by virtue of death, final removal or other cause, a new commissioner
shall be appointed to fill the unexpired term of said commissioner within ten days after said ex-commissioner shall have ceased to be a member of said commission. Such appointment shall be made by the officer or body who in the first instance appointed the commissioner who is no longer a member of the commission. Each year the three members of the commission shall, together, elect one of their number to act as president of the commission, who shall serve as president for one year. The mayor may, at any time, remove any commissioner or commissioners for good cause, which shall be stated in writing and made a part of the records of the commission: Provided, That once the mayor has removed any commissioner, the mayor shall within ten days thereafter file in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located a petition setting forth in full the reason for said removal and praying for the confirmation by said circuit court of the action of the mayor in so removing the said commissioner. A copy of said petition shall be served upon the commissioner so removed simultaneously with its filing in the office of the clerk of the circuit court and shall have precedence on the docket of said court and shall be heard by said court as soon as practicable upon the request of the removed commissioner or commissioners. All rights herein vested in said circuit court may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time of the filing of said petition, and the judge thereof cannot be reached in the county wherein the petition was filed, said petition shall be heard at the next succeeding term of said circuit court, whether regular or special, and the commissioner or commissioners so removed shall remain removed until a hearing is had upon the petition of the mayor. The court or the judge thereof in vacation shall hear and decide the issues presented by said petition. The mayor or commissioner or commissioners, as the case may be, against whom the decision of the court or the judge thereof in vacation shall be rendered, shall have the right to petition the supreme court of appeals for a review of the decision of the circuit
court or the judge thereof in vacation as in other civil cases. In the event that the mayor shall fail to file his petition in the office of the clerk of the circuit court, as hereinbefore provided, within ten days after the removal of said commissioner or commissioners, such commissioner or commissioners shall immediately resume his or their position or positions as a member or members of the firemen's civil service commission.

Any resident of the municipality shall have the right at any time to file charges against and seek the removal of any member of the firemen's civil service commission of such municipality. Such charges shall be filed in the form of a petition in the office of the clerk of the circuit court of the county in which the municipality or the major portion of the territory thereof is located, and a copy of said petition shall be served upon the commissioner or commissioners sought to be removed. Said petition shall be matured for hearing and heard by said circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard, and the party against whom the circuit court's decision is rendered shall have the right to petition the supreme court of appeals for a review of the action of the circuit court, as in other civil cases.

No commissioner shall hold any other office (other than the office of notary public) under the United States, this state or any municipality, county or other political subdivision thereof; nor shall any commissioner serve on any political committee or take any active part in the management of any political campaign.


1 The recorder of the municipality shall be ex officio clerk of the firemen's civil service commission and shall supply to the commission without extra compensation all necessary clerical and stenographic services for the work of the commission.

§8-15-14. Rooms, stationery, etc., to be furnished by municipality; appropriations required.

1 It shall be the duty of the mayor and the heads of the
departments of government of every municipality having
a paid fire department to cause suitable and convenient
rooms and accommodations to be assigned and provided,
furnished, heated and lighted for carrying on the work
and examinations of the commission. The commission may
order from the proper authorities the necessary station-
ery, postage stamps, official seal and other articles to be
supplied, and the necessary printing to be done, for its
official use. It shall be the duty of the officers of every
such municipality to aid the commission in all proper
ways in carrying out the civil service provisions of this
article, and to allow the reasonable use of public build-
ings, and to heat and light the same, for holding examina-
tions and investigations, and in all proper ways to facil-
itate the same.

All municipalities subject to the civil service provisions
of this article are hereby required to appropriate sufficient
funds for the purpose of carrying out such provisions.

§8-15-15. Powers, authority and duties of firemen's civil ser-
vice commission.

The firemen's civil service commission in each munici-

(1) Prescribe and enforce rules and regulations for
carrying into effect the civil service provisions of this
article. All rules and regulations so prescribed may, from
time to time, be added to, amended or rescinded: Provided,
that all rules and regulations shall be approved by the
mayor and the governing body before they go into effect,
but when so approved shall not be changed or rescinded
except by the commission with the approval of the mayor
and governing body: Provided, however, That if the
mayor and governing body take no action on a proposed
rule and regulation or a proposed change or rescission
submitted to them within a period of twenty days from
the date of submission, then the same shall become effec-
tive as though approved by the mayor and governing
body.

(2) Keep minutes of its own proceedings, and records
of its examinations and other official actions. All recom-
mendations of applicants for office, received by the said
commission or by any officer having authority to make ap-
pointments to office, shall be kept and preserved for a
period of ten years, and all such records, recommenda-
tions of former employees excepted, and all written causes
of removal, filed with it, shall, subject to reasonable regu-
lation, be open to public inspection.

(3) Make investigations, either sitting as a body or
through a single commissioner, concerning all matters
touching the enforcement and effect of the civil service
provisions of this article and the rules and regulations
prescribed hereunder or concerning the action of any
examiner or subordinate of the commission or any indi-
vidual in the public service with respect to the execution
of the civil service provisions of this article; and, in the
course of such investigations, each commissioner shall
have the power to administer oaths and affirmations, and
to take testimony.

(4) Have the power to subpoena and require the at-
tendance of witnesses, and the production thereby of
books and papers pertinent to the investigations and in-
quiries herein authorized, and examine them and such
public records as it shall require, in relation to any matter
which it has the authority to investigate. The fees of such
witnesses for attendance and travel shall be the same as
for witnesses before the circuit courts of this state, and
shall be paid from the appropriation for the incidental ex-
penses of the commission. All officers in the public ser-
vice, and their deputies, clerks, subordinates and em-
ployees shall attend and testify when required to do so
by said commission. Any disobedience to, or neglect of,
any subpoena issued by the said commissioners, or any
one of them, to any person, shall be held a contempt of
court, and shall be punished by the circuit court of the
county in which the municipality or the major portion of
the territory thereof is located, or the judge thereof in
vacation, as if such subpoena had been issued therefrom.
The judge of such court shall, upon the application of any
one of said commissioners, in any such case, cause the
process of said court to issue to compel such person or
persons disobeying or neglecting any such subpoena to
appear and to give testimony and produce evidence be-
fore the said commissioners, or any one of them, and shall
have the power to punish any such contempt.

(5) Make an annual report to the mayor showing its
own actions, and its rules and regulations, and all of the
exceptions thereto in force, and the practical effects there-
of, and any suggestions it may have for the more effectual
accomplishment of the purposes of the civil service pro-
visions of this article. Such report shall be made available
for public inspection within five days after the same shall
have been delivered to the mayor of the municipality.

§8-15-16. Rules and regulations for all examinations; proba-
tionary appointments.

The firemen's civil service commission in each mu-
icipality shall make rules and regulations providing for
both competitive and medical examinations for appoint-
ments and promotions to all positions in the paid fire
department in such municipality, and for such other
matters as are necessary to carry out the purposes of the
civil service provisions of this article. Any such com-
mission shall have the power and authority to require
by rules and regulations a physical fitness examination
as a part of its competitive examination or as a part
of its medical examination. Due notice of the contents
of such rules and regulations and of any modifications
thereof shall be given, by mail, in due season, to the
appointing officer; and said rules and regulations and
any modifications thereof shall also be printed for public
distribution. All original appointments to any positions
in a paid fire department subject to the civil service
provisions of this article shall be for a probationary
period of six months: Provided, That at any time dur-
ing the probationary period the probationer may be dis-
charged for just cause, in the manner provided in section
twenty-five of this article. If, at the close of this proba-
tionary term, the conduct or capacity of the probationer
has not been satisfactory to the appointing officer, the
probationer shall be notified, in writing, that he will
not receive absolute appointment, whereupon his em-
ployment shall cease; otherwise, his retention in the
service shall be equivalent to his final appointment.
§8-15-17. Form of application; age and residency requirements; exceptions.

1 The firemen's civil service commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules and regulations of said commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

1. His full name, residence and post-office address;
2. His United States citizenship, age and the place and date of his birth;
3. His state of health, and his physical capacity for the public service;
4. His business and employments and residences for at least three previous years; and
5. Such other information as may reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

Blank forms for such applications shall be furnished by the commission, without charge, to all individuals requesting the same. The commission may require, in connection with such application, such certificates of citizens, physicians and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

No application for original appointment shall be received if the individual applying is less than twenty-one years of age or more than thirty-five years of age at the date of his application. Provided, That in the event any applicant formerly served upon the paid fire department of the municipality to which he makes application, for a period of more than six months, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against such applicant, within a period of two years next preceding the date of his application, and at the time of his application resides within the corporate limits of the municipality in which the paid fire department to which he
seeks appointment by reinstatement is located, then such individual shall be eligible for appointment by reinstatement in the discretion of the firemen's civil service commission, even though such applicant shall be over the age of thirty-five years, and such applicant, providing his former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination, but such applicant shall undergo a medical examination; and if such individual shall be so appointed by reinstatement to the paid fire department, he shall be the lowest in rank in the department next above the probationers of the department.

Any applicant for original appointment must have been a resident for one year, during some period of time prior to the date of his application, of the municipality in which he seeks to become a member of the paid fire department: Provided, That if the commission deems it necessary it may consider for original appointment applicants who are not residents of the municipality but who have been residents of the county in which the municipality or any portion of the territory thereof is located for a period of at least one year.

§8-15-18. Character and notice of competitive examinations; qualifications of applicants; press representatives; posting eligible list; medical examinations.

All competitive examinations for appointments or promotions to all positions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the individual or individuals examined to discharge the duties of the employment sought by him or them. All competitive examinations shall be open to all applicants who have fulfilled the preliminary requirements specified in the other civil service provisions of this article.

Adequate public notice of the date, time and place of every competitive examination, together with information as to the kind of position to be filled, shall be given at least one week prior to such competitive examination.
15. The said commission shall adopt reasonable rules and regulations for permitting the presence of representatives of the press at any such competitive examination. The commission shall post, in a public place at its office, the eligible list, containing the names and grades of those who have passed such competitive examinations for positions in the paid fire department, and shall indicate thereon such appointments as may be made from said list.

23. All applicants for appointment or promotion to any position in a paid fire department who have passed the competitive examination specified above shall, before being appointed or promoted, undergo a medical examination which shall be conducted under the supervision of a board composed of two doctors of medicine appointed for such purpose by the mayor of the municipality. Such board must certify that an applicant is free from any bodily or mental defects, deformity or diseases which might incapacitate him from the performance of the duties of the position desired and is physically fit to perform such duties before said applicant shall be appointed or promoted to any position. Notwithstanding the first sentence of this paragraph, in the event the commission deems it expedient, the medical examination may be given prior to the competitive examination, and if the medical examination is not passed as aforesaid, the applicant shall not be admitted to the competitive examination.

§8-15-19. Refusal to examine or certify; review thereof.

1. The commission may refuse to examine an applicant, or after examination to certify as eligible one, who is found to lack any of the established preliminary requirements for the examination or position for which he applies; or who is physically so disabled as to be rendered unfit for the performance of the duties of the position desired; or who is addicted to the habitual use of intoxicating liquors or drugs; or who has been guilty of any crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to
practice any deception or fraud, in his application, in any such examination, or in securing his eligibility; or who refuses to comply with the rules and regulations of the commission.

If any applicant feels aggrieved by the action of the commission in refusing to examine him, or after an examination in refusing to certify him as an eligible, the commission shall, at the request of such applicant, appoint a date, time and place for a public hearing; at which time such applicant may appear, by himself or counsel, or both, and the commission shall then review its refusal to make such examination or certification, and testimony shall be taken. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by him. After such review, the commission shall file in its records the testimony taken, and shall again make a decision, which decision shall be final and not subject to judicial review, but under no circumstances shall the provisions of this article be construed, in the case of a refusal to examine an applicant for promotion or to certify an applicant as eligible for promotion, as depriving such applicant of his right to seek a writ of mandamus, if the application for such writ is made within twenty days from the date of the decision refusing to examine or to certify him as eligible for promotion.

§8-15-20. Appointments from list of eligibles; special examinations for electricians or mechanics.

Every position, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the firemen's civil service commission of any vacancy in a position which he desires to fill, and shall request the certification of eligibles. The commission shall forthwith certify, from the eligible list, the names of the three individuals thereon who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candi-
dates, make an appointment from the three names so
certified: *Provided*, That should he make objection, to the
commission, to one or more of these individuals, for any
of the reasons stated in section nineteen of this article, and
should such objection be sustained by the commission,
after a public hearing along the lines of the hearing pro-
vided for in section nineteen, if any such hearing is re-
quested, the commission shall thereupon strike the name
of any such individual from the eligible list, and certify
the next highest name for each individual so stricken. As
each subsequent vacancy occurs, in the same or another
position, precisely the same procedure shall be followed:
*Provided, however*, That after any name has been three
times rejected for the same or another position in favor
of a name or names below it on the same list, the said
name shall be stricken from the list. When there are a
number of positions of the same kind to be filled at the
same time, each appointment shall, nevertheless, be made
separately and in accordance with the foregoing pro-
visions. When an appointment is made under the pro-
visions of this section it shall be, in the first instance, for
the probationary period of six months, as provided in
section sixteen of this article: *Provided further*, That in
the event any position as an electrician or mechanic is to
be filled in any paid fire department, then the examina-
tions to be given to applicants for either position shall be
so drawn as to test only the qualifications of such appli-
cants in regard to their ability as electricians or mechan-
ics, such examinations to be special examinations.

§8-15-21. **Noncompetitive examination for filling vacancy; pro-
visional appointment.**

Whenever there are urgent reasons for filling a vacancy
in any position in a paid fire department and there is no
list of individuals eligible for appointment after a com-
petitive examination, the appointing officer may nominate
an individual to the firemen’s civil service commission for
noncompetitive examination; and if such nominee shall
be certified by the said commission as qualified, after such
noncompetitive examination and a medical examination,
he may be appointed provisionally, to fill such vacancy
10 until a selection and appointment can be made after com-
11 petitive examination, in the manner prescribed in section
12 twenty of this article; but such provisional appointment
13 shall not continue for a longer period than three months,
14 nor shall successive provisional appointments be made
15 to the same position, under the provisions of this section.

§8-15-22. Vacancies filled by promotions; eligibility for promo-
tion.
1 Vacancies in positions in a paid fire department shall be
2 filled, so far as practicable, by promotions from among
3 individuals holding positions in the next lower grade in
4 the department. Promotions shall be based upon merit
5 and fitness to be ascertained by competitive examinations
6 to be provided by the firemen's civil service commission
7 and upon the superior qualifications of the individuals
8 promoted, as shown by their previous service and ex-
9 perience: Provided, That no individual shall be eligible
10 for promotion from the lower grade to the next higher
11 grade until such individual shall have completed at least
12 two years' service in the next lower grade in the depart-
13 ment. The commission shall have the power to determine
14 in each instance whether an increase in salary constitutes
15 a promotion.

§8-15-23. No inquiry shall be made concerning political or re-
ligious opinions or affiliations of applicants, etc.
1 No question in any form of application or in or during
2 any examination shall be so framed as to elicit informa-
3 tion concerning the political or religious opinions or
4 affiliations of any applicant; nor shall inquiry be made
5 concerning such opinions or affiliations; and all disclo-
6 sures thereof shall be discountenanced. No discrimination
7 shall be exercised, threatened or promised by any indi-
8 vidual in a paid fire department against, or in favor of, an
9 applicant, eligible, or member of a paid fire department
10 because of his political or religious opinions or affiliations.

§8-15-24. Political activity of members of paid fire depart-
ments prohibited.
1 No member of any paid fire department shall engage
2 in any political activity of any kind, character or nature
whosoever, except to cast his vote at any election, or shall act as an election official in any election, municipal, county or state. Any member of any paid fire department violating the provisions of this section shall have his appointment vacated and he shall be removed in accordance with the pertinent provisions of this article.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section twenty-four of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. For the purpose of the remainder of this subsection and subsections (b) and (c) of this section, the term "suspension" shall mean only (1) a suspension in excess of fifteen days, or (2) a suspension in any calendar year which when added to any previous suspension or suspensions within the same calendar year results in a total period of suspension in excess of fifteen days within such same calendar year, and for the purpose of the remainder of this subsection and said subsections (b) and (c), a member shall not be considered to be suspended or sought to be suspended unless his suspension meets the foregoing definition of said term. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the firemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in
writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as “removing officer,” to justify his action, and in the event the removing officer fails to justify his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the municipality or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court’s decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court’s decision, as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at
all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, said municipality shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid fire department of said municipality shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid fire department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid fire department shall be made.


1 Any individual who makes an appointment or promotion to any position, or selects an individual for employment, contrary to the civil service provisions of this article, or wilfully refuses or neglects otherwise to comply with, or to conform to, any of the civil service provisions of this article, or violates any of such provisions, shall be deemed guilty of a misdemeanor.

2 Any commissioner or examiner, or any other individual, who shall wilfully, by himself or in cooperation with one or more persons, defeat, deceive or obstruct any individual with respect to his right of examination or registration according to the civil service provisions of this article, or to any rules and regulations prescribed pursuant thereto, or who shall wilfully or corruptly, falsely mark, grade, estimate, or report upon any such examination or proper standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aid in so doing, or who shall wilfully or corruptly furnish to any individual any special or secret information, for the purpose of either improv-
or injuring the prospects or chances of appointment
or promotion to any position of any individual so exam-
ined, registered or certified, or to be so examined, regis-
tered or certified, or who shall impersonate any other
individual, or permit or aid in any manner any other
individual to impersonate him, in connection with any
such examination or registration, or application or re-
quest to be examined or registered, shall, for each offense,
be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense
shall be punished by a fine of not less than fifty dollars,
nor more than one thousand dollars, or by imprisonment
for a term not exceeding one year, or by both such fine
and imprisonment, in the discretion of the court.

§8-15-27. Repeal of conflicting acts and provisions; civil ser-
vice provisions of article exclusive; status or tenure
not affected.

All acts, whether general, special, local or special legis-
native charters, or parts thereof, in relation to any civil
service measure affecting any paid fire department inconst-
sistent with the civil service provisions of this article
shall be, and the same are, hereby repealed insofar as such
inconsistencies shall exist. It is intended by the civil
service provisions of this article to furnish a complete and
exclusive system for the appointment, promotion, rein-
statement, removal, discharge, suspension and reduction
of all members of all paid fire departments in all munici-
palities. The status or tenure of all members of any paid
fire department, which members were employed on the
effective date of this article, shall not be affected by the
enactment of this article, but all such members shall be
subject to all of the civil service provisions of this article
with like effect as if they had been appointed members
hereunder.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND
FINANCING.

PART I. DEFINITION; AUTHORIZATION OF
MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.
§8-16-2. Municipalities authorized to construct, etc., public works and
to acquire property; payment of costs.
§8-16-3. Special provisions as to certain municipal public works.
PART II. CONTROL OF GOVERNING BODY OR BOARD.
§8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

PART III. GENERAL POWERS AND AUTHORITY.
§8-16-5. Powers of board.
§8-16-6. Preliminary expenses.
§8-16-7. Ordinance for construction, etc., of works.

PART IV. RIGHT OF EMINENT DOMAIN.
§8-16-8. Right of eminent domain.

PART V. REVENUE BOND FINANCING.
§8-16-9. Bonds for improvements, etc., of works.
§8-16-10. Items of expense included in cost of works.
§8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.
§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.
§8-16-13. Obligations not to bind municipal official or officer or member of board personally.
§8-16-14. Additional bonds for improvements, etc., of works.
§8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
§8-16-17. Sinking fund; sinking fund commission; purchase of outstanding bonds.

PART VI. IMPOSITION OF RATES OR CHARGES.
§8-16-18. Rates or charges for services rendered by works.
§8-16-19. Appeal to public service commission from rates fixed.

PART VII. ACCOUNTING SYSTEM AND RECORDS.
§8-16-20. Accounting system; yearly audit; custodian of funds.

PART VIII. RATES OR CHARGES FOR MUNICIPALITIES.
§8-16-21. Municipality or municipalities to pay established rates or charges for services rendered to it or them.

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.
§8-16-22. Statutory mortgage lien upon works created.
§8-16-23. Acquisition of property on which lien exists.
§8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.
§8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.
§8-16-27. Article liberally construed.
§8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

PART I. DEFINITION; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.

1 As used in this article, the terms "municipal public works" or "works" or "projects" shall be construed to mean and include the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where such works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall mean and include any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.
§8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.

1 Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, right-of-ways, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties: Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article.

§8-16-3. Special provisions as to certain municipal public works.

1 When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.
When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

When the cost of the municipal public works is to be paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds.

PART II. CONTROL OF GOVERNING BODY OR BOARD.

§8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

1 The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or
bodies, as the case may be, may provide, by ordinance
or ordinances, for said committee, board or commission
to exercise such of the functions of the governing body
or bodies in connection with the matter as it or they
dee proper, and may provide for said committee, board
or commission to receive such compensation as such
body or bodies may deem proper, all of which author-
ity and compensation shall be specifically provided for
by ordinance or ordinances. Any such committee, board
or commission shall consist of the number of members
fixed in the ordinance or ordinances creating the same,
and the manner and mode of the selection and appoint-
ment of the members of any such board or commission
shall be stated in such ordinance or ordinances. The
members of any such board or commission appointed
by the governing body or bodies shall be chosen without
regard to their political affiliations, but with regard to
their business and professional experience or standing
as citizens in the community. All compensation and ex-
penses, including attorney's fees, of such committee, board
or commission shall be paid solely from funds provided
under the authority of this article. Any such committee,
board or commission shall have the power to establish
bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term “board”
shall be construed to mean the governing body or com-
mittee composed of all or a portion of the governing body
when only one municipality is involved, or a board or
commission appointed by the governing body when only
one municipality is involved or appointed by the gov-
erning bodies when two or more municipalities take joint
action under the provisions of this article, as the case
may be. When two or more municipalities take joint
action under the provisions of this article each govern-
ing body shall appoint to the board the number of mem-
ers which the governing bodies have agreed shall be
appointed by each such governing body.

The governing body or bodies also, in its or their dis-
cretion, may provide by ordinance or ordinances for the
leasing of a municipal public works and provide for the
custody, maintenance and operation thereof by a lessee
in accordance with the provisions of such ordinance or
ordinances and lease contract executed pursuant thereto:

Provided, That the lessee shall pay to the municipality
or municipalities for the use and occupancy of such
municipal public works so leased an amount sufficient
to provide a sinking fund for the payment of the bonds
and the interest thereon and all other charges mentioned
in section seventeen of this article.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

The board shall have plenary power and authority to
take all steps and proceedings, and to make and enter
into all contracts or agreements necessary, appropriate,
useful, convenient or incidental to the performance of
its duties and the execution of its powers and authority
under this article: Provided, That any contract or agree-
ment relating to the financing, or the construction, re-
construction, establishment, acquisition, improvement,
renovation, extension, enlargement, increase or equip-
ment of any such works, and any trust indenture with
respect thereto as hereafter provided for, shall be ap-
proved by the governing body or bodies.

The board may employ engineers, architects, inspec-
tors, superintendents, managers, collectors, attorneys and
such other employees as in its judgment may be neces-
sary in the execution of its powers and duties, and may
fix their compensation, all of whom shall do such work
as the board may direct. All such compensation and
expenses incurred in carrying out the provisions of this
article shall be paid solely from funds provided under
the authority of this article, and the board shall not exer-
cise or carry out any power or authority herein given
it so as to bind said board or any municipality beyond
the extent to which money shall have been, or may be
provided under the authority of this article. No contract
or agreement with any contractor or contractors for labor
or materials, or both, exceeding in amount the sum of
one thousand dollars shall be made without advertising
for bids, which bids shall be publicly opened and an
30 award made to the lowest responsible bidder, with power
31 and authority in the board to reject any and all bids.
32 After the construction, reconstruction, establishment,
33 acquisition, renovation or equipment of any such works,
34 the board shall maintain, operate, manage and control
35 the same, and may order and complete any improvements,
36 extensions, enlargements, increase or repair (including
37 replacements) of and to the works that the board may
38 deem expedient, if funds therefor be available, or are
39 made available, as provided in this article, and shall
40 establish rules and regulations for the use, maintenance
41 and operation of the works, and do all things necessary
42 or expedient for the successful operation thereof. All
43 public ways or public works damaged or destroyed by
44 the board in carrying out its authority under this article
45 shall be restored or repaired by the board and placed in
46 their original condition, as nearly as practicable, if re-
47 quested so to do by proper authority, out of the funds
48 provided under the authority of this article.

§8-16-6. Preliminary expenses.
1 All necessary preliminary expenses actually incurred
2 by the board of any municipality or municipalities in the
3 making of surveys or estimates of cost and of revenues,
4 employment of engineers or other employees, the giving
5 of notices, the taking of options, and all other expenses of
6 whatsoever nature necessary to be paid prior to the issue,
7 sale and delivery of the revenue bonds herein provided
8 for, may be paid by the municipality or municipalities, to
9 be reimbursed and repaid out of the proceeds of the sale
10 of such revenue bonds to be used for the construction, re-
11 construction, establishment, acquisition, improvement,
12 renovation, extension, enlargement, increase, equipment
13 or repair (including replacements) of such works as here-
14 inafter provided.

§8-16-7. Ordinance for construction, etc., of works.
1 Before any municipality or municipalities shall, under
2 the provisions of this article, construct, reconstruct, estab-
3 lish, acquire, improve, renovate, extend, enlarge, increase,
4 equip or repair (including replacements) any municipal

MUNICIPALITIES [Ch. 86
public works, the governing body, or the governing body
of each participating municipality, shall enact an or-
dinance or ordinances, which shall (a) set forth a brief and
general description of the works, including a reference to
the preliminary report or plans and specifications which
shall theretofore have been prepared; (b) set forth the
estimated cost thereof; (c) order the construction, recon-
struction, establishment, acquisition, improvement, ren-
avation, extension, enlargement, increase, equipment or
repair (including replacements) of such works; (d) direct
that municipal revenue bonds be issued pursuant to this
article, in such amount as may be found necessary to pay
the cost of the works; and (e) contain such other provi-
sions as may be necessary or proper in the premises.
When two or more municipalities take joint action under
the provisions of this article, a certified copy of each such
ordinance shall be filed in the office of the clerk of the
county court of the county or counties in which the mu-
unicipalities are located and in the office of the state tax
commissioner, and when any such municipality is located
in more than one county, the filing for that municipality
shall be in the office of the clerk of the county court in
which the major portion of the territory of such munici-
ality is located. Before any such ordinance shall become
effective, it shall be published as a Class II legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be such municipality or
each such municipality, as the case may be. Said notice
shall specify a date, time and place for a public hearing,
the date being not less than ten days after the first publi-
cation of said notice at which time and place all parties
and interests may appear before the governing body of
the municipality or each such municipality and may be
heard as to whether or not said ordinance shall be put into
effect. At such hearing all objections and suggestions shall
be heard and the governing body or each such governing
body shall take such action as it or they shall deem proper
in the premises: Provided, That if at any such hearing
written protest is filed by thirty percent or more of the
freeholders of the municipality for which the hearing is
46 held, then the governing body of said municipality shall
47 not take further action unless four fifths of the members
48 of said governing body assent thereto: Provided, however,
49 That in case written protest is filed by thirty percent or
50 more of the freeholders as herein provided, any such gov-
51 erning body shall have authority to appoint a committee
52 to consist of one proponent, one opponent and the third
53 to be selected by these two, to determine whether or not
54 thirty percent of the freeholders have in fact protested
55 and said committee shall report its findings to any such
56 governing body.

PART IV. RIGHT OF EMINENT DOMAIN.

§8-16-8. Right of eminent domain.

1 Every such municipality shall have plenary power and
2 authority to condemn any such municipal public works to
3 be acquired, and any land, rights, easements, right-of-
4 ways, franchises and other property, real or personal,
5 deemed necessary, appropriate, useful, convenient or in-
6 cidental for or to the construction, reconstruction or es-
7 tablishment of any such works, or for the improvement,
8 renovation, extension, enlargement, increase or equip-
9 ment thereof or thereto, and in connection therewith shall
10 have and may exercise all the rights, power, authority and
11 privileges of eminent domain granted to municipalities
12 under the laws relating thereto. Title to property shall be
13 taken in the name of the municipality or jointly in the
14 names of the participating municipalities. Proceedings for
15 such appropriation of property shall be under and pur-
16 suant to chapter fifty-four of this code: Provided, That
17 any such municipality shall be under no obligation to ac-
18 cept and pay for any property condemned, and shall in no
19 event pay for any property condemned or purchased, ex-
20 cept from funds provided under the authority of this ar-
21 ticle; and in any proceedings to condemn, such orders may
22 be made as may be just to any such municipality and to
23 the owners of the property to be condemned; and an un-
24 derstanding or other security may be required securing
25 such owners against any loss or damage which may be sus-
26 tained by reason of the failure of any such municipality
to accept and pay for the property, but such undertaking
or security shall impose no liability upon any such mu-
nicipality, except such as may be paid from the funds
provided under the authority of this article.

In the event of acquisition by purchase, the board may
obtain and exercise an option from the owners of said
property for the purchase thereof, and may enter into a
contract for the purchase thereof, and such purchase may
be made upon such terms and conditions, and in such
manner as the board may deem proper: Provided, how-
ever, That the exercise of such option, or the contract for
such purchase, or such purchase shall in no event create
any obligation of any such municipality, or create any
debt, liability or claim, except such as may be discharged
or paid from the funds provided under the authority of
this article.

In the event of the acquisition of any works already
constructed by purchase or condemnation, the board at
or before the time of the adoption of any ordinance de-
scribed in section seven hereof, shall cause to be deter-
mined what reconstruction, improvement, renovation, ex-
tension, enlargement, increase, equipment or repair (in-
cluding replacements) will be necessary, in order that
such works may be effective for their purpose, and an
estimate of the cost thereof shall be included in the esti-
mate of the cost required by section seven hereof, and the
same shall be made upon the acquisition of the works and
as a part of the cost thereof: Provided further, That no
municipality or municipalities shall, under the authority
conferred by this article, condemn any existing privately
owned works in operation at the date of the condemna-

PART V. REVENUE BOND FINANCING.

§8-16-9. Bonds for improvements, etc., of works.

Whenever any municipality or municipalities now, or
hereafter, shall own and maintain and operate any of the
works herein referred to, whether constructed, recon-
structed, established or acquired under the provisions of
this article or not, and shall desire to improve, renovate,
extend, enlarge, increase, equip or repair (including re-
7 placements) the same, it may issue revenue bonds, under
8 the provisions of this article, to pay for the same, and the
9 procedure therefor, including fixing all rates and the com-
10 putation of the amount thereof, shall be the same as in
11 this article provided for the issuance of bonds for the
12 construction, reconstruction, establishment or acquisition
13 of any such works in or by any such municipality which
14 has not theretofore owned and maintained and operated
15 any such works: Provided, That no existing obligations
16 or rights shall be affected or impaired thereby.

§8-16-10. Items of expense included in cost of works.
1 The cost of the works shall be deemed to include the
2 cost of construction, reconstruction, establishment or ac-
3 quisition thereof, the cost of all land, rights, easements,
4 right-of-ways, franchises and other property, real or per-
5 sonal, deemed necessary, appropriate, useful, convenient
6 or incidental therefor or thereto and for the improvement,
7 renovation, extension, enlargement, increase, equipment
8 or repair (including replacements) determined upon; the
9 interest upon bonds prior to and during the project and
10 for six months after completion thereof; engineering and
11 legal expense; expenses for estimates of cost and of reve-
12 nues; expenses for plans, specifications and surveys; other
13 expenses necessary or incident to determining the feas-
14 ibility or practicability of the enterprise; administrative
15 expenses; and such other expenses as may be necessary or
16 incident to the financing herein authorized, the project,
17 the placing of the works in operation and the performance
18 of the things herein required or permitted in connection
19 with any thereof.

§8-16-11. No municipality is to incur any obligation not pay-
1 able from proceeds of bonds; exemption from taxation.
2 Nothing in this article contained shall be so construed
3 as to authorize or permit any municipality or munici-
4 palities to make any contract or incur any obligation of
5 any kind or nature, except such as shall be discharged or
6 payable solely from the funds provided under the author-
7 1 ity of this article. Funds for the payment of the entire
cost of the works shall be provided by the issuance of
revenue bonds of the municipality or municipalities, the
principal and interest of which bonds shall be payable
solely from the special fund for such payment herein pro-
vided for, and said bonds shall not in any respect be a
corporate indebtedness of such municipality or munici-
palities. All such bonds and the interest thereon, and all
properties and revenues and income derived from such
municipal public works, shall be exempt from all taxa-
tion by this state, or any county, municipality, political
subdivision or agency thereof. All of the details of such
bonds and the issuance thereof shall be determined by
ordinance of the governing body or bodies.

§8-16-12. Interest rate and life of bonds; redemption; how pay-
able; form, denominations, etc.; additional bonds
authorized; interim certificates.

Such revenue bonds shall bear interest at not more than
six percent per annum, payable annually, or at shorter
intervals, and shall mature at such time or times, not ex-
ceeding forty years, as may be determined by the or-
dinance or ordinances authorizing the issuance of such
bonds. Such bonds may be made redeemable before ma-
turity, at the option of the municipality or municipalities
issuing the same, to be exercised by said board, at not
more than the par value thereof, and at a premium of
not more than five percent, under such terms and condi-
tions as may be fixed by the ordinance or ordinances
authorizing the issuance of the bonds. The principal and
interest of the bonds may be made payable in any lawful
medium. Such ordinance or ordinances shall determine
the form of the bonds, including the interest coupons to
be attached thereto, and shall fix the denomination or
denominations of such bonds, and the place or places of
the payment of the principal and interest thereof, which
may be at any banking institution or trust company with-
in or without the state. When two or more municipalities
take joint action under the provisions of this article, the
bonds shall be issued by the participating municipalities
either as separate or joint bonds, as the governing bodies
thereof may agree, and when separate bonds are issued,
the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven hereof. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments, under the Uniform Commercial Code of this state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone; but bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than six percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error or calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definite bonds, in-
terim certificates may, under like restrictions, be issued with or without coupons exchangeable for definite bonds upon the issuance of the latter.

§8-16-13. Obligations not to bind municipal official or officer or member of board personally.

1 No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires.

§8-16-14. Additional bonds for improvements, etc., of works.

1 The governing body or bodies may provide by the said ordinance or ordinances authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said ordinance or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed necessary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine of this article.


1 All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

§8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.

1 In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust in-
denture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the state. The ordinance or ordinances authorizing the issuance of the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality or municipalities and the board in relation to the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase and equipment of the project and the repair (including replacements), maintenance, operation and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the project shall be contracted for, carried out and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or such trustee, or both. Except as in this article otherwise provided, the governing body or bodies may provide by ordinance or ordinances or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository, as such body or bodies may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as such body or bodies may determine.

§8-16-17. Sinking fund; sinking fund commission; purchase of outstanding bonds.

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, pro-
vide for a sinking fund for the payment of the bonds and
the interest thereon, and the payment of the charges of
banking institutions or trust companies for making
payment of such bonds and interest, out of the net
revenues of said works, and shall set aside and pledge a
sufficient amount of the net revenues of the works hereby
defined to mean the revenues of the works remaining
after the payment of the reasonable expenses of repair
(including replacements), maintenance and operation,
such amount to be paid by the board into the sinking fund
at intervals, to be determined by ordinance or ordinances
adopted prior to the issuance of the bonds, for (a) the
interest upon such bonds as such interest shall fall due;
(b) the necessary fiscal agency charges for paying bonds
and interest; (c) the payment of the bonds as they fall
due, or if all bonds mature at one time, the proper main-
tenance of a sinking fund sufficient for the payment there-
of at such time; and (d) a margin for safety and for the
payment of premium upon bonds retired by call or
purchase as herein provided, which margin, together with
unused surplus of such margin carried forward from the
preceding year, shall equal ten percent of all other
amounts so required to be paid into the sinking fund.
Such required payments shall constitute a first charge
upon all the net revenues of the works. Prior to the is-
suance of the bonds, the board may, by ordinance or
ordinances, be given the right to use or direct the trustee
or the state sinking fund commission to use such sinking
fund, or any part thereof, in the purchase of any of the
outstanding bonds payable therefrom, at the market
prices thereof, but not exceeding the price, if any, at
which the same shall in the same year be payable or re-
deemable, and all bonds redeemed or purchased shall
forthwith be cancelled, and shall not again be issued.
After the payments into the sinking fund as herein re-
quired, the board may at any time in its discretion trans-
fer all or any part of the balance of the net revenues,
after reserving an amount deemed by the board sufficient
for repair (including replacements), maintenance and
operation for an ensuing period of not less than twelve
months and for depreciation, into the sinking fund, or into
a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the state sinking fund commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

PART VI. IMPOSITION OF RATES OR CHARGES.

§8-16-18. Rates or charges for services rendered by works.

1 The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use and services rendered, or the improvement or protection of property provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust such rates or charges from time to time. When two or more municipalities take joint action under the provisions of this article, such rates or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amount of such rates or charges, and such rates or charges may be the same with respect to each municipality, or they may be different.

Rates or charges heretofore or hereafter established and maintained for the improvement or protection of property, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such
ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and such governing body is reasonably assured that such works will be completed and placed in operation without unreasonable delay.

All rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund.

Revenues collected pursuant to the provisions of this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing at which all the users of the works and owners of the property served, or to be served thereby, and others interested, shall have an opportunity to be heard concerning the proposed rates or charges. After introduction of the proposed ordinance fixing such rates or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publishing the same as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required. After such hearing the ordinance establishing rates or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest. The rates or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same
class, without the necessity of any hearing or notice. Any change or adjustment of rates or charges may be made in the same manner as such rates or charges were originally established as hereinabove provided. The aggregate of the rates or charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments. If any rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of charges due for services rendered, such charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under section seven of this article, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to pay for the same when due, the board may discontinue such service without notice.

§8-16-19. Appeal to public service commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of the immediately preceding section of this article, such party shall have the right to appeal to the public service commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the public service commission.

PART VII. ACCOUNTING SYSTEM AND RECORDS.

§8-16-20. Accounting system; yearly audit; custodian of funds.

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor
shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for and in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen of this article.

PART VIII. RATES OR CHARGES FOR MUNICIPALITIES.

§8-16-21. Municipality or municipalities to pay established rates or charges for services rendered to it or them.

The municipality or municipalities issuing such bonds shall be subject to the same rates or charges established as hereinbefore provided, or to rates or charges established in harmony therewith, for service rendered to the municipality or municipalities and shall pay such rates or charges, when due, from corporate funds, and the same shall be deemed to be a part of the revenues of the works as herein defined, and may be applied as herein provided for the application of such revenue.

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.

§8-16-22. Statutory mortgage lien upon works created.

There shall be and there is hereby created and granted a statutory mortgage lien upon such municipal public
Municipalities

§8-16-23. Acquisition of property on which lien exists.

No property shall be acquired under the provisions of this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

§8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as
so restricted, with power to charge and collect rates
or charges sufficient to provide for the payment of the
expenses of repair (including replacements), mainte-
nance and operation, and also to pay any bonds and
interest outstanding, and to apply the income or other
revenue in conformity with this article, and the said ordi-
nance or trust indenture, or both, and the power herein
provided for the appointment of a receiver and the ad-
ministration by the court of the works on behalf of the
municipality or municipalities, and the bondholders or
trustee, or both, shall apply to cases where such works
are operated by a lessee of the municipality or munici-
palities as well as to cases where works are operated by
the municipality or municipalities. In case a receiver
is appointed for works operated by a lessee of a munici-
pality or municipalities, the lease agreement then exist-
ing between the municipality or municipalities and the
lessee ipso facto thereby shall be terminated and all
property, equipment, bills receivable and assets of every
kind, used in connection with the operation of such
works, shall pass to the receiver and upon the termina-
tion of such receivership, such works, equipment, prop-
erty, bills receivable and assets of every kind then in the
hands of the receiver thereupon shall pass to the munici-
pality or municipalities.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.
§8-16-25. Article confers additional power and authority; ex-
traterritorial jurisdiction.
1 The power and authority herein granted shall be in
addition to and not in derogation of any power and au-
thority vested in any municipality under any constitu-
tional, statutory or charter provisions which may now
or hereafter be in effect. For all purposes of this article,
municipalities shall have jurisdiction for ten miles outside
of the corporate limits thereof, except where such zone
would overlap with the zone of another municipality, in
which event the meridian line of the overlapping zone
shall be the dividing line of their respective jurisdictions,
except that one municipality shall have jurisdiction
within such ten-mile zone and may overlap into the zone
of another municipality or municipalities with the con-
sent thereof.


This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation of the works herein provided for, and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the state to the contrary notwithstanding.

§8-16-27. Article liberally construed.

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof.

§8-16-28. Reference to “municipal authorities” or “municipal authority” elsewhere in law to mean “governing body” for the purposes of this article only.

In elaboration of the provisions of section eight, article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court, reference is made to the term “municipal authorities” or “municipal authority” within the meaning of the provisions of former article four-a of this chapter, such reference shall henceforth be read, construed and understood to mean “governing body” as that term is used in this article sixteen only.
ARTICLE 17. LOW COST IMPROVEMENTS.

Part I. Purpose; Definitions.

§8-17-1. Purpose of article; liberal construction.
§8-17-2. Definitions.

Part II. Power and Authority to Make Low Cost Improvements—Preliminary Proceedings.

§8-17-3. Municipality empowered and authorized to make improvements.
§8-17-4. Petition and bond; action of governing body; memorandum of engineer.
§8-17-5. Hearing on adverse report in engineer's memorandum; notice thereof; modification of memorandum; expenses charged to petitioner upon failure of petition.
§8-17-6. When petition for improvement is to be granted.

Part III. Power and Authority to Make Low Cost Improvements—Proceedings After Granting of Petition.

§8-17-7. Procedure when petitioner to pay all of total cost.
§8-17-8. Procedure when total cost to be apportioned among all abutters.
§8-17-9. Accomplishment of the improvement; use of municipal employees and equipment; contracts; account of costs.
§8-17-10. Apportionment among petitioners only; limit on total cost chargeable to petitioners; notice.
§8-17-11. Apportionment among all abutters; limit on total cost chargeable to abutters; engineer's report; notice; hearings; correcting and laying assessments.
§8-17-12. Assessments where property owned or controlled by public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

Part IV. Collection of Assessments and Charges.

§8-17-13. Due date of assessments; statement of amount in default to petitioner.
§8-17-14. Due date of charges against petitioner; collection on bond; petitioner's right of action.

Part V. Cumulative Authority.

§8-17-15. Cumulative authority.

Part I. Purpose; Definitions.

§8-17-1. Purpose of article; liberal construction.

1 It is hereby declared to be the purpose and policy of
2 the Legislature in enacting this article to provide for a
3 simplified method of low cost municipal improvements
4 which cannot be practically accomplished out of municip-
5 al revenues or in accordance with the procedures estab-
lished in article eighteen of this chapter. This article shall be liberally construed to accomplish the purpose hereof.

§8-17-2. Definitions.

For the purposes of this article:

1. "Abutter" shall include the owner or owners, as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article, of the property abutting on any street, alley, public way or easement, or sewer right-of-way or easement, upon or in which an improvement shall be made or proposed to be made under the provisions of this article;

2. "Engineer" shall mean the municipal engineer, or, if the municipality has no regularly employed municipal engineer, any registered professional engineer, if there be any practicing in the municipality or the county, or if no such engineer be practicing in the county, any competent civil engineer;

3. "Petitioner" shall, unless the context clearly indicates otherwise, include those abutters, whether one or more, who file the petition and bond described in section four of this article;

4. "Improvement" shall include the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurb ing and repairing of streets, alleys, public ways or easements, or portions thereof, and the building, renewing and repairing of sidewalks, and the constructing, renewing and repairing of storm or sanitary or combined storm and sanitary sewer systems, or portions thereof, upon or in any streets, alleys, public ways or easements, or sewer right-of-ways or easements, or portions thereof, independently or in conjunction with other of such improvements, within the municipality; and

5. "Total cost" shall include the cost and expense of surveys, engineering and attorney fees, the printing and publishing in relation thereto, and the cost and expense of all labor, work, supervision, inspection, equipment leased and materials furnished and used in completing said improvements, excepting, however, any salaries and wages paid to municipal employees that would have been paid regardless of the work on the proposed improvement.
§8-17-3. Municipality empowered and authorized to make improvements.

1 Every municipality is hereby empowered and authorized, in addition to any other rights, power or authority conferred upon it, to make improvements upon the terms and conditions and in the manner hereinafter in this article set forth.

§8-17-4. Petition and bond; action of governing body; memorandum of engineer.

1 Upon the filing of a written petition for the making of an improvement, together with the bond hereinafter described, by (1) a petitioner stating in said petition the willingness of said petitioner to pay all of the total cost of said improvement, or (2) a petitioner owning the greater amount of frontage of property abutting upon any portion of a street, alley, public way or easement, or sewer right-of-way or easement, upon or in which said improvement is to be made, the governing body shall, by ordinance or resolution, order the engineer to investigate the improvement and to prepare a memorandum describing the portions of the streets, alleys, public ways or easements, or sewer right-of-ways or easements, proposed to be improved, and certifying the reasonable necessity of the improvement, the plans and specifications for the improvement and a list of all items comprising the total cost of the improvement, with an estimate of the cost of each item.

There shall be stated, specified or described in the petition the name and mailing address of the petitioner, the part or parts of the therein named streets, alleys, public ways or easements, or sewer right-of-ways or easements, desired improved, the improvement desired and whether the petitioner will pay all of the total cost or whether he desires the total cost to be apportioned among all of the abutters. In any case where two or more petitioners file the petition and it is stated therein that they intend to pay all of the total cost of the improvement, it shall also be
stated therein either that they desire to have such total cost apportioned among them on a pro rata basis of their abutting footages according to a list of such footages compiled by them and contained in the petition or that they desire to pay such total cost according to a list of percentage shares formulated by them and contained in the petition.

Any petition filed under the provisions of this article shall be signed by the petitioner. A bond shall be given by the petitioner with good security to be approved by the governing body in the penal sum of one thousand dollars. The bond shall bind the petitioner (jointly and severally, in the case of more than one petitioner) to pay all charges and assessments imposed upon such petitioner under the provisions of this article.

§8-17-5. Hearing on adverse report in engineer's memorandum; notice thereof; modification of memorandum; expenses charged to petitioner upon failure of petition.

1 If the engineer certifies in his memorandum that the improvement is not reasonably necessary, or that the estimated total cost is more than one thousand dollars, or both, the governing body shall notify the petitioner of the adverse report in the engineer's memorandum, and of a date (at least ten days from the date of the mailing of the notice as provided below), time and place of a meeting of the governing body, at which the engineer shall be present and the petitioner may object to or be heard on any part of the engineer's memorandum concerned with the said adverse report. The notice shall be given by mailing a copy thereof to the petitioner at the address listed in the petition unless the petitioner shall have notified the governing body in writing of a change in his mailing address, in which case the notice shall be mailed according to such change. The governing body may modify the memorandum in accordance with the evidence introduced at said meeting; but if no evidence is introduced, the engineer's memorandum shall be accepted. In any case where the petition fails because there is no reasonable necessity for the improvement or because the estimated
total cost of the improvement is more than one thousand dollars, or because of both reasons, the petitioner shall be charged with all municipal expenses in connection therewith, except salaries and wages of regular municipal officials and employees, which charge shall be made by ordinance or resolution of the governing body; and a statement of such charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

For convenience of reference herein, the term “engineer’s memorandum” shall mean, as the case may be, his original memorandum, or his memorandum as modified in accordance with the provisions of this section or section eight of this article.

§8-17-6. When petition for improvement is to be granted.
1 A petition for improvement shall be granted when it and the accompanying bond have been found to be regular, and when the engineer’s memorandum indicates that the proposed improvement is reasonably necessary and that the total cost will not exceed one thousand dollars.

PART III. POWER AND AUTHORITY TO MAKE LOW COST IMPROVEMENTS—PROCEEDINGS AFTER GRANTING OF PETITION.

§8-17-7. Procedure when petitioner to pay all of total cost.
1 If the petitioner has stated in the petition that he will pay all of the total cost, the governing body shall, as soon as the petition is granted as provided in section six of this article, order, by ordinance or resolution, the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer’s memorandum.

§8-17-8. Procedure when total cost to be apportioned among all abutters.
1 If the petitioner has stated in the petition that he desires the total cost to be apportioned among all of the abutters, the governing body shall, as soon as the petition is granted, cause notice to be given to all abutters that the petition has been granted; that the engineer’s memorandum, certifying reasonable necessity, the plans and speci-
cations and the cost estimates, will be reconsidered, before
work is started, at a public meeting of the governing body
on the date and at the time and place named in the notice;
and that all abutters will be given an opportunity to pro-
test or be heard concerning any or all particulars of the
engineer's memorandum at that meeting or an adjourn-
ment thereof. Such notice to abutters may be by service on
such abutters in the manner in which process commencing
a civil action under the law of this state is permitted to be
served, at least ten days before said meeting. In lieu of
such service of such notice, the following described notice,
or one in substantially the same form, may be given, and
shall be deemed to have been served on all such abutters,
by publication of such notice as a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area for
such publication shall be such municipality:

“NOTICE TO ALL PERSONS OR CORPORATIONS
OWNING PROPERTY ABUTTING ON ____________
(here describe the portion of the street, alley, public way
or easement, sewer right-of-way or easement, to be im-
proved) IN THE ___________________________ (city, town or
village) OF ________________________________ (name of muni-
cipality);

A petition has been granted by the _______________________
(council, board of directors, commissioners
or other governing body) of the _______________________
(city, town or village) of ___________________________ (name
of municipality) to improve the portion of the ____________
___________________________ (street, alley, public way or easement,
or sewer right-of-way or easement) above described in
___________________________ (name of municipality) by _______
___________________________ (grading, regrading, paving, repaving, sur-
fac ing, resurfacing, curbing, recurbing or repairing, or
the building, renewing or repairing of sidewalks, or the
constructing of sanitary or storm sewers, or both, or other
general description of the proposed improvement), as
specifically described in the engineer's memorandum
certifying the reasonable necessity of the proposed im-
provement, the plans and specifications thereof, and the
estimate of the items of cost thereof, and to apportion the
cost of such improvement among the owners, as of ________
the date of the first publication of this notice), of the abutting property.

The engineer's memorandum above described and the
granting of the petition will be reconsidered by the ______
council, board of directors, commissioners or other governing body) at a public meeting to
be held on the ______ day of ________, 19__________, at ______ M. at _______. Any abut-
ing owner or interested party will be given an oppor-
tunity to protest or be heard at said meeting or an ad-
journment thereof.

(name of recorder)

(name of official position)."

An affidavit of publication of the notice, made by the
newspaper publisher, or some person authorized to do so
on behalf of such publisher, and a copy of the notice shall
be made a part of the minutes of the governing body and
spread on its records of the meeting described in the
notice. The service of said notice upon all persons owning
any interest in any property abutting upon any portion
of said street, alley, public way or easement, or sewer
right-of-way or easement, to be improved shall conclu-
sively be deemed to have been given when such news-
paper publication shall have been completed.

Any part or parts of the engineer's memorandum may
be modified or remodeled at the protest meeting in ac-
cordance with the evidence introduced at such meeting,
including the extent of the portions of the streets, alleys,
public ways or easements, or sewer right-of-ways or ease-
ments, proposed to be improved as designated in the engi-
neer's memorandum. If, after modification or remodifica-
tion at such protest meeting, the memorandum indicates
that the improvement is not reasonably necessary or that
its estimated total cost is more than one thousand dollars,
or both, then the petition shall be automatically revoked;
and the petitioner shall be charged with all municipal
expense in connection therewith except the salaries and
wages of regular municipal employees, which charge shall
be made by ordinance or resolution of the governing body
and a statement of said charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

If the engineer's memorandum has not been so modified or remodified at the protest meeting as to render the petition automatically revoked as provided above, the governing body shall order, by ordinance or resolution, the proper municipal authorities to proceed with the accomplishment of the improvement according to the plans and specifications in the engineer's memorandum, as modified or remodified at the protest meeting in the event that they were modified or remodified.

§8-17-9. Accomplishment of the improvement; use of municipal employees and equipment; contracts; account of costs.

When the proper municipal authorities shall have been ordered by the governing body to proceed under the provisions of either section seven or section eight of this article, they shall do so without delay. The improvement shall be accomplished, as far as possible without interfering with normal municipal services, with the municipality's regular employees and equipment; but contracts may be made with reputable persons for the improvement. Said authorities shall keep an account of all items of cost connected therewith that affect the total cost of the improvement. Upon completion of the improvement, said proper municipal authorities shall deliver the account of costs to the engineer.

§8-17-10. Apportionment among petitioners only; limit on total cost chargeable to petitioners; notice.

Where the willingness of the petitioner to pay all of the total cost is stated in the petition, the engineer shall compute the actual total cost as soon as the improvement is completed and the account called for in section nine of this article is furnished to him; and, where more than one petitioner filed the petition, the engineer shall assess the amount owed by each petitioner according to the method indicated in the petition as prescribed in section four of this article: Provided, That if the actual total cost exceeds one thousand dollars, the municipality shall be responsible for such excess over one thousand dollars, and
if the actual total cost is less than one thousand dollars but exceeds the estimated total cost by more than ten percent of the latter, the municipality shall be responsible for such excess over one hundred ten percent of the estimated total cost.

The engineer shall certify his determination of charges to the governing body, and, after adopting the same by ordinance or resolution, the governing body shall notify the petitioner of the assessment list by mailing a written copy thereof to the petitioner at the proper address, determined as aforesaid.

§8-17-11. Apportionment among all abutters; limit on total cost chargeable to abutters; engineer’s report; notice; hearings; correcting and laying assessments.

Where the petitioner indicated in the petition his desire to have the total cost apportioned among all of the abutters, the engineer shall, as soon as the governing body has ordered the proper municipal authorities to proceed with the improvement under the provisions of section eight of this article, determine or cause to be determined the several frontages abutting on the improvement, a brief description thereof and the owners of such frontages as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and he shall keep an account of all items of cost connected therewith that affect the total cost. As soon as the improvement is completed and the account called for in section nine of this article has been furnished to him, the engineer shall compute the actual total cost of the improvement.

The total cost shall be personally borne by such owners of abutting property, including the petitioner, as of the date of service of, or the date of the first publication of, a notice under the provisions of section eight of this article; and the amount of the assessment against each shall be apportioned by the engineer on the basis of the formula next hereinafter set forth. Each lot or parcel of land so abutting shall be assessed with that portion of the total cost of the entire project which is represented
by the proportion which the abutting frontage in feet of such lot or parcel bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the streets, alleys, public ways or easements, or sewer right-of-ways or easements, so improved: Provided, That if the character of the improvements shall be substantially different upon different streets, alleys, public ways or easements, or sewer right-of-ways or easements, or portions thereof, the cost may be equitably apportioned to the respective streets, alleys, public ways or easements, or sewer right-of-ways or easements, or portions thereof, in proportion to the character and cost of the improvements respectively thereon; and the part of the cost so apportioned to each respective street, alley, public way or easement, or sewer right-of-way or easement, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: Provided, however, That if any part of the street, alley, public way or easement improved is used by a railway then the cost of the portion of any improvements between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway: Provided further, That if there be any property abutting on the portion of the street, alley, public way or easement, or sewer right-of-way or easement, so improved which it has been determined by the governing body, and shown in the ordinance or resolution authorizing the improvement, not to be specially benefited by the improvement, or for other reasons would not be liable to assessment for any of, or for some part of, the cost of improvements, then the cost of the improvements abutting such part of said street, alley, public way or easement, or sewer right-of-way or easement, as is so determined to be nonassessable, shall be apportioned among, assessed against and borne by the remaining property abutting upon the portion of the street, alley, public way or easement, or sewer right-of-way or easement, improved in proportion to the frontage of such remaining abutting property as hereinabove provided: And provided further, That if such improvement includes the
building, renewing or repairing of sidewalks on only
one side of a street, alley, public way or easement, then
the cost of such improvement shall be assessed only on
the property abutting on that side where the sidewalks
are so built, constructed or repaired: Provided, That if
there be property abutting the street, alley, public way
or easement, or sewer right-of-way as easement, so
improved which is owned by the United States of
America, and, for that reason, not legally subject to
assessment, then the municipality shall pay the propor-
tionate part of the cost of the improvement which other-
wise would be assessable against such federally owned
property: Provided, however, That if the actual total
cost exceeds one thousand dollars, the municipality shall
be responsible for such excess over one thousand dollars,
and if the actual total cost is less than one thousand
dollars but exceeds the estimated total cost by more
than ten percent of the latter, the municipality shall be
responsible for such excess over one hundred ten per-
cent of the estimated total cost.

The engineer shall formulate a report showing the
chargeable total cost to be apportioned among, assessed
against and borne by the abutters, the names of the
abutters (including the petitioner), the several frontages
owned by said abutters, a brief description thereof and
the proper amount of the chargeable total cost to be
assessed personally against each abutter, and shall deliver
such report to the governing body. The governing body
shall thereupon give notice to the abutters to be assessed
that, on or after a date named in said notice, an assess-
ment may be laid personally against the abutters as
embodied in said report. Said notice shall state that the
abutters so named, or other interested party, may on
said date appear before the governing body to move
the correction or revision of such proposed assessment.
Said notice shall show the same facts embodied in the
engineer's report hereinabove described and shall be
published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be the municipality. On or after the date so ad-
736  MUNICIPALITIES  [Ch. 86

108 vertised, the governing body may revise, amend, correct
109 and verify the report according to the evidence intro-
110 duced by the contesting abutters or by the engineer, and
111 shall thereafter proceed by ordinance or resolution to
112 lay the assessments, as corrected and verified, against
113 the abutters personally.

§8-17-12. Assessments where property owned or controlled by
public, charitable, eleemosynary, educational or
religious institutions; duty of those in charge to
cause assessments to be paid.

1 When any of the lots or parcels of land abutting the
2 portion of the street, alley, public way or easement, or
3 sewer right-of-way or easement, improved consist of
4 property owned or controlled by this state, any munici-
5 pality, county, board of education or other public body,
6 or consist of property owned by or used for, a church, or
7 a religious, charitable, educational or eleemosynary insti-
8 tution, for purposes not subject to taxation, the owners
9 of such property, as of the date of service of, or the date
10 of the first publication of, a notice under the provisions
11 of section eight of this article, shall nevertheless be
12 assessed with their proper proportion of the total cost of
13 said improvement, and it shall be the duty of the owners
14 or those persons having charge of the fiscal affairs of such
15 owners or the management of any such property or insti-
16 tution to make proper arrangements for the payment of
17 such assessments and to cause the same to be paid.

PART IV. COLLECTION OF ASSESSMENTS AND CHARGES.

§8-17-13. Due date of assessments; statement of amount in de-
fault to petitioner.

1 Assessments made under the provisions of section
2 eleven of this article shall be due the municipality within
3 sixty days after the adoption by the governing body of
4 the ordinance or resolution laying the assessment; and
5 upon payment of an assessment by an abutter, he shall
6 be given a receipt therefor, a copy of which shall be re-
7 tained by the municipality; and, upon payment in due
8 course of all such assessments pertaining to an improve-
9 ment, the petitioner shall be automatically discharged on
his bond. If any such assessment, in whole or in part, be not paid within said sixty days, the governing body shall determine the total amount in default and shall charge said amount to the petitioner by ordinance or resolution; and a statement of the charge shall be mailed to the petitioner at the proper address, determined as aforesaid.

§8-17-14. Due date of charges against petitioner; collection on bond; petitioner's right of action.

Charges made against any petitioner under the provisions of sections five, eight, ten and thirteen of this article shall be due the municipality within thirty days from the date that a statement was mailed to him at the proper address, determined as aforesaid. If any such charges against any petitioner be not paid within such thirty days, the governing body shall by ordinance or resolution authorize the proper municipal authorities to proceed to collect on the petitioner's bond.

Any petitioner who is forced to pay, either by collection on the bond or by voluntary payment to avoid collection on the bond, any sum which should have been paid by another petitioner or any other abutter shall have a right of action against any such defaulter for the amount that the defaulter should have paid, with interest at six percent from the date that the defaulter was in default; and where a petitioner makes a voluntary payment for any such defaulter to avoid collection on the bond, a receipt shall be given to him, and a copy retained by the municipality, showing the petitioner who made such payment, the defaulter for whom the payment was made and the charge or assessment for which the defaulter was in default, which receipt shall be prima facie evidence of the petitioner's right to collect from the defaulter named in said receipt the amount specified therein, with interest as above stated.

PART V. CUMULATIVE AUTHORITY.

§8-17-15. Cumulative authority.

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitu-
ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEwers; SEWER CONNECTIONS AND BOARD OF HEALTH.

PART I. POWER AND AUTHORITY TO MAKE IMPROVEMENTS.
§8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements.
§8-18-2. Petition of abutting property owners for improvement; improvements without petition.
§8-18-3. Notice to abutting owners before authorizing improvements; form of notice; affidavit of publication.

PART II. PROCEDURES RELATED TO IMPROVEMENTS AND ASSESSMENTS.
§8-18-4. Ordinance or resolution authorizing improvements; approval of plans, specifications and estimates; provisions for advertisement of bids and payment of cost; default.
§8-18-5. Report on completion; notice to abutting owners of assessments; hearings; correcting and laying assessments.

PART III. APPORTIONMENT IN MAKING ASSESSMENTS.
§8-18-6. Construction of sewers and sewer systems; assessments; corner lots, etc.
§8-18-7. What total cost to include.
§8-18-9. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

PART IV. LIENS OF ASSESSMENTS AND ENFORCEMENT THEREOF.
§8-18-10. Liens; recording notice of liens; suit for enforcement; priority.
§8-18-11. How assessments may be evidenced.

PART V. FINANCING IMPROVEMENTS BY USE OF UNAPPROPRIATED FUNDS TO BE REPAID BY ASSESSMENTS.
§8-18-12. How funds of municipality to be repaid if work paid for from unappropriated funds rather than by means of assessment certificates or from the proceeds of bonds.

PART VI. FINANCING IMPROVEMENTS BY ISSUANCE OF ASSESSMENT CERTIFICATES.

PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.
§8-18-16. Bond issue to be authorized by voters.

PART VIII. PAYMENT OF ASSESSMENTS.
§8-18-17. Payment of assessments or installments; release.
PART IX. REASSESSMENT FOR VOID ASSESSMENTS.
§8-18-18. Reassessment for void, irregular or omitted assessments.

PART X. LIMITATION ON ADDITIONAL ASSESSMENTS.
§8-18-19. Limitation on additional assessments.

PART XI. CONSTRUCTION.
§8-18-20. Liberal construction of article; validity and enforcement of assessments when bond issue for same improvements; cumulative authority.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH.
§8-18-22. Connection to sewers; board of health.

PART I. POWER AND AUTHORITY TO MAKE IMPROVEMENTS.
§8-18-1. Power and authority of municipalities relating to street, sidewalk, sewer and other permanent improvements.

Every municipality is hereby empowered and authorized, in addition to any other rights, power and authority conferred upon it, upon the terms, conditions and in the manner hereinafter set forth, to grade or regrade, pave or repave, surface or resurface, curb or recurb, streets (which term is used in this article to include avenues and roads), alleys, public ways or easements, or portions thereof, and to build or renew sidewalks, and to construct, provide or renew any of such improvements or other permanent public improvements in any streets, alleys, public ways or easements, or portions thereof, in such municipality, and, if deemed advisable, to construct storm and sanitary sewers, or all or a part of a storm or sanitary or combined storm and sanitary sewer system in any streets, alleys, public ways or easements, or sewer right-of-ways or easements, or portions thereof, independently or in conjunction with other of such improvements, and to assess the costs of any or all of such improvements on abutting property.

§8-18-2. Petition of abutting property owners for improvement; improvements without petition.

Upon the petition in writing of persons owning the greater amount of frontage of property abutting upon any portion of a street, alley, public way or easement, or sewer
right-of-way or easement, for any permanent improve-
ment (which term is used in this section and the succeed-
ing sections of this article to include any reimprovement)
authorized in section one of this article, the governing
body of any municipality may, after giving notice to
abutting property owners as hereinafter in this article
provided, by ordinance or resolution declare the necessity
or convenience of such improvement and order and cause
such portions of such streets, alleys, public ways or eas-
ements, or sewer right-of-ways or easements, to be graded;
regraded, paved, repaved, surfaced, resurfaced, curbed,
recurbed, sewered, resewered, permanently improved
(which term is used in this section and the succeeding
sections of this article to also mean reimproved) with
sidewalks or otherwise permanently improved with suit-
able material, or any one or more of such improvements
without the others, as may be determined by the govern-
ing body, to be made or constructed within such munici-
pality or within such part or parts thereof as the govern-
ing body may determine, and such governing body may
specially assess the entire cost of such improvements, or
any part thereof, upon the property abutting on both
sides of the portions of the streets, alleys, public ways or
easements, or sewer right-of-ways or easements, im-
proved.

The governing body of any municipality may also adopt
such ordinance or resolution of necessity or convenience
and provide for such improvements and the assessing of
the cost thereof upon abutting property without such a
petition of property owners having first been received,
when the ordinance or resolution providing for such im-
provements is adopted by the affirmative vote of at least
three fourths of the members of such governing body by
recorded vote, after having given notice to abutting prop-
erty owners as hereinafter in this article provided.

§8-18-3. Notice to abutting owners before authorizing improve-
ments; form of notice; affidavit of publication.

Before the adoption of such ordinance or resolution
of necessity or convenience, the governing body shall
cause notice to be given to owners of abutting property
that such ordinance or resolution will be considered before adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons shall at that meeting, or an adjournment thereof, be given an opportunity to protest or be heard concerning the adoption or rejection of said ordinance or resolution. Such notice to owners of property abutting on the portion of the street, alley, public way or easement, or sewer right-of-way or easement, to be improved may be by service on such owners in the manner in which process commencing a civil action under the laws of this state is permitted to be served at least ten days before said meeting. In lieu of such service of such notice, the following described notice, or one in substantially the same form, may be given, and shall be deemed to have been served on all such owners of abutting property, by publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality:

"NOTICE TO ALL PERSONS OR CORPORATIONS OWNING PROPERTY ABUTTING ON -------------- (here describe the portion of the street, alley, public way or easement, or sewer right-of-way or easement, to be improved) IN THE _______________________ (city, town or village) OF ___________________ (name of municipality):

Proposals have been made to the ___________________ (council, board of directors, commissioners or other governing body) of the ___________________ (city, town or village) of ___________ (name of municipality) to permanently improve the portion of the ___________ (street, alley, public way or easement, or sewer right-of-way or easement) above described in ___________ (name of municipality) by ___________ (grading, regrading, paving, repaving, surfacing, resurfacing, curbing or recurbing, building or renewing of sidewalks, or the constructing of sanitary or storm sewers, or other general description of the proposed improvements) as the ___________ (council, board of directors, commissioners or other governing body) may deem proper, and to assess the cost of such
improvements on the property abutting said portion of
said _______ (street, alley, public way or easement,
or sewer right-of-way or easement).

The proposals to make such improvements, and the
plans, specifications, profiles and estimates therefor, will
be considered by the ________________ (council, board of
directors, commissioners or other governing body) at a
public meeting to be held on the _______ day of ________,
19____, at ______ M. at ______ ___. Any abutting owner
or interested party will be given an opportunity to pro-
test or be heard at said meeting or an adjournment
thereof.

______________________ (name of recorder)
______________________ (official position).

An affidavit of publication of the notice, made by the
newspaper publisher, or some person authorized to do
so on behalf of such publisher, and a copy of the notice
shall be made a part of the minutes of the governing body
and spread on its records of the meeting described in the
notice. The service of said notice upon all persons own-
ing any interest in any property abutting upon any por-
tion of said street, alley, public way or easement, or
sewer right-of-way or easement, to be improved shall
conclusively be deemed to have been given when such
newspaper publication shall have been completed.

PART II. PROCEDURES RELATED TO IMPROVEMENTS AND
ASSESSMENTS.

§8-18-4. Ordinance or resolution authorizing improvements;
approval of plans, specifications and estimates;
provisions for advertisement of bids and payment
of cost; default.

After hearing held pursuant to notice as provided in
section three of this article, the governing body, by ordi-
nance or resolution, may authorize such improvements
and the assessing of the total cost or any part thereof on
abutting property as herein provided. In the same or sub-
sequent ordinances or resolutions, but before advertising
for bids from contractors, the governing body shall cause
to be prepared plans, specifications and estimates of the
cost of the proposed improvements under the supervision
of the engineer for the municipality. Such plans, specifications and estimates shall show the proposed grade and sufficient data for any owner of abutting property to calculate approximately what proportionate part of the estimated cost thereof might be assessed against his property, and shall be filed with the recorder and open to the inspection of interested persons before advertisement for bids of contractors and before the meeting at which such bids may be accepted or rejected. Before advertising for bids of contractors, such governing body shall consider said plans, specifications and estimates and may amend or modify them, and before advertising for bids shall by ordinance or resolution approve such plans, specifications and estimates as so amended and modified. Such ordinance or resolution shall also provide for advertisement for bids, for the letting of a contract or contracts for the work to the lowest responsible bidder, with right reserved to such governing body to reject any and all bids, and shall provide for supervision of such work by the mayor, city manager, if any, municipal engineer, if any, or other person or committee designated by the governing body. Such ordinance or resolution shall also provide for payment of the cost of the work when completed. The governing body shall provide in such ordinance or resolution for the payment by abutting property owners of the cost of the work in equal installments payable over a period of not less than five years nor more than ten years from the date of assessment, with interest at the rate of six percent per annum from the date of assessment, and in said ordinance or resolution the governing body shall fix the number of installments in which the amounts assessed shall be payable: Provided, That each of said assessments or the installments thereof then remaining unpaid shall be payable at any time after assessment without interest after the date such payment is made: Provided, however, that on failure of the owner of the property assessed to pay any installment as and when due, and if such default continues for sixty days, then at the option of the governing body (if neither assessment certificates nor bonds are issued as hereinafter in this article provided), or the holder of the assessment certificates (if the assessments
are evidenced by such certificates), or the holder of any bonds secured by such assessments (if bonds are issued), the entire balance due may be declared immediately due and payable and the municipality, or the holder of the certificates, or bonds, as the case may be, may forthwith proceed to enforce the collection thereof: Provided further, That if the amounts to be assessed against abutting property be less than two dollars for each abutting front foot of property, then said governing body is authorized to make the same payable in one lump sum or in installments, with interest, over a period of less than five years from the date of assessment.

§8-18-5. Report on completion; notice to abutting owners of assessments; hearings; correcting and laying assessments.

1 When the improvement of such street, alley, public way or easement, or sewer right-of-way or easement, has been completed, the governing body shall cause the engineer, or other person charged by the governing body with the supervision of the work of improvement, to make a report showing the several frontages abutting thereon, the total cost, the respective amounts chargeable upon each lot or parcel of land assessed abutting thereon and the proper amounts to be assessed against the respective abutting lots or parcels of land as provided herein, with a description of the abutting lots and parcels of land as to ownership, frontage and location. The governing body shall thereupon give notice to the owners of the property to be assessed that on or after a date named in said notice an assessment may be laid against the property so improved as embodied in said report. Said notice shall state that the owner or owners whose property is to be assessed, or other interested party, may on said date appear before the governing body to move the revision or correction of such proposed assessment. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. Said notice shall show the total cost of the improvement, the several frontages abutting thereon and
the respective amounts to be assessed against the abutting
property, with a description of the respective abutting
lots and parcels of land as to ownership, frontage and
location. On or after the date so advertised, the governing
body may revise, amend, correct and verify the report and
proceed by ordinance or resolution to lay the assessments
as corrected and verified.

PART III. APPORTIONMENT IN MAKING ASSESSMENTS.

§8-18-6. Construction of sewers and sewer systems; assess-
ments; corner lots, etc.

1 The governing body of any municipality is hereby em-
powered and authorized to order and cause to be con-
structed, within said municipality, or partly within and
partly without the corporate limits of said municipality,
public, common, lateral, branch and trunk storm and
sanitary sewers and sewer systems and combined storm
and sanitary sewers or sewer systems, or both, by contract
or directly by the municipality, for the benefit of said
municipality or any part thereof, and to purchase lands
or easements or to condemn lands or easements in the
manner provided by law for such sewers or sewer sys-
tems. When the governing body shall order and complete
the construction of any such sewer or sewer system or any
part thereof within said municipality, the property
abutting on such sewer or abutting upon any street, alley,
public way or easement, or any sewer right-of-way or
easement, in which such sewer shall be constructed, or
abutting on any street, alley, public way or easement, or
any sewer right-of-way or easement, in which any part
of such a sewer is constructed, may be charged with all or
any part of the cost thereof, including the cost of such
sewer or sewer system across intersections of streets,
alleys, public ways and easements.

A sewer system shall be deemed to include all of the
common sewers whether they be lateral, branch, trunk
or combined sewers, which serve to drain a definite drain-
age area as specified in the order of the governing body
directing the work to be done.

In case of a corner lot, or of acreage which has not been
divided into lots, frontage which may be assessed shall
be measured along the longest dimension thereof abutting on each street, alley, public way or easement, or sewer right-of-way or easement, in which such sewer is laid, but if sewered on two or more sides then such corner lot, or acreage which has not been divided into lots, is to be charged only with the side first sewered unless two hundred feet or more in depth measured from such first sewered side, in which event the corner lot, or acreage which has not been divided into lots, shall be charged only with the footage in excess of two hundred feet. Any lot, or any acreage which has not been divided into lots, having such a depth of two hundred feet or more and abutting on two or more streets, alleys, public ways or easements, or sewer right-of-ways or easements, one in the front and one in the rear of said lot, or said acreage which has not been divided into lots, shall be assessed on both of said streets, alleys, public ways or easements, or sewer right-of-ways or easements, if a sewer is constructed on both such streets, alleys, public ways or easements, or sewer right-of-ways or easements. Where a corner lot, or an acreage which has not been divided into lots, has been assessed on both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on either end.

In case of corner lots, or acreage which has not been divided into lots, where the cost of sewering along one dimension is not assessed against the owner thereof, and in the case of lots, or acreage, less than two hundred feet deep abutting at each end on a street, alley, public way or easement, or sewer right-of-way or easement, in which a sewer is laid, the cost of sewering along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the streets, alleys, public ways or easements, or sewer right-of-ways or easements, being improved, in the manner of apportionment of the cost of improvements in intersections.

§8-18-7. What total cost to include.

1 In ascertaining the total cost of the improvements in any project undertaken pursuant to the provisions of
Ch. 86]  MUNICIPALITIES  747

3 this article, there shall be included the cost and ex-
4 pense of surveys, engineering and attorneys' fees, the
5 printing and publishing in relation thereto, and the
6 cost and expense of all labor, work, supervision, inspec-
7 tion, equipment leased, and materials furnished and used
8 in completing said improvements.


1 The cost of the entire project, including the cost of all
2 improvements at and within intersections, shall be ap-
3 portioned to, and assessed against and borne by the prop-
4 erties abutting upon the streets, alleys, public ways or
5 easements, or sewer right-of-ways or easements, in or
6 upon which the improvements involved in the project
7 shall have been made. Each lot or parcel of land so
8 abutting shall be assessed, subject to the provisions of
9 section six of this article respecting assessment for sewer
10 improvement of corner lots, acreage not divided into lots
11 and lots or acreage sewered on more than one side or end,
12 with that portion of the total cost of the entire project
13 which is represented by the proportion which the abut-
14 ting frontage in feet of such lot or parcel of land bears to
15 the total abutting frontage in feet of all the lots or par-
16 cels of land abutting on the streets, alleys, public ways or
17 easements, or sewer right-of-ways or easements, so im-
18 proved: Provided, That if the character of the improve-
19 ments shall be substantially different upon different
20 streets, alleys, public ways or easements, or sewer right-
21 of-ways or easements, or portions thereof, the cost may be
22 equitably apportioned to the respective streets, alleys,
23 public ways or easements, or sewer right-of-ways or ease-
24 ments, or portions thereof, in proportion to the character
25 and cost of the improvements respectively thereon and
26 the part of the cost so apportioned to each respective
27 street, alley, public way or easement, or sewer right-of-
28 way or easement, or portion thereof, shall be apportioned
29 to and assessed against the respective lots or parcels of
30 land abutting thereupon in the proportion as hereinabove
31 provided: Provided, however, That if any part of the
32 street, alley, public way or easement improved is used
33 by a railway, then the cost of the portion of any improve-
ments between the rails and for two feet outside said rails shall be assessed against and wholly borne by the owner of the railway: Provided further, That property shall be assessed only to the extent it is benefited and if there be any property abutting on the portion of the street, alley, public way or easement, or sewer right-of-way or easement, so improved which it has been determined by the governing body, and shown in the ordinance or resolution authorizing the improvements, not to be specially benefited by the improvements, or not to be specially benefited to the full extent of the cost of the improvements, or for other reasons would not be liable to assessment for any of, or for some part of, the cost of improvements, then the cost of the improvements abutting such part of said street, alley, public way or easement, or sewer right-of-way or easement, or so much thereof as is so determined to be nonassessable, shall be apportioned among, assessed against and borne by the remaining property abutting upon the streets, alleys, public ways or easements, or sewer right-of-ways or easements, improved in proportion, subject to the aforesaid provisions of section six of this article, to the frontage of such remaining abutting property as hereinabove provided: And provided further, That if such improvements include the building or renewal of sidewalks on only one side of a street, alley, public way or easement, then the cost of such sidewalk shall be assessed only on the property abutting on that side where the sidewalks are so built or renewed: Provided, That in apportioning and assessing the cost of sewers or sewer systems the provisions of section six of this article shall be observed: Provided, however, That if there be property abutting the street, alley, public way or easement, or sewer right-of-way or easement, so improved which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property.

In apportioning the cost to any lot or parcel of land in any situation not covered in this article, the cost shall be apportioned equitably, as determined by the governing
body, in keeping with the concepts and principles ex-
pressed in this article and the special benefit to the
property in question from the improvements made.

§8-18-9. Assessment against property of public, charitable,
eleemosynary, educational or religious institutions;
duty of those in charge to cause assessments to be
paid.

1 When any of the lots or parcels of land abutting the
portion of the street, alley, public way or easement, or
sewer right-of-way or easement, improved consist of
property owned or controlled by this state, any munici-
pality, county, board of education or other public body,
or consist of property owned by, or used for, a church,
or a religious, charitable, educational or eleemosynary
institution, for purposes not subject to taxation, such
property shall nevertheless be assessed with its proper
proportion of the cost of said improvement, and it shall
be the duty of those persons having charge of the fiscal
affairs of such owner or the management of any such
property or institution to make proper arrangements for
the payment of, and cause to be paid, such assessments
as and when due and payable.

PART IV. LIENS OF ASSESSMENTS AND ENFORCEMENT THEREOF.

§8-18-10. Liens; recording notice of liens; suit for enforcement;
priority.

1 The property abutting the portion of the street, alley,
public way or easement, or sewer right-of-way or ease-
ment, improved shall be subject to a lien, from the
date of the ordinance or resolution laying the assessment,
for the payment of the cost of the improvements assessed
against said property. A notice of the liens of said
assessments referring to the assessing ordinance or
resolution, and setting forth a list of the property assessed,
described respectively as to amounts of assessment and
ownership, frontage and location of the property, shall
be certified by the recorder of the municipality to the
clerk of the county court of the county wherein the
improvement or any part thereof is located. The county
clerk shall record the same in a proper trust deed book
and index the same in the name of each owner of abutting property assessed. From the date of the assessment, the municipality (if neither assessment certificates nor bonds are issued as hereinafter in this article provided), or the holder of the assessment certificates (if the assessments are evidenced by such certificates), or the holders of the bonds secured by such assessments (if bonds are issued), shall have such liens and shall be entitled to enforce the same in its, his or their name or the name of the municipality to the extent of the amount, principal and interest, of such assessments and against the said property, as to any assessment not paid as and when due. Said assessments shall be and constitute liens in the hands of the municipality, or the holders of said certificates, or the holders of said bonds, as the case may be, upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality, and except any liens for preexisting special assessments. Said assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. The municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may enforce the lien thereof in any proper suit, and when default in the payment, as and when due, of any assessment, principal or interest, or installment, shall occur and such default shall have continued for more than sixty days, the municipality, or the holders of any such certificates, or the holders of any such bonds, as the case may be, may declare the whole unpaid balance due and payable and by proper civil action seeking equitable relief enforce the lien thereof, upon process issued and served according to law upon the owner or owners of the lots or parcels of land subject to said lien at the time such suit may be brought as shown by the records of the clerk of the county court of the county in which said lots or parcels of land are located.

§8-18-11. How assessments may be evidenced.

The governing body shall also determine and provide in the ordinance or resolution laying the assessments,
adopted in accordance with the provisions of section five of this article, if such provision was not made in the ordinance or resolution adopted in accordance with the provisions of section four of this article, the method of paying for the work, for the cost of which assessments are levied as in this article provided, whether by an appropriation from funds in the treasury of the municipality unappropriated to be repaid from the collection of the assessments, or by the issuance of certificates as hereinafter provided, or from the proceeds of bonds issued in anticipation of the collection of special assessments to be made against the abutting property owners as provided for in section fourteen of this article.

PART V. FINANCING IMPROVEMENTS BY USE OF UNAPPROPRIATED FUNDS TO BE REPAID BY ASSESSMENTS.

§8-18-12. How funds of municipality to be repaid if work paid for from unappropriated funds rather than by means of assessment certificates or from the proceeds of bonds.

If the governing body shall determine by ordinance or resolution as in this article provided to pay for the work completed, for the cost of which assessments are levied as in this article provided, from unappropriated funds in the treasury of the municipality, it shall be the duty of the governing body immediately to certify such assessments to the treasurer for collection in accordance with the terms provided in the ordinance or resolution authorizing the improvements.

To each of the installments of assessments remaining unpaid in the treasurer's hands on the dates specified for the payment thereof, a penalty of ten percent shall be added, and any assessments so remaining unpaid in the treasurer's hands on such dates shall be taken up by the governing body on settlements had with the treasurer on such dates, and such assessments, with the penalty added thereto, shall be collected in all respects as provided for the collection of taxes due the municipality, and they shall be a lien upon the property liable therefor the same as a lien for taxes, which lien
21 may be enforced in the same manner as provided for
22 a lien for taxes.
23 Whenever all installments of an assessment for such
24 improvements shall be paid in full to the treasurer he,
25 on behalf of the municipality, shall execute and deliver
26 to the party paying the same a release of the lien there-
27 for, which may be recorded in the office of the clerk
28 of the county court as other releases of liens; and when-
29 ever any such assessments shall not be in the hands
30 of the treasurer for collection, but the same shall be
31 shown to the satisfaction of the municipal auditor or
32 other official performing the duties of auditor for the
33 municipality to have been paid in full to any officer
34 entitled to receive the same, such auditor or such other
35 official or the mayor, in cases where the municipality
36 has no auditor or such other official, may in like manner
37 execute such release.

PART VI. FINANCING IMPROVEMENTS BY ISSUANCE OF
ASSESSMENT CERTIFICATES.


1 If the governing body shall determine by ordinance or
2 resolution to pay for the cost of the work by the issuance
3 of assessment certificates, then immediately upon the
4 laying of the assessment against the abutting property,
5 such assessment certificates shall be issued evidencing
6 said assessments and each installment of principal and
7 interest payable. Said certificates may be payable to
8 the municipality or to the bearer and be signed by the
9 mayor and recorder, or other equivalent officers of the
10 municipality, and shall refer to the ordinance or resolu-
11 tion laying the assessments; shall show the amount and
12 date of the assessment and describe the property against
13 which the assessment is laid, describing the same as to
14 ownership, amount, frontage and briefly as to location.
15 Said certificates shall also show the dates on which
16 principal and interest payments are due, and shall con-
17 tain a provision that in the event there is default in the
18 payment of any one of such installments and such de-
19 fault continues for a period of sixty days, then all unpaid
20 installments shall become due and payable at the elec-
tion of the certificate holder and the holder may proceed
22 to collect all of the unpaid balances of installments, with
23 interest until paid. Said certificates may be issued to
24 the contractor making the improvements in payment
25 therefor, upon the contractor’s reimbursing the munici-
26 pality for those items of the cost and expense advanced
27 by the municipality and referred to in section seven of
28 this article. Said certificates payable to the bearer shall
29 be assignable by delivery of the certificates and be en-
30 forceable by the holder. The municipality issuing such
31 certificates shall not be held as guarantor or in any way
32 liable for the payment of bearer certificates.

PART VII. FINANCING IMPROVEMENTS BY ISSUANCE OF BONDS.


1 Every municipality is hereby empowered and au-
2 thorized to issue its bonds for any improvements under
3 the provisions of this article in anticipation of special
4 assessments to be made upon the property abutting
5 upon the streets, alleys, public ways or easements, or
6 sewer right-of-ways or easements, so improved, and such
7 bonds may be in such an amount as will be sufficient
8 to pay the entire estimated cost and expense of such
9 improvements for which such special assessments are
10 levied. Such municipality is also authorized to sell such
11 bonds, but the price for which they are sold shall not be
12 below the par value of such bonds. Such bonds shall be
13 payable in not to exceed ten years from the date of the
14 issuance thereof, and shall bear interest at not to exceed
15 six percent per annum, payable annually; and in the
16 issuance and sale of such bonds, the municipality shall
17 be governed by all the restrictions and limitations of
18 the constitution of this state, and by the restrictions and
19 limitations of the statutes of this state with respect to
20 the issuance and sale of other bonds, so far as they are
21 not in conflict with the provisions of this article; and
22 the assessments shall be collected as provided in sections
23 ten and twelve of this article, and as paid and collected
24 shall be applied to the liquidation of such bonds and the
25 interest thereon; and if by reason of penalties collected
26 with delinquent assessments there be any balance after
the payment of such bonds and all accrued interest and
cost, such balance shall be turned into the municipal
treasury to the credit of the interest and sinking fund of
the municipality: Provided, That no such municipality
shall by sale or issuance of such bonds cause the aggre-
gate of its indebtedness of every kind whatsoever to
exceed five percent of the value of taxable property
therein: Provided, however, That nothing herein con-
tained shall be construed as authorizing any such munici-
pality to become indebted in any other manner or for
any other purpose, to an amount, including its existing
indebtedness, in the aggregate exceeding two and one-
half percent of the value of the taxable property therein,
as provided in section three, article one, chapter thirteen
of this code, except for the purpose of grading, regrading,
paving, repaving, surfacing, resurfacing, curbing, recurb-
ing, building or renewing sidewalks, or constructing
sewers or otherwise improving or reimproving the streets,
alleys, public ways or easements, or sewer right-of-ways
or easements, of such municipality, as provided for in
this article; nor shall such municipality make such is-
suance and sale without at the same time providing for
the collection of a direct annual tax sufficient to pay
annually the interest on such debt and the principal
thereof within and not exceeding ten years. All of the
assessments, interest and penalties collected from the
abutting property owners on account of the grading,
regrading, paving, repaving, surfacing, resurfacing, curb-
ing, recurbing, building or renewing sidewalks, or con-
structing sewers or otherwise improving or reimprov-
ing the streets, alleys, public ways or easements, or sewer
right-of-ways or easements, of any such municipality,
under the provisions of this article, shall annually be
applied to the annual tax required to pay the interest on
such debt and such principal within and not exceeding
ten years; and in the event that the assessments, interest
and penalties so collected do not amount to a sum suffi-
cient to pay annually the interest on such debt and the
principal thereof within and not exceeding ten years,
then the governing body of such municipality shall
collect so much of such levy as will pay annually the

Every municipality is also empowered and authorized to issue and sell its bonds, as provided in this article for the sale of other bonds, to pay any part of the cost of such improvements to be paid by the municipality, and such municipality may levy taxes in addition to all other taxes authorized by law, to pay such bonds and interest thereon: Provided, That the total indebtedness of the municipality for all purposes shall not exceed five percent of the total value of all taxable property therein.

§8-18-16. Bond issue to be authorized by voters.

No bonds shall be issued under the provisions of this article unless and until the question of issuing such bonds shall have first been submitted to a vote of the qualified voters of the municipality, and shall have received three fifths of all of the votes cast at such election for or against the same. The governing body of any municipality empowered and authorized to issue bonds under the provisions of this article may provide by ordinance for an annual election, at which the question shall be submitted to the people as to whether the municipality shall issue bonds, for the purposes and under the provisions of this article, to an amount not to exceed in the ensuing year the amount recommended by such ordinance for such ensuing year. The ordinance providing for such election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of such aggregate issue authorized for such year, but, before issuing any such bonds, the governing body shall adopt an ordinance or resolution as in this article provided, authorizing the improvements to be made. It shall be a sufficient description of the purpose for which such election is held if the ordinance calling the same shall recite that the governing body proposes to issue bonds for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or
MUNICIPALITIES

constructing sewers or otherwise improving or reimprov-
ing the streets, alleys, public ways or easements, or sewer
right-of-ways or easements, of such municipality at such
time as to the governing body shall seem fit during the
ensuing year ending on the _____ day of ________________,
19____, to an amount not exceeding in the aggregate dur-
ing said year the sum of $____________. When the gov-
erning body shall have once been authorized by a vote
of the qualified voters to issue bonds for such purposes
and to a sum not to exceed the amount set forth in the
ordinance calling such election, no further election shall
be necessary for the issuing of bonds during such en-
suing year up to the amount stipulated in such ordinance
calling such election, but the governing body shall, from
time to time during such ensuing year, by ordinance
authorize the issuance of such bonds in such sums, and
authorize such improvements the cost of which shall
be paid from the proceeds of such bonds, as said govern-
ing body shall determine. The aggregate amount of bonds
authorized by such annual election shall not be exceeded
during such ensuing year, unless the same be authorized
by a special bond election held at a subsequent time in
such year and duly called as provided for the calling of
the annual bond election. The provisions of article one,
chapter thirteen of this code, concerning bond elections
shall, so far as they are not in conflict with the provisions
of this article, apply to the annual bond elections and
special bond elections herein provided for.

PART VIII. PAYMENT OF ASSESSMENTS.

§8-18-17. Payment of assessments or installments; release.

Payments of any assessments or installments thereof
may be made to the treasurer of the municipality or the
holder of the assessment certificates. If payment is made
to the treasurer he shall require all interest to be paid
which is owed up to the time of payment, and notify the
holder of the certificate, if informed of the holder's ad-
address, that he has received such payment, and make
payment to the holder on presentation for cancellation
of the certificate representing such payment. If payment
is made to the holder of the certificate, the holder shall
deliver to the payor certificates marked "paid" representing the payments made of principal and interest. On presentation to the treasurer for cancellation of all certificates of principal and interest for the whole assessment made against a specific piece of property assessed, the treasurer shall on request execute and deliver a release of the lien of such assessment.

PART IX. REASSESSMENT FOR VOID ASSESSMENTS.

§8-18-18. Reassessment for void, irregular or omitted assessments.

In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvements were made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the governing body within ten years after the completion of such improvements, or after any court shall have declared such assessment invalid, to cause notice to be given to any person or persons against whom the cost of said improvements might properly be or have been assessed, of its intention to lay such assessment and fixing a date, time and place at which the owner or owners may appear and show cause against the same. Said notice shall be served in the manner provided in this article for the giving of notices in assessment proceedings, or in any other manner provided by law. At the time and place specified in the notice aforesaid or at any time thereafter, the governing body shall proceed to lay and levy an assessment or assessments for the cost of such improvements as would have been lawful under proper proceedings at the time said improvements were completed, unless the owner or owners so notified shall show good cause against the same. The reassessment or reassessments so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the completion of the improvements, with
interest therefrom, and proper assessment certificates may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements had the assessments therefor been then properly laid and levied.

PART X. LIMITATION ON ADDITIONAL ASSESSMENTS.

§8-18-19. Limitation on additional assessments.

1 When the cost of grading or regrading, paving or repaving, surfacing or resurfacing, curbing or recuring or other work permanently improving streets, alleys, public ways or easements, or of building or renewing sidewalks, or constructing sewers, has been assessed against abutting property under the provisions of this article, no part of the cost of a similar permanent improvement of the same portion of the same street, alley, public way or easement, or sewer right-of-way or easement, shall be assessed against such abutting property within ten years after completion of the last preceding similar such improvement for which assessments have been so made and levied.

PART XI. CONSTRUCTION.

§8-18-20. Liberal construction of article; validity and enforcement of assessments when bond issue for same improvements; cumulative authority.

1 This article shall be liberally construed to accomplish the purpose of providing reasonable, economical and expeditious means for municipalities to provide permanent improvements and to assure to the contractors making such improvements, or persons directly or indirectly financing the same, security in the payment of the cost and expense of such improvements; and nothing in this article shall be construed as imposing a time limit on a certificate holder or bondholder for the enforcement of his rights.

11 Moreover, the validity and enforcement of the assessments in this article provided shall not be impaired by the issuance and sale of bonds, as provided in article

MUNICIPALITIES [Ch. 86

758

1 The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH.

§8-18-22. Connection to sewers; board of health.

1 The owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement in any municipality on which a public sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of law) upon which lot or parcel of land any business or residence building is now located or may hereafter be erected, not connected with a public sewer, may be required and compelled by the board of health to connect any such building with such sewer. Notice so to connect may be given by the board of health either to the owner, lessee or occupant of such building. Each day's failure to comply with such notice and connect with such sewer by such owner or owners, after ten days from the giving of such notice, shall be a misdemeanor and a separate and new offense under this section, and each such offense shall be punishable by a fine of not less than five nor more than twenty-five dollars. Jurisdiction to hear, try, determine and sentence for any violation of this section is hereby vested in the police or municipal court thereof, or, where no police court exists, in the mayor thereof.

ARTICLE 19. MUNICIPAL WATERWORKS SYSTEMS.

PART I. MUNICIPAL WATERWORKS SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal waterworks systems; extension beyond corporate limits; definition.
PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Class III city and Class IV town or village prohibited from selling or leasing water plant without first submitting question to voters.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
§8-19-5. Publication of ordinance and notice; hearing.
§8-19-6. Amount, negotiability and execution of bonds.
§8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.
§8-19-10. Operating contract.
§8-19-11. Rates or charges for water must be sufficient to pay bonds, etc.; disposition of surplus.
§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.
§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-19-17. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.
§8-19-18. Additional and alternative method for constructing, etc., and financing waterworks system; cumulative authority.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction, etc., of waterworks system.
§8-19-20. Article to be liberally construed.

PART I. MUNICIPAL WATERWORKS SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal waterworks systems; extension beyond corporate limits; definition.

1 Subject to and in accordance with the provisions of 2 this article, any municipality may acquire, construct,
establish, extend, equip, repair, maintain and operate, 
or lease to others for operation, a waterworks system, 
or construct, maintain and operate additions, betterments 
and improvements to an existing waterworks system, 
within the corporate limits of said municipality and 
within the area extending twenty miles beyond the 
corporate limits of such municipality, notwithstanding 
any provision or limitation to the contrary in any other 
law or charter: Provided, That such municipality shall 
not serve or supply water facilities or services within 
the corporate limits of any other municipality without 
the consent of the governing body of such other munici-
pality.

When used in this article, the term “waterworks system” shall be construed to mean and include a water-
works system in its entirety or any integral part thereof, 
including mains, hydrants, meters, valves, standpipes, 
storage tanks, pump tanks, pumping stations, intakes, 
wells, impounding reservoirs, pumps, machinery, puri-
fication plants, softening apparatus, and all other facil-
ities necessary, appropriate, useful, convenient or in-
cidental in connection with or to a water supply system.

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Class III city and Class IV town or village prohibited from selling or leasing water plant without first submitting question to voters.

The governing body of any Class III city or Class IV town or village is hereby prohibited from selling, leasing or otherwise disposing of its municipally owned waterworks system, unless upon submission of the ques-
tion of the proposed sale, lease or other disposition to 
the qualified voters of said city, town or village for 
ratification or rejection at any regular municipal election 
or special municipal election, three fifths of the legal 
votes cast shall be in favor of ratification. Should any 
such city, town or village desire to sell, lease or otherwise 
dispose of its waterworks system, it shall publish the 
following described notice immediately prior to the reg-
ular municipal election or special municipal election,
as specified by the governing body, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such city, town or village. The notice shall set forth the terms and conditions of such sale, lease or other disposition of said waterworks system, the price or other consideration which has been agreed upon, the name of the purchaser or purchasers or lessee or lessees, and such other information as the governing body may deem necessary, and each ballot, or ballot label where voting machines are used, shall have written or printed thereon the following words:

- For Ratification
- Against Ratification

Such election shall be held under the superintendence of the commissioners of election appointed by the governing body of such city, town or village and the results of such election shall be certified under oath and returned by said election commissioners to the governing body as soon as may be after such election.

In the event that the sale, lease or other disposition of said waterworks system is ratified by three fifths of the qualified voters voting at said regular or special municipal election, the governing body of said city, town or village having control of such waterworks system shall proceed to consummate the sale, lease or other disposition to the purchaser or purchasers or lessee upon such terms and provisions as have been agreed upon; otherwise, no further action with respect to said sale, lease or other disposition shall be taken.

**PART III. RIGHT OF EMINENT DOMAIN.**

§8-19-3. **Right of eminent domain; limitations.**

1 For the purpose of acquiring, constructing, establishing or extending any waterworks system, or for the purpose of constructing any additions, betterments or improvements to any waterworks system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks system, under the provisions of this article, the municipality shall
have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

Whenever a municipality shall, under the provisions of this article, determine to acquire (by purchase or otherwise), construct, establish, extend or equip a waterworks system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than six percent per annum, payable semiannually, and shall be payable at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance.
Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds.

§8-19-5. Publication of ordinance and notice; hearing.

After the ordinance for any project under this article has been adopted, the ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said ordinance shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body, upon a certain date which shall not be less than ten days subsequent to the date of the last publication of such ordinance and notice, and present protests. At such hearing all protests
and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than six percent per annum to the purchaser upon the amount paid therefor.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision
or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.


There shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks system so acquired, constructed, established, equipped or extended from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six hereof. Any revenue bonds so issued in payment for such an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have; in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.


Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institu-
tion or trust company within or without the state for
the security of said bonds, which any such municipality
is hereby empowered and authorized to enter into and
execute, may contain covenants with the holders of such
bonds as to:

(a) The purpose or purposes to which the proceeds
of sale of such bonds or the revenues derived from said
waterworks system may be applied and the securing,
use and disposition thereof, including, if deemed desir-
able, the appointment of a trustee or depository for any
of such funds;

(b) The pledging of all or any part of the revenues
derived from the ownership, control or operation of such
waterworks system, including any part thereof here-
tofore or hereafter acquired, constructed, established,
extended or equipped or derived from any other sources,
to the payment of the principal of or interest thereon
of bonds issued hereunder and for such reserve or
other funds as may be deemed necessary or desir-
able;

(c) The fixing, establishing and collecting of such
rates or charges for the use of the services and facilities
of the waterworks system, including the parts thereof
heretofore or hereafter acquired, constructed, established,
extended or equipped and the revision of same from
time to time, as will always provide revenues at least
sufficient to provide for all expenses of repair, mainte-
nance and operation of such waterworks system, the
payment of the principal of and interest upon all bonds
or other obligations payable from the revenues of such
waterworks system, and all reserve and other funds
required by the terms of the ordinance authorizing the
issuance of such bonds;

(d) The transfer from the general funds of the mu-
nicipality to the account or accounts of the waterworks
system of an amount equal to the cost of furnishing the
municipality or any of its departments, boards or agen-
cies with the services and facilities of such waterworks
system;

(e) Subject to the provisions of subsection (b), sec-
tion twelve of this article, limitations or restrictions upon
the issuance of additional bonds or other obligations
payable from the revenues of such waterworks system,
and the rank or priority, as to lien and source and
security for payment from the revenues of such water-
works system, between bonds payable from such rev-

eues;

(f) The manner and terms upon which all bonds
and other obligations issued hereunder may be declared
immediately due and payable upon the happening of
a default in the payment of the principal of or interest
thereon, or in the performance of any covenant or
agreement with bondholders, and the manner and
terms upon which such defaults may be declared cured
and the acceleration of the maturity of such bonds
rescinded and repealed;

(g) Budgets for the annual repair, maintenance and
operation of such waterworks system and restrictions
and limitations upon expenditures for such purposes,
and the manner of adoption, modification, repeal or
amendment thereof, including the approval of such
budgets by consulting engineers designated by holders
of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon
such waterworks system, or any part thereof, and the
use and disposition of the proceeds of any insurance;
and

(i) The keeping of books of account, relating to such
undertakings and the audit and inspection thereof, and
the furnishing to the holders of bonds issued hereunder
or their representatives, reports prepared, certified or
approved by accountants designated or approved by the
holders of bonds issued hereunder.

Any such ordinance or trust indenture may also con-
tain such other additional covenants as shall be deemed
necessary or desirable for the security of the holders
of bonds issued hereunder, notwithstanding that such
other covenants are not expressly enumerated above,
and it being the intention hereof to grant to municipalities
plenary power and authority to make any and all
covenants or agreements necessary in order to secure
greater marketability for bonds issued hereunder as
fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state.

§8-19-10. Operating contract.

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water must be sufficient to pay bonds, etc.; disposition of surplus.

Rates or charges for water fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation
account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and if any surplus shall exist in the bond and interest redemption account the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.
(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund for the retirement of the bonds and payment of the interest thereon.


Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of said waterworks system for the nonpayment of the rates or charges for said water service.


Whenever any municipality shall now or hereafter own and operate a waterworks system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided for the issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system in a municipality which has not heretofore owned and operated a waterworks system: Provided, That nothing in this article shall be construed as authorizing any municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting
20 aside and segregation of such revenues for the con-
21 struction of such additions, betterments or improvements
22 only where and to the extent consistent with outstanding
23 obligations of such municipality, and in accordance with
24 the provisions of this article.


1 Any municipality operating a waterworks system
2 under the provisions of this article shall set up and main-
3 tain a proper system of accounts in accordance with
4 the requirements of the public service commission,
5 showing the amount of revenues received from such
6 waterworks system and the application of the same.
7 At least once each year such municipality shall cause
8 such accounts to be properly audited, and a report of
9 such audit shall be open to the public for inspection
10 at all reasonable times.

§8-19-16. Protection and enforcement of rights of bondholders,
etc.; receivership.

1 Any holder of any bonds issued under the provisions
2 of this article or of any coupons representing interest
3 accrued thereon may by civil action, mandamus or other
4 proper proceeding enforce the statutory mortgage lien
5 created and granted in section eight of this article, pro-
6 tect and enforce any and all rights granted hereunder
7 or under any such ordinance or trust indenture, and
8 may enforce and compel performance of all duties re-
9 quired by the provisions of this article or by any such
10 ordinance or trust indenture to be performed by the
11 municipality, or by the governing body or any officer,
12 including the making and collecting of reasonable and
13 sufficient rates or charges for services rendered by the
14 waterworks system. If there be default in the payment
15 of the principal of or interest upon any of such bonds,
16 or of both principal and interest, any court having
17 jurisdiction shall appoint a receiver to administer said
18 waterworks system on behalf of the municipality, and
19 the bondholders or trustee, or both, with power to charge
20 and collect rates or charges sufficient to provide for the
retirement of the bonds and pay the interest thereon,
and for the payment of the repair, maintenance and
operation expenses, and such receiver shall apply the
revenues in conformity with the provisions of this article
and the ordinance pursuant to which such bonds have
been issued or any trust indenture, or both.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE
AUTHORITY.

§8-19-17. Acceptance of grants and procurement of loans or
temporary advances from, and contracts and agree­
ments with, federal agencies or private parties.

Any municipality is hereby empowered and authorized
to accept grants, and procure loans or temporary advances,
for the purpose of paying part or all of the cost of acquisi­
tion, construction, establishment, extension or equipment
of waterworks systems and the construction of additions,
betterments and improvements thereto, from the United
States of America or any federal or public agency or
department of the United States or any private agency,
corporation or individual, which loans or temporary ad­
vances may be repaid out of the proceeds of bonds
authorized to be issued under the provisions of this article
and to enter into the necessary contracts and agreements
to carry out the purposes hereof with the United States
of America or any federal or public agency or department
of the United States, or with any private agency, corpo­
ratio or individual.

In no event shall any such loan or temporary advance
be a general obligation of the municipality and such loans
or temporary advances, including the interest thereon,
shall be paid solely from the proceeds of the bonds
authorized to be issued under the provisions of this article
or the revenues of the municipal waterworks system so
recited in each such contract and agreement.

§8-19-18. Additional and alternative method for constructing,
etc., and financing waterworks system; cumulative
authority.

This article shall, without reference to any other
statute or charter provision, be deemed full authority for
the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the waterworks system herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefore and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction, etc., of waterworks system.

As an alternative to the procedures hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as pro-
17vided in article sixteen of this chapter, except that as to
18a Class III city or Class IV town or village, the right to
19lease said waterworks system shall be strictly limited
20as provided in section two of this article nineteen.

§8-19-20. Article to be liberally construed.

1 This article is necessary for the public health, safety
2and welfare and shall be liberally construed to effectuate
3its purposes.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE
SYSTEMS.

PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS
AUTHORIZED; DEFINITIONS.

§8-20-1. Acquisition and operation of combined waterworks and sew­
erage systems; extension beyond corporate limits; definitions.

PART II. RIGHT OF EMINENT DOMAIN.

§8-20-2. Right of eminent domain; limitations.

PART III. REVENUE BOND FINANCING.

§8-20-3. Ordinance describing project; contents.
§8-20-4. Publication of ordinance and notice; hearing.
§8-20-5. Amount, negotiability and execution of bonds; refund of
outstanding obligations or securities by sale or exchange
of bonds.

§8-20-6. Bonds payable solely from revenues; not to constitute mu­
cipal indebtedness.

§8-20-7. Lien of bondholders.
§8-20-8. Covenants with bondholders.

§8-20-10. Power and authority of municipality to enact ordinances and
make rules and regulations and fix rates or charges;
change in rates or charges; delinquent rates or charges as
liens; civil action for recovery thereof.

§8-20-11. Discontinuance of water service for nonpayment of rates or
charges.

§8-20-12. Use of revenues; sinking fund.
§8-20-14. Repair and maintenance of municipal sewerage system outside
corporate limits.
§8-20-15. Protection and enforcement of rights of bondholders, etc.;
receivership.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE
AUTHORITY.

§8-20-16. Acceptance of grants and procurement of loans or temporary
advances from, and contracts and agreements with, federal
agencies or private parties.
§8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

PART V. OPERATION BY BOARD; CONSTRUCTION.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

§8-20-19. Article to be liberally construed.

PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS.

§8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to
either the waterworks system or the sewerage system of
such combined waterworks and sewerage system, or both,
by the issuance of revenue bonds under the provisions of
this article.
Notwithstanding the provisions of any other law or
charter to the contrary, any such municipality may serve
and supply the area included within twenty miles out-
side its corporate limits with the water or sewer services
and facilities, or both, of its combined waterworks and
sewerage system: Provided, That such water or sewer
services and facilities shall not be served or supplied
within the corporate limits of any other municipality
without the consent of the governing body of such other
municipality.
When used in this article, the term "waterworks sys-
tem" shall be construed to mean and include a water-
works system in its entirety or any integral part thereof,
including mains, hydrants, meters, valves, standpipes,
storage tanks, pump tanks, pumping stations, intakes,
wells, impounding reservoirs, pumps, machinery, purifica-
tion plants, softening apparatus, and all other facilities
necessary, appropriate, useful, convenient or incidental
in connection with or to a water supply system; the term
"sewerage system" shall be construed to mean and in-
clude any or all of the following: A sewage treatment
plant or plants, collecting, intercepting and outlet sewers,
lateral sewers, drains, force mains, conduits, pumping
stations, ejector stations and all other appurtenances, ex-
tensions, additions and improvements necessary, approp-
riate, useful, convenient or incidental for the collection,
treatment and disposal in a sanitary manner of sewage
and industrial wastes; and the term "combined water-
works and sewerage system" shall be construed to mean
and include a waterworks and sewerage system, which a
municipality determines by ordinance to operate in com-
bination.

PART II. RIGHT OF EMINENT DOMAIN.
§8-20-2. Right of eminent domain; limitations.
1 For the purpose of acquiring, constructing, establishing
2 or extending any waterworks system or any sewerage
system, or a combined waterworks and sewerage system, or for the purpose of constructing any additions, betterments or improvements to any such waterworks or sewerage system, or a combined waterworks and sewerage system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or sewerage system, or a combined waterworks and sewerage system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks system or a combined waterworks and sewerage system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined waterworks and sewerage system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission.

PART III. REVENUE BOND FINANCING.

§8-20-3. Ordinance describing project; contents.

1 The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined waterworks and sewerage system any existing waterworks system or any existing sewerage system, or both, such ordinance shall provide that it or they be so included in such combined system and shall describe in a general way such existing waterworks or sewerage system or both to be included in the combined waterworks and sewerage system. Such ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks
or sewerage system, or both. Such ordinance shall determine the period of usefulness of the contemplated project. If it is intended to acquire, construct, establish and equip a combined waterworks and sewerage system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed. Such ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with such bonds deemed advisable. Such ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

§8-20-4. Publication of ordinance and notice; hearing.

After the ordinance for any project under the provisions of this article has been adopted, the ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said ordinance shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body, upon a certain date which shall not be less than ten days subsequent to the date of the last publication of such ordinance and notice, and present protests. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the
20 municipality, then the governing body of said munici-
21 pality shall not take further action unless four fifths of
22 the qualified members of said governing body assent
23 thereto.

§8-20-5. Amount, negotiability and execution of bonds; refund
of outstanding obligations or securities by sale or
exchange of bonds.

1 For the purpose of defraying the cost of acquisition,
2 construction, establishment or equipment of any such
3 waterworks or sewerage system, or a combined water-
4 works and sewerage system, and for the purpose of
5 paying the cost of constructing any extensions, addi-
6 tions, betterments or improvements to either the water-
7 works or sewerage system of said combined waterworks
8 and sewerage system, or both, any such municipality
9 may issue revenue bonds under the provisions of this
10 article. All such bonds may be authorized, issued and
11 sold pursuant to ordinance in installments at different
12 times or an entire issue or series may be sold at one time.
13 Such bonds shall bear interest at a rate not to exceed
14 six percent per annum, payable semiannually, and shall
15 mature within the period of usefulness of the project
16 involved, to be determined by the governing body and
17 in any event within a period of not more than forty
18 years. Such bonds may be in such denomination or de-
19 nominations, may be in such form, either coupon or
20 registered, may carry such registration and conversion
21 privileges, may be executed in such manner, may be pay-
22 able in such medium of payment, at such place or places,
23 may be subject to such terms of redemption, with or
24 without a premium, may be declared to become due
25 before the maturity date thereof, may provide for the
26 replacement of mutilated, destroyed, stolen or lost bonds,
27 may be authenticated in such manner and upon com-
28 pliance with such conditions, and may contain such other
29 terms and covenants, as may be provided by ordinance
30 of the governing body of the municipality. Notwith-
31 standing the form or tenor thereof, and in the absence
32 of an express recital on the face thereof that the bond
33 is nonnegotiable, all such bonds shall at all times be, and
shall be treated as, negotiable instruments for all purposes. Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with said combined waterworks or sewerage system, and all the moneys, revenues and other income of such municipality derived from such combined waterworks and sewerage system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Such bonds may be sold in such manner as the governing body shall determine and if issued to bear interest at the rate of six percent per annum shall be sold for not less than par and accrued interest. If any such bonds shall be issued to bear interest at a rate of less than six percent per annum, the minimum price at which they may be sold shall be such that the interest cost to such municipality of the proceeds of such bonds shall not exceed six percent per annum computed to maturity according to the standard table of bond values: Provided, That if the governing body of the municipality determines to sell any revenue bonds of such combined waterworks and sewerage system for refunding purposes, such bonds shall be sold at not less than par and accrued interest and the proceeds deposited at the place of payment of the bonds, obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the law of this state.

Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely
from the revenues of such waterworks or such sewerage
system or any part thereof, such outstanding bonds, obliga-
tions or securities may be refunded by the issuance
and sale or exchange therefor of revenue bonds to be
issued under the provisions of this article. Whenever
any outstanding bonds, obligations or securities previ-
ously issued which are payable solely from the revenues
of any waterworks or sewerage system included in a
combined waterworks and sewerage system under the
provisions of this article are refunded and the refunding
is to be accomplished by exchange, such outstanding
bonds, obligations or securities shall be surrendered and
exchanged for revenue bonds of such combined water-
works and sewerage system of a total principal amount
which shall not be more and may be less than the
principal amount of the bonds, obligations or securities
surrendered and exchanged plus the interest to accrue
thereon to the date of surrender and exchange, and if
the refunding is to be accomplished through the sale of
revenue bonds of such combined waterworks and sewer-
age system the total principal amount of such revenue
bonds which may be sold for refunding purposes shall
not exceed the principal amount of the bonds, obligations
or securities being refunded plus the interest to accrue
thereon to the retirement date or the next succeeding
interest payment date, whichever date may be earlier.
Provision may be made that each bond to be exchanged
for refunding bonds shall be kept intact and shall not be
cancelled or destroyed until the refunding bonds, and
interest thereon, have been finally paid and discharged;
but each such bond shall be stamped with a legend to the
effect that the same has been refunded pursuant to the
provisions of this article.

§8-20-6. Bonds payable solely from revenues; not to constitute
municipal indebtedness.

1 Bonds issued under the provisions of this article shall
2 be payable solely from the revenues derived from the
3 combined waterworks and sewerage system, and such
4 bonds shall not in any event constitute an indebtedness of
5 such municipality within the meaning of any constitu-
MUNICIPALITIES

6 tional or statutory provision or limitation and it shall be
7 plainly stated on the face of each bond that the same
8 has been issued under the provisions of this article, and
9 that it does not constitute an indebtedness of such munici-
10 pality within any constitutional or statutory provision
11 or limitation. The ordinance authorizing the issuance of
12 the bonds may contain such covenants and restrictions
13 upon the issuance of additional revenue bonds thereafter
14 as may be deemed necessary or advisable for the assurance
15 of payment of the bonds thereby authorized and as
16 may thereafter be issued.

§8-20-7. Lien of bondholders.

1 There shall be and there is hereby created and granted
2 a statutory mortgage lien upon such combined water-
3 works and sewerage system which shall exist in favor
4 of the holder of bonds hereby authorized to be issued,
5 and each of them, and to and in favor of the holder of
6 the coupons attached to said bonds, and such combined
7 waterworks and sewerage system shall remain subject
8 to such statutory mortgage lien until payment in full
9 of the principal of and interest upon said bonds.
10 Any municipality in acquiring an existing waterworks
11 system may provide that payment therefor shall be made
12 by issuing revenue bonds and delivering the same at
13 such prices as may be agreed upon within the limitations
14 prescribed in section five hereof. Any revenue bonds
15 so issued in payment for such an existing waterworks
16 system shall for all purposes be regarded as partaking
17 of the nature of and as being secured by a purchase
18 money mortgage upon the property so acquired; and
19 the holders thereof shall have, in addition to any other
20 remedies and rights prescribed by this article, such
21 remedies and rights as may now or hereafter exist in law
22 in the case of purchase money mortgages.

§8-20-8. Covenants with bondholders.

1 Any ordinance authorizing the issuance of bonds here-
2 under, or any trust indenture with any banking institu-
3 tion or trust company, within or without the state, for
4 the security of said bonds, which any such municipality
is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said combined waterworks and sewerage system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined waterworks and sewerage system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the combined waterworks and sewerage system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined waterworks and sewerage system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined waterworks and sewerage system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the combined waterworks and sewerage system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such combined waterworks and sewerage system;
(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined waterworks and sewerage system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined waterworks and sewerage system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined waterworks and sewerage system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such combined waterworks and sewerage system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertaking and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance or trust indenture may also contain such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all cove-
nants or agreements necessary in order to secure greater
marketability for bonds issued hereunder as fully and
to the same extent as such covenants or agreements
could be made by a private corporation rendering similar
services and facilities and to grant to municipalities full
and complete power and authority to enter into any con-
tracts, covenants or agreements with holders of bonds
issued hereunder not inconsistent with the constitution
of this state.

1 Any such municipality may enter into contracts or
agreements with any persons for (1) the repair, main-
tenance and operation and management of the facilities
and properties of said combined waterworks and sewer-
age system, or any part thereof, or (2) the collection and
disbursement of the income and revenues thereof, or for
both (1) and (2), for such period of time and under
such terms and conditions as shall be agreed upon be-
tween such municipality and such persons. Any such
municipality shall have plenary power and authority to
provide in the ordinance authorizing the issuance of
bonds hereunder, or in any trust indenture securing such
bonds, that such contracts or agreements shall be valid
and binding upon the municipality as long as any of said
bonds, or interest thereon, is outstanding and unpaid.

§8-20-10. Power and authority of municipality to enact ordi-
nances and make rules and regulations and fix
rates or charges; change in rates or charges; de-
linquent rates or charges as liens; civil action for
recovery thereof.
1 The governing body of any municipality availing itself
of the provisions of this article shall have plenary power
and authority to make, enact and enforce all needful rules
and regulations for the repair, maintenance and opera-
tion and management of the combined waterworks and
sewerage system of such municipality and for the use
thereof, and shall also have plenary power and authority
to make, enact and enforce all needful rules and regula-
tions and ordinances for the care and protection of any
such system, which may be conducive to the preservation
of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needful, consistent with the provisions of this article.

Such rates or charges whenever delinquent, as provided by ordinance of the municipality, shall be liens for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus a reasonable attorney’s fee.

§8-20-11. Discontinuance of water service for nonpayment of rates or charges.

Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of said combined waterworks and sewerage system for the nonpayment of the rates or charges for said water service or sewer service, or both.

§8-20-12. Use of revenues; sinking fund.

All revenues derived from the operation of any combined waterworks and sewerage system under the pro-
visions of this article shall be set aside as collected and
used only for the purpose of paying the cost of repairing,
maintaining and operating such system, providing an
adequate reserve fund, an adequate depreciation fund,
and paying the principal of and interest upon the revenue
bonds issued by the municipality under the provisions of
this article. The ordinance pursuant to which any such
bonds are issued shall pledge the revenues derived from
the combined waterworks and sewerage system to the
purposes aforesaid and shall definitely fix and determine
the amount of revenues which shall be necessary and set
apart in a special fund for the bond requirements. The
amounts as and when so set apart into said special fund
for the bond requirements shall be remitted to the state
sinking fund commission to be retained and paid out by
said commission consistent with the provisions of this
article and the ordinance pursuant to which such bonds
have been issued.


Any municipality operating a combined waterworks and
sewerage system under the provisions of this article shall
set up and maintain a proper system of accounts in ac-
cordance with the requirements of the public service
commission, showing the amount of revenues received
from such combined waterworks and sewerage system and
the application of the same. At least once each year such
municipality shall cause such accounts to be properly
audited, and a report of such audit shall be open to the
public for inspection at all reasonable times.

§8-20-14. Repair and maintenance of municipal sewerage sys-
tem outside corporate limits.

Whenever a municipality collects rates or charges from
users of any part of a sewerage system located outside the
corporate limits of such municipality for sewerage service
rendered to such users, pursuant to the provisions of this
article or other act or law, such municipality shall be
responsible for the repair and maintenance of such
sewerage system and the county court of the county or
counties in which such sewerage system is located shall
not be liable or responsible for the repair and maintenance of such sewerage system.

§8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the combined waterworks and sewerage system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined waterworks and sewerage system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which such bonds have been issued or trust indenture, or both.

PART IV. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§8-20-16. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Any municipality is hereby empowered and authorized to accept grants, and procure loans or temporary ad-
vances, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined waterworks and sewerage systems and the construction of additions, betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the combined waterworks and sewerage system so recited in each such contract and agreement.

§8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the is-
suance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health and the division of water resources of the department of natural resources shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART V. OPERATION BY BOARD; CONSTRUCTION.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.

(a) As an alternative to the procedure hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined waterworks and sewerage system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

(b) In the event that the waterworks or sewerage system or both are in existence prior to the creation of the combined waterworks and sewerage system, and the waterworks or sewerage system or both are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this
section is to be followed with respect to the supervision
and control of the combined waterworks and sewerage
system, the governing body may by ordinance, after the
creation of the combined waterworks and sewerage sys-
tem, provide (1) the manner of and procedure for trans-
ferring such supervision and control from each such
separate committee, board or commission to the com-
mittee, board or commission which is supervising and
controlling the combined waterworks and sewerage sys-
tem, or (2) the manner of and procedure for combining
each such separate committee, board or commission into
one committee, board or commission and transferring
thereto such supervision and control as aforesaid.

§8-20-19. Article to be liberally construed.
This article is necessary for the public health, safety
and welfare and shall be liberally construed to effectuate
its purposes.

ARTICLE 21. BOARD OF PARK AND RECREATION COMMISS-
SIONERS.

PART I. ESTABLISHMENT; ORGANIZATION.
§8-21-1. Cities may establish board.
§8-21-2. Board a public corporate body; perpetual existence; seal; name;
powers.
§8-21-3. Members; quorum; qualifications; election or appointment;
terms; disqualification.
§8-21-4. Filling vacancies.
§8-21-5. Oath of members; organization of board; secretary; treasurer.
§8-21-6. Members to be paid expenses; members not to be personally
interested in contracts or property controlled by board.

PART II. POWERS.
§8-21-7. Office; powers.
§8-21-8. Purchase, lease or condemnation of real property.
§8-21-9. Authority to take title to real and personal property; con-
veyances of real property to board by public bodies; sales
and conveyances of real property by board; execution of
deeds.
§8-21-10. General powers of board; enactment and enforcement of rules
and regulations; counsel.

PART III. FINANCING.
§8-21-11. Charges for use of recreational facilities; use of funds.
§8-21-12. Use of city appropriations and other funds.
§ 8-21-14. Construction of article.

PART I. ESTABLISHMENT; ORGANIZATION.

§ 8-21-1. Cities may establish board.

1 Every city is hereby empowered and authorized to
2 provide for by charter provision, or to create by ordi-
3 nance, a board of park and recreation commissioners,
4 for the purpose of establishing, constructing, improving,
5 extending, developing, maintaining and operating a city
6 public park and recreation system.

§ 8-21-2. Board a public corporate body; perpetual existence; seal; name; powers.

1 The board of park and recreation commissioners
2 provided for by charter provision, or created by ordi-
3 nance, pursuant to the authority of this article, shall
4 be a public corporate body, with perpetual existence
5 and a common seal. It shall be known as the board of
6 park and recreation commissioners of such city. It shall
7 have the power to purchase, hold, sell and convey real
8 or personal property; receive any gift, grant, donation,
9 bequest or devise; sue and be sued; contract and be
10 contracted with; and do any and all things and acts
11 which may be necessary, appropriate, convenient or
12 incidental to carry out and effectuate the purposes and
13 provisions of this article. For convenience of reference
14 herein, the board of park and recreation commissioners
15 will be hereinafter referred to as the "board."

§ 8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

1 The board shall consist of not less than three nor
2 more than five members as may be provided by charter
3 provision or ordinance, a majority of whom shall con-
4 stitute a quorum for the transaction of business, except
5 as hereinafter in this article provided. Each member
6 of said board must be a resident and freeholder of the
7 city. It may be provided either by charter provision
8 or by ordinance for the appointment of the members
9 thereof by the governing body, but unless and until
such provision is made, the members of the board shall be elected by the qualified voters of the city at appropriate regular municipal elections. Membership on the governing body shall not disqualify any member for election to the board. If provision is made for the appointment of members as aforesaid and the board consists of three or four members, one member of the governing body, if otherwise qualified, may be appointed by the governing body, and if the board consists of five members not more than two members of the governing body so qualified may be so appointed. The term of the board membership of any such member of the governing body so appointed shall continue during his term as a member of such governing body and until his successor is appointed or elected and qualified. The terms of other appointed or of elected members shall be for six years, and until their successors have been duly appointed or elected and qualified: Provided, That notwithstanding the fact that there be no charter provision or ordinance for appointment of the members of the board, the governing body of the city shall appoint the members of the first board, such appointees to serve, one for a term of six years, one for a term of four years, and one for a term of two years. The date upon which the terms of such board members shall begin shall be specified by ordinance. When any member of the board, during his term of office, shall cease to be a resident and freeholder of the city, he shall thereby be disqualified as a member of said board and his office shall thereupon become vacant.

§8-21-4. Filling vacancies.

1 When a vacancy occurs on said board by reason of death, resignation, change of residence from the city, failure to remain a freeholder of the city, or due to any other cause, the remaining member or members of said board shall appoint a successor or successors, or if there should be no members left on said board, the governing body of the city shall appoint successors, and in either event, the appointments shall be for the unexpired term or terms.
§8-21-5. Oath of members; organization of board; secretary; treasurer.

1 After appointment or election, the members of the board shall qualify by taking and filing with the recorder of the city the oath prescribed by law for public officials, and they shall not be permitted to serve upon said board until they have so qualified. If any member of said board shall fail to so qualify on or before the date upon which he should assume the duties of his office, a vacancy shall exist which shall be filled as provided in section four of this article.

2 At the first meeting held after the first board has been appointed, as hereinbefore provided, and thereafter on a date to be fixed by ordinance, the members of the board shall organize by electing one of their number president, and another vice president, and by electing a secretary who need not be a member of the board. The secretary shall keep an accurate record of all the fiscal affairs of the board, and shall keep a minute book in which he shall record the proceedings and transactions of each meeting of the board. The secretary shall be paid such compensation for his services as the board shall fix from year to year. The city treasurer shall be ex officio treasurer of said board, and he shall take the oath prescribed by law and shall furnish such bond as may be required by said board.

§8-21-6. Members to be paid expenses; members not to be person ally interested in contracts or property controlled by board.

1 The members of said board shall receive no compensation for their services but they shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as members of said board. They shall not be personally interested, directly or indirectly, in any contract entered into by said board, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as members of said board.
§8-21-7. Office; powers.

1 The governing body shall furnish said board an office in the city building where it may hold its meetings and keep its records. Any board operating under the provisions of this article shall have complete and exclusive control and management of all of the properties which shall be operated in connection with the public park and recreation system for the city, and shall have power to employ such persons as, in its opinion, may be necessary for the establishment, construction, improvement, extension, development, maintenance or operation of the property under its control, at such wages or salaries as it shall deem proper, and shall have full control of all employees.

§8-21-8. Purchase, lease or condemnation of real property.

1 The board is hereby granted the power and authority to acquire in its name or in the name of the city by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such land or lands as it shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a system of public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities for the city, whether of a like or different nature.

§8-21-9. Authority to take title to real and personal property; conveyances of real property to board by public bodies; sales and conveyances of real property by board; execution of deeds.

1 The board is hereby empowered and authorized to take title in its name or in the name of the city to all real and personal property acquired by it for the use of the public or useful to the public in the establishment, construction, improvement, extension, development, maintenance or operation of all public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and all other public park and recreational facilities...
for the city, whether of a like or different nature, and shall manage and dispose of the same as, in its opinion, will best serve the interests of the public in carrying out the purposes of this article. The city and all other public bodies owning real property intended to be used for public parks and recreation are hereby authorized to convey the same to said board to be held by it for such purposes, and said board is hereby authorized to receive the same. Nothing contained in this chapter shall be construed as limiting said board from going beyond the corporate limits of the city, anywhere within the state, to lease, purchase or otherwise acquire any real property for the purposes herein set forth. The board shall have the right to sell and convey only such part of the real property that it may acquire by gift, devise, purchase or otherwise, as it may determine to be of no advantage in the establishment, construction, improvement, extension, development, maintenance or operation of said public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities, whether of a like or different nature; except that the board shall have the power and authority to make such sales and conveyances of its real property as may be necessary, appropriate or convenient to enable the city to obtain the benefits of article sixteen of this chapter or any other similar act or legislative authorization. Under no circumstances shall any of such real property of the board be sold or conveyed except by unanimous vote of all of the members of said board. All deeds conveying the real property of said board shall be executed in its official name by its president or vice president, shall have its seal affixed and shall be duly attested by its secretary.

§8-21-10. General powers of board; enactment and enforcement of rules and regulations; counsel.

The board shall have the necessary, appropriate, convenient and incidental powers and authority to manage and control all public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities
of all kinds used as a part of said public park and recreation system or as a means of maintaining places of beauty, education and recreation, and promoting the health, property, lives, decency, morality and good order of the general public, and particularly of the inhabitants of the city and vicinity; to abate or cause to be abated all nuisances affecting same; to regulate or prohibit the selling of any article, goods, wares or merchandise within said park and recreation system so designated; to regulate or prohibit the placing of signs, billboards, posters and advertisements within said park and recreation system as so designated, or the grounds immediately adjacent thereto; to have the same kept in good order and free from obstruction for the use and benefit of the public; to restrict and prohibit vagrants, mendicants, beggars, tramps, prostitutes or disorderly individuals therefrom; to establish, construct, improve, extend, maintain and operate such parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities, whether of a like or different nature, on any grounds controlled by said board; to acquire for public use by lease or otherwise lands either within or without the corporate limits of the city; to cause any public street, avenue, road, alley, way, bridle path or walkway, which is a part of the public park and recreation system, to be graded, drained and surfaced; to construct, maintain and operate all necessary sewers and water lines in connection with said public park and recreation system; and to do any and all other things or acts which may in any way be necessary, appropriate, convenient or incidental to the use and enjoyment of said public park and recreation system by the general public as a place or places of beauty, education, entertainment and recreation.

In order to accomplish the foregoing purposes, said board is hereby empowered and authorized to promulgate, and amend from time to time, such rules and regulations as may be necessary, appropriate, convenient or incidental thereto; after codification of such rules and regulations, or any amendments thereto, by ordinance of the governing body which may provide penalties for a viola-
tion thereof, which codification is hereby authorized, to
enforce the same by appropriate proceedings in any
proper tribunal of this state, or any county, district or
municipality thereof; and to employ such police officers
as it shall deem proper and necessary. The city attorney
shall be the official counsel for said board and shall advise
it on all legal matters, but said board may, in its own
discretion, employ other or additional counsel.

PART III. FINANCING.

§8-21-11. Charges for use of recreational facilities; use of funds.

1 The board may make reasonable charges to the public
2 for the privilege of using any of the recreational facili-
3 ties provided in said park and recreation system and
4 may use the funds so received for the purpose of estab-
5 lishing, constructing, improving, extending, developing,
6 maintaining or operating said park and recreation system.

§8-21-12. Use of city appropriations and other funds.

1 In carrying out the purposes of this article, the board
2 is hereby empowered and authorized to receive and
3 disburse for such purposes, any moneys appropriated
4 to it by the governing body of the city, together with
5 any other funds which may come into its hands by gift,
6 grant, donation, bequest, devise, or from its own opera-
7 tion, or otherwise.


1 Every city is hereby empowered and authorized to
2 issue, in the manner prescribed by law, bonds for the
3 purpose of raising funds to establish, construct, improve,
4 extend, develop, maintain or operate, or any combination
5 of the foregoing, a system of public parks and recrea-
6 tional facilities for such city, or to refund any bonds
7 of the city, the proceeds of which were expended in the
8 establishing, constructing, improving, extending, develop-
9 ing, maintaining or operating of such public park and
10 recreation system, or any part thereof. Any bonds issued
11 for any of the purposes stated in this section shall contain
12 in the title or subtitle thereto the words “public park
and recreation bonds,” in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city. The governing body may provide for the issuance of bonds for other lawful purposes of the city in the same ordinance in which provision shall be made for the issuance of bonds under the provisions of this section. The board shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park and recreation bonds only. The costs and expenses of holding an election to authorize the issuance of public park and recreation bonds and bonds for other city purposes shall be paid by the board and the city respectively, in the proportion that the public park and recreation bonds bear to the total amount of bonds authorized.

Whenever the governing body of the city and the requisite majority of the legal votes cast at the election thereon shall authorize, in the manner prescribed by law, the issuance of bonds for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a system of public parks and recreational facilities for the city, or for refunding any outstanding bonds, the proceeds of which were applied to any of said purposes, said bonds shall be issued and delivered to the board to be by it sold in the manner prescribed by law, and the proceeds thereof shall be paid into the treasury of the board, and the same shall be applied and utilized by the board for the purposes prescribed by the ordinance authorizing the issuance of such bonds. In any ordinance for the issuance of bonds for such purposes, it shall be a sufficient statement of the purposes for creating the debt to specify that the same is for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a public park and recreation system for the city, without specifying the particular establishment, construction, improvement, extension, development, maintenance or operation contemplated; but an ordinance for refunding bonds shall designate
the issue and the number of bonds which it is proposed to refund.

PART IV. CONSTRUCTION.

§8-21-14. Construction of article.

1 The provisions of this article shall be construed as conferring additional power and authority upon cities acting hereunder, and shall not be construed as affecting any power or authority heretofore conferred upon any city by the Legislature by general, special or local law or municipal charter, or parts thereof.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREFEYMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART I. PARTICIPATION IN STATE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

§8-21-1. Membership in public retirement system.

PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I AND CLASS II CITIES.

§8-22-2. Class I and Class II cities empowered and authorized to establish and maintain "employees retirement and benefit fund" or to maintain such fund heretofore established.


§8-22-4. Board of trustees.

§8-22-5. Employees eligible for participation in fund.

§8-22-6. Contributions; prior, earned and total service credits; service breaks.


§8-22-8. Disability pensions; annuities.


§8-22-10. Contributions by city.

§8-22-11. Investment of funds.

§8-22-12. Individual accounts; actuarial data; tables.

§8-22-13. Reports by board of trustees.

§8-22-14. Custodian of fund; duties; bond.

§8-22-15. Action by city required before new provisions are applicable.

PART III. POLICEMEN'S PENSION AND RELIEF FUND; FIREFEYMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

§8-22-17. Powers of boards of trustees.
§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

§8-22-20. When arrest fee to be collected for municipal policemen’s pension and relief fund.


§8-22-22. How trustees of funds to invest moneys received; annual report.

§8-22-23. Rules and regulations as to distribution of funds; proof of age.


§8-22-27. General provisions concerning disability pensions, retirement retirement pensions and death benefits.

§8-22-28. Period in which Payments limited to income from fund; reduced payments where fund insufficient.

PART IV. PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-29. Pension plans for employees of waterworks system, sewerage system or combined waterworks and sewerage system may be continued.

PART I. PARTICIPATION IN STATE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

§8-22-1. Membership in public employees retirement system.

1 Any municipality may elect to become a participating public employer under the West Virginia public em-
2 ployees retirement system created and established by, 3 and administered pursuant to, the provisions of article 4 ten, chapter five of this code, for the coverage of all 5 employees eligible under the provisions of said article 6 ten, except policemen and firemen covered by a police-
7 men’s pension and relief fund or firemen’s pension and 8 relief fund.

PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I AND CLASS II CITIES.

§8-22-2. Class I and Class II cities empowered and authorized to establish and maintain “employees retirement and benefit fund” or to maintain such fund hereto-
fore established.

1 Every Class I and Class II city which is not a par-
2 ticipating public employer in the said West Virginia
Ch. 86]  MUNICIPALITIES  803

3 public employees retirement system is hereby empowered
4 and authorized to and may establish and maintain an
5 "employees retirement and benefit fund" in accordance
6 with the provisions of this section two and sections
7 three through fourteen of this article. Any Class I or
8 Class II city which has heretofore established such a fund
9 in accordance with the acts of the Legislature referred
10 to in section fifteen of this article may continue to main-
11 tain said fund in accordance with the provisions of this
12 section two and sections three through fourteen of this
13 article, or said acts, as specified in said section fifteen.

1 For the purpose of sections two through fifteen of this
2 article:
3 (a) "Prior service credit" shall mean the number of
4 years that the member has been in the service of the
5 city prior to the effective date of the employees retire-
6 ment and benefit fund;
7 (b) "Earned service credit" shall mean the number of
8 years that the member has contributed to the em-
9 ployees retirement and benefit fund;
10 (c) "Total service credit" shall mean the total of all
11 prior service credit and all earned service credit;
12 (d) "Fund" shall mean the employees retirement and
13 benefit fund;
14 (e) "Board" shall mean the board of trustees of the
15 fund;
16 (f) "Member" shall mean an eligible employee of the
17 city, who is a member of the fund;
18 (g) "Total disability in line of duty" shall mean total
19 and permanent disablement from performing any work
20 for pay, whether for the city by which employed at date
21 of disability or other employer, which shall be caused
22 by accidental injury sustained in the course of the opera-
23 tions usual to his employment and while in line of duty,
24 and shall include all operations necessary, incident or
25 appurtenant thereto, or connected therewith, whether
26 such operations are conducted at the usual place of em-
27 ployment or elsewhere in connection with or in relation
28 to his usual and customary employment;
Municipalities

(h) "Total disability not in line of duty" shall mean total and permanent disablement from performing any work for pay, whether for the city by which employed at date of disability or other employer, from any cause other than that set forth in subdivision (g) of this section;

(i) The term "actuarial equivalent" shall mean an annuity of equal value to the accumulated contributions, annuity or benefit when computed upon the basis of the actuarial tables in use by the fund;

(j) "Monthly salary" shall mean the amount earned each month by a member as an employee of the city: Provided, That to and including June thirty, one thousand nine hundred sixty-seven, the maximum amount of salary to be considered hereunder for purposes of contributions and in the computation of benefits shall be four hundred dollars per month; and

(k) "Average salary" shall mean the highest annual average salary earned by a member during a period of five consecutive years within the total service of the member, subject to a maximum amount of four hundred dollars per month to and including June thirty, one thousand nine hundred sixty-seven, and no such maximum amount after such date.

§8-22-4. Board of trustees.

1 The governing body of each such city desiring to establish and maintain a fund as authorized in sections two through fourteen of this article shall by ordinance provide for a board of trustees of the fund.

5 The said board of trustees shall consist of the mayor and four members of the fund, to be appointed by the mayor, with the advice and consent of a majority of the members of the fund. The initial appointments shall be for a term of one, two, three and four years, respectively, after which all appointments shall be for a term of four years.

12 The presiding officer of the board shall be the mayor, and the secretary thereof shall be appointed by said board. It shall be the duty of such secretary to keep a full and permanent record of all the proceedings of the
board, and said board may fix his compensation for this work which shall be paid out of said fund.

The mayor or any three members of the board shall have the power to call a meeting at any time that it is necessary in order to carry out the business of the board. Three members of the board shall constitute a quorum to transact business, but it shall require three or more affirmative votes to pass any matter before the board.

The board shall have charge of and administer the fund and shall order payments therefrom, and no money shall be paid out of the fund except upon the order of the board.

The governing body shall have plenary power and authority to make any and all rules and regulations pertaining to the fund not inconsistent with the provisions of sections two through fifteen of this article, the constitution and the laws of this state.

Such board shall be a public corporation by the name and style of "The Board of Trustees of the Employees Retirement and Benefit Fund of (name the city)," by which name the board may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property, for the use of said fund, and have and use a common seal. Said board may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of said board.

§8-22-5. Employees eligible for participation in fund.

Employees eligible for participation in the fund shall include all employees who are employed by the city on a permanent basis. The following employees, however, shall not be eligible for participation in the fund:

(1) Appointive members of administrative boards and commissions, except employees of such boards and commissions;

(2) Individuals employed under contract for a definite period or for the performance of a particular or special service;
(3) Employees serving on a part-time basis of less than one-half time;
(4) Policemen and firemen covered by a policemen’s pension and relief fund or firemen’s pension and relief fund;
(5) Employees who are paid in part by the state, county or other governmental agency, and only in part by the city;
(6) Employees who are past sixty years of age on the effective date of the fund; and
(7) Employees who are hired after the effective date of the fund and who were past fifty years of age at the time they were so employed.

In case of doubt, the board of trustees of the fund may make determination as to any individual’s eligibility to become a member of the fund.

All employees eligible for participation at the effective date of the fund shall become members of the fund, unless they file a written election not to become a member within thirty days after the effective date of the fund.

§8-22-6. Contributions; prior, earned and total service credits; service breaks.

Until June thirty, one thousand nine hundred sixty-seven, each member shall pay into the fund six percent of his monthly salary up to four hundred dollars a month. After June thirty, one thousand nine hundred sixty-seven, each member shall contribute six percent of his monthly salary without any such maximum limitation. Each member shall continue to make such contributions until such time as such member retires or until he has contributed to the fund for a period of thirty-five years, that is, has thirty-five years of “earned service credit.”

For prior service, each participating employee, in the employ of the city on the effective date of the fund, shall be credited, as of such date, with a prior service credit equal to the period or periods of service that the member has rendered to the city prior to the effective date of the fund. Any employee who is in the employ of the city on the effective date of the fund and who
becomes a member of the fund shall be entitled to prior
service credit even though such prior service was not
continuous. Any individual who is not in the employ
of the city on the effective date of the fund but who
has been employed by the city in the past shall be
entitled to prior service credit if he returns to the service
of the city within two years from the date of the ter-
mination of his service and becomes a member of the
fund within such two-year period.

A member upon separation from the service shall be
entitled to withdraw his contributions without interest
in lieu of any benefits to which he may be entitled. If
such employee returns to the service of the city within
two years and becomes a member of the fund, he shall
be considered as a new employee and shall have for-
feited all prior service credits unless he shall repay to
the fund in cash at the time of reemployment the amount
of money which he has withdrawn plus four percent
interest compounded annually on said amount during
the time he was separated from the service. If, however,
the break in service of such member is more than two
years, he shall not be entitled to any prior service credit
nor shall he be entitled to redeposit withdrawals but
he shall reenter the fund as a new member.


(a) After the effective date of the fund, any member
of the fund who has at least ten years of total service
credit shall receive a vested right to a retirement pension
which he may exercise upon or after attainment of age
sixty. When he has attained the age of sixty years he
may, at his option, apply for a retirement pension, the
amount thereof to be determined in accordance with
the provisions of subsection (d) of this section.

(b) Retirement for all members of the fund shall
be compulsory at the age of sixty-five, subject to the
following conditions: The employee may be permitted
to continue in the service if he so desires and if his
services are still valuable to the city. Whether an
employee's services are valuable at the age of sixty-five
shall be determined by the appointing officer of the
city. If he determines that such services are valuable, his determination must be certified to the board for approval. If the board approves, the employee may continue in the service of the city. The appointing officer shall annually certify to the board relative to the ability and competency of all employees over age sixty-five. The amount of any pension under the provisions of this subsection shall be determined in accordance with the provisions of subsection (d) of this section.

(c) Although he has not attained the age of sixty, any member who has thirty-five years’ total service and who becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies shall be entitled to an annual retirement pension, the amount thereof to be determined in accordance with the provisions of subsection (d) of this section.

(d) A member of the fund, upon retirement, shall be entitled to the following annual retirement pension, payable in twelve monthly installments:

For thirty-five years of total service credit to and including twenty-four years of total service credit, fifty percent of average salary plus one and two-thirds percent of average salary per year of service for each year above twenty-three years;

For twenty-three years of total service credit, fifty percent of average salary: Provided, That if a member has twenty-three years of total service credit he shall be entitled to a minimum retirement pension of one hundred dollars per month;

For twenty-two years of total service credit, forty-nine percent of average salary;

For twenty-one years of total service credit, forty-eight percent of average salary;

For twenty years of total service credit, forty-seven percent of average salary;

For nineteen years of total service credit, forty-five percent of average salary;

For eighteen years of total service credit, forty-three percent of average salary;
For seventeen years of total service credit, forty-one percent of average salary;
For sixteen years of total service credit, thirty-nine percent of average salary;
For fifteen years of total service credit, thirty-six percent of average salary;
For fourteen years of total service credit, thirty-three percent of average salary;
For thirteen years of total service credit, thirty-one percent of average salary;
For twelve years of total service credit, twenty-nine percent of average salary;
For eleven years of total service credit, twenty-seven percent of average salary; and
For ten years of total service credit, twenty-five percent of average salary.

The rate of a retirement pension shall be prorated for any fractional part of the total service credit of an employee of less than a full year.

(e) With the condition that no optional benefit shall be effective if the member dies within thirty days after the effective date of his retirement, such member may elect at least one year prior to such effective date of his retirement to receive a lesser retirement pension, on a joint and last survivor basis, in order to provide, on an actuarial equivalent basis, an annuity to a designated beneficiary under any of the following two options:

Option 1. Upon his death while on retirement, his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life, as he shall have named in a written designation duly acknowledged and filed with the board.

Option 2. Upon his death while on retirement, one half of his lesser retirement pension shall be continued throughout the life of and paid to such individual having an insurable interest in his life as he shall have named in a written designation duly acknowledged and filed with the board.
(f) A member who has attained the age of sixty years and who has less than ten years' total service credit shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation account at the time of his retirement.

§8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under any one of the following mutually exclusive provisions:

(1) If a member receives total disability in line of duty, he shall be entitled during the time of his disability to a monthly disability pension equal to fifty percent of the monthly salary of the member at date of disability: Provided, That the minimum payment shall be one hundred dollars per month.

(2) If a member receives total disability not in line of duty while an employee of the city after he has had at least ten years' total service credit and such member is not entitled to a retirement pension under the provisions of section seven of this article, he shall be entitled during the time of his disability to one half of the retirement pension to which he would have been entitled under the provisions of said section seven had he been sixty years of age at date of disability and had elected to take retirement: Provided, That he shall be entitled to a minimum payment of fifty dollars per month and a maximum payment of one hundred dollars per month.

(3) If a member becomes so physically or mentally disabled as to render him unfit for the performance of the duties of the position he occupies, but his disability does not constitute either total disability in line of duty or total disability not in line of duty, and such member has less than ten years' total service credit, he shall be entitled to an annuity which shall be the actuarial equivalent of his total accumulation at the date of his disability.

The board of trustees of the fund shall order a periodic reexamination of members of the fund receiving a disability pension, and if the disability no longer exists the payment thereunder shall be discontinued: Provided, That no such reexamination of any such member shall

(a) A beneficiary or beneficiaries of a deceased member, which member was not receiving a retirement pension under the provisions of section seven of this article at the date of his death, may qualify for death benefits under either of the following mutually exclusive provisions:

(1) If the member died as a result of personal injury or disease arising out of and in the course of his employment with the city, the surviving spouse shall be entitled during widowhood or widowerhood to a monthly benefit equal to thirty-three and one-third percent of the final monthly salary of the member, but not to exceed one hundred and twenty-five dollars per month. In the event there be no surviving spouse, or if remarriage occurs before the youngest child attains age eighteen, each child under age eighteen shall be entitled until age eighteen to a monthly benefit equal to twenty percent of the member's final monthly salary, subject to a total payment to all such children of fifty percent of such final monthly salary, or one hundred twenty-five dollars per month, whichever is the lesser. If there be no surviving spouse or children under age eighteen, the deceased member's dependent father or mother or both, the question of dependency to be determined by the board, shall each be entitled until death to a monthly payment equal to one sixth of the deceased member's final monthly salary, but the payment to either parent shall not exceed fifty dollars per month.

(2) If the member died from any cause other than that stated in subdivision (1) of this subsection, and such member at the date of his death had ten or more years' total service credit, his beneficiary or beneficiaries shall be entitled, for a period not to exceed ten years, to death benefits in accordance with the retirement pension table contained in section seven of this article. The death benefits shall be paid to such individual or individuals having an insurable interest in the member's life as such
member shall have nominated in a designation filed with the board. As to any spouse beneficiary, the marriage must have occurred at least one year prior to the death of the member in order that the spouse may be eligible for benefits under this subdivision (2).

(b) If a member receiving a retirement pension under the provisions of section seven of this article at the date of his death dies with a spouse surviving [concerning which retirement pension the optional benefit provisions set forth in subsection (e) of said section seven are not applicable], and such member had been receiving such retirement pension for less than ten years, such surviving spouse shall be entitled to receive death benefits equivalent to the deceased member’s retirement pension for the remaining period of ten years dating from the date of the member’s retirement; but a surviving spouse shall not be entitled to death benefits under the provisions of this subsection unless such surviving spouse was married to the member before the date of his retirement and such marriage took place at least one year prior to the date of the death of the member. If the surviving spouse remarries, such spouse’s death benefits shall be terminated and shall not be resumed upon subsequent change in the marital status of such spouse.

(c) If a member dies with less than ten years’ total service credit so that he was not entitled to a retirement pension during life, the member’s total contributions to the fund, without interest, shall be returned to such individual or individuals having an insurable interest in the member’s life as such member shall have nominated in a designation filed with the board, and in the absence of any such designation, to the member’s estate.

§8-22-10. Contributions by city.

1 The governing body shall annually provide sufficient funds in the budget of the city, on an actuarially funded basis, to provide for the funded requirements of the fund for current service of the employees over and above the amount contributed by the members, plus an amount to pay the cost of administration of the fund.
The city shall also contribute to the fund the amount required, at three and one-half percent interest per annum, to amortize, over a period not to exceed forty years from July one, one thousand nine hundred sixty-seven, any unfunded accrued liability at that date.

§8-22-11. Investment of funds.

The board shall keep as an available sum for the purpose of making retirement, disability and death payments and administration expense an amount estimated to meet such payments for a period not to exceed ninety days. It shall have full power and authority in its sole discretion to invest and reinvest any moneys received by it in the following types of securities: (a) Direct general obligations of the United States government or of this state; (b) direct general obligations of any municipality, county or school district in this state; (c) bonds or debentures of any utility corporation, industrial corporation or railroad corporation organized under the laws of any state of the United States, rated "A" or better by any two security rating concerns, provided interest shall have been paid by the corporation on its indebtedness for at least the ten years last past; and (d) federally insured mortgages under sections two hundred three and two hundred seven of the National Housing Act.

§8-22-12. Individual accounts; actuarial data; tables.

The board of trustees shall maintain an individual account with each member, showing the amount of the member's contributions and the interest accumulations thereon. It shall collect and keep in convenient form such data as may be necessary for the preparation of the required mortality and service tables, and for the compilation of such other information as may be needed for the actuarial valuation of the fund. The board of trustees shall adopt appropriate tables for the purpose of evaluating and computing retirement, disability and death allowances.

§8-22-13. Reports by board of trustees.

At such times as the board of trustees may deem it necessary, but at least once within the first three years
of the operation of the fund and each five-year period thereafter, the board of trustees shall employ a competent actuary to prepare a report containing an evaluation of the present and prospective assets and liabilities of the fund.

The board of trustees shall submit to the governing body an annual report showing the condition of the fund under its control. It shall certify in such report the amount of accumulated cash and securities in the fund and shall present a full account of the operation of the system.

§8-22-14. Custodian of fund; duties; bond.

The treasurer of the city shall be the custodian of all of the assets of the fund, and shall deposit and pay out the moneys of the fund upon, and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund, and the official bond of the treasurer covering such fund shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such fund. Such fund shall not be used for any other purpose than provided in sections two through fourteen of this article.

§8-22-15. Action by city required before new provisions are applicable.

Notwithstanding any provisions in sections two through fourteen of this article to the contrary, the provisions of said sections two through fourteen shall not be applicable to any fund established by any city prior to the effective date of this section, unless and until such city shall by ordinance provide for the application thereof. In the absence of any such ordinance, any such established fund shall be governed and controlled by and administered in accordance with the provisions of chapter one hundred fourteen, acts of the Legislature, regular session, one thousand nine hundred forty-seven, and the amendments by (1) chapter ninety-two, acts of the Legislature, regular session, one thousand nine hundred forty-nine, (2) chapter one hundred twenty-nine,
acts of the Legislature, regular session, one thousand
nine hundred fifty-five, and (3) chapter thirty-nine, acts
of the Legislature, regular session, one thousand nine
hundred sixty-eight, if and only if an ordinance were
adopted on and after May eight, one thousand nine hun-
dred sixty-eight, and prior to the effective date of this
section providing for the application of said chapter
thirty-nine.

PART III. POLICEMEN’S PENSION AND RELIEF FUND;
FIREMEN’S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen;
creation of boards of trustees; definitions; continu­
ance of funds.

In every Class I and Class II city having, or which
may hereafter have, a paid police department and a paid
fire department, or either of such departments, the gov-
erning body shall, and in every Class III city and Class
IV town or village having, or which may hereafter have,
a paid police department and a paid fire department, or
either of such departments, the governing body may, by
ordinance provide for the establishment and maintenance
of a policemen’s pension and relief fund, and for a fire-
men’s pension and relief fund, for the purposes herein-
after enumerated, and, thereupon, there shall be created
boards of trustees which shall administer and distribute
the moneys authorized to be raised by this section and
the following sections of this article. For the purposes
of this section and sections seventeen through twenty-
eight of this article, the term “paid police department”
or “paid fire department” shall be taken to mean only a
municipal police department or municipal fire depart-
ment, as the case may be, maintained and paid for out
of public funds and whose employees are paid on a full-
time basis out of public funds. The term shall not be
taken to mean any such department whose employees
are paid nominal salaries or wages or are only paid for
services actually rendered on an hourly basis.

Unless and until other provision is made by subse-
quent legislative action, any policemen’s pension and
relief fund and any firemen’s pension and relief fund
established in accordance with the provisions of former
article six of this chapter or this article twenty-two shall be or remain mandatory and shall be governed by the provisions of sections sixteen through twenty-eight of this article twenty-two (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city), and shall not be affected by the transition from one class of municipal corporation to a lower class as specified in section three, article one of this chapter.

§8-22-17. Powers of boards of trustees.

Such board of trustees, or boards of trustees, shall be public corporations by the name and style of "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)," or "The Board of Trustees of the Firemen's Pension and Relief Fund of (name of municipality)," as the case may be, by which names they may sue and be sued, plead and be impleaded, contract and be contracted with, take and hold real and personal property for the use of said policemen's pension and relief fund or said firemen's pension and relief fund and have and use a common seal. In the absence of such a seal, the seal of the president of any such corporation shall be equivalent to such common seal. Any such board of trustees may also in its corporate name do and perform any and all other acts and business pertaining to the trust created hereby or by any conveyance, devise or dedication made for the uses and purposes of said board.

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

The board of trustees of the policemen's pension and relief fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that
between the hours of nine in the forenoon and six in
the afternoon, on the day designated for such election,
an election will be held for such purpose and that each
member shall furnish in writing the names of four
members of the paid police department voted for; and
all votes so cast shall be counted and canvassed by the
mayor and the governing body for the first election,
and thereafter the votes shall be counted by the then
existing members of such board, who after such election
shall announce the results, and the four members of
the paid police department receiving the highest num-
ber of votes shall, with the mayor, constitute "The Board
of Trustees of the Policemen's Pension and Relief Fund
of (name of municipality)." As to the first election
held following the adoption of the ordinance providing
for the establishment and maintenance of such fund,
the member receiving the highest number of votes
shall serve for a period of four years, the member
receiving the second highest number of votes shall serve
for a period of three years, the member receiving the
third highest number of votes shall serve for a period
of two years, and the member receiving the fourth
highest number of votes shall serve for a period of one
year. After such first election, the board shall hold a
similar election each year to elect one member to suc-
ceed, for a term of four years, the retiring member.
In the case of a tie vote being received by any two
individuals for the office of trustee, such tie vote shall
be decided by casting lots, or in any other way which
may be agreed upon by the individuals for whom such
tie vote was cast. The results of such election shall be
entered in the record of the proceedings of the board
and the members so elected shall, except as hereinabove
specified with respect to the first election, serve for
four years and until their successors are elected and
have qualified. The election for such members of the
board of trustees shall be held annually upon the
second Monday of the same month during which the
first election was held. In case of a vacancy by death,
resignation, or otherwise, among the members so
elected, the remaining members of the board shall
choose the successor, or successors, until the next annual
election at which latter time all vacancies shall be
filled.

The board of trustees of the firemen's pension and
relief fund shall consist of the mayor of the munici-
pality and four members of the paid fire department,
to be chosen in the same manner and for such terms
as is provided above in this section for the election
of policemen to the policemen's pension and relief fund
board of trustees.

The presiding officer of any such board of trustees
shall be the mayor of the municipality, and the secre-
tary thereof shall be appointed by the board. It shall
be the duty of such secretary to keep a full and per-
manent record of all of the proceedings of the board,
and said trustees may fix the secretary's compensation
for this work, which shall be paid out of the funds of
said policemen's pension and relief fund or firemen's
pension and relief fund, as the case may be.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on
members of departments; return of assessments.

In every municipality in which there shall be a
policemen's pension and relief fund or a firemen's pension
and relief fund, or both, the same shall be maintained
as follows: The governing body of the municipality
shall levy annually and in the manner provided by
law for other municipal levies, and include within the
maximum levy or levies permitted by law, and if neces-
sary in excess of any charter provision, a tax at such
rate as will, after crediting all interest, if any, to be
received in such year from the investments of the
respective boards, provide funds equal to the sum of
(1) the full amount of estimated expenditures of the
boards of trustees of the respective funds, and (2) an
additional amount equal to ten percent of such estimated
expenditures, said ten percent amount to be taken,
accumulated and invested, if possible, as surplus reserve:
Provided, That in no event shall such levy for each of
the respective boards of trustees be less than one cent
nor more than five cents on each one hundred dollars
of all real and personal property as listed for taxation in such municipality.

The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditure thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any such fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of four percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman.

Any member of a paid police or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his connection with said department, provided he has served two full years or more, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest. In the event such refund is made and such member subsequently reenters the department no credit shall be allowed him for any former service, unless any such member of a paid police or fire department repays to the pension and relief fund all sums refunded to him within one year from the date he reenters the department with interest at the rate of six percent per annum: Provided, however,
That any member who, on or before June three, one thousand nine hundred fifty-five, reentered the paid police or fire department shall be allowed credit for any former service in the same department reentered if he within one year from said June three, one thousand nine hundred fifty-five, repaid all sums withdrawn or refunded to him with interest at the rate of six percent per annum, but in no case shall interest be charged for more than three years. Any probationary member of a paid police or fire department who is not given an absolute appointment at the end of his probationary period shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest.

§8-22-20. When arrest fee to be collected for municipal policemen's pension and relief fund.

In case of conviction for violation of any municipal ordinance or any state law of any person arrested by any member of the paid police department of any municipality having a policemen's pension and relief fund, or of the forfeiture of bail not vacated after arrest for violation of any municipal ordinance or any state law by any person so arrested, whether the conviction or forfeiture be in the court of a justice of the peace, or in the mayor's court of a municipality, or in the police court or municipal court of a city, or in any other court of criminal jurisdiction, an arrest fee of one dollar shall be taxed as part of the costs, in addition to other fees authorized by law, and shall be collected from the person convicted or furnishing bail, and such arrest fee shall be paid into the policemen's pension and relief fund of the municipality of the arresting officer.


The treasurer of the municipality shall be the custodian of all of the assets of the policemen's pension and relief fund and firemen's pension and relief fund, and shall deposit and pay out the moneys thereof upon,
and in accordance with, any proper order of the board of trustees. Such treasurer shall be liable upon his official bond as treasurer for the faithful performance of his duties in respect to such fund or funds, and the official bond of the treasurer covering such fund or funds shall be executed with a good and financially responsible surety company, authorized to do business in this state, as surety for such fund or funds. Such fund or funds shall be trust funds and shall not be used for any other purpose than provided herein.

§8-22-22. How trustees of funds to invest moneys received; annual report.

The said board of trustees shall invest any moneys received by it either in interest-bearing general obligation bonds of the United States, or of this state, or of the municipality, or of the county or school district in which the municipality or any portion of the territory thereof may be located, or in improved real estate first lien security worth at least twice the amount loaned thereon, based on a sound appraisal by a competent appraiser and duly certified by him, or in savings accounts in state and national banking institutions to the extent that such accounts are insured by the federal deposit insurance corporation, or in state building and loan associations or federal savings and loan associations to the extent that such interests are insured by the federal savings and loan insurance corporation or by any other similar federal instrumentality that may be hereafter created, or in any combination of the foregoing investments. Said board of trustees shall make a report to the governing body of the municipality on the condition of its fund on the thirty-first day of December of each year.

§8-22-23. Rules and regulations as to distribution of funds; proof of age.

The board of trustees of the policemen's pension and relief fund and the board of trustees of the firemen's pension and relief fund shall make rules and regulations, not inconsistent with the provisions of sections
sixteen through twenty-eight of this article, for the
distribution of the moneys of such funds according to
the qualifications of those to whom any portion of such
moneys shall be paid and the amount thereof: Provided,
That such rules and regulations shall not be enforced
until the same have been approved by the governing
body.

At the time of the original appointment of any mem-
er to the paid police or fire department, such member
shall, at the request of the board of trustees, furnish to
said board a certified copy of his birth certificate or
other proof of his date of birth satisfactory to the board.


(a) If any member of any such paid police or fire de-
partment of any such municipality shall become and be
found upon examination by a majority of a board of
medical examiners, which board shall consist of not less
than three physicians appointed by the board of trustees,
to have become so physically or mentally permanently
disabled by reason of service rendered in the perform-
ance of his duties in such department, as to render neces-
sary his retirement from all service in such department,
or if any member who has been such a member of either
of such departments for a period of not less than five
consecutive years preceding his disability become and be
found upon such an examination to have become so
physically or mentally permanently disabled, from any
reason other than as specified above in this section, as
to render necessary his retirement from all service in
such department, such board of trustees shall retire such
permanently disabled members from all service in such
department; and said board of trustees of such pension
and relief fund shall authorize the payment to each
such permanently disabled member monthly from the
pension and relief fund a disability pension, the amount
thereof to be determined as specified in subsection (f)
of this section.

(b) If any member of any such department shall at
any time be injured or become sick, regardless of the
cause therefor, so as to render such member temporarily
disabled, he shall be paid, during such disability for not exceeding twenty-six weeks, from said pension and relief fund temporary disability payments, the amount thereof to be determined as specified in said subsection (f) for the determination of payments under a disability pension.

(c) No member shall be eligible for any disability pension or any temporary disability payments unless such member shall have presented himself for an examination at the time of his appointment to the department and his condition was then approved by a majority of a board of medical examiners appointed as aforesaid by such pension board: Provided, That this provision shall not apply to any individual who became a member of either of said departments on or before March eight, one thousand nine hundred thirty-five. Any such pension board may, if it so elects, designate as a member or members of its board of medical examiners any physician or physicians appointed by the policemen's civil service commission or firemen's civil service commission of such municipality to conduct medical examinations on behalf of any such commission under the provisions of article fourteen or article fifteen of this chapter, as the case may be.

(d) Any member who has been heretofore, or shall hereafter be, allowed a disability pension or temporary disability payments under the provisions of sections sixteen through twenty-eight of this article may be required by such board to be reexamined at any time and if he is then not disabled as aforesaid he shall be ordered by the mayor of the municipality to return to duty in his former position in the paid police or fire department, as the case may be, and his disability pension or temporary disability payments shall be discontinued: Provided, however, That this provision shall not apply to any member until such member can and shall be restored to his former position in such department.

(e) All medical examinations conducted under the provisions of this section shall be ordered by the pension board.
(f) The monthly sum to be paid to each permanently disabled member of a paid police or fire department entitled thereto shall be equal to fifty percent of the monthly salary or compensation being received by such member, at the time he is so disabled, or the sum of one hundred fifty dollars per month, whichever shall be greater: Provided, That any member who is permanently disabled, after having served twenty years in such department, shall be entitled to such sum in twelve monthly installments as shall equal fifty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which he received his highest salary or compensation while a member of the department, and also one additional percent (to be added to the fifty percent) per each year served in excess of said twenty years (up to a maximum of five additional percent), or a total amount of one hundred fifty dollars per month, whichever shall be greater.


(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to fifty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of one hundred fifty dollars per month, whichever shall be greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of
subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the fifty percent authorized in said subsection (a), receive one additional percent, to be added to the fifty percent, per each year served in excess of said twenty years, up to a maximum of five additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department shall have reached the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixty-fifth birthday; and the mayor shall cause such sixty-five-year-old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection (d), such member, whether he has been employed in said department for twenty years or not, shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to fifty percent of such member's average annual salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, or an amount of one hundred fifty dollars per month, whichever shall be greater, and if such member has been employed in said department for more than twenty years, the provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or fire department at the time a fund is hereafter
established to furnish the necessary proof of his date
of birth to the said board of trustees, as specified in
section twenty-three of this article, within a reasonable
length of time, said length of time to be determined by
the said board of trustees; and then the board of trustees
and the mayor shall proceed to act in the manner pro-
vided in subsection (d) of this section and shall cause
all members of the paid police or fire department who
are over the age of sixty-five years to be retired in not
less than sixty days from the date the fund is established.
Upon retirement under the provisions of this subsection
(e), such member, whether he has been employed in
said department for twenty years or not, shall re-
ceive retirement benefits payable in twelve
monthly installments for each year of the remainder of
his life, in an amount equal to fifty percent of such
member's average annual salary or compensation re-
ceived during the five fiscal years, not necessarily con-
secutive, in which such member received his highest
salary or compensation while a member of the depart-
ment, or an amount of one hundred fifty dollars per
month, whichever shall be greater, and if such member
has been employed in said department for more than
twenty years, the provisions of subsection (b) of this
section shall apply.


(a) In case:

(1) Any member of a paid police or fire department
who has been in continuous service for more than five
years shall die, from any cause other than as specified
in subsection (b) of this section twenty-six, before re-
tirement on a disability pension under the provisions of
section twenty-four of this article or a retirement pen-
sion under the provisions of subsection (a) or both sub-
sections (a) and (b) of section twenty-five of this article,
leaving in either case surviving a dependent spouse, or
any dependent child or children under the age of eighteen
years, or dependent father or mother or both, or any
dependent brothers or sisters or both under the age of
eighteen years; or
(2) Any former member of any such department who is on a disability pension under the provisions of said section twenty-four, or has attained the age of fifty years and is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die, from any cause other than as specified in subsection (b) of this section twenty-six, leaving in either case surviving a dependent spouse to whom the marriage took place prior to the date of such member's retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member's retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(3) Any former member of any such department who has retired under the provisions of subsection (a) or both subsections (a) and (b) of section twenty-five of this article, shall die before attaining the age of fifty years, from any cause other than as specified in subsection (b) of this section twenty-six, leaving surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; then in any of the cases set forth above in (1), (2) and (3), the board of trustees of such pension and relief fund shall, immediately following the death of such member, pay to or for each of such entitled surviving dependents the following pension benefits, viz.: To such dependent spouse, until death or remarriage, a sum per month equal to twenty-five percent of such member's average monthly salary or compensation received during the five fiscal years, not necessarily consecutive, in which such member received his highest salary or compensation while a member of the department, hereinafter for convenience referred to in this section as "monthly average," or an amount of seventy-five dollars per month, whichever shall be greater;
to each such dependent child a sum per month equal to

ten percent of such monthly average, or the sum of thirty
dollars per month for each such child, whichever shall
be greater, until such child shall attain the age of
eighteen years or marry, whichever first occurs; to each
such dependent orphaned child a sum per month equal
to fifteen percent of such monthly average, or the sum
of forty-five dollars per month for each such child, which-
ever shall be greater, until such child shall attain the
age of eighteen years or marry, whichever first occurs;
to each such dependent father or mother a sum per
month for each equal to ten percent of such monthly
average, or the sum of thirty dollars per month for each
such father and mother, whichever shall be greater; to
each such dependent brother or sister the sum of five
dollars per month until such individual shall attain the
age of eighteen years or marry, whichever first occurs,
but in no event shall the aggregate amount paid to such
brothers and sisters exceed thirty dollars per month; but
if at any time, because of the number of dependents,
all such dependents cannot be paid in full as herein
provided, then each dependent shall receive his pro rata
share of such payments: Provided, however, That in no
case shall the payments to the surviving spouse and
children be cut below sixty percent of the total amount
to be paid to all dependents.

(b) The dependent spouse, child or children, or de-
pendent father or mother, or dependent brothers or sis-
ters, of any such member who shall die by reason of
service rendered in the performance of such member's
duties shall, regardless of the length of such member's
service and irrespective of whether such member was
or was not entitled to receive or was or was not receiv-
ing a disability pension or temporary disability payments
at the time of his death, receive the death benefits pro-
vided for in subsection (a) of this section, and if such
member had less than five years' service at the time of
his death, the monthly average shall be computed on the
basis of the actual number of years of service.

(c) The provisions of this section shall not be con-
strued as creating or establishing any contractual or
vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.


(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or re-
tirement pension benefits from a policemen's or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such pension benefits:

(1) A former member who on June thirty, one thousand nine hundred sixty-two, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits in the amount of one hundred fifty dollars per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall receive the disability pension benefits or retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits in the following amounts: To a dependent spouse, until death or remarriage, the sum of seventy-five dollars per month; to each dependent child the sum of thirty dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month for each; to each
dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided further, That in no case shall the payments to the surviving spouse and children be cut below sixty percent of the total amount to be paid to all dependents;

(2) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who became eligible for death benefits on or after July one, one thousand nine hundred sixty-two, shall receive the death benefits provided for in section twenty-six of this article.

§8-22-28. Period in which payments limited to income from fund; reduced payments where fund insufficient.

1 Until the expiration of three years from the time of the creation of any such fund, unless otherwise authorized by ordinance of the municipality, no payment shall be made to any member or beneficiary except from the income arising from said fund; and if at any time there shall not be sufficient money to the credit of said pension and relief fund to pay each member and beneficiary entitled to the benefits thereof the full amount per month, as herein provided, then an equal percentage of such monthly payments shall be made to each member and beneficiary thereof, until said fund is so replenished as to warrant payment in full to each of such members and beneficiaries.

PART IV. PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTE M, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-29. Pension plans for employees of waterworks system, sewerage system or combined waterworks and sewerage system may be continued.

1 Any city which owns a waterworks system or sewer-
age system or combined waterworks and sewerage sys-
tem, which does not hereafter become a participating
public employer under the said West Virginia public
employees retirement system, which does not establish
and maintain an employees' retirement and benefit fund
in accordance with the provisions of sections two
through fourteen of this article and which has hereto-
fore provided, under the provisions of former section
twenty-one-a, article four of this chapter, a pension
plan or plans on behalf of and pertaining to all or part
of the employees of said waterworks system or sewer-
age system or combined waterworks and sewerage
system, may continue to maintain such plan or plans,
financed from the general operation funds of said water-
works system or sewerage system or combined water-
works and sewerage system, and administered by a
pension board or pension commission. Any such pension
board or pension commission shall continue to be
composed of such members as shall be approved by
the governing body, giving proper representation to
the employees of such waterworks system or sewerage
system or combined waterworks and sewerage system.
The chief financial executive officer or treasurer of such
pension board or pension commission shall continue to
maintain bond with a surety company qualified to do
business in this state in an amount equal to the value
of any funds or securities in the control of or owned
by the pension board or pension commission. After
reserving such funds as may be deemed necessary by
the pension board or pension commission to provide
such amounts as may be required to meet temporary
commitments, the remainder shall continue to be in-
vested in general obligation bonds of the United States,
this state or any political subdivision of this state.

ARTICLE 23. INTERGOVERNMENTAL RELATIONS—CONTRACT-
ING AND JOINT ENTERPRISES.

PART I. PURPOSE; DEFINITIONS.

§8-23-1. Statement of purpose.
PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.
§8-23-4. Filing of intergovernmental agreements.
§8-23-5. Additional approval of intergovernmental agreements required in certain cases.
§8-23-6. Appropriations; furnishing of property, personnel and services.
§8-23-7. Contract between public agencies for one public agency to perform a service, etc., for another public agency.
§8-23-8. Duration of intergovernmental agreements and contracts.

PART III. CONSTRUCTION.


PART I. PURPOSE; DEFINITIONS.

§8-23-1. Statement of purpose.

1 It is the purpose of this article to permit local governmental units to make the most efficient use of their power and authority by enabling them to cooperate with each other on a basis of mutual advantage and to consolidate functions and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization which will result in economies in the operation of local government and which will accord best with the geographic, economic, population and other factors influencing the needs and development of local governmental services and facilities, and thus promote the public health, safety and welfare.


1 For the purposes of this article:
2 (1) The term "public agency" shall mean any municipality, county or other political subdivision of this state, or any county board of education of this state; and
3 (2) The term "public works" shall mean any improvement or project involving an outlay of a capital nature which may be required by or convenient for the purposes of any public agency, including, without limiting the generality of the foregoing, the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replace-
ments) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, mu-
seums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers,
docks, terminals, airports, drainage systems, flood con-
trol systems, floodwalls, sewers, culverts, bridges (in-
cluding approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries,
motor vehicle parking facilities (including parking lots,
buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, con-
venient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums,
ports arenas, auditoriums, public recreation centers,
public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or other public improvements, or the grading,
regrading, paving, repaving, surfacing, resurfacing, curbing, recurfing, widening or otherwise improving of any street, avenue, road, alley or way.

PART II. INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS.

§8-23-3. Intergovernmental agreements generally.

Any power or powers, privilege or privileges, authority or undertaking, exercised or capable of exercise, or which may be engaged in, and any public works which may be undertaken, by a public agency acting alone may be exercised, enjoyed, engaged in or undertaken jointly with any other public agency which could like-
wise act alone.

Any two or more public agencies may enter into a written agreement with one another for joint or coop-
erative action pursuant to the provisions of this section. Appropriate action by ordinance, resolution, or other-
wise pursuant to law, of the governing bodies of the participating public agencies shall be necessary before any such agreement shall become effective.

Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of any separate legal or administrative entity created
thereby, together with the powers delegated thereto,
provided such entity may be legally created;
(3) Its purpose or purposes;
(4) The manner of financing the joint or cooperative
undertaking and of establishing and maintaining a
budget therefor;
(5) The permissible method or methods to be em-
ployed in accomplishing the partial or complete ter-
mination of the agreement and for disposing of property
upon such partial or complete termination; and
(6) Any other necessary and proper matters.

In the event that the agreement does not establish a
separate legal or administrative entity to conduct the
joint or cooperative undertaking, the agreement shall,
in addition to the items enumerated above, contain the
following:
(1) Provision for an administrator or a joint board
responsible for administering the joint or cooperative
undertaking, and in the event a joint board is provided
for, there shall be a representative on the board from
each of the public agencies which are party to the
agreement; and
(2) The manner of acquiring, holding and disposing
of real and personal property used in the joint or coop-
erative undertaking.

No agreement made pursuant to the provisions of this
section shall relieve any public agency of any obliga-
tion or responsibility imposed upon it by law, except
that to the extent of actual and timely performance
thereof by a joint board or other legal or administrative
entity created by an agreement made hereunder, said
performance may be offered in satisfaction of the obliga-
tion or responsibility.

Every agreement made pursuant to the provisions of
this section shall, prior to and as a condition precedent
to its becoming effective, be submitted to the attorney
general who shall determine whether the agreement is
in proper form and is compatible with the laws of this
state. The attorney general shall approve any such
agreement submitted to him unless he shall find that
it does not meet the conditions set forth herein, in which event he shall detail in writing to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove any such agreement so submitted within thirty days of its submission shall constitute approval thereof.

The financing of joint projects by agreement shall be as provided by law.

§8-23-4. Filing of intergovernmental agreements.

Before an agreement made pursuant to the provisions of section three of this article may become effective, a copy of the same must be filed with the recorder of any municipality party thereto and with the clerk of the county court of any county party thereto, and, as to any other public agency party thereto, with the officer in charge of the records thereof. When a municipality is a party, a copy of the agreement must also be filed with the state tax commissioner before such agreement becomes effective.

§8-23-5. Additional approval of intergovernmental agreements required in certain cases.

In the event that an agreement entered into pursuant to the provisions of section three of this article shall deal in whole or in part with the providing of services or facilities with respect to which an officer or agency of this state has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its becoming effective, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements and provisions governing the action of the attorney general under said section three of this article. This requirement of the submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorney general.
§8-23-6. Appropriations; furnishing of property, personnel and services.
1 Any public agency entering into an agreement pursuant to the provisions of section three of this article is hereby empowered and authorized to appropriate funds to, and to sell, lease, transfer or otherwise supply real or personal property to, and to furnish personnel and services to, the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking, and such board or entity is hereby empowered and authorized to receive, expend and utilize the same.

§8-23-7. Contract between public agencies for one public agency to perform a service, etc., for another public agency.
1 Any one or more public agencies are hereby empowered and authorized to contract with any one or more other public agencies for the performance of any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, power, authority, rights, objectives and responsibilities of the contracting parties. Any contracting party may make such payments for the performance of such service, activity or undertaking and as reimbursement for expenses incurred with respect thereto, as may be specified in the contract, and the public agency to which such payments are to be made is hereby empowered and authorized to receive the same.

§8-23-8. Duration of intergovernmental agreements and contracts.
1 Any intergovernmental agreement entered into in accordance with the provisions of section three of this article, and any contract for the performance of a service, activity or undertaking entered into in accordance with the provisions of section seven of this article, shall be limited in duration to one fiscal year, but the same
7 may be annually renewed each fiscal year: Provided, That
8 any such agreement or contract may be for such period
9 in excess of one fiscal year as is specified in the agree-
10 ment or contract, if such agreement or contract is ratified
11 by a majority of the legal votes cast by the qualified
12 voters of the several jurisdictions represented by the
13 contracting parties voting separately at a regular or
14 special election.

**Part III. Construction.**


1 The provisions of this article are in addition to and
2 not in derogation of any power and authority vested
3 in any public agency under any constitutional, statutory
4 or charter provisions which may now or hereafter be in
5 effect, and under no circumstances whatever shall the
6 provisions of this article be construed as in any way
7 limiting the power and authority to take joint or co-
8 operative action or enter into agreements or contracts
9 granted in other articles of this chapter.

**Article 24. Intergovernmental Relations—Urban and
Rural Planning and Zoning.**

**Part I. Urban and Rural Planning—Planning
Commissions Authorized; Objective; Definitions.**

§8-24-1. Planning commissions authorized; statement of objective.
§8-24-2. Continuation of planning commissions heretofore established.
§8-24-3. Definitions.

**Part II. Same—Exercise of Powers and Authority;
Organization and Function of Commissions.**

§8-24-4. How powers and authority exercised.
§8-24-5. Municipal planning commission generally.
§8-24-6. County planning commission generally.
§8-24-7. Advisory members.
§8-24-8. Regular and special meetings.
§8-24-9. Quorum.
§8-24-10. Offices; appropriation for expenses.
§8-24-11. Election of officers.
§8-24-12. Appointment, duties and compensation of secretary and em-
ployees; special and temporary services; legal assistance.
§8-24-13. Municipal-county commission; powers and authority; ex-
penses.
PART III. SAME—POWERS, AUTHORITY AND DUTIES.


§8-24-15. Appropriations; expenditures; disposition of gifts; participation in federal planning assistance programs.

PART IV. SAME—COMPREHENSIVE PLAN.


§8-24-17. Same—Contents.


§8-24-19. Same—Adoption by commission.

§8-24-20. Same—Certification and presentment to governing body or county court.

§8-24-21. Same—Consideration of plan and ordinance by governing body or county court; publication.

§8-24-22. Same—Rejection or amendment by governing body or county court; consideration and report by commission.

§8-24-23. Same—Amendment of plan and ordinance after adoption.

§8-24-24. Same—Validation of prior action.

§8-24-25. Same—Intergovernmental cooperation.

§8-24-26. Same—Jurisdiction of municipal planning commission.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and governing and administrative bodies and officials.

PART V. SAME—COMPREHENSIVE PLAN; SUBDIVISION CONTROL.

§8-24-28. Subdivision plats—Approval required prior to recordation.

§8-24-29. Same—Application for approval; notice and hearing.

§8-24-30. Same—Basis for commission’s action upon application for approval.

§8-24-31. Same—Effect of approval or disapproval.

§8-24-32. Same—Application fees.

§8-24-33. Same—Plats filed without approval.

§8-24-34. Same—Conditional approval; bonds.

§8-24-35. Same—Jurisdiction and control; inconsistent provisions for platting control repealed.

PART VI. SAME—IMPROVEMENT LOCATION PERMITS.

§8-24-36. Improvement location permits—Conformity of structure to comprehensive plan and ordinance.

§8-24-37. Same—Authority to issue and control.

PART VII. JUDICIAL REVIEW OF COMMISSION DECISIONS.

§8-24-38. Review of decisions of commission by certiorari.

PART VIII. URBAN AND RURAL ZONING—ZONING GENERALLY.


PART IX. SAME—ZONING DISTRICTS.


§8-24-41. Same—Preliminary study.
PART X. SAME—ZONING DISTRICTS—PROCEDURES.

§8-24-42. Same—Tentative report; notice and hearings.

§8-24-43. Same—Action by governing body or county court on tentative report.

§8-24-44. Same—Final report; notice and hearing; action.

PART XI. SAME—AMENDING, SUPPLEMENTING OR CHANGING ZONING ORDINANCE RULES AND REGULATIONS.

§8-24-45. Supplemental and amending ordinances.

§8-24-46. Changes of zoning rules and regulations—Petition for change.

§8-24-47. Same—Considered as amendments to comprehensive plan; notice and hearing.

PART XII. SAME—ELECTION ON ZONING ORDINANCE.

§8-24-48. Election on zoning ordinance; form of ballots or ballot labels; procedure.

PART XIII. SAME—EXISTING ORDINANCES AND USES.

§8-24-49. Validation of existing ordinances.

§8-24-50. Existing uses safeguarded.

PART XIV. SAME—BOARD OF ZONING APPEALS—ORGANIZATION AND FUNCTION.

§8-24-51. Board of zoning appeals—Creation; membership; terms; vacancies.

§8-24-52. Same—Officers; quorum; compensation of secretary and employees.

§8-24-53. Same—Offices; appropriation for expenses.

§8-24-54. Same—Rules and regulations and procedures; minutes and records.

PART XV. SAME—BOARD OF ZONING APPEALS—POWERS, AUTHORITY AND DUTIES.

§8-24-55. Same—Powers, authority and duties.

PART XVI. SAME—BOARD OF ZONING APPEALS—PERFECTING APPEAL AND HEARING THEREON.

§8-24-56. Appeal from decision of administrative official or board.

§8-24-57. Hearing of appeal.

§8-24-58. Staying of work on premises when appeal taken; exception.

PART XVII. SAME—BOARD OF ZONING APPEALS—JUDICIAL REVIEW.

§8-24-59. Petition for writ of certiorari from decision or order.

§8-24-60. Notice to adverse parties.

§8-24-61. Action of court or judge on petition.

§8-24-62. Stay of work on allowance of writ.

§8-24-63. Return to writ by board of zoning appeals.

§8-24-64. Action by circuit court or judge thereof.

§8-24-65. Appeal from final judgment of circuit court or judge thereof.
PART XVIII. ENFORCEMENT PROVISIONS.

§8-24-67. Injunction.
§8-24-68. Penalty.

PART XIX. CONSTRUCTION; SPECIAL PROVISIONS; REPEALER.

§8-24-69. Provisions supplemental; special provisions concerning state-supported institutions of higher education.
§8-24-70. Conflict with other laws, etc.
§8-24-71. General repealer; planning and zoning outside corporate limits exercised under prior acts.

PART I. URBAN AND RURAL PLANNING—PLANNING COMMISSIONS AUTHORIZED; OBJECTIVE; DEFINITIONS.

§8-24-1. Planning commissions authorized; statement of objective.

1 The governing body of every municipality and the county court of every county may by ordinance create a planning commission in order to promote the orderly development of its governmental units and its environs.
2 It is the object of this article to encourage local units of government to improve the present health, safety, convenience and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational and recreational facilities; that the needs of agriculture, industry and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

18 In accomplishing this objective, it is intended that the planning commission shall serve in an advisory capacity to the governing body of a municipality or a county court, that certain regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers and authority be granted to the governing bodies of municipalities and to counties to carry out the objective and overall purposes of this article.
§8-24-2. Continuation of planning commissions heretofore established.

1 Any planning commission heretofore established shall continue to operate as though established under the terms of this article. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this article.

2 The membership of existing commissions shall continue unchanged until the first regular meeting of the governing body of a municipality or the county court in January of the year following enactment of this article. At that time, any appointments or changes necessary shall be made to bring the membership of the commissions into conformity with the provisions of this article.

§8-24-3. Definitions.

1 As used in this article:

2 (1) “Commission or planning commission” shall mean a municipal planning commission or a county planning commission, as the case may be;

3 (2) “Comprehensive plan” shall mean a complete comprehensive plan or any of its parts such as a comprehensive plan of land use and zoning, of thoroughfares, of sanitation, of recreation and other related matters, and including such ordinance or ordinances as may be deemed necessary to implement such complete comprehensive plan or parts thereof by legislative approval and provision for such rules and regulations as are deemed necessary and their enforcement;

4 (3) “Public place” includes any tracts owned by the state or its subdivisions;

5 (4) “Streets” includes streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways;

6 (5) “Unit of government” means any federal, state, regional, county or municipal government or governmental corporation; and

7 (6) “Utility” means any facility used in rendering service which the public has a right to demand.
§8-24-4. How powers and authority exercised.

1 Where power and authority are conferred herein, singly
2 or disjunctively, on the governing body or administrative
3 authority of a municipality, that power and authority
4 may be exercised only in relation to a municipal planning
5 commission. Where power and authority are conferred
6 herein, singly or disjunctively, on a county court, that
7 power may be exercised only in relation to a county
8 planning commission.

§8-24-5. Municipal planning commission generally.

1 A municipal planning commission shall consist of not
2 less than five nor more than fifteen individuals, the exact
3 number to be specified in the ordinance creating such
4 commission, all of whom shall be freeholders and resi-
5 dents of the municipality, who shall be qualified by
6 knowledge and experience in matters pertaining to the
7 development of the municipality, who shall include repre-
8 sentatives of business, industry and labor, and who shall
9 be nominated by the administrative authority and con-
10 firmed by the governing body of the municipality or ap-
11 pointed by the governing body where the administrative
12 authority and governing body are the same. At least
13 three fifths of all of the members must have been resi-
14 dents of the municipality for at least ten years prior to
15 nomination and confirmation or appointment. One mem-
16 ber of the commission shall also be a member of the
17 governing body of the municipality and one member shall
18 also be a member of the administrative department of
19 the municipality, the term of these two members to be
20 coextensive with the term of office to which they have
21 been elected or appointed, unless the governing body and
22 administrative authority of the municipality at the first
23 regular meeting of the commission each year designate
24 others to serve as the municipality's representatives.
25 The remaining members of the commission first selected
26 shall serve respectively for terms of one year, two years
27 and three years, divided equally or as nearly equally
28 as possible between these terms. Thereafter, members
shall be selected for terms of three years each. Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8-24-6. County planning commission generally.

A county planning commission shall consist of not less than five nor more than fifteen individuals, the exact number to be specified in the ordinance creating such commission, all of whom shall be freeholders and residents of the county, who shall be qualified by knowledge and experience in matters pertaining to the development of the county, who shall include representatives of business, industry, labor and farming, and who shall be appointed by the county court. At least three fifths of all of the members must have been residents of the county for at least ten years prior to appointment. One member of the commission shall also be a member of the county court, the term of such member to be coextensive with the term of office to which he has been elected, unless the county court at the first regular meeting of the commission each year appoints another member to serve as its representative. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be appointed for terms of three years each. Vacancies shall be filled by appointment by the county court for the unexpired term only. Members of the commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. An individual may at the same time serve as a member of a municipal planning commission and as a member of a county planning commission.

§8-24-7. Advisory members.

In the event a municipality which has or shall establish a planning commission is located within or partly within
a county which has or shall have a county planning commission, a designated representative of the county planning commission shall be an advisory member of the municipal planning commission. A designated representative of a municipal planning commission of a municipality located within or partly within a county which has or shall have a county planning commission shall be an advisory member of the county planning commission. All such advisory members shall have all the privileges of membership except the right to vote.

§8-24-8. Regular and special meetings.

1 The commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October.

2 Special meetings of the commission may be called by the president or by at least two members upon written request to the secretary. Whether called by the president or by two or more members, the secretary shall send to all of the members, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written notice of a special meeting is not required if the date, time and place of the special meeting have been fixed in a regular meeting, or if all of the members are present at the special meeting.

§8-24-9. Quorum.

1 A majority of the members of a commission shall constitute a quorum. No action of a commission shall be official, however, unless authorized by a majority of all of the members of the commission at a regular or properly called special meeting.

§8-24-10. Offices; appropriation for expenses.

1 The county court in the case of a county planning commission, and the governing body of the municipality in the case of a municipal planning commission, shall provide the commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the commission.
§8-24-11. Election of officers.
1 At its first regular meeting in each year the commis-
2 sion shall elect from its members a president and vice
3 president. The vice president shall have the power and
4 authority to act as president of the commission during
5 the absence or disability of the president.

§8-24-12. Appointment, duties and compensation of secretary
and employees; special and temporary services; legal assistance.
1 Any commission may appoint and prescribe the duties
2 and fix the compensation of a secretary and such em-
3 ployees as are necessary for the discharge of the duties
4 and responsibilities of the commission. All such com-
5 pensation, however, shall be in conformity to and in
6 compliance with the salaries and compensation thereto-
7 fore fixed by the governing body or county court of such
8 municipalities or counties.
9 A commission may make contracts for special or tem-
10 porary services and any professional counsel. The prose-
11 cuting attorney of a county, upon request, shall, without
12 additional compensation, render legal assistance and
13 service to the county planning commission.

§8-24-13. Municipal-county commission; powers and authority;
expenses.
1 The governing body of any municipality located within
2 a county having an established planning commission
3 may, by ordinance, designate such county planning com-
4 mission as the municipal planning commission. The
5 county court of any county within which a municipality
6 having an established planning commission is located
7 may, by ordinance, designate such municipal planning
8 commission as the county planning commission. In the
9 event any such municipality is located partly within
10 one county and partly within another county or counties,
11 the foregoing provisions of this section shall apply only
12 to the county within which the major portion of the
13 territory of the municipality is located.
14 A county planning commission designated as a munic-
15 ipal planning commission shall have for that municipality
all the powers, authority and duties granted under this article to a municipal planning commission. A municipal planning commission designated as a county planning commission shall have for that county all the powers, authority and duties granted under this article to a county planning commission.

Any municipality designating a county planning commission as its municipal planning commission may contract annually to pay to the county a proportionate part of the expenses which is properly chargeable to the planning service rendered to such municipality, and any such payments received by the county shall be appropriated by the county to the county planning commission in addition to any funds budgeted for planning purposes, although the county court may, if it so elects, agree to pay the total cost. Any county designating a municipal planning commission as its county planning commission may contract annually to pay to the municipality a proportionate part of the expenses which is properly chargeable to the planning service rendered to such county, and any such payments received by the municipality shall be appropriated by the municipality to the municipal planning commission in addition to any funds budgeted for planning purposes.

PART III. SAME—POWERS, AUTHORITY AND DUTIES.


To effectuate the purposes of this article, a commission shall have the power, authority and duty to:

1 (1) Exercise general supervision of and make rules and regulations for the administration of the affairs of the commission;

2 (2) Prescribe uniform rules and regulations pertaining to its investigations and hearings;

3 (3) Supervise the fiscal affairs and responsibilities of the commission;

4 (4) Prescribe the qualifications of, appoint, remove and fix the compensation of, the employees of the commission, such compensation to be in conformity to and in compliance with the salaries and compensation there-
(5) Delegate to employees authority to perform ministerial acts in all cases except where final action of the commission is necessary;

(6) Keep an accurate and complete record of all departmental proceedings, and record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission;

(7) Make recommendations and an annual report to the governing body of the municipality or to the county court concerning the operation of the commission and the status of planning within its jurisdiction;

(8) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;

(9) Adopt a seal, and certify all official acts;

(10) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;

(11) Prepare and submit an annual budget in the same manner as other departments of municipal and county government and the commission shall be limited in all expenditures to the provisions made therefor by the governing body of such municipality or by the county court of such county;

(12) If deemed advisable, establish an advisory committee or committees; and

(13) Delegate to a committee composed of one or more members of the commission the power to hold any public hearings or conferences required or permitted under this article to be held by the commission. If the hearing or conference is held by a committee, a written record of the substance of the hearing or conference shall be made and preserved with the records of the commission for not less than five years. The committee shall have
§8-24-15. Appropriations; expenditures; disposition of gifts; participation in federal planning assistance programs.

1 After the governing body of a municipality or a county court has adopted an ordinance creating a planning commission, the governing body or county court shall appropriate funds to carry out the duties of the commission.

2 The planning commission shall have the power and authority to expend, under regular municipal or county procedure as provided by law, all sums appropriated to it for the purposes and activities authorized under this article.

3 A municipality or county may accept gifts and donations for planning commission purposes. Any moneys so accepted shall be deposited with the municipality or county in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor.

4 The disbursing officer of a municipality or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning commission.

5 A municipal or county planning commission is empowered and authorized to spend funds made available for the purposes of this article, and to accept and use funds provided for the purposes of this article by the government of the United States and any other agency or group whose interests are in harmony with such purposes, in accordance with federal requirements and subject to such conditions or limitations as the constitution or law of the state may provide. In this connection a municipal or county planning commission is hereby expressly authorized to participate in the federal planning assistance programs as set forth in the "Federal Housing Act of 1954," as amended, and any subsequent acts.
PART IV. SAME—COMPREHENSIVE PLAN.


A planning commission shall make and recommend for adoption to the governing body of the municipality or to the county court, as the case may be, a comprehensive plan for the physical development of the territory within its jurisdiction. Any county plan may include the planning of towns or villages to the extent to which, in the commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: Provided, That the plan shall not be considered as a comprehensive plan for any town or village without the consent of any planning commission and the governing body of such town or village. The county plan shall be coordinated with the plans of the state road commission, insofar as it relates to highways or thoroughfares under the jurisdiction of that commission. A county planning commission may prepare, and the county court is empowered and authorized to adopt, a comprehensive plan and zoning ordinance for either the entire county, or for any part or parts thereof which constitute an effective region or regions for planning and zoning purposes without the necessity of adopting a plan and ordinance for any other part. In determining what constitutes an effective region or regions for planning and zoning purposes, due consideration shall be given to such factors as population density, health, general welfare, water and sanitation requirements, and future potential for residential, commercial, industrial or public use. The procedure for the preparation and adoption of a comprehensive plan and zoning ordinance for a part of such county shall be the same as the procedure for the preparation and adoption of a plan and ordinance for the entire county, except that the election provided for in section forty-eight of this article shall be restricted to the qualified electors residing within the part or parts affected.

The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show recommendations for the development
of the territory covered by the plan and may include, among other things, the general location, character and extent of streets, viaducts, bridges, waterways and waterfront developments, parkways, playgrounds, forests, reservations, parks, airports and other public ways, grounds, places and spaces; the general location and extent of publicly owned utilities and terminals, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities or terminals; the general character, location and extent of community centers, municipal sites or housing development; the general location and extent of forests, agricultural areas and open-development areas for the purposes of conservation, food and water supply, sanitary drainage facilities or the protection of urban development; a land classification and utilization program; the distribution of population, and the uses of land for trade, industry, habitation, recreation, agriculture, forestry, soil and water conservation and other purposes.

In the preparation of a comprehensive plan, a planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future changes of such conditions within the territory under its jurisdiction. The comprehensive plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the area which will, in accordance with present and future needs and resources, best promote the health, safety, morals, order, convenience, prosperity or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including, among other things, such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry and other purposes as will tend:

(1) To create conditions favorable to health, safety, transportation, prosperity, civic activities and recreational, educational and cultural opportunities;

(2) To reduce the wastes of physical, financial or
human resources which result from either excessive
congestion or excessive scattering of population; and
(3) Toward the efficient and economic utilization,
conservation and production of the supply of food and
water and of drainage, sanitary and other facilities and
resources.

§8-24-17. Same—Contents.

A comprehensive plan may include the following or a study of the following:
(a) Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the municipality and its environs or of the county;
(b) Maps, plats, charts and descriptive material presenting basic information, locations, extent and character of any of the following:
(1) History, population and physical site conditions;
(2) Land use, including the height, area, bulk, location and use of private and public structures and premises;
(3) Population densities;
(4) Community centers and neighborhood units;
(5) Blighted and slum areas;
(6) Streets, including bridges, viaducts, subways, parkways and other public ways and places;
(7) Sewers, sanitation and drainage, including handling, treatment and disposal of excess drainage waters, sewage, garbage, refuse, wastes, ashes, trash and other similar matters;
(8) Stream pollution;
(9) Flood control and prevention;
(10) Public and private utilities, including water, light, heat, communication and other services;
(11) Transportation, including rail, bus, truck, air and water transport and their terminal facilities;
(12) Local mass transportation, including motor and trolley busses; street, elevated or underground railways and taxicabs;
(13) Parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges and other
32 public grounds, spaces and facilities of a recreational
33 nature;
34 (14) Public buildings and institutions, including gov-
35 ernmental administration and service buildings, hospitals,
36 infirmaries, clinics, penal and correctional institutions
37 and other civic and social service buildings;
38 (15) Education, including location and extent of
39 schools, colleges and universities;
40 (16) Land utilization, including residence, industry,
41 agriculture, forests and other uses;
42 (17) Conservation of water, soil, agricultural and
43 mineral resources; and
44 (18) Any other factors which are a part of the physi-
45 cal, economic or social situation within the municipality
46 or county;
47 (c) Reports, maps, charts and recommendations
48 setting forth plans for the development, redevelopment,
49 improvement, extension and revision of the subjects
50 and physical situations of the municipality or county
51 set out in subdivision (b) of this section so as to sub-
52 stantially accomplish the objective set forth in section
53 one of this article;
54 (d) A long-range development program of public
55 works projects, based on the recommended plans of the
56 commission, for the purpose of eliminating unplanned,
57 unsightly, untimely and extravagant projects and with
58 a view to stabilizing industry and employment, and
59 the keeping of such program up to date by yearly
60 revisions; and
61 (e) A long-range financial program of governmental
62 expenditures in order that such development program
63 may be carried out, and the keeping of such program
64 up to date, for all separate taxing units within the
65 municipality or county, respectively, for the purpose of
66 assuring efficient and economic use of public funds.

1 Prior to the adoption of a comprehensive plan, a com-
2 mission shall give notice, as hereinafter in this section
3 specified, and hold a public hearing on the plan and
4 the proposed ordinance for its enforcement.
At least thirty days prior to the date set for hearing, the commission shall publish a notice of the date, time and place of the hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county, as the case may be.

§8-24-19. Same—Adoption by commission.

After a public hearing has been held, the commission may by resolution adopt the comprehensive plan and recommend the ordinance to the governing body of the municipality or to the county court.

§8-24-20. Same—Presentation and presentment to governing body or county court.

Upon adoption of the comprehensive plan and recommendation of the ordinance, the secretary shall certify a copy of the plan to the governing body of the city or to the county court.

At the first meeting of the governing body of the municipality or of the county court after adoption of the plan, the secretary or a member of the commission shall present the plan and ordinance to the governing body or to the county court.

§8-24-21. Same—Consideration of plan and ordinance by governing body or county court; publication.

After certification of the plan and ordinance to the governing body of the municipality or to the county court, the governing body of the municipality or the county court shall proceed to a consideration of the plan and ordinance and shall either adopt, reject or amend the same. If the ordinance adopting the comprehensive plan is published, the plan may be incorporated by reference in the ordinance and the full text of said plan not published.

§8-24-22. Same—Rejection or amendment by governing body or county court; consideration and report by commission.

If the governing body of the municipality or the county court rejects the plan and ordinance or amends it, then
it shall be returned to the commission for its consideration, with a written statement of the reasons for its rejection or amendment.

The commission shall have forty-five days in which to consider the rejection or amendment and report thereon to the governing body of the municipality or to the county court. If the commission approves the amendment, the ordinance shall stand as adopted by the governing body of the municipality or the county court as of the date of the filing of the commission's report with the governing body of the municipality or with the county court. If the commission disapproves the rejection or amendment, it shall state its reasons in the report, and the governing body of the municipality or the county court shall again consider said plan and ordinance, and its action in rejecting or amending said plan and ordinance, after such consideration, shall be final.

In case the commission does not file a report with the governing body of the municipality or with the county court within forty-five days, the action in rejecting or amending the ordinance shall be final.

§8-24-23. Same—Amendment of plan and ordinance after adoption.

After the adoption of a comprehensive plan and ordinance, all amendments to it shall be adopted according to the procedures set forth in sections eighteen through twenty-two of this article, except that publication of notice of the date, time and place of hearing upon amendment of the zoning ordinance need be only fifteen or more days prior to the date set for such hearing, and except that, if the governing body of the municipality or the county court desires an amendment, it may direct the planning commission to prepare an amendment and submit it to public hearing within sixty days after formal written request by the governing body of the municipality or by the county court.

§8-24-24. Same—Validation of prior action.

The adoption of a comprehensive plan or any general development plans by a planning commission under the
authority of prior acts is hereby validated and shall continue in effect until amended under the authority of this article.

§8-24-25. Same—Intergovernmental cooperation.

Whenever the commission undertakes the preparation of a comprehensive plan, the departments and officials of the state and of municipal, county and separate taxing units operating within lands under the jurisdiction of the commission shall make available, upon the request of the commission, such information, documents and plans as have been prepared, or upon the request of the commission shall provide such information as relates to the commission's activity.

§8-24-26. Same—Jurisdiction of municipal planning commission.

A municipal planning commission shall adopt a comprehensive plan for the development of the municipality, but the authority of such municipal planning commission shall not extend beyond the corporate limits of the municipality.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and governing and administrative bodies and officials.

In the exercise of the powers and authority granted by this article, the planning commission of any municipality or county may cooperate with the planning commissions or governing and administrative bodies and officials of other municipalities within or without such county and of other counties, with a view to coordinating and integrating the planning and zoning of such municipality or county with the plans of such other municipalities and of such other counties, and may appoint such committee or committees and may adopt such rules and regulations as may be thought proper to effect such cooperation. Such planning commissions and governing and administrative bodies and officials of other municipalities and counties are hereby authorized to cooperate with such municipal or county planning commissions for the purposes of such coordination and integration. Sim-
Ch. 86] MUNICIPALITIES 857

17 similarly, such municipal or county planning commissions
18 may cooperate with the department of natural resources
19 of this state and make use of advice and information
20 furnished by such department and by other appropriate
21 state and federal officials, departments and agencies, and
22 all state departments and agencies having information,
23 maps and data pertinent to the planning and zoning of
24 such municipality or county may make such available
25 for the use of such planning commissions.

PART V. SAME—COMPREHENSIVE PLAN; SUBDIVISION CONTROL.

§8-24-28. Subdivision plats—Approval required prior to re-
cordation.

1 After a comprehensive plan and an ordinance contain-
ing provisions for subdivision control and the approval
3 of plats and replats have been adopted by the governing
4 body of the municipality or by the county court and a
5 certified copy of the ordinance has been filed with the
6 clerk of the county court (being in the case of a munici-
7 pal plan and ordinance the county court of the county in
8 which the municipality is located), a plat of a sub-
9 division shall not be recorded by the clerk of such county
10 court unless it has first been approved by the planning
11 commission having jurisdiction over the area. If in the
12 case of a municipal plan and ordinance, the municipality
13 is located in more than one county, a certified copy of
14 the ordinance shall be filed with the clerk of the county
15 court of each such county.

§8-24-29. Same—Application for approval; notice and hearing.

1 A person desiring the approval of a plat shall submit a
2 written application for approval, together with a copy of
3 the proposed plat, to the planning commission having
4 jurisdiction.

5 Upon receipt of the application, the commission, if it
6 tentatively approves the application, shall set a date,
7 time and place for a hearing, notify the applicant in
8 writing, and notify by publication in the manner speci-
9 fied in section eighteen of this article or otherwise any
10 person or governmental unit having a probable interest
11 in the proposed plat.
§8-24-30. Same—Basis for commission’s action upon application for approval.

1 In determining whether an application for approval shall be granted, the commission shall determine if the plat provides for:

2 (1) Coordination of subdivision streets with existing and planned streets;

3 (2) Coordination with and extension of facilities included in the comprehensive plan;

4 (3) Establishment of minimum width, depth and area of lots within the projected subdivision;

5 (4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county; and

6 (5) Fair allocations of areas for streets, parks, schools, public and semipublic buildings, homes, utilities, business and industry.

7 As a condition of approval of a plat the commission may specify:

8 (1) The manner in which streets shall be laid out, graded and improved;

9 (2) Provisions for water, sewage and other utility services;

10 (3) Provision for schools;

11 (4) Provision for essential municipal services; and

12 (5) Provision for recreational facilities.

§8-24-31. Same—Effect of approval or disapproval.

1 After hearing and within a reasonable time after the filing of an application for approval of the plat, the commission shall approve or disapprove it. If the commission approves the application, it shall affix the commission’s seal upon the plat. If it disapproves the application, it shall set forth its reasons in its own records and provide the applicant with a copy thereof.

§8-24-32. Same—Application fees.

1 The commission may establish a uniform schedule of fees proportioned to the cost of checking and verifying
3 proposed plats. An applicant shall pay the specified fee at the time of filing his application.

§8-24-33. Same—Plats filed without approval.

1 After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the filing and recording of a plat involving the subdivision of lands covered by such comprehensive plan and ordinance shall be without legal effect unless approved by the commission: Provided, that failure to comply with this section shall not invalidate or affect the title to any land within the area of such plat: Provided, however, That if such plat shall bear the seal of the commission it shall be presumed to have been approved thereby.

§8-24-34. Same—Conditional approval; bonds.

1 The commission may approve a plat for a subdivision in which the improvements and installations have not been completed as required by the ordinance for the approval of plats if the applicant provides a bond which shall:

6 (1) Run to the municipality or county which established the commission;
6 (2) Be in an amount determined by the commission to be sufficient to complete the improvements and installations in compliance with the ordinance;
6 (3) Be with surety satisfactory to the commission; and
6 (4) Specify the time for the completion of the improvements and installations.

Any funds received from any such bonds shall be used by the legally constituted body charged with making public improvements for the municipality or county only for completion of the improvements and installations for which such bonds were provided, and without prior appropriation. The municipality or county is hereby authorized to make these improvements and installations.
§8-24-35. Same—Jurisdiction and control; inconsistent provisions for platting control repealed.

After a comprehensive plan and an ordinance containing provisions for subdivision control and the approval of plats and replats have been adopted and a certified copy of the ordinance has been filed with the clerk of the county court as aforesaid, the municipal planning commission, in the case of a municipal plan and ordinance, shall have exclusive control over the approval of all plats involving land covered by such municipal plan and ordinance and located within the corporate limits of such municipality, and the county planning commission, in the case of a county plan and ordinance, shall have exclusive control over the approval of plats involving unincorporated lands covered by such county plan and ordinance and located within its jurisdiction.

All control over plats granted by other statutes, so far as such statutes are in harmony with the provisions of this article, shall be transferred to the commission having jurisdiction over the lands involved. Existing provisions for platting control, so far as they are inconsistent with the provisions of this article, are hereby repealed to the extent of such inconsistency.

PART VI. SAME—IMPROVEMENT LOCATION PERMITS.

§8-24-36. Improvement location permits—Conformity of structure to comprehensive plan and ordinance.

Within the corporate limits of the municipality, a structure shall not be located and an improvement location permit for a structure on platted or unplatted lands shall not be issued unless the structure and its location conform to the municipality's comprehensive plan and ordinance. A structure shall not be located and an improvement location permit shall not be issued for a structure on unincorporated lands within the jurisdiction of the county planning commission unless the structure and its location conform to the county's comprehensive plan and ordinance.
§8-24-37. Same—Authority to issue and control.
1 The ordinance may designate the official or employee
2 of the municipality or county who shall have authority
3 to issue and control improvement location permits within
4 the jurisdiction of the commission and in conformity
5 with the comprehensive plan and ordinance.

PART VII. JUDICIAL REVIEW OF COMMISSION DECISIONS.

§8-24-38. Review of decisions of commission by certiorari.
1 A decision of a commission may be reviewed by
2 certiorari procedure the same as that provided for the ap-
3 peal of zoning cases from the decision or order of a board
4 of zoning appeals, as hereinafter in this article provided.
5 A petition for certiorari shall specify the grounds upon
6 which it is alleged that the commission's action is illegal.
7 Such petition must be filed in the circuit court of the
8 county in which the affected land or the major portion
9 thereof is located within thirty days after the date of
10 such decision.

PART VIII. URBAN AND RURAL ZONING—ZONING GENERALLY.

1 As an integral part of the planning of areas so that
2 adequate light, air, convenience of access, and safety from
3 fire, flood and other danger may be secured; that con-
4 gestion in the public streets may be lessened or avoided;
5 that the public health, safety, comfort, morals, con-
6 venience and general public welfare may be promoted;
7 and that the objective set forth in section one of this
8 article may be further accomplished, the governing body
9 of a municipality or a county court shall have the follow-
10 ing powers:
11 (1) To classify, regulate and limit the height, area,
12 bulk and use of buildings hereafter to be erected;
13 (2) To regulate and determine the area of front, rear
14 and side yards, courts and other open spaces about such
15 buildings;
16 (3) To regulate and determine the use and intensity of
17 use of land and lot areas;
18 (4) To classify, regulate and restrict the location of
(5) To regulate and control, or prohibit in certain areas, junk yards, salvage yards, used parts yards, dumps or automobile or appliance graveyards, or the maintenance and operation of secondhand stores or outlets in residential areas;

(6) To classify and designate the rural lands among agricultural, industrial, commercial, residential and other uses and purposes; and

(7) To divide the municipality or county into districts of such kind, character, number, shape and area as may be deemed necessary to carry out the purposes of this section.

PART IX. SAME—ZONING DISTRICTS.


The various kinds of districts created and designated as use, height, area, volume or bulk districts, as well as districts created for any other purpose necessary to carry out the purposes of section thirty-nine of this article, need not necessarily cover or include the same territory, and may overlap or coincide. The districts created shall also be subject to the following:

(1) Rules and regulations as to height, area, bulk and use of buildings and as to the area of all yards, courts and open spaces shall be uniform for each class of buildings throughout each district;

(2) For each district designated for the location of trades, callings, industries, commercial enterprises or buildings designated for specified uses, rules and regulations may be enforced specifying uses that shall be excluded or subjected to reasonable requirements of a special nature and designating the use for which buildings may not be erected, altered or used;

(3) The rules and regulations in one or more districts of the same kind or character may differ from those in other like districts but shall be uniform for each district; and
Several parts of the municipality or county may be classified within a single district although not contiguous.

§8-24-41. Same—Preliminary study.

In establishing such districts and rules and regulations the governing body of a municipality or the county court shall give reasonable regard to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted and the conservation of property values throughout the municipality or county.

PART X. SAME—ZONING DISTRICTS—PROCEDURES.

§8-24-42. Same—Tentative report; notice and hearings.

Recommendations as to the boundaries of districts and the rules and regulations and restrictions to be enforced therein shall be prepared by the planning commission. The commission may prepare the tentative report on its own initiative or the governing body of the municipality or the county court may require its preparation. The commission shall hold public preliminary hearings and conferences, on such dates and at such times and places and upon such notice as it may determine to be necessary to inform and aid itself in the preparation of the tentative report.

The tentative report, which shall include the proposed zoning ordinance with explanatory maps, shall be made to the governing body of the municipality or to the county court by the planning commission.

§8-24-43. Same—Action by governing body or county court on tentative report.

The governing body of the municipality or the county court shall consider the tentative report of the planning commission and shall return it, with any suggestions and recommendations, to the planning commission for its final report. No zoning ordinance hereunder shall be adopted until after the final report of the planning commission has been received by the governing body of the municipality or by the county court.
§8-24-44. Same—Final report; notice and hearing; action.

1 After the final report has been submitted by the planning commission, the governing body of the municipality or the county court shall afford all interested persons an opportunity to be heard with reference to it at public hearings, convenient for all persons affected, to be held on dates and at times and places to be specified in notices to be published, within fourteen consecutive days next preceding the date set for the hearings, as Class II legal advertisements in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county, as the case may be. The notices shall state the dates, times and places of the hearings, that the report contains a comprehensive zoning ordinance for the municipality or county, that written objections to the final report filed with the recorder of the municipality or with the clerk of the county court at or before the hearings will be heard and that the hearings will be continued from time to time as may be found necessary. During the period between the date of the first publication of the notice and the date of the hearing, the final report shall be on file in the office of the planning commission for public examination. Upon completion of the public hearings, the governing body of the municipality or the county court shall proceed to the consideration of the ordinance.

PART XI. SAME—AMENDING, SUPPLEMENTING OR CHANGING ZONING ORDINANCE RULES AND REGULATIONS.

§8-24-45. Supplemental and amending ordinances.

1 The governing body of a municipality or the county court may, from time to time, amend, supplement or change the rules and regulations and districts fixed by ordinance hereunder.

§8-24-46. Changes of zoning rules and regulations—Petition for change.

1 Petitions, duly signed, may be presented to the recorder of the municipality or to the clerk of the county court requesting an amendment, supplement or change of the rules and regulations of the zoning ordinance by:
5 (1) The planning commission; or
6 (2) The owners of fifty percent or more of the real
7 property area to which the petition relates.

§8-24-47. Same—Considered as amendments to comprehensive
plan; notice and hearing.

1 Amendments, supplements or changes of the rules and
2 regulations of the zoning ordinance shall be considered
3 as amendments to the comprehensive plan. Any pro-
4 posed ordinance for the amendment, supplement, change
5 or repeal of the zoning ordinance not originating upon
6 petition of the planning commission shall be referred
7 to the planning commission for consideration and report
8 before any final action is taken by the governing body
9 of the municipality or the county court.

10 Prior to submission to the governing body of a munici-
11 pality or to the county court of a planning commission
12 petition or a report on a proposed ordinance referred
13 to it for an amendment, supplement, change or repeal
14 of the zoning ordinance, the planning commission shall
15 give notice and hold a public hearing in the manner
16 prescribed for adoption of a comprehensive plan in
17 section eighteen of this article, except that publication
18 of notice of the date, time and place of hearing upon
19 a proposed amendment, supplement, change or repeal
20 of the zoning ordinance need be made only fifteen or
21 more days prior to the date set for such hearing.

PART XII. SAME—ELECTION ON ZONING ORDINANCE.

§8-24-48. Election on zoning ordinance; form of ballots or
ballot labels; procedure.

1 If, within sixty days following adoption of the zoning
2 ordinance by the governing body of the municipality
3 or by the county court, a petition is filed with the re-
4 corder or the clerk of the county court praying for
5 submission of such zoning ordinance for approval or
6 rejection to the qualified voters residing in the area
7 within the jurisdiction of the municipal or county plan-
8 ning commission, such ordinance shall not take effect
9 until the same shall have been approved by a majority
10 of the legal votes cast thereon at any regular primary
or general election or special election called for that purpose. The petition may be in any number of counterparts but must be signed in their own handwriting by a number of qualified voters residing in the area affected by the proposed zoning equal, notwithstanding the provisions of subdivision (10), subsection (b), section two, article one of this chapter, to not less than fifteen percent of the total legal votes cast in the affected area for all candidates for governor at the last preceding general election at which a governor was elected. Only qualified voters residing in the area affected by the proposed ordinance shall be eligible to vote with respect thereto.

Upon the ballots, or ballot labels where voting machines are used, there shall be written or printed the following:

☐ For Zoning
☐ Against Zoning

If a majority of the legal votes cast upon the question be for zoning, the provisions of said zoning ordinance shall, upon the date the results of such an election are declared, be effective. If a majority of the legal votes cast upon the question be against zoning, said zoning ordinance shall not take effect, but the question may again be submitted to a vote at any regular primary or general election in the manner herein provided.

Subject to the provisions of the immediately preceding sentence, voting upon the question of zoning may be conducted at any regular primary or general election or special election, as the governing body of the municipality or the county court in its order submitting the same to a vote may designate.

Notice of all elections at which the question of zoning is to be voted upon shall be given by publication of the order calling for a vote on such question as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the area in which voting on the question of zoning is to be conducted.
Any election at which the question of zoning is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state concerning primary, general or special elections, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

PART XIII. SAME—EXISTING ORDINANCES AND USES.

§8-24-49. Validation of existing ordinances.
1 All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county court taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

§8-24-50. Existing uses safeguarded.
1 Such zoning ordinance or ordinances shall not prohibit the continuance of the use of any land, building or structure for the purpose for which such land, building or structure is used at the time such ordinance or ordinances take effect, but any alteration or addition to any land or any alteration, addition or replacement of or to any existing building or structure for the purpose of carrying on any use prohibited under the zoning rules and regulations applicable to the district may be prohibited: Provided, That no such prohibition shall apply to alterations or additions to or replacement of buildings or structures by any farm, industry or manufacturer, or to the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or to the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation or any present or future satellite agricultural,
industrial or manufacturing use. If a nonconforming use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structure may be located: Provided, however, That abandonment of any particular agricultural, industrial or manufacturing process shall not be construed as abandonment of agricultural, industrial or manufacturing use.

Nothing contained in this article shall be deemed to authorize an ordinance, rule and regulation which would prevent, outside of urban areas, the complete use and alienation of any timber and any and all minerals, including coal, oil and gas, by the owner or alienee thereof. For the purpose of this section, urban area shall include all lands or lots within the jurisdiction of a municipal planning commission as defined in this article.

PART XIV. SAME—BOARD OF ZONING APPEALS—ORGANIZATION AND FUNCTION.

§8-24-51. Board of zoning appeals—Creation; membership; terms; vacancies.

As a part of the zoning ordinance, the governing body of the municipality or the county court shall create a board of zoning appeals consisting of five members to be appointed by the governing body of the municipality or by the county court, as the case may be.

The members of the board of zoning appeals shall be individuals who are freeholders and residents of the municipality or county, as the case may be, and at least three fifths of such members must have been residents of the municipality or county, as the case may be, for at least ten years preceding the time of their appointment. No member of the board of zoning appeals shall be a member of the planning commission nor shall any member hold other elective or appointive office in the municipal or county government. Members of the board shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: one for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.

If a vacancy occurs, by resignation or otherwise, among the members of the board of zoning appeals, the governing body of the municipality or the county court, as the case may be, shall appoint a member for the unexpired term.

§8-24-52. Same—Officers; quorum; compensation of secretary and employees.

At its first meeting of each year, the board of zoning appeals shall elect a chairman and vice chairman from its membership. The vice chairman shall have the power and authority to act as chairman during the absence or disability of the chairman.

A majority of the members of a board of zoning appeals shall constitute a quorum. No action of a board shall be official, however, unless authorized by a majority of all of the members of the board.

The board of zoning appeals may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties, all in conformity to and in compliance with the salaries and compensation theretofore fixed by the municipality or county court.

§8-24-53. Same—Offices; appropriation for expenses.

The governing body of the municipality in the case of a municipal board of zoning appeals and the county court in the case of a county board of zoning appeals shall provide the board with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the board.
§8-24-54. Same—Rules and regulations and procedures; minutes and records.

1 The board of zoning appeals shall adopt such rules and regulations concerning the filing of appeals, applications for variances and exceptions, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this article.

2 The board shall keep minutes of its proceedings, keep records of all official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the board and shall be public records.

PART XV. SAME—BOARD OF ZONING APPEALS—POWERS, AUTHORITY AND DUTIES.

§8-24-55. Same—Powers, authority and duties.

1 The board of zoning appeals shall:

2 (1) Hear and determine appeals from and review any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of any ordinance or rule and regulation adopted pursuant to sections thirty-nine through forty-nine of this article;

3 (2) Permit and authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the ordinance;

4 (3) Hear and decide special exceptions to the terms of the ordinance upon which the board is required to act under the ordinance; and

5 (4) Authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

6 In exercising its powers and authority, the board of zoning appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, as in its opinion ought to be done in the premises, and to this end shall have
26 all the powers and authority of the official or board from
27 whom or which the appeal is taken.

PART XVI. SAME—BOARD OF ZONING APPEALS—PERFECTING
APPEAL AND HEARING THEREON.

§8-24-56. Appeal from decision of administrative official or
board.

1 An appeal taken from any order, requirement, decision
2 or determination made by an administrative official or
3 board charged with the enforcement of any ordinance
4 or rule and regulation adopted pursuant to sections
5 thirty-nine through forty-nine of this article shall be
6 filed with the board of zoning appeals.

7 The appeal shall specify the grounds thereof and shall
8 be filed within such time and in such form as may be
9 prescribed by the board by general rule and regulation.

10 The administrative official or board from whom or
11 which the appeal is taken shall, upon request of the
12 board of zoning appeals, transmit to it all documents,
13 plans and papers constituting the record of the action
14 from which an appeal was taken.

§8-24-57. Hearing of appeal.

1 The board of zoning appeals shall fix a reasonable
2 time for the hearing of an appeal. Public notice of the
3 hearing shall be given in the manner specified in section
4 eighteen of this article, and due notice shall be given
5 additionally to the interested parties.

6 The board of zoning appeals may require the party
7 taking the appeal to assume the cost of public notice
8 and due notice to interested parties.

9 At the hearing, any party may appear in person, by
10 agent or by an attorney at law admitted to practice in
11 this state.

§8-24-58. Staying of work on premises when appeal taken;
exception.

1 When an appeal has been taken and filed with the
2 board of zoning appeals, all proceedings and work on
3 the premises in question shall be stayed unless the
4 official or board from whom or which the appeal was
taken shall certify to the board of zoning appeals that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. If such certificate be filed, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the circuit court of the county in which the premises affected are located, upon application therefor, on notice to the official or board from whom or which the appeal is taken and the owner of the premises affected and on due cause shown.

PART XVII. SAME—BOARD OF ZONING APPEALS—JUDICIAL REVIEW.

§8-24-59. Petition for writ of certiorari from decision or order.

Every decision or order of the board of zoning appeals shall be subject to review by certiorari.

Any person or persons jointly or severally aggrieved by any decision or order of the board of zoning appeals may present to the circuit court of the county in which the premises affected are located a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of the alleged illegality. The petition must be presented to the court within thirty days after the date of the decision or the order of the board of zoning appeals complained of.

§8-24-60. Notice to adverse parties.

Upon filing a petition for a writ of certiorari with the clerk of the circuit court of the county in which the premises affected are located, the petitioner shall cause a notice to be issued and served by the sheriff of the county upon the adverse party or parties, if any, as shown by the record of the appeal in the office of the board of zoning appeals, and upon the chairman or secretary of the board of zoning appeals.

The adverse party or parties shall be any property owner whom or which the record of the board of zoning appeals shows to have appeared at the hearing before the board in opposition to the petitioner. If the record shows a written remonstrance or other document opposing the request of petitioner containing the names...
of more than three property owners, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named in the remonstrance or document shall not be required.

The notice shall state that a petition for a writ of certiorari has been filed in the circuit court of the county asking for a review of the decision or order of the board of zoning appeals, shall designate the premises affected and shall specify the date of the decision or order complained of.

Service of the notice by the sheriff on the chairman or secretary of the board of zoning appeals shall constitute notice to the board and to the municipality or county and to any official or board thereof charged with the enforcement of the zoning ordinance, and no further summons or notice with reference to the filing of such petition shall be necessary.

§8-24-61. Action of court or judge on petition.

Upon presentation of a petition for a writ of certiorari, the circuit court of the county in which the premises affected are located, or a judge thereof in vacation, shall direct the board of zoning appeals to show cause within twenty days from the date of such citation why a writ of certiorari should not issue. If such board fails to show to the satisfaction of the court or judge that a writ should not issue then the court or judge may allow a writ of certiorari directed to the board of zoning appeals. The writ shall prescribe the time in which a return shall be made to it. This time shall not be less than ten days from the date of issuance of the writ and may be extended by the court or judge thereof.

§8-24-62. Stay of work on allowance of writ.

The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review. The court or judge may, however, upon application and on notice to all parties to the decision or order and on due
cause shown grant such relief as the circumstances of
the case may require, including an order staying the
proceedings or work until final determination of the case
by the court or judge thereof.

Such staying order may be issued by the court or
judge without requiring the petitioner to enter into a
written undertaking with the adverse party or parties
affected thereby for the payment of damages by reason
of such staying order.

§8-24-63. Return to writ by board of zoning appeals.

The return to the writ of certiorari by the board of
zoning appeals must concisely set forth such facts and
data as may be pertinent and present material to show
the grounds of the decision or order appealed from.
The return must be verified by the secretary of the
board.

The board shall not be required to return the original
papers acted upon by it. It shall be sufficient to return
certified copies of all or such portion of the papers as
may be called for by the writ.

§8-24-64. Action by circuit court or judge thereof.

The court or judge may consider and determine the
sufficiency of the allegations of illegality contained in
the petition without further pleadings and may make
a determination and render a judgment with reference
to the legality of the decision or order of the board of
zoning appeals on the facts set out in the petition and
return to the writ of certiorari.

If it shall appear to the court or judge that testimony
is necessary for the proper disposition of the matter,
the court or judge may take evidence to supplement the
evidence and facts disclosed by the petition and return
to the writ of certiorari, but no such review shall be
by trial de novo.

In passing upon the legality of the decision or order
of the board of zoning appeals, the court or judge may
reverse or affirm, in whole or in part, or may modify such
decision or order.
§8-24-65. Appeal from final judgment of circuit court or judge thereof.

An appeal may be taken to the supreme court of appeals of this state from the final judgment of the court or judge reversing, affirming or modifying the decision or order of the board of zoning appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.

PART XVIII. ENFORCEMENT PROVISIONS.


The governing body of a municipality or the county court may provide penalties, as set out in section sixty-eight of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this article and may declare that any buildings erected, raised or converted or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of sections thirty-nine through sixty-five of this article shall be common nuisances and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

§8-24-67. Injunction.

The planning commission, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county to restrain a person or unit of government from violating the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. The planning commission, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court directing a person or unit of government to remove a structure erected in violation of the provisions of this article or of any ordinance or rule and regulation adopted pursuant hereto. If the planning commission, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.
§8-24-68. Penalty.

1 Any person who violates any provision of this article
2 shall be guilty of a misdemeanor, and, upon conviction,
3 shall be fined not less than ten dollars nor more than
4 three hundred dollars.

PART XIX. CONSTRUCTION; SPECIAL PROVISIONS; REPEALER.

§8-24-69. Provisions supplemental; special provisions concerning state-supported institutions of higher education.

1 The planning and zoning provisions of this article are
2 supplemental to and do not abrogate the powers and
3 authority extended to agencies, bureaus, departments,
4 commissions, divisions and officials of the state govern-
5 ment by other state statute and these powers and author-
6 ity shall remain in full force and effect. The powers
7 of supervision and regulation by such divisions of the
8 state government over municipal, county and other
9 local governmental units and persons are also not abro-
10 gated and shall continue in full force and effect. If the
11 county court of any county in which a state-supported
12 institution of higher education is situate shall not create
13 a county planning commission as contemplated herein,
14 the county court of such county is hereby authorized
15 to enact an ordinance for the zoning of any unincor-
16 porated territory in said county within one-half mile
17 of the campus of any such state-supported institution
18 of higher education, and with respect to the zoning of
19 such territory, any such county court shall have the
20 same power and authority as are conferred hereunder
21 upon municipalities.

§8-24-70. Conflict with other laws, etc.

1 Whenever any ordinance or rule and regulation adopted
2 under the authority of this article requires a greater
3 width or size of yards, courts or other open spaces, or
4 requires a lower height of building or less number of
5 stories, or requires a greater percentage of lot to be left
6 unoccupied, or imposes other higher standards than are
7 required in any other statute, including a special legis-
8 lative charter, or local ordinance or rule and regulation,
the provisions of the ordinance or rule and regulation
adopted under the authority of this article shall govern.
Whenever any other statute, including a special legis-
native charter, or local ordinance or rule and regulation
requires a greater width of size of yards, courts or other
open spaces, or requires a lower height of building or
a less number of stories, or requires a greater percentage
of lot to be left unoccupied, or imposes other higher
standards than are required by any ordinance or rule
and regulation adopted under the authority of this article,
the provisions of such other statute, including a special
legislative charter, or such other local ordinance or rule
and regulation shall govern.
§8-24-71. General repealer; planning and zoning outside cor-
porate limits exercised under prior acts.
All acts or parts of acts, including special legislative
charters, inconsistent with the provisions of this article
are hereby repealed to the extent of their inconsistency,
except as provided in section seventy of this article.
In amplification of the provisions of sections two,
twenty-four and forty-nine of this article, and notwith-
standing any other provision of this article to the con-
trary, any comprehensive plan and any zoning ordinance
or rule and regulation adopted by any municipality af-
fecting land located beyond the corporate limits of such
municipality under any prior planning and zoning act
of the Legislature granting such extraterritorial juris-
diction to such municipality shall remain valid and en-
forceable, and any such municipality which adopted or
enacted any such plan or ordinance or rule and regu-
lation under such prior act may continue to exercise
planning and zoning control and authority, under the
provisions of this article, over any territory located be-
yond the corporate limits thereof which is covered under
the plan or ordinance or rule and regulation adopted or
enacted under any such prior act, and under no circum-
stances whatever shall a municipality which has not
heretofore exercised extraterritorial jurisdiction under
any such prior act hereafter have any power or authority,
withstanding any provision of this chapter to the con-
trary, to exercise any such extraterritorial jurisdiction.
ARTICLE 25. INTERGOVERNMENTAL RELATIONS—REGIONAL PLANNING.

PART I. PURPOSE; CREATION; ORGANIZATION AND FUNCTION.

§8-25-2. Creation of a regional planning commission.
§8-25-3. Definition of the term "region."
§8-25-4. Membership and organization of commission; meetings.
§8-25-5. Annual budget; appropriations; depositories; expenditures; accounting.
§8-25-6. Financial aid; contracts; reports.
§8-25-7. Cooperation by and with other planning commissions, governmental units and officials; authority of political subdivisions to expend funds.
§8-25-8. Director and staff.

PART II. POWERS AND DUTIES.


PART III. IMPLEMENTATION OF REGIONAL PLANS.

§8-25-10. Certification and implementation of regional plans.
§8-25-11. Adoption of plan by local planning commissions and governing bodies; amendments to plan.
§8-25-12. Cooperation by local governments.

PART IV. REPORTS.


PART I. PURPOSE; CREATION; ORGANIZATION AND FUNCTION.


1 The Legislature hereby recognizes the social and economic interdependence of the people residing within a given region of the state and the common interest they share in its future development. The Legislature hereby further recognizes that plans and decisions made by local governments within a region with respect to land use, circulation patterns, capital improvements and the like, affect the welfare of neighboring jurisdictions and therefore should be developed jointly. It is, therefore, the aim of this article to provide a means for: (1) Formulation and execution of objectives and policies necessary for the orderly growth and development of a region as a whole; and (2) coordination of the objectives, plans and policies of the separate units of government comprising the area; all being hereby declared to be public purposes.
§8-25-2. Creation of a regional planning commission.

A regional planning commission may be established as a public agency pursuant to the following procedures and with the approval of the commissioner of commerce:

(a) Two or more municipalities, two or more counties, or one county or two or more counties and a municipality or municipalities within the county or counties may, by agreement among their respective governing bodies, create or reorganize a regional planning commission: Provided, That a municipality or county not having a planning commission shall not participate in the creation or reorganization of a regional planning commission: Provided, however, That (1) in the case of municipalities, the one within the region with the largest population shall be a party to the agreement; and (2) the total number of both counties and municipalities participating in the agreement shall equal fifty percent or more of the total number of counties and municipalities within the region. The agreement shall be effected through the adoption by the governing body of each participating government, acting individually, of an appropriate resolution. A copy of such agreement shall be filed with the commissioner of commerce.

(b) Any additional county or municipality within the region may become a party to the original agreement or a new agreement reorganizing the commission.

§8-25-3. Definition of the term “region.”

As used in this article, the term “region” shall mean a specific geographic area in which a regional planning commission shall have jurisdiction, which area shall be fixed and determined by the commissioner of commerce and be stipulated with his approval in the agreement by which the commission is established or reorganized: Provided, That no territory within a municipality or county not having a planning commission shall be included in the area, except that territory within a municipality having a planning commission may be included even though the county in which it is located does not have a planning commission.
§8-25-4. Membership and organization of commission; meetings.

1 Except as provided below, the membership of a regional planning commission shall consist of representatives from each participating government or stipulated combinations thereof, in number to be specified in the agreement: Provided, That at least one member of the planning commission of each participating government and one member of the governing body of each participating government shall be members of the commission, and all members of the commission shall be qualified by knowledge and experience in matters pertaining to the planning and development of municipalities, counties or regions, with the exception of the member or members of the governing body of each participating governmental unit. A commission may appoint not to exceed two members from the general public, such members to have demonstrated outstanding leadership in community affairs. The terms of the members of a commission, the manner of their appointment or removal, and the method and manner of filling any vacancies on a commission, as well as any additional qualifications for membership on a commission, shall be specified in the agreement. A representative of the state government may be designated by the governor to attend meetings of a commission.

2 The members of a commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their commission duties. A commission shall elect a chairman from among its members, and shall establish its own rules and regulations and such committees as it deems necessary to carry on its work. Such committees may have as members persons other than members of the commission. A commission shall meet as often as necessary, but not less than four times a year.

§8-25-5. Annual budget; appropriations; depositories; expenditures; accounting.

1 A regional planning commission shall adopt an annual budget, to be submitted to the participating governments
which shall each contribute to the financing of the commission according to the formula specified in the agreement, and each such government is hereby empowered and authorized to appropriate and expend funds for services rendered to it by the commission. Money received by a commission shall be deposited in such depository as may be specified in the agreement and be paid out in such manner as the commission may determine. A commission shall upon demand at any time make a full and complete accounting of all funds to the participating government, and shall in every event without demand make to the participating governments an annual accounting thereof.

§8-25-6. Financial aid; contracts; reports.

A regional planning commission is hereby empowered and authorized to accept and expend funds and grants provided for the purposes hereof by the government of the United States or its departments or agencies, by departments and agencies of this state or of any other state, by one or more municipalities, counties or other political subdivisions of this state or of any other state, or by any other agency whose interests are in harmony with the purposes hereof, including planning commissions, all in accordance with any federal requirements and subject to any conditions or limitations the constitution or law of the state may provide, and to contract with respect thereto, either separately, jointly, or cooperatively, if the contract is approved by the attorney general, and to provide such information and reports as may be necessary to secure such financial aid. In this connection, any such commission is hereby expressly empowered and authorized to participate in any federal planning assistance program.

§8-25-7. Cooperation by and with other planning commissions, governmental units and officials; authority of political subdivisions to expend funds.

To effectuate the purposes of this article, a regional planning commission and the planning commissions of the participating governments in the region may cooperate with regional planning commissions for other
regions or the planning commissions of the participating
governments therein, with the governing or administra-
tive bodies and officials of any municipality, county or
other political subdivision, including those in other
states, with federal and state departments, agencies and
officials, including those of other states, and with any
other agency whose interests are in harmony with the
purposes of this article, with a view to coordinating and
integrating the planning for the cooperating govern-
mental units, and may appoint such committees and may
adopt such rules and regulations as may be thought
proper to effect such cooperation; and, for the purpose
of such coordination and integration, may contract with
respect thereto with such bodies, departments, agencies
and officials, all in accordance with any federal require-
ments and subject to any conditions or limitations the
constitution or law of the state may provide, if the con-
tract is approved by the attorney general. The governing
or administrative bodies and officials of municipalities,
counties and other political subdivisions within this
state are hereby empowered and authorized to cooperate
in this manner with such planning commissions and with
the governing or administrative bodies and officials of
political subdivisions in other states for the purposes of
such coordination and integration.

All municipalities, counties and other political sub-
divisions within this state are hereby empowered and
authorized to appropriate and expend funds for services
they obtain through cooperative arrangements made pur-
suant to the provisions of this section.

§8-25-8. Director and staff.

A regional planning commission may appoint a director,
who shall be qualified for the position by training and
experience and who shall serve at the will and pleasure
of the commission. The director shall be the chief ad-
ministrative and planning officer and regular technical
advisor of the commission, and shall appoint and remove
the staff of the commission. When authorized by the
regional planning commission, such director may enter
into agreements with the planning commissions of the
participating governments for the temporary transfer
or joint use of staff employees, and may contract for professional or consultant services from other governmental and private agencies.

In the event a director is not appointed, a commission may exercise the power and authority granted to a director by the provisions of this section as well as the other power and authority granted to it by the provisions of this article.

PART II. POWERS AND DUTIES.


A regional planning commission shall:

(a) Prepare, and from time to time revise, amend, extend or add to, a plan or plans for the development of the region. Any such plan or plans shall be based on studies of physical, social, economic and governmental conditions and trends, and shall aim at the coordinated development of the region in order to promote the general health, welfare, convenience and prosperity of its people. The plan or plans shall embody the policy recommendations of the regional planning commission, and may include, but shall not be limited to:

(1) A statement of the objectives, standards and principles sought to be expressed in the plan or plans.

(2) Recommendations for the most desirable pattern and intensity of general land use within the region in the light of the best available information concerning natural environmental factors, the present and prospective economic and demographic bases of the region, and the relation of land use within the region to land use in adjoining areas. The land use pattern shall include provision for open as well as urban, suburban and rural development.

(3) Recommendations for the general circulation pattern for the region, including land, water and air transportation and communication facilities, whether used for movement within the region or to and from adjacent areas.
(4) Recommendations concerning the need for and proposed general location of public and private works and facilities, which by reason of their function, size, extent or for any other cause are of a regional, as distinguished from purely local, concern.

(5) Recommendations for the long-range programming and financing of capital projects and facilities.

(6) Such other recommendations as it may deem appropriate concerning such current and impending problems as may affect the region.

(b) Prepare, and from time to time revise, recommended ordinances and rules and regulations which would implement the regional plan or plans.

(c) Prepare studies of the region's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public service, local governments and any other matters which are relevant to regional planning.

(d) Collect, process and analyze, at regular intervals, the social and economic statistics for the region which are necessary to planning studies, and make the results of such collection, processing and analysis available to the general public.

(e) Participate with other governmental agencies, educational institutions and private organizations in the coordination of the regional research activities described in subdivisions (c) and (d) of this section.

(f) Cooperate with, and provide planning assistance to, municipalities, counties and municipal and county planning commissions within the region, and coordinate regional planning with the planning activities and plans of the state and of the municipalities and counties within the region, as well as neighboring areas, including those in adjoining states, and the programs of federal departments and agencies.

(g) Provide information to officials, departments, agencies and instrumentalities of the federal, state and local governments, and to the public at large, in order to foster public awareness and understanding of the
objectives of the regional plan and the functions of re-
gional and local planning, and in order to stimulate pub-
lic interest and participation in the orderly, integrated
development of the region.
(h) Receive and review for compatibility with re-
gional plans all proposed comprehensive land use, circu-
lation and public facilities plans and projects, ordinances
and rules and regulations, official maps and building
codes of local governments in the geographic area and
all amendments or revisions of such plans, rules and
regulations and maps, and make recommendations for
their modification where deemed necessary to achieve
such compatibility.
(i) Review applications of participating governments
for capital project financial assistance from the federal
government and state governments, and comment upon
their consistency with the regional development plan;
and review and comment upon state plans for highways
and public works within the area to promote coordina-
tion of all intergovernmental activities in the region on
a continuing basis.
(j) Exercise all other power and authority necessary
and proper for the discharge of its duties.
In developing a comprehensive plan, the plan may be
for all or part of the territory in the region, or for all
or part of the territory in the region and any territory
adjacent to the region, including that without the state,
which, in the opinion of the commission, bears a sub-
stantial relation to the planning for territory within the
region: Provided, That any plan for a part of the region
shall be for territory which does not begin and terminate
within the boundaries of any single participating gov-
ernment. In developing a plan, a commission shall give
consideration to any comprehensive or general develop-
ment plan existing in any participating government.
During the preparation of a plan, a commission shall
periodically consult with the planning commissions of
the various participating governments involved in the
plan and make every effort to develop a plan which will
meet with the approval of the planning commissions of
such governments.
PART III. IMPLEMENTATION OF REGIONAL PLANS.

§8-25-10. Certification and implementation of regional plans.

All comprehensive regional plans, including zoning ordinances and subdivision regulations, prepared pursuant to the provisions of this article, shall, after adoption by the regional planning commission, be certified by the commission to all planning commissions of the participating governments within the region.

§8-25-11. Adoption of plan by local planning commissions and governing bodies; amendments to plan.

A plan shall not be considered the comprehensive plan or a part thereof for any participating government until it has been adopted by its governing body in accordance with the provisions of sections eighteen through twenty-two, article twenty-four of this chapter, and when so adopted it shall supersede any previous comprehensive plan or any part of such plan of the participating government inconsistent therewith. Before rejecting or amending a plan as certified by the regional planning commission, the planning commission or the governing body of the participating government shall refer the plan to the regional planning commission which prepared it for its recommendations in regard to such rejection or amendment, but any report of such regional planning commission after such a reference shall be advisory only.

Amendments to a regional plan, including ordinances and regulations, shall be adopted in the same manner as provided herein for the adoption of the original plan, except that if the planning commission or governing body of a participating government desires an amendment, it may request the regional planning commission to prepare the amendment and certify it to the local planning commission as herein provided.

After the adoption or rejection of a regional plan, a regional planning commission shall from time to time reexamine the plan with the view of keeping it up to date.

After the adoption of such plan by a participating government, its planning commission shall thereafter act in effectuating the plan in that jurisdiction.
§8-25-12. Cooperation by local governments.

1 Any municipality or county within the geographic area of the region may, and all participating governments and their planning commissions shall, file with the regional planning commission all current and proposed plans, zoning ordinances, official maps, building codes, subdivision regulations, and project plans for capital facilities, and amendments to and revisions of any of the foregoing, as well as copies of their regular and special reports dealing with planning matters. Each municipality or county within the geographic area of the region shall afford the regional planning commission having jurisdiction therein a reasonable opportunity to comment upon any such proposed plans, zoning ordinances, subdivision regulations and project plans for capital facilities and shall consider such comments, if any, prior to adopting any such plan, ordinance, regulation or project plan.

PART IV. REPORTS.


1 A regional planning commission shall submit an annual report to the commissioner of commerce and to the governing bodies and planning commissions of all participating governments in the region.

ARTICLE 26. INTERGOVERNMENTAL RELATIONS — INTERSTATE REGIONAL PLANNING COMMISSIONS.

PART I. CREATION; ORGANIZATION AND FUNCTION.

§8-26-1. Creation of commission; state may be ex officio member.
§8-26-2. Region defined.
§8-26-3. Membership and organization of commission; reports and audits.

PART II. POWERS AND DUTIES.

§8-26-4. Powers and duties of an interstate regional planning commission.
§8-26-5. Appropriations, receipts and expenses.

PART I. CREATION; ORGANIZATION AND FUNCTION.

§8-26-1. Creation of commission; state may be ex officio member.

1 Any municipality or county or any two or more municipalities or counties, or any combination thereof, may
cooperate with political subdivisions of other states bordering on this state for the purpose of creating, by an agreement, an interstate regional planning commission, whenever such political subdivisions comprise a region which would benefit from cooperative planning. The agreement entered into by the several political subdivisions shall specify the extent of the region included within the jurisdiction of the interstate regional planning commission; and shall fix the membership comprising the commission, the terms of office and method of appointment of the members thereof, the duration of the commission, the method for terminating the commission, the method of disposal of all property belonging to the commission, the distribution of the proceeds, and the apportionment of the costs of maintaining the planning commission to be borne respectively by the various political subdivisions included within the agreement, such apportionment to be based on the population of the various participating political subdivisions. Any such agreement shall be executed on behalf of any municipality by the governing body thereof and on behalf of a county by the county court.

The state of West Virginia may be an ex officio member of any such interstate regional planning commission formed under the provisions of this article. The commissioner of commerce or a representative designated by him shall represent the state in the deliberations of any interstate regional planning commission or its agencies or instrumentalities but this state shall not be a voting member of any interstate regional planning commission or any agency or instrumentality thereof.

§8-26-2. Region defined.

The term "region," as used in this article, shall mean a specific metropolitan interstate area designated by the proper federal agency pursuant to the "Demonstration Cities and Metropolitan Development Act of 1966" and any amendments thereto, as well as all other interstate areas which would benefit from cooperative planning. Before any area in this state is included within an interstate region for interstate planning, it shall be approved
by the commissioner of the department of commerce:

Provided, That no territory within any municipality or county not having a planning commission shall be included in an interstate area.

§8-26-3. Membership and organization of commission; reports and audits.

Any member of an interstate regional planning commission may hold any other public office, appointive or elective, if not prohibited by some other statute or constitutional provision, and a member thereof may also serve as a member of a municipal, county or regional planning commission. The members of the commission shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of their commission duties. The commission shall elect its own chairman or other officers from among its members and shall establish its own rules and regulations and bylaws, schedule of meetings and such committees with such powers as it may deem necessary to carry on its work.

Any such commission shall make a quarterly report to the governing body of each municipality and to the county court of each county contributing to the financial support of such commission, containing an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within thirty days after the end of each quarter. At the end of each fiscal year, any such commission shall arrange for an independent audit of its financial affairs and within thirty days after the end of such fiscal year, such commission shall furnish a copy of the report of such audit to any such governing body or county court and shall cause a copy thereof to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each municipality and county which contributed to the financial support of such commission.
PART II. POWERS AND DUTIES.
§8-26-4. Powers and duties of an interstate regional planning commission.

(a) An interstate regional planning commission may make studies, maps, plans and reports relative to the region and shall recommend procedures and policies to the appropriate authorities, based on physical, social, economic and governmental conditions and trends, to promote the coordinated development of the region and the general health, welfare, convenience and prosperity of the people of the region. Such planning and coordination may reflect the following planning criteria:

1. Goals, objectives, standards and principles for the development of the region;
2. The distribution and intensity of general land use and open space;
3. The general circulation pattern for the region, including land, water and air transportation and communication facilities, and continuing comprehensive transportation planning;
4. The general location, character and extent of public and private works and facilities which are of area-wide or regional, as distinguished from purely local, concern; and
5. Long-range programming and financing of capital projects and facilities.

(b) The commission shall:

1. Review plans and proposals for projects and programs of interstate or regional significance which may be proposed by others;
2. Review and make recommendations concerning administrative and regulatory measures to implement area-wide or regional plans;
3. Review and make recommendations concerning effective utilization of such federal and state assistance as may be available on a regional basis or as may have a regional impact;
4. Collect, analyze and report on statistics and other information concerning traffic, housing, population and social, economic and physical conditions of the region;
(5) Make recommendations to governmental bodies within such region for such actions as are necessary and proper to further the coordinated development of the region; and

(6) Conduct necessary investigations and research and cooperate with other public and private agencies or persons to conduct such investigations and research on planning problems affecting the region.

§8-26-5. Appropriations, receipts and expenses.

(a) Any political subdivision which becomes a member of any interstate regional planning commission may contract each fiscal year with said interstate regional planning commission to pay a proportionate part of the expenses properly chargeable to the planning services rendered to such political subdivision, and any funds budgeted for interstate planning may be paid over by the political subdivision to the interstate regional planning commission.

(b) An interstate regional planning commission may accept and use funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of any adjoining state, and from any municipality, county or other political subdivision of this or any adjoining state, including municipal, county, regional or other planning commissions of this or any adjoining state, or from private sources, or services from departments, agencies or instrumentalities of this state, and may contract with respect thereto and provide such information and reports as may be necessary to secure such financial or other aid. Within the amounts thus agreed upon and appropriated or otherwise received, any commission may employ such engineers, planners, consultants and other employees as are necessary and may rent or own such space and make such purchases as it deems necessary to its use.

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.

PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF AUTHORITIES.


§8-27-2. Legislative findings and declaration of policy.
§8-27-4. Urban mass transportation authorities authorized; authorities to be public corporations.

**PART II. ORGANIZATION AND FUNCTION OF AUTHORITIES AND BOARDS.**

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.
§8-27-6. Compensation of members; expenses.
§8-27-7. Meetings of authority; officers; employees; official bonds; records of authority public records.
§8-27-8. Quorum; majority vote required.

**PART III. POWERS AND DUTIES OF AUTHORITIES.**


**PART IV. FUNDS OF AUTHORITIES.**

§8-27-11. Contributions to authorities; funds and accounts of authorities; reports; audit by state tax department.

**PART V. DEVELOPMENT OF TRANSPORTATION PLAN.**

§8-27-12. Study and plan of operation; notice and hearing; adoption of transportation plan.

**PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.**

§8-27-13. Resolution authorizing acquisition or construction of urban mass transportation system.
§8-27-16. Sinking fund; sinking fund commission; purchase of outstanding bonds.
§8-27-17. Remedies of bondholders.

**PART VII. PUBLIC SERVICE COMMISSION.**

§8-27-18. Authority and duty of public service commission.

**PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.**


**PART IX. EMPLOYEES OF EXISTING SYSTEMS.**


**PART X. CONFLICT OF INTEREST; BIDS; LEGAL INVESTMENTS; CONSTRUCTION.**

§8-27-22. Conflict of interest.
§8-27-23. Competitive bids; publication of solicitation for sealed bids.
§8-27-25. Article constitutes complete authority; liberal construction.
PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF AUTHORITIES.

1 This article may be cited as the "Urban Mass Transportation Authority Act."

§8-27-2. Legislative findings and declaration of policy.
1 The Legislature hereby finds and declares:
2 (a) That a significant part of the population of this state is located in expanding urban areas;
3 (b) That in certain of these areas there are no urban mass transportation systems and in others there are urban mass transportation systems which are inadequate or in imminent danger of becoming inadequate or in imminent danger of discontinuing such service;
4 (c) That the establishment and maintenance of adequate urban mass transportation systems in such areas is essential for preserving viable urban areas and further promoting the healthful, safe, orderly and economical development and expansion of such urban areas;
5 (d) That the creation of urban mass transportation authorities to establish and maintain urban mass transportation systems in such areas is for the welfare of the people of this state in general and of the participating governments in particular, and is a public purpose for which public money may be spent and private property acquired; and
6 (e) This article is enacted in view of these findings and shall be liberally construed in the light thereof.

1 As used in this article, unless a different meaning appears from the context:
2 (a) "Authority" means any urban mass transportation authority created pursuant to the provisions of this article;
3 (b) "Board" means the board of any urban mass transportation authority;
4 (c) "Contiguous counties" means two or more counties which constitute a compact territorial unit within
(d) "Facilities and equipment" means all real and personal property of every kind and character owned or held by any urban mass transportation system for the purpose of providing transportation by bus or rail or other conveyance serving the public;

(e) "Participating government" means any municipality or county establishing or participating in an urban mass transportation authority;

(f) "Project" means any undertaking of an authority;

(g) "Revenues" means the gross receipts derived directly or indirectly from or in connection with the operation by an authority of any urban mass transportation system or systems and shall include, without limitation, all fees, rates, fares, rentals or other income actually received or receivable by or for the account of an authority from the operation of the system, and any other receipts from whatever source derived;

(h) "Service area of the authority" means and includes an area commensurate with the area served by an existing system or systems acquired or to be acquired by an authority, or if there be no existing system, the area shall extend to and include an area to be defined in the certificate of convenience and necessity issued by the public service commission under the applicable provisions of chapter twenty-four and chapter twenty-four-a of this code;

(i) "System" means any urban mass transportation system;

(j) "Trust indenture" means a security instrument entered into by an authority pursuant to which bonds or notes are issued;

(k) "Urban area" means any area that includes a municipality or other built-up place which is appropriate for a system to serve commuters or others in the locality taking into consideration the local patterns and trends of growth;
(l) "Urban mass transportation system" means any common carrier of passengers for hire which operates equipment over regular routes within the service area of the authority; and
(m) The singular shall include the plural and the plural shall include the singular.

§8-27-4. Urban mass transportation authorities authorized; authorities to be public corporations.

Any municipality or county, or both, or any two or more municipalities within any county or contiguous counties, or any two or more contiguous counties, or any combination thereof, may create an urban mass transportation authority. Such authority shall be created upon the adoption, by the governing body of each participating government, acting individually, of an appropriate ordinance or order. Each authority shall constitute a public corporation, and as such, shall have perpetual existence.

PART II. ORGANIZATION AND FUNCTION OF AUTHORITIES AND BOARDS.

§8-27-5. Management of authority vested in board; eligibility, appointment, number and term of members; vote of members; vacancies.

The management and control of any authority, its operations, business and affairs shall be lodged in a board of not less than five nor more than fifteen individuals who shall be known as members of the board and who shall be appointed for terms of three years each by the governing bodies of the participating governments. Prior to making the initial appointments to the board, the governing bodies of the participating governments shall agree to make such initial appointments so that approximately one third of the total number of the members to be so appointed shall be appointed for a term of one year, approximately one third of such total number of the members shall be appointed for a term of two years and approximately one third of such total number of the members shall be appointed for a term of three years. As the term of each such initial appointee expires, the successor to fill the vacancy created by such expired term
shall be appointed for a term of three years. The number
of members representing each participating government
shall be as agreed upon from time to time by the govern-
ing bodies of the said participating governments. Each
member of the board shall have one vote on all matters
coming before it. Any individual who is a resident of,
or member of the governing body of, any participating
government is eligible to serve as a member of the board.
The governing body of each participating government shall
inform the authority of its appointments or reappoint-
ments to the board by delivering to the authority a cer-
tified copy of the ordinance or order making the appoint-
ment or reappointment. If any member of the board
dies, resigns, or for any other reason ceases to be a mem-
er of the board, the governing body of the participating
government which such member represented shall ap-
point another individual to fill the unexpired portion of
the term of such member.

§8-27-6. Compensation of members; expenses.
1 As compensation for his services on the board each
2 member shall receive from the authority the sum of fifty
3 dollars for each meeting actually attended. The total
4 compensation paid to any member by the authority for
5 any fiscal year shall not exceed in the aggregate the sum
6 of six hundred dollars. Each member shall also be reim-
bursed by the authority for all reasonable and necessary
8 expenses actually incurred in the discharge of his duties
9 as a member of the board.

§8-27-7. Meetings of authority; officers; employees; official
bonds; records of authority public records.
1 At its first meeting, to be held no later than sixty days
2 from the creation of the authority as provided in section
3 four of this article, the board shall elect from its mem-
bership a president to act during the next ensuing fiscal
5 year, or until his successor is elected and qualified. At
6 that time, the board shall also elect a vice president, a
7 secretary and a treasurer and such other officers as may
8 be required, who need not be members of the board,
9 whose duties shall be defined and whose compensation
10 shall be fixed by the board and paid out of the funds of
the authority. The treasurer, and such other officers and
employees as the board shall direct, shall furnish bond
for the use and benefit of the authority in such penal
sum as may be fixed by the board and conditioned upon
the faithful discharge by such treasurer and such other
officers and employees so directed by the board of the
duties of their respective offices or employment, and upon
accounting for and paying over all moneys which may
come into their possession by virtue of such office or
employment. At its first meeting the board shall also
fix the time and place for holding regular meetings, but
it shall meet at least once in the months of January, April,
July and October. Special meetings of the board may be
called by the president or by two members upon written
request to the secretary. The secretary shall send to all
the members, at least two days in advance of a special
meeting, a written notice setting forth the time and place
of the special meeting and the matters to be considered
at such special meeting. Written notice of a special meet-
ing is not required if the time of the special meeting has
been fixed in a regular meeting, or if all the members
are present at the special meeting. All regular meetings
shall be general meetings for the consideration of any and
all matters which may properly come before an authority.
All proceedings of the authority shall be entered in a
permanently bound record book, properly indexed, and
the same shall be carefully preserved by the secretary
of the authority. All records of the authority shall be
public records.

§8-27-8. Quorum; majority vote required.

A majority of the members of the board, which majority
must include members from a majority of the particip-
pating governments, shall constitute a quorum. The vote
of a majority of all members present at any meeting of
the board shall be necessary to take any action.


The board shall establish the beginning and ending of
its fiscal year, which period shall constitute its budget
year, and at least thirty days prior to the beginning of
the first full fiscal year after the creation of the authority and annually thereafter the treasurer shall prepare and submit to the board a tentative budget. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by said board, shall be adopted as the budget for the ensuing fiscal year. No expenditures in excess of the budget shall be made during such fiscal year unless expressly authorized and directed by the board. It shall not be necessary to include in such budget any statement of necessary expenditures for annual interest or principal payments on bonds or for capital outlays, but it shall be the duty of the board to make provisions for their payment as they become due.

Part III. Powers and Duties of Authorities.


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 pleasure;
4 (c) To make and adopt all rules and regulations and bylaws as may be necessary or desirable to enable it to exercise the powers and perform the duties conferred or imposed upon it by the provisions of this article;
5 (d) To employ, in its discretion, planning, architectural and engineering consultants, attorneys, accountants, construction, financial, transportation and traffic experts and consultants, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation;
6 (e) To acquire by grant, purchase, gift, devise or lease and to hold, use, sell, lease or otherwise dispose of real and personal property of every kind and nature whatsoever, licenses, franchises, rights and interests necessary for the full exercise of its powers pursuant to the provisions of this article, or which may be convenient or useful for the carrying out of such powers;
7 (f) To acquire, construct, reconstruct, complete, develop, improve, own, equip, maintain and operate any
system or systems, or any part thereof, including, without
limitation, the power to acquire by purchase, lease or gift
all or any part of any licenses, franchises, rights, interests,
engineering and technical studies, data or reports owned
or held by any person and determined by its board to be
necessary, convenient or useful to the authority in con-
nection with the acquisition, construction, reconstruction,
completion, development, improvement, ownership, equip-
ing, maintenance or operation of any system or systems
and to reimburse public utilities for relocation of any
utility line or facility made necessary by the construction,
reconstruction, completion, development, improvement,
equipping, maintenance or operation of any system or
systems;

(g) To acquire any land, rights or easements deemed
necessary or incidental for the purposes of the authority
by eminent domain to the same extent and to be exer-
cised in the same manner as now or hereafter provided by
law for such right of eminent domain by business corpo-
rations;

(h) To enter into contracts and agreements which are
necessary, convenient or useful to carry out the pur-
poses of this article with any person, public corporation,
state or any agency or political subdivision thereof and
the federal government and any department or agency
thereof, including, without limitation, contracts and
agreements for the joint use of any property and rights
by the authority and any person or authority operating
any system, whether within or without the service area
of the authority, and contracts and agreements with any
person or authority for the maintenance, servicing, stor-
age, operation or use of any system or part thereof,
facility or equipment on such basis as shall seem proper
to its board;

(i) To enter into contracts and agreements for super-
intendence and management services with any person,
who has executive personnel with experience and skill
applicable to the superintendence and management of
any system, for the furnishing of its services and the
services of experienced and qualified personnel for the
superintendence and management of any system or any part thereof, including, without limitation, superinten­dence over personnel, purchases, properties and opera­tions and all matters relating thereto, and any revenue bond trust indenture may require such contract or agree­ment, but the personnel whose services are to be so furnished under any such contract or agreement shall not include any member of the board, any member of the immediate family of a member of the board or any agents or employees of the authority, and no such contract or agreement shall extend beyond a term of ten years or such longer time as there are outstanding any revenue bonds under a trust indenture which requires such contract or agreement;

(j) To assume any lien indebtedness of any system or part thereof acquired by it under the provisions of this article;

(k) To execute security agreements, contracts, leases, equipment trust certificates and any other forms of contracts or agreements, granting or creating a lien, security interest, encumbrance or other security in, on or to facilities and equipment, containing such terms and provisions as the board deems necessary;

(l) To apply for, receive and use grants, grants-in­aid, donations and contributions from any source or sources, including, but not limited to, the federal govern­ment and any agency or department thereof, and a state government whose constitution does not prohibit such grants, grants-in-aid, donations and contributions, and any agency or department thereof, and to accept and use bequests, devises, gifts and donations from any person;

(m) To lease any system or any part thereof to, or contract for the use of any system or any part thereof by, any person, but a trust indenture may prohibit, limit or restrict the exercise of such power;

(n) To acquire for cash or in exchange for its bonds all or any part of any publicly or privately owned system or systems;

(o) To make or cause to be made either by itself or in cooperation with other persons or organizations,
Ch. 86] MUNICIPALITIES 901

104 whether public or private, traffic surveys, population surveys and such other surveys and studies as it shall consider useful in the performance of its duties or the exercise of its powers under the provisions of this article and in connection therewith the authority may contract with any person or organization for such planning services;

111 (p) To enter into contracts and agreements with any public or private system either within or contiguous to its boundaries for the transfer of passengers between it and the system operating in territory contiguous to its boundaries;

116 (q) To fix and establish from time to time, subject to the approval of the public service commission, such fees, rates or other charges and routes, time schedules and standards of service as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by the authority, and reasonable reserves therefor, as the same shall become due, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, together with all other payments required in each such year by the resolution which authorized the issuance of such bonds, or the trust indenture securing the same, including, without limitation, reasonable reserves or margins for any of such purposes, and every authority shall file and keep on file the information specified in section two, article six, chapter twenty-four-a of this code in the manner and form as therein provided;

133 (r) To issue revenue bonds of the authority for any of its purposes or projects and to refund its bonds, all as provided in this article;

136 (s) To encumber or mortgage all or any part of its facilities and equipment;

138 (t) To prepare plans for and assist in the relocation of persons displaced by the authority and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, in-
cluding the making of such payments financed by the federal government; and
(u) To do any and all things necessary or convenient to carry out the powers given in this article unless otherwise forbidden by law.
The exercise of any of the powers herein granted is expressly made subject to the provisions of section eighteen of this article, wherever the same are applicable.

PART IV. FUNDS OF AUTHORITIES.

§8-27-11. Contributions to authorities; funds and accounts of authorities; reports; audit by state tax department.

Contributions may be made to authorities from time to time by the participating governments and by any other municipalities, counties or persons that shall desire to do so. All such funds and all of the other funds received by any authority shall be deposited in a separate account in such banking institution or institutions as its board may direct and shall be withdrawn therefrom only in such manner as its board may direct. Each authority shall keep strict account of all its receipts and expenditures and shall make a quarterly report to the participating governments which have made contributions to it and such report shall contain an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within ninety days after the end of each fiscal year, each authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding fiscal year, and any and all other information which the board may deem pertinent, to all of the participating governments. The books, records and accounts of each authority shall be subject to audit and examination by the state tax department of West Virginia.

PART V. DEVELOPMENT OF TRANSPORTATION PLAN.

§8-27-12. Study and plan of operation; notice and hearing; adoption of transportation plan.
The authority, as soon as practical after its organization, shall prepare a comprehensive plan with respect
3 to a program for a unified or officially coordinated system
4 as a part of a comprehensively planned development of
5 the urban area within its service area. Said program,
6 to the maximum extent feasible, shall provide for the
7 participation 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
14 and harmonious development of systems within the
15 service area which, in accordance with present and
16 future needs and resources, will best promote the health,
17 safety and general welfare of the inhabitants of the
18 service area, as well as the orderly and economical
19 development and expansion of the service area.
20 Prior to the adoption of a comprehensive plan, the
21 authority shall submit its tentative plan to the governing
22 bodies of the participating governments and hold a public
23 hearing in the service area on the plan. At least thirty
24 days prior to the date set for hearing, the authority
25 shall publish a notice of the time and place of the
26 hearing as a Class II legal advertisement in compliance
27 with the provisions of article three, chapter fifty-nine
28 of this code, and the publication area for such publication
29 shall be the service area of the authority. After a public
30 hearing has been held, the authority may by resolution
31 adopt the comprehensive plan and may from time to
32 time amend, supplement or change the comprehensive
33 plan in the same manner in which it was adopted.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.

§8-27-13. Resolution authorizing acquisition or construction
of urban mass transportation system.
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 con-
5 struction and all incidental expenses connected there-
6 with;
§8-27-12. Resolution of the authority. —

(a) The probable sources of revenue and the estimated amount thereof;

(b) The estimated cost of administration, maintenance, repair and operation thereof;

(c) The proposed methods of financing; and

(d) Any other information which the authority shall deem appropriate.

Such resolution shall also:

(a) Order the acquisition or construction of such system;

(b) If appropriate, direct that revenue bonds in such amount as the authority may deem necessary to pay all or any part of the cost of acquisition or construction of such system be issued pursuant to the provisions of this article; and

(c) Set forth the amount of the principal of the indebtedness, the maximum term the bonds proposed to be issued shall run before maturity and the maximum rate of interest to be paid and such other details with respect to the bonds and the trust indenture, if any, securing the same as the authority may deem necessary or desirable.

Before such resolution shall become effective, the authority shall submit such resolution to the governing bodies of the participating governments and hold a public hearing in the service area on the resolution. At least thirty days prior to the date set for hearing, the authority shall publish a notice of the time and place of hearing as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the service area of the authority.

At such hearing all objections and suggestions shall be heard and after the hearing has been held the authority shall take such action as it shall deem proper.


The authority is hereby empowered and authorized to provide by resolution, from time to time, for the issuance of revenue bonds of the authority for the purpose of paying all or any part of the cost of acquiring,
constructing or improving a system or systems, or any part thereof, or the facilities and equipment therefor, as the case may be, or for any other purpose or project authorized by the provisions of this article. The purposes for which revenue bonds may be issued may include the payment of all costs and estimated costs incidental to or connected with the accomplishment of such purpose or project including, without limitation, engineering, inspection and legal fees, the fees of fiscal agents and financial consultants and other fees, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period and for a period not to exceed two years thereafter, and expenses of all proceedings for the authorization, issuance and sale of the bonds.

The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six percent per annum, payable semiannually, and shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be at any banking institution or trust company within or without the state. The bonds shall be signed by the president of the authority or shall bear his facsimile signature, and the official seal of the authority, or a facsimile thereof, shall be impressed or imprinted thereupon and attested by the secretary of the authority, and any coupons attached to the bonds shall bear the facsimile signature of the president of the authority. All such signatures, countersignatures and seal may be printed, lithographed or mechanically reproduced, except that one of such signatures or countersignatures on the bonds shall be manually affixed, unless the resolution authorizing the issuance of such
bonds shall otherwise provide. If any officer whose
signature or countersignature or a facsimile of whose
signature or countersignature appears on bonds or
coupons ceases to be such officer before the delivery of
the bonds, his signature shall be as effective as if he
had remained in office until such delivery. The bonds
may be issued in coupon or in registered form, or both,
as each authority may determine and provision may
be made for the registration of any coupon bonds as
to principal alone, and also as to both principal and
interest, for the reconversion into coupon bonds of any
bonds registered as to both principal and interest, and
for the interchange of registered and coupon bonds.
Notwithstanding the form or tenor thereof, and in the
absence of any express recital on the face thereof that
the bond is nonnegotiable, all such bonds shall be, and
shall be treated as, negotiable instruments for all
purposes except when registered in the name of a
registered owner.

The authority may exchange its bonds, in whole or
in part, for any system or systems, or any parts thereof,
or facilities and equipment therefor, or may sell its
bonds, in whole or in part, in such manner either at
public or private sale and for such price as it may
determine will best effect the purposes of this article
and be for the best interest of the authority.

Prior to the preparation of definitive bonds, the
authority may, under like restrictions, issue interim
receipts or temporary bonds with or without coupons,
exchangeable for definitive bonds when such bonds shall
have been executed and are available for delivery. The
authority may also provide for the replacement of any
bonds which shall become mutilated or shall be destroyed
or lost.

The authority is hereby empowered and authorized
to provide by resolution, from time to time, for the
issuance, sale or exchange of revenue refunding bonds
of such authority for the purpose of refunding any
bonds then outstanding which shall have been issued
under the provisions of this article, including the pay-
ment of any redemption premium thereon and any
interest accrued or to accrue to the date of redemption
of such bonds, and the payment of all expenses incidental
thereto. The authority is further empowered and autho-
rized to provide by resolution, from time to time, for
the issuance, sale or exchange of revenue bonds of such
authority for the combined purpose of refunding any
bonds then outstanding, as herein provided, and paying
all or any part of the cost of any additional project or
projects. All provisions of this article applicable to
the issuance of revenue bonds are applicable to the
issuance of refunding bonds and to the sale or exchange
thereof.


1 In the discretion of the authority, any bonds issued
under the provisions of this article may be secured by
a trust indenture by and between such authority and
a corporate trustee, which may be any trust company
or banking institution having the powers of a trust
company within or without the state, or any person
in the United States having power to enter into the same,
including any federal agency.

2 Any resolution authorizing the issuance of such bonds
or any trust indenture securing the same may contain
such provisions for protecting and enforcing the rights
and remedies of the bondholders and of the trustee
as the authority may deem necessary and proper and
not in violation of law, including provisions pledging
all or any part of the revenues of such authority or
cumbering all or any part of the facilities and equip-
ment of such authority to secure the payment of the
bonds subject to such agreements with bondholders
as may then exist; limiting the purpose to which the
proceeds of sale of any bonds then or thereafter to
be issued may be applied; defining the duties of such
authority in relation to the acquisition, construction,
 improvement, maintenance, repair, operation and ins-
surance of any project or projects in connection with
which such bonds shall have been authorized; providing
for the custody, safeguarding and application of all
moneys; limiting the issuance of additional bonds; pre-
scribing a procedure by which the provisions of any
trust indenture or contract with bondholders may be amended or modified; requiring such authority to fix and establish such fees, rates or other charges and routes, time schedules and standards of service as will provide revenues in each year at least sufficient to pay the principal of and interest on all bonds issued by such authority and reasonable reserves therefor as the same shall become due, together with the cost of administration, maintenance, repair and operation of such system or systems in each year, including, without limitation, reasonable reserves or margins or sinking funds for any of such purposes, subject to the provisions of section eighteen of this article; defining the acts or omissions to act which shall constitute a default in the duties of such authority to the holders of its bonds and providing the rights and remedies of such holders and of the trustee in the event of default and the manner and terms upon which such default may be declared cured; vesting in a trustee such property rights, powers and duties, in trust, as such authority may determine; and such other additional provisions as such authority may deem necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that such other provisions are not expressly enumerated in this section, it being the intention to grant to the authority the power to make any and all covenants or agreements necessary to secure greater marketability of bonds issued under the provisions of this article, as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services, and to grant to such authorities full and complete power to enter into any contract, covenant or agreement with holders of bonds issued under the provisions of this article not inconsistent with this article or the constitution of this state.

§8-27-16. Sinking fund; sinking fund commission; purchase of outstanding bonds.

1 Before the issuance of any bonds under the provisions of this article, the authority shall, by resolution, provide
for a sinking fund for the payment of the bonds and
the interest thereon, and the payment of the charges
of banking institutions or trust companies for making
payment of such bonds and interest, out of the net
revenues of said system, and, in this connection, shall
set aside and pledge a sufficient amount of the net
revenues of the system for such purpose, such net
revenues being hereby defined to mean the revenues
of the system remaining after the payment of the reason-
able expense of administration, maintenance, repair and
operation, such amount to be paid by such authority
into the sinking fund at intervals, to be determined by
resolution adopted prior to the issuance of the bonds,
for (a) the interest upon such bonds as such interest
shall fall due; (b) the necessary fiscal agency charges
for paying bonds and interest; (c) the payment of the
bonds as they fall due, or, if all the bonds mature at
one time, the proper maintenance of a sinking fund
sufficient for the payment thereof at such time; and
(d) a margin for safety and for the payment of premium
upon bonds retired by call or purchase as provided in
this article. Such required payments shall constitute
a first charge upon all the net revenues of such authority.
Prior to the issuance of any bonds, the authority may,
by resolution, be given the right to use or direct the
state sinking fund commission to use such sinking fund,
or any part thereof, in the purchase of any of the out-
standing bonds payable therefrom, at the market prices
thereof, but not exceeding the price, if any, at which
the same shall in the same year be payable or redeem-
able, and all bonds redeemed or purchased shall forth-
with be cancelled, and shall not again be issued. In
addition to the payments into the sinking fund provided
for above, the authority may at any time in its dis-
cretion transfer all or any part of the balance of the
net revenues, after reserving an amount deemed by
such authority sufficient for maintenance, repair and
operation for an ensuing period of not less than twelve
months and for depreciation, into the sinking fund.

The amounts of the balance of the net revenues as
and when so set apart shall be remitted to the state
sinking fund commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the resolution pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law.

§8-27-17. Remedies of bondholders.

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust indenture securing the same, except to the extent the rights herein given may be restricted by such trust indenture, may, by civil action, mandamus or other proceeding, protect and enforce any and all rights under the laws of this state or granted under the provisions of this article or under the resolution authorizing the issuance of such bonds, or the trust indenture securing same, and may enforce and compel the performance of all duties required by the provisions of this article or by such resolution or trust indenture to be performed by any authority or by any officer thereof.

PART VII. PUBLIC SERVICE COMMISSION.

§8-27-18. Authority and duty of public service commission.

Each authority which undertakes to engage in transporting passengers for hire by motor vehicles or other conveyances over regular routes shall be deemed a common carrier of passengers for hire and shall be subject to the jurisdiction and authority of the public service commission of West Virginia as provided in chapter twenty-four and chapter twenty-four-a of this code, to the same extent as any other common carrier of passengers for hire: Provided, That it shall be the mandatory duty of the public service commission to fix and establish, from time to time, such fees, rates or other charges and routes,
time schedules and standards of service for each au-

12 thority as will provide revenues in each year at least

13 sufficient to pay the principal of and interest on all bonds

14 issued by that authority, and reasonable reserves therefor,

15 as the same shall become due in each year, together with

16 the cost of administration, maintenance, repair and opera-

17 tion of such system or systems in each year, together with

18 all other payments required in each year by the resolu-

19 tion which authorized the issuance of such bonds or the

20 trust indenture securing the same, including reasonable

21 reserves, margins or sinking funds for any of such pur-

22 poses.

PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.


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.

4 No such indebtedness or obligation incurred by any au-

5 thority shall give any right against any member of the

6 governing body of any participating government or any

7 member of the board of any authority. Any obligation

8 or indebtedness of any nature of any authority shall never

9 constitute an obligation or indebtedness of any participat-

10 ing government or the governing body of any participat-

11 ing government, within the meaning of any constitutional

12 provision or statutory limitation, and shall never con-

13 stitute or give rise to a pecuniary liability of any par-

14 ticipating government or the governing body of any participat-

15 ing government, or be a charge against the general

16 credit or taxing power of any participating government

17 or the governing body of any participating government,

18 and such fact shall be plainly stated on the face of any

19 bonds issued by any authority. The rights of creditors

20 of any authority shall be solely against the authority

21 as a corporate body and shall be satisfied only out of

22 revenues, moneys or property received or held by it in

23 its corporate capacity.


1 It is hereby found, determined and declared that the

2 creation of any authority and the carrying out of its
purposes is in all respects for the benefit of the people of this state in general, and of the participating governments in particular, and is a public purpose; and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, property, operations and activities shall be exempt from the payment of any taxes or fees to the state or any of its political subdivisions or to any officer or employee of the state or any of its political subdivisions, except the special assessment provided for in section six, article six, chapter twenty-four-a of this code. The revenue bonds and other evidences of indebtedness issued pursuant to the provisions of this article, and the interest thereon, shall be exempt from taxation, except inheritance and transfer taxes.

PART IX. EMPLOYEES OF EXISTING SYSTEMS.


Whenever any authority acquires any existing system pursuant to the provisions of this article, the employees of such system shall be protected in the following manner:

(a) The employees of such system shall be retained to the fullest extent possible consistent with sound management, and if terminated or laid off shall be assured priority of reemployment;

(b) The individual employees who are retained shall be retained in positions the same as, or no worse than, their positions prior to the acquisition of such system;

(c) The rights, privileges and benefits of the employees under existing collective bargaining agreements shall not be affected and the owning authority shall assume the duties and obligations of the acquired system under any such agreement;

(d) Collective bargaining rights shall be continued with respect to employees of any acquired system;

(e) The rights, privileges and benefits of the employees under any existing pension or retirement plan or plans
(f) The owning authority shall provide paid training or retraining programs when necessary; and

(g) The authority owning a system, or any of the employees of any system owned by the authority, shall, in the case of any labor dispute relating to the terms and conditions of employment which is not settled through any established grievance procedure, have the right to submit the dispute to final and binding arbitration by a board of arbitration consisting of three arbitrators, one arbitrator to be chosen by the authority, one by the employee and the third to be chosen by the two arbitrators selected by the authority and the employee. A decision of a majority of the members of the board of arbitration shall be final and binding on the parties. The parties shall each pay the arbitrator of its or his own selection, and they shall jointly pay the third arbitrator and any other expenses connected with submitting such labor dispute to the board of arbitration.

In the event any authority acquires a system and (1) leases such acquired system, or (2) enters into a management contract for superintendence and management services for the operation of such acquired system pursuant to any provision of this article, the lease or contract shall include terms and provisions insuring the protection specified in this section.

PART X. CONFLICT OF INTEREST; BIDS; LEGAL INVESTMENTS; CONSTRUCTION.

§8-27-22. Conflict of interest.

1 No member of any authority, nor any of its officers, employees, agents or consultants, shall have any interest in any firm, partnership, corporation, company, association or joint-stock association engaged in the business of providing public transportation in the area encompassed by the authority, or in the manufacture, sale or lease of passenger transportation equipment or facilities. No member of any authority, nor any of its officers, employees, agents or consultants, shall contract with the
authority or be interested in, either directly or indirectly, any contract with such authority or in the sale of property, either real or personal, to such authority. The term "agents" as used in this section shall not be deemed for the purposes of this section to include any persons or authorities which lease from or contract for superintendence and management services with any authority for the administration, maintenance, repair or operation of any system.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

A purchase of or contract for all supplies, equipment and materials and a contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of one thousand dollars, shall be based on competitive sealed bids. Such bids shall be obtained by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the service area of such authority. The second publication shall be made at least fourteen days before the final date for submitting bids. In addition to such publication, the notice may also be published by any other advertising medium such authority may deem advisable, and such authority may also solicit sealed bids by sending requests by mail to prospective suppliers and by posting notice on a bulletin board in the office of such authority.


Banking institutions, building and loan associations, and insurance companies organized under the laws of this state, may lawfully invest their own funds in bonds issued under the provisions of this article.

§8-27-25. Article constitutes complete authority; liberal construction.

This article shall constitute full and complete authority for the creation of any authority and for carrying out the powers and duties of any such authority and for the issuance, sale or exchange of revenue bonds by such
authority as provided in this article. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals shall be required in connection therewith except as may be prescribed by this article:

Provided, That all applicable functions, powers, authorities and duties of the public service commission shall remain unaffected except as provided in this article.

ARTICLE 28. INTERGOVERNMENTAL RELATIONS—AIRPORTS AND AVIGATION.

PART I. DEFINITIONS; OPERATION OF AIRPORTS.

§8-28-1. Definitions.

§8-28-2. Establishment, lease and operation of airports by municipalities and counties; jurisdiction of county court.

§8-28-3. Acquisition of property for airport; payment therefor.

§8-28-4. Construction, maintenance and operation of airport; expenses; rules and regulations and fees.

PART II. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC NEAR AIRPORTS.

§8-28-5. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

PART III. JOINT OPERATION OF AIRPORTS.

§8-28-6. Airports maintained jointly; abandonment and sale thereof; suits concerning disposition, etc., of airport.

PART IV. LEASE OF AIRPORTS TO OTHERS.

§8-28-7. State and political subdivisions empowered and authorized to lease airports and grounds to others.

PART V. FUNDS FOR AIRPORTS.

§8-28-8. Levy for airport; funds for its maintenance and operation.

PART VI. MUNICIPALITIES IN ADJOINING STATES AND AIRPORT LAND IN THIS STATE.

§8-28-9. Construction, maintenance and operation of airports by municipalities of an adjoining state; acquisition of property therefor; property tax exempt.

PART I. DEFINITIONS; OPERATION OF AIRPORTS.

§8-28-1. Definitions.

1 When used in this article, the terms “airport” and 2 “aircraft” shall have the meanings ascribed to them in
§8-28-2. Establishment, lease and operation of airports by municipalities and counties; jurisdiction of county court.

Any municipality or county may acquire, establish, construct, lease, equip, improve, maintain and operate for such municipality or county an airport for the use of aircraft, and may acquire or lease for such purpose real property within or without or partly within and partly without the corporate limits of such municipality, or within or without or partly within and partly without such county, or may set apart and use for such purpose real property owned by the municipality or county, which is not needed for any other public use, however such real property was acquired. Any county court now owning or leasing or hereafter acquiring or leasing any real property without or partly without the limits of its county for the purpose of acquiring, establishing, constructing, improving, maintaining and operating an airport, shall have the same and all jurisdiction over such property, its maintenance and operation, as it has with respect to real property owned or leased and operated by it for airport purposes within the limits of its own county.

§8-28-3. Acquisition of property for airport; payment therefor.

Real property necessary for such airport may be acquired by gift, or by purchase if such municipality or county is able to agree with the owners of such real property on the terms thereof, and otherwise by condemnation, in the manner provided by law under which such municipality or county is authorized to acquire real property for public use. The purchase price or award for any property acquired for airport purposes may be paid by appropriation of moneys available therefor or wholly or partly from the proceeds of sale of the bonds of such municipality or county, as the governing body or county court shall determine, subject, however, to the general provisions of law for the issuance and sale of bonds of municipalities and counties for public purposes generally.
§8-28-4. Construction, maintenance and operation of airport; expenses; rules and regulations and fees.
1 The governing body or county court of such municipality or county may direct or employ or vest jurisdiction in any appropriate officer, board or body of such municipality or county to locate, acquire, establish, construct, lease, equip, improve, maintain and operate such airport for such municipality or county, but the site so located and the acquisition, establishment, construction, leasing, equipment, improvement, maintenance and operation of such airport shall be subject to the approval of such governing body or county court, as the case may be. The expense of the acquisition, establishment, construction, leasing, equipment, improvement, maintenance and operation shall be a municipal or county charge, as the case may be.

The governing body or county court may adopt rules and regulations and establish fees or charges for the use of such airport, or may authorize the officer, board or body of such municipality or county having jurisdiction to adopt such rules and regulations and establish such fees and charges, subject, however, to the approval of such governing body or county court before they shall take effect.

PART II. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC NEAR AIRPORTS.

§8-28-5. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

The governing body or county court is hereby empowered and authorized to adopt and promulgate rules and regulations to: (1) Control the movement and disposition of vehicular and pedestrian traffic within one-fourth mile of any building or installation of any airport owned or operated or owned and operated by any such municipality or county court, (2) regulate and control vehicular parking within such areas by the installation of parking meters or by other methods, and (3) impose
reasonable charges for the use of the parking space so
metered or otherwise allocated, so as to provide maximum
opportunity for the public use thereof.

Violation of any such rule and regulation shall con-
stitute a misdemeanor and the offender, upon conviction
in the manner provided by law, may be fined not less
than two dollars nor more than ten dollars for each such
violation.

Justices of the peace shall have concurrent jurisdic-
tion with the circuit courts and with statutory courts of
record having criminal jurisdiction for the trial of off-
fenses under this section.

PART III. JOINT OPERATION OF AIRPORTS.

§8-28-6. Airports maintained jointly; abandonment and sale
thereof; suits concerning disposition, etc., of airport.

One or more municipalities or counties or both may join
with another or other municipalities or counties or both
for the purpose of acquiring, establishing, constructing,
leasing, equipping, improving, maintaining and operating
an airport. Any such airport may be located at such
point as the governing bodies and county courts of the
municipalities and counties joining therein may agree
upon, and such municipalities and counties may raise, by
levy or otherwise as provided in this article, funds for
the purpose of acquiring, establishing, constructing, leas-
ing, equipping, improving, maintaining and operating
any such airport, and the municipalities and counties
shall agree upon the proportionate part of the cost and
expense of such airport to be paid by each municipality
and county joining therein. The provisions of sections
two, three, four, five, seven and eight of this article
shall apply to any such joint airport, and as to section
eight, the rules and regulations authorized therein shall
be jointly adopted and promulgated.

In case any such joint airport is abandoned and such
airport is owned by such municipalities and counties, the
same may be sold with the approval of the governing
bodies and county courts of the municipalities and coun-
ties jointly owning same. The proceeds of such sale shall be distributed to the municipalities and counties in the proportion to which such municipalities and counties had contributed to the acquisition, establishment, construction, equipment, improvement, maintenance and operation of such airport. In case of a failure of the municipalities and counties to agree upon the disposition of such airport and the equipment thereat or connected therewith or used in its maintenance or operation, any one or more of the municipalities and counties interested therein may bring a suit in the circuit court of the county in which such airport or the major portion thereof is located, and upon a trial of the cause, held in the manner provided by law for other civil actions seeking equitable relief, the court shall make such decree or decrees with reference to the disposition of the property and distribution of the proceeds or other moneys involved as to the court may seem to the best interests of all the parties involved, and an appeal from any such decree or decrees to the supreme court of appeals shall lie as in other civil actions.

**PART IV. LEASE OF AIRPORTS TO OTHERS.**

§8-28-7. State and political subdivisions empowered and authorized to lease airports and grounds to others.

1. The state, acting through the aeronautics commission, or any municipality or county, owning, either severally or jointly with other governmental units, an airport and any grounds used or useful in connection therewith may severally or jointly lease the same to others, for use as an airport and for any other purposes incidental to and not inconsistent therewith, for a term not exceeding thirty years: Provided, That no lease shall be executed by such owner or owners of any such airport or grounds unless and until such owner or owners shall have given notice by publication of the following described notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the state if it is the state which proposes to make such lease or the political subdivision or subdivisions
involved if it is a political subdivision or subdivisions which propose to make such lease. The notice shall state its or their intent to lease said airport or grounds, shall accurately describe what is proposed to be leased, the purpose or purposes for which the same may be used and the terms of said lease, shall state the time and place for the public opening of proposals for such lease, and shall reserve the right to reject any and all proposals. Nothing herein contained, however, shall prevent such owner or owners of any such airport or grounds from granting or renting landing rights for airplanes, hangar space, gasoline storage space, handling facilities, ticket or general office space, or any other facilities or rights in connection with such airport or grounds, covering or affecting less than the whole thereof, without notice and upon such terms as such owner or owners may deem advisable. All income received by a municipality or county court under the terms of any such lease or grant shall be paid to the state sinking fund commission to retire the bonded indebtedness, if any, created for the acquisition, establishment, construction, equipment, improvement, maintenance and operation of such airport or grounds, and if there be no such outstanding bonded indebtedness, then such income shall be paid into the general funds of such municipality or county.

PART V. FUNDS FOR AIRPORTS.

§8-28-8. Levy for airport; funds for its maintenance and operation.

The governing body of a municipality or the county court of a county to which this article is applicable may lay a levy, not to exceed five cents on each one hundred dollars of valuation, for a period not exceeding three years, and appropriate therefrom funds for the purpose of acquiring, establishing, constructing, equipping or improving an airport. Funds necessary for providing maintenance and operating expenses for such airport may be appropriated out of the general funds of the municipality or county: Provided, That nothing contained herein shall in any way affect any rights, powers and privileges of any municipality or county court under any special
PART VI. MUNICIPALITIES IN ADJOINING STATES AND AIRPORT LAND IN THIS STATE.

§8-28-9. Construction, maintenance and operation of airports by municipalities of an adjoining state; acquisition of property therefor; property tax exempt.

Notwithstanding any other provision of law to the contrary, a municipality organized and existing under the laws of an adjoining state, the nearest corporate limits thereof being not more than ten miles distant from the nearest boundary of this state, may acquire or lease real property situate within this state, the nearest boundary of such real property being not greater than ten miles from the nearest corporate limits of such municipality of an adjoining state, for use in connection with the acquisition, establishment, construction, lease, equipment, improvement, maintenance or operation for such municipality of an adjoining state of an airport exclusively for nonprofit public use; and any such municipality shall have the right to acquire real property necessary for such airport by gift or by purchase, and otherwise by condemnation, and the use of real property in this state under the provisions hereof shall be deemed to be a public use for which private property may be taken or damaged, for just compensation. All property, real and personal, acquired, held and used in this state pursuant to the provisions of this section shall be public property and therefore exempt from taxation in the manner provided by section nine, article three, chapter eleven of this code.

ARTICLE 29. INTERGOVERNMENTAL RELATIONS—REGIONAL AIRPORTS.

PART I. AUTHORITIES AUTHORIZED; ORGANIZATION OF AUTHORITIIES; OPERATION OF AIRPORTS; DEFINITIONS.

§8-29-1. Regional airport authorities authorized; definitions.

§8-29-2. Authorities to be public corporations.
§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports; state aeronautics commission.

§8-29-4. Management of authority vested in members; appointment and terms of members; vote of members; valuation of property contributed to an authority; participation by additional municipalities or counties without state.

§8-29-5. Substitution of members.

§8-29-6. Qualification of members.

§8-29-7. Compensation of members.

**PART II. GENERAL POWERS OF AUTHORITIES.**


**PART III. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC NEAR AIRPORTS.**

§8-29-9. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

**PART IV. INDEBTEDNESS; FUNDS; EMINENT DOMAIN; EXEMPTION FROM TAXATION; DISPOSITION OF SURPLUSES.**

§8-29-10. Indebtedness of authorities.

§8-29-11. Agreements in connection with obtaining funds.

§8-29-12. Authorities to have right of eminent domain.

§8-29-13. Property, bonds and obligations of authorities exempt from taxation.

§8-29-14. Authorities may lease facilities.

§8-29-15. Disposition of surplus of authorities.

§8-29-16. Contributions to authorities; funds and accounts of authorities.

§8-29-17. Participation.

**PART V. DISSOLUTION OF AUTHORITIES; WORKMEN'S COMPENSATION; CONSTRUCTION.**

§8-29-18. Dissolution of authority; disposition of assets after payment of debts.

§8-29-19. Employees to be covered by workmen's compensation.

§8-29-20. Liberal construction of article.

**PART I. AUTHORITIES AUTHORIZED; ORGANIZATION OF AUTHORITIES; OPERATION OF AIRPORTS; DEFINITIONS.**

§8-29-1. Regional airport authorities authorized; definitions.

1 Any two or more municipalities, any two or more contiguous counties, or any county or two or more contiguous counties and one or more municipalities located therein or partly therein, of this state, are hereby authorized to create and establish one or more authorities for the purpose of acquiring, establishing, construct-
ing, equipping, improving, financing, maintaining and operating a regional airport or airports, as the case may be, for the use of aircraft: Provided, That no such municipality or county shall participate in such authority unless and until the governing body or county court so provides. As used in this article, the terms "airport" and "aircraft" shall have the meanings ascribed to them in section one, article two-a, chapter twenty-nine of this code, the term "contiguous counties" means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least one other county, but does not require that each county touch all of the other counties so combining, and the term "authority" means a regional airport authority created pursuant to the provisions of this article.

§8-29-2. Authorities to be public corporations.
Each authority when created and established, and the members thereof, shall constitute a public corporation and as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports; state aeronautics commission.
Each authority is hereby empowered and authorized to acquire, establish, construct, equip, improve, finance, maintain and operate a regional airport or landing field and appurtenant facilities so located to best serve the region in which they are located. Each authority shall be subject to the jurisdiction of the state aeronautics commission to the same extent as a state or municipal airport.

§8-29-4. Management of authority vested in members; appointment and terms of members; vote of members; valuation of property contributed to an authority; participation by additional municipalities or counties without state.
The management and control of each authority, its property, operations, business and affairs shall be lodged
in a board of not less than five nor more than twenty-
one individuals who shall be known as members of the
authority and who shall be appointed for terms of three
years each by the municipalities and county courts con-
tributing moneys or property to the authority. However,
the first board shall be comprised of one member
appointed by each participating municipality and one
member appointed by each participating county court,
and any such member shall serve a term of one year,
beginning as of the date the authority is created. No
more than three members shall serve from one county
on the first board.

Each municipality or county shall have one vote for
each five thousand dollars it has contributed to the
authority in the form of moneys or property. When
property is contributed, the contributing municipality or
county court and the authority shall agree in writing
at the time the contribution is made as to the fair market
value of such property, which valuation shall determine
the number of votes to be allocated to the municipality
or county on the basis thereof. For the fiscal year during
which any authority is formed, the number of votes to
which any municipality or county shall be entitled shall
be determined as of the time of formation of the author-
ity and shall govern until the end of that fiscal year,
even though additional moneys or property are con-
tributed during that fiscal year. Thereafter, the number
of votes shall be determined at the end of each fiscal
year and such determination shall govern for the en-
suing fiscal year, even though additional moneys or prop-
erty are contributed during that fiscal year. Subsequent
to its formation, any authority may permit any munici-
pality or county without this state to participate in the
affairs of the authority, to appoint members of the
authority in the same manner, and to have such vote
or votes beginning as of the next ensuing fiscal year,
as prescribed by law with respect to the original par-
ticipating municipalities or counties or any combination
thereof.
§8-29-5. 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 municipality or the county court
4 (or other similar body in the case of an out-of-state
5 participating county) which such member represented
6 shall appoint another individual to fill the unexpired
7 portion of the term of such member.

§8-29-6. Qualification of members.
1 All members of the board of each authority shall be
2 residents of the municipality or county which said mem-
3 bers represent.

§8-29-7. 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 all
6 reasonable and necessary expenses actually incurred in
7 connection with the performance of his duties as such
8 member.

PART II. GENERAL POWERS OF AUTHORITIES.

1 Each authority is hereby given plenary power and
2 authority as follows:
3 (1) To make and adopt all necessary bylaws and
4 rules and regulations for its organization and operations
5 not 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, including
10 both public and private corporations, or governmental
11 department or agency, and generally to do any and all
12 things necessary or convenient for the purpose of acquir-
13 ing, establishing, constructing, equipping, improving,
14 financing, maintaining and operating a public airport
15 to best serve the region in which it is located;
(4) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any department or agency thereof, and this state subject to any constitutional and statutory limitations with respect thereto, and to accept and use bequests, devises, gifts and donations from any person;

(6) To acquire lands and hold title thereto in its own name;

(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real property which it may own;

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

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each authority is a "governing body" as that term is used in said article sixteen only;

(10) To establish, charge and collect reasonable fees and charges for services or for the use of any part of its property or facilities, or for both services and such use;

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

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

(13) To prescribe by bylaw the manner of financial participation by members.
PART III. CONTROL OF VEHICULAR AND PEDESTRIAN TRAFFIC NEAR AIRPORTS.

§8-29-9. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

1 The county court of the county in which any such airport or the major portion thereof is located is hereby empowered and authorized, upon request of the authority, to adopt and promulgate rules and regulations to: (1) Control the movement and disposition of vehicular and pedestrian traffic within one-fourth mile of any building or installation of any such airport, (2) regulate and control vehicular parking within such areas by the installation of parking meters or by other methods, and (3) impose reasonable charges for the use of the parking space so metered or otherwise allocated, so as to provide maximum opportunity for the public use thereof.

2 Violation of any such rule and regulation shall constitute a misdemeanor and the offender, upon conviction in the manner provided by law, may be fined not less than two dollars nor more than ten dollars for each such violation.

3 Justices of the peace shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

PART IV. INDEBTEDNESS; FUNDS; EMINENT DOMAIN; EXEMPTION FROM TAXATION; DISPOSITION OF SURPLUSES.

§8-29-10. Indebtedness of authorities.

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

2 No indebtedness or obligation incurred by an authority shall give any right against any member of the governing body of any of said municipalities, or the county court (or other similar body in the case of an out-of-state participating county) of any of said counties, or any member of the board of the authority. No indebtedness
of any nature of an authority shall constitute an in-
debtedness of any municipality or county or the govern-
ning body of any such municipality or the county court (or
other similar body in the case of an out-of-state partici-
pating county) of any such county, or be a charge against
any property of any municipality or county. The rights
of creditors of an authority shall be solely against the
authority as a corporate body and shall be satisfied only
out of property held by it in its corporate capacity.

§8-29-11. Agreements in connection with obtaining funds.
1 Each authority may, in connection with obtaining
2 moneys or property for its purposes, enter into any agree-
3 ment with any person, including the federal government,
4 or any department, agency or subdivision thereof, con-
taining such provisions, covenants, terms and conditions
6 as the authority may deem advisable.

§8-29-12. 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-
ferred, to take or acquire any lands, structures or build-
ings or other rights, either in fee or as easements, for the
5 purposes herein set forth, the authority may purchase
6 the same directly or through its agents from the owner
7 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-
nation proceedings in chapter fifty-four of this code, and
11 such purposes are hereby declared to be public uses for
12 which private property may be taken or damaged:
13 Provided, That under no circumstances shall an authority
14 have the right of immediate entry.

§8-29-13. Property, bonds and obligations of authorities
exempt 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 any municipalities or to any officer or employee of the
4 state or of any subdivision thereof or of any municipality.
5 The property of each authority shall be exempt from
6 all municipal and county taxes. Bonds, notes, debentures
and other evidences of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxation.

§8-29-14. Authorities may lease facilities.
1 Each authority may lease its airport and all or any part of the appurtenances and facilities therewith to any available lessee, subject to all constitutional and statutory limitations with respect thereto, at such rental and upon such terms and conditions as the authority shall deem proper. Such leases shall be for some purpose associated with airport activities, and shall be subordinate to any mortgage or deed of trust executed by the authority.

§8-29-15. Disposition of surplus of authorities.
1 If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the equipping, improvement, maintenance and operation of the airport and for meeting all required payments on its obligations, it shall set aside such reserve for future equipping, improvements, maintenance, operations and contingencies as it shall deem proper and shall then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future equipping, improvements, maintenance, operations and contingencies, as aforesaid, and then pay the residue of such surplus, if any, to the municipalities and counties in direct proportion to their contribution of moneys and property.

§8-29-16. Contributions to authorities; funds and accounts of authorities.
1 Contributions of moneys may be made to authorities from time to time by the participating municipalities and counties, and persons that shall desire to do so. All such moneys and all other moneys received by an authority shall be deposited in such banking institution or banking institutions as the authority may direct and shall be with-
drawn therefrom in such manner as the authority may
direct. Each authority shall keep strict account of all of
its receipts and expenditures and shall each quarter
make a quarterly report thereon to the municipalities and
counties which have made contributions of moneys or
property, and such report shall contain an itemized ac-
count of its receipts and disbursements during the pre-
ceding quarter. Such report shall be made within sixty
days after the termination of the quarter. Within sixty
days after the end of each fiscal year, each authority
shall make an annual report containing a summary of its
receipts and disbursements for the preceding fiscal year,
and publish the same as a Class II-0 legal advertisement
in compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the municipalities and counties, as
provided in section one of this article. The books, records
and accounts of each authority shall be subject to audit
and examination by the office of the state tax commis-
sioner and by any other proper public official or body
in the manner provided by law.

§8-29-17. Participation.
1 The municipalities and counties or any one or more
2 of them participating therein, jointly or severally, are
3 hereby empowered and authorized to appoint members
4 of the said authorities and to contribute to the cost of
5 acquiring, establishing, constructing, equipping, improv-
ing, maintaining and operating the said regional airports
6 and appurtenant facilities.
7 Any of the municipalities or counties as provided in
8 section one of this article is hereby empowered and au-
thorized to convey or transfer to the authorities property
9 of any kind heretofore acquired by the municipalities or
10 counties for airport purposes.

PART V. DISSOLUTION OF AUTHORITIES; WORKMEN'S
COMPENSATION; CONSTRUCTION.

§8-29-18. Dissolution of authority; disposition of assets after
payment of debts.
1 In the event full and adequate provision is made for
2 the payment of all of the debts of an authority, the par-
Participating municipalities or counties or any combination thereof which have contributed at least sixty percent of the total value of all moneys and property (the value of which property is determined as specified in section four of this article) contributed to the authority by the participating municipalities and counties may by resolution provide for the dissolution of the authority and for (1) the conveyance of the real and tangible personal property contributed to it to those participating municipalities and counties which contributed the same, (2) equitable distribution among the contributing municipalities and counties of any real and tangible personal property purchased or condemned by the authority or of the proceeds of sale thereof, or the fair value thereof, and (3) the equitable distribution of all moneys on hand to the participating municipalities and counties in direct proportion to the contribution of moneys by them.

§8-29-19. Employees to be covered by workmen's compensation.

All eligible employees of any authority shall be deemed to be within the workmen's compensation statute of this state and premiums on their compensation shall be paid by the authority as required by law.

§8-29-20. Liberal construction of article.

The purposes of this article are to provide for the acquisition, establishment, construction, equipping, improvement, financing, maintenance and operation of regional airports in a prudent and economical manner, and this article shall be liberally construed as giving to any authority created and established hereunder full and complete power reasonably required to give effect to the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any constitutional, statutory or charter provisions which may now or hereafter be in effect.
ARTICLE 30. INTERGOVERNMENTAL RELATIONS—FLOOD CONTROL PROJECTS.

§8-30-1. Establishment and operation of flood control projects by municipalities and counties.

Any municipality or county may establish, construct, maintain and operate for such municipality or county a flood control project, including the removal of accumulated snags and other debris from and the clearing and straightening of the channel of navigable streams and tributaries thereof, and any such municipality or county may accept any and all benefits, moneys, services and assistance from the federal government in connection with any agreement as authorized by federal statutes and laws relating to flood control, and any such municipality or county under such agreements as are required by Section 701c, Title 33, United States Code or other federal statutes is hereby empowered and authorized to give assurances satisfactory to the secretary of the army or other proper federal authority that such municipality or county will: (a) Provide without cost to the United States, all lands, easements and right-of-ways necessary for the construction of the project; (b) hold and save the United States free from damages due to the construction works; and (c) maintain and operate all the works after completion in accordance with regulations prescribed by the secretary of the army.

Any such municipality or county is hereby further empowered and authorized to levy, within all constitutional and statutory limitations, for the maintenance or operation of a flood control project; to purchase land situate therein for the same; to institute condemnation proceedings for the acquiring of any land required under the flood control project; and to authorize the issuance and sale of bonds within all constitutional and statutory limitations, as is provided under general law for the issuance and sale of bonds by municipalities and counties for public purposes generally. Any levy shall be equal and uniform throughout the municipality or county, as the case may be. Real or personal property or moneys
may also be acquired for such purpose by gifts to such
municipality or county.

Any municipality or county is hereby empowered and
authorized to adopt zoning ordinances restricting the use
of the lands and the construction of buildings and struc-
tures within the flood control area and one hundred feet
on each side thereof and to enforce such ordinances by
fine or imprisonment, or both, in the circuit court of the
county in which the offense occurred in the case of a
county ordinance, or by injunction proceedings in the
circuit court of the county in which the offense occurred.
Prosecution for violation of any such municipal ordinance
shall be as in any other municipal ordinance violation
case.

The power and authority granted by this section may
be exercised by any municipality or county in coopera-
tion with each other or separately where such flood con-
trol project is located, regardless of the sponsoring agency
of such project.

ARTICLE 31. INTERGOVERNMENTAL RELATIONS—FRANCHISE
OBLIGATIONS.

PART I. GRANTING OF FRANCHISE.

§8-31-1. Conditions to granting of franchise by governing body or coun-
ty court; term of franchise; public service commission power
and authority not affected.

PART II. COMPPELLING COMPLIANCE WITH FRANCHISE.

§8-31-2. Compelling compliance with franchise obligations; damages;
forfeiture.

PART I. GRANTING OF FRANCHISE.

§8-31-1. Conditions to granting of franchise by governing body or county
court; term of franchise; public service commission power
and authority not affected.

Every municipality and every county court are hereby
empowered and authorized to grant an exclusive or
nonexclusive franchise to any person. No franchise, how-
ever, shall hereafter be granted by the governing body of
any municipality or by the county court of any county
where the application for such franchise has not been
filed, with the recorder of such municipality or the clerk of such county court, at least thirty days prior to the time when it is to be acted upon by such governing body or county court, and where notice of such application, stating the object of such franchise, has not been given by publication thereof as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, for which publication the publication area shall be the municipality or the county, as the case may be, wherein such franchise is to be granted. No such franchise shall be granted within thirty days after the application has been filed, nor until an opportunity has been given any person interested in the granting or refusing of such franchise to be heard. No such franchise shall hereafter be granted by any municipality or county court for a longer term than fifty years: Provided, That nothing in this section shall prevent the renewal of any such franchise for a term not exceeding fifty years, when the same shall have expired. No such franchise hereafter granted for any longer term than fifty years shall be of any force or validity. Notwithstanding the provisions of this article or any other provisions of this chapter, other general law or any charter, the failure or inability of any person to obtain from any municipality or county court a franchise for the rendering of a public service shall in no way whatever affect the power and authority granted to, and the duties and obligations imposed upon, such person under the provisions of chapter twenty-four of this code or by the public service commission.

PART II. Compelling Compliance With Franchise.

§8-31-2. Compelling compliance with franchise obligations; damages; forfeiture.

When any person has obtained or shall hereafter obtain any franchise, and the terms, conditions or manner of exercising such franchise are embodied in the ordinance of the municipality or the order of the county court granting such franchise, or are otherwise either voluntarily assumed, or by law imposed upon such
7 person, then and in each of such cases the circuit court
8 of the county (except so far as the powers herein
9 conferred upon the circuit court are, by chapter twenty-
10 four of this code, conferred upon the public service
11 commission) in which the municipality or the major
12 portion of the territory thereof is located or for
13 which the county court acted shall have power by
14 mandamus to compel such person, and the successors
15 and assigns of such person, to use and exercise such
16 franchise in accordance with the lawful terms and
17 conditions and in the manner so prescribed in such
18 ordinance or order or otherwise lawfully so defined or
19 assumed, and to do and perform each and every lawful
20 obligation or duty attached to such franchise, whether
21 such obligation or duty be voluntarily assumed or im-
22 posed by law.
23 Such mandamus may be awarded at the instance of
24 such municipality or county, and this section shall not
25 be construed to deprive such municipality or county,
26 or any inhabitant thereof, of any other remedy to compel
27 such person to comply with the terms, conditions and
28 agreements of such franchise, or of the right to recover
29 damages for noncompliance therewith or to affect, re-
30 move or lessen the liability of such person to forfeiture
31 of such franchise for failure so to use and exercise such
32 franchise.

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS FOR PUBLIC PURPOSES.

PART I. MUSEUMS; CULTURAL CENTERS, ETC.

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.

PART II. AREA DEVELOPMENT CORPORATIONS.


PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit organizations.
§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations; limitations and restrictions.

(a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) When a nonstock, nonprofit corporation, chartered under the laws of this state, (1) is organized for the construction, maintenance or operation of museums or facilities for the appreciation or enjoyment of art, music, dance, drama, nature or science, and provides in its charter that its buildings or facilities, or a designated portion thereof, shall be devoted to the use by the public for all purposes set forth in such charter without regard to race, religion, national origin or economic circumstance, and free from charge except such as is necessary to provide the means to keep the buildings, facilities and grounds in proper condition and repair, and to pay the cost of insurance, care, management, operations, teaching and attendants, so that the general public may have the benefit of such establishment for the uses set forth in such corporation's charter at as little expense as possible, (2) provides in its charter that no member trustee, or member of the board of directors (by whatever name the same may be called), of the corporation shall receive any compensation, gain or profit from such corporation, and (3) is operated in compliance with such charter provisions as aforesaid, then, notwithstanding any statutory or municipal charter provisions to the contrary, the municipality in which such nonstock, nonprofit corporation is operating, if any, and the county court of any county in which such corporation is operating, may appropriate funds subject to the provisions and limitations set forth in subsections
(c) and (d) of this section, to such nonstock, nonprofit corporation, for such public purposes: Provided, That such funds may be expended and otherwise utilized only within the municipality or county, as the case may be, making the appropriation thereof. In every such case, the governing body of any such municipality or the county court and such corporation may agree for the appointment of additional members to the board of directors of such corporation by such governing body or county court, either as regular members or in an ex officio capacity.

(c) No funds appropriated by a municipality or county court under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality or the county court, as the case may be, which made such appropriation, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body or county court, as the case may be, and shall in every event without demand make to such governing body or county court an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by any municipality or county court under the authority of this section give rise to or create any indebtedness on the part of the municipality, the governing body of such municipality, the county, such county court, any member of such governing body or the county court or any municipal or county official or employee.

PART II. AREA DEVELOPMENT CORPORATIONS.


Every municipality is hereby empowered and authorized to become associated with and to participate as a member of any area development corporation chartered as a nonstock, nonprofit corporation under the laws of this state for the purposes of promoting, developing and advancing the business prosperity and economic welfare of the area embraced, its citizens and its indus-
trial complex; encouraging and assisting through loans, investments or other business transactions in locating new business and industry within such area and re-habilitating and assisting existing businesses and industries therein; stimulating and promoting the expansion of all kinds of business and industrial activity which will tend to advance, develop and maintain economic stability and provide maximum opportunities for employment in such area; cooperating and acting in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within such area; and furnishing money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite for the promotion, development and conduct of all types of business, agricultural and recreational activities within each area:

Provided, That it is specified in the charter of such corporation that no member trustee or member of the board of directors (by whatever name the same may be called) of the corporation shall receive any compensation, gain or profit from such corporation, and such corporation is operated in compliance with all charter provisions. The Legislature hereby finds that the aforesaid purposes of such nonstock, nonprofit area development corporations are for the general welfare of the public and are public purposes. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

Every municipality is hereby empowered and authorized to contribute to the cost of the operations and projects of such area development corporation by appropriating for such purposes money from its general funds not otherwise appropriated. Every municipality is hereby empowered and authorized, notwithstanding any other provision of this chapter to the contrary, to transfer and convey to such area development corporation property of any kind heretofore acquired by such municipality for or adaptable to use in industrial and economic development, such transfers or conveyances to be without consideration or for such price and upon
such terms and conditions as such municipality shall deem proper.

Every municipality shall require as a condition of any such appropriation, transfer or conveyance that the area development corporation receiving the same shall upon demand at any time by such municipality make a full and complete accounting thereto of all receipts and disbursements and shall in every event without demand, within thirty days after the close of the quarter, make to such municipality a report containing an itemized statement of its receipts and disbursements during the preceding quarter, and make available to audit and examination by the office of the state tax commissioner and any other proper public official or body its books, records and accounts.

Under no circumstances whatever shall any action taken by any municipality under the authority of this section give rise to or create any indebtedness on the part of the municipality, the governing body of such municipality, any member of such governing body or any municipal official or employee.

PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit organizations.

(a) Notwithstanding any statutory or charter provisions to the contrary, every municipality is, subject to the provisions and limitations set forth in subsections (b) and (c) of this section, hereby empowered and authorized to make application for, receive and accept grants from the federal government, or any agency thereof, for, on behalf of and for use by a nonstock, nonprofit corporation chartered under the laws of this state for charitable, patriotic or philanthropic or other public purposes and operating within the corporate limits of said municipality. The Legislature hereby finds that the support of such nonstock, nonprofit corporations is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) No federal funds received by a municipality
under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body.

(c) Under no circumstances whatever shall any action taken by any municipality under the authority of this section give rise to or create any indebtedness on the part of such municipality, the governing body of such municipality, any member thereof or any municipal official or employee.

ARTICLE 33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS.

PART I. COMMISSIONS AUTHORIZED; ORGANIZATION OF COMMISSIONS.

§8-33-1. Municipal, county and municipal-county building commissions authorized.

§8-33-2. Commissions are public corporations.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

PART III. INDEBTEDNESS; SURPLUSES; EXEMPTION FROM TAXATION; FUNDS; PROPERTY.

§8-33-5. Indebtedness of commission.

§8-33-6. Disposition of surplus of commission.

§8-33-7. Property, bonds and obligations of commissions exempt from taxation.

§8-33-8. Contributions to commissions; funds and accounts of commissions; reports; audits.

§8-33-9. Authority to convey or transfer property to commission.

§8-33-10. Sale of property by commission.

PART IV. WORKMEN'S COMPENSATION; CONSTRUCTION.


§8-33-12. Liberal construction.

PART I. COMMISSIONS AUTHORIZED; ORGANIZATION OF COMMISSIONS.

§8-33-1. Municipal, county and municipal-county building commissions authorized.

1 Any municipality or county, or one or more municipalities and any county, or any two or more municipalities within any county or counties, or any combination thereof,
may create and establish a municipal building commission, a county building commission, or a municipal-county building commission, as the case may be (hereinafter in this article referred to as commission or commissions). Such commissions shall be formed by an ordinance or order, as appropriate, by each governmental body establishing the same.

§8-33-2. Commissions are public corporations.

Each commission, when created, shall be a public corporation and shall have perpetual existence.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

All property, powers and duties and the management and control of each commission shall be vested in a board consisting of representatives appointed by the governmental body or bodies creating and establishing such commission. In the case of a municipal building commission or a county building commission such board shall consist of not less than three nor more than five members and in the case of a municipal-county building commission each participating municipality shall appoint two members and each participating county shall appoint three members. All members of any board shall be appointed for terms of five years. Prior to making the initial appointments to the board, the governmental body or bodies shall make such initial appointments so that approximately one fifth of the total number of members of the board shall be appointed for a term of one year, approximately one fifth of the total number of members of the board shall be appointed for a term of two years, approximately one fifth of the total number of members of the board shall be appointed for a term of three years, approximately one fifth of the total number of members of the board shall be appointed for a term of four years, and approximately one fifth of the total number of members of the board shall be appointed for a term of five years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.
If any member of any board die, resign or for any reason cease to be a member of the board, the governmental body which such member represented shall appoint another individual to fill the unexpired portion of the term of such member. No more than two thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office (other than the office of notary public) or employment under the United States of America, the state of West Virginia, any county or political subdivisions thereof, or any political party. All members of any board shall be residents of the municipality or county for which appointed. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

PART II. POWERS OF COMMISSIONS.

§8-33-4. Powers.

1. Each commission shall have plenary power and authority to:

   (a) Sue and be sued;
   (b) Contract and be contracted with;
   (c) Adopt, use and alter a common seal;
   (d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;
   (e) Elect such officers, appoint such committee and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;
   (f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
(g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;

(h) Sell, encumber or dispose of any property, real or personal;

(i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;

(j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each commission is a "governing body" as that term is used in said article sixteen only;

(k) Exercise the power of eminent domain in the manner provided in chapter fifty-four of this code for business corporations, for the purposes set forth in subdivision (f) of this section, which purposes are hereby declared public purposes for which private property may be taken or damaged;

(l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper, but when any municipality or county court is a lessee under any such lease, such lease must contain a provision granting to such municipality or county court the option to terminate such lease during any fiscal year covered thereby; and

(m) Do all things reasonable and necessary to carry out the foregoing powers.

PART III. INDEBTEDNESS; SURPLUSES; EXEMPTION FROM TAXATION; FUNDS; PROPERTY.

§8-33-5. Indebtedness of commission.

1 No constitutional or statutory limitation with respect to the nature or amount of indebtedness which may be
3 incurred by municipalities, counties or other public or
4 governmental bodies shall apply to the indebtedness of
5 a commission. No indebtedness of any nature of a com-
6 mission shall constitute an indebtedness of any munici-
7 pality or county creating and establishing such commis-
8 sion or a charge against any property of said munici-
9 palities or counties. No indebtedness or obligation in-
10 curred by any commission shall give any right against
11 any member of the governing body of any municipality
12 or any member of the county court of any county or any
13 member of the board of any commission. The rights of
14 creditors of any commission shall be solely against the
15 commission as a corporate body and shall be satisfied
16 only out of property held by it in its corporate capacity.

§8-33-6. Disposition of surplus of commission.
1 If a commission should realize a surplus over and above
2 the amount required for the improvement, maintenance
3 and operation of its facilities and for meeting all required
4 payments on its obligations, it shall set aside such reserve
5 for future improvements, maintenance, operations and
6 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 obliga-
10 tions have been paid and discharged in full, the commis-
11 sion shall, at the end of each fiscal year, set aside the
12 reserve for future improvements, maintenance, opera-
13 tions and contingencies, as aforesaid, and then pay the
14 residue of such surplus, if any, to the governmental bodies
15 creating and establishing such commission in direct pro-
16 portion to their financial contribution.

§8-33-7. Property, bonds and obligations of commissions
exempt from taxation.
1 Each commission shall be exempt from the payment
2 of any taxes or fees to the state or any subdivisions
3 thereof or any municipalities or to any officer or em-
4 ployee of the state or of any subdivision thereof or of
5 any municipality. The property of each commission
6 shall be exempt from all municipal and county taxes.
7 Bonds, notes, debentures and other evidences of in-
8 debtedness of each commission are declared to be issued
9 for a public purpose and to be public instrumentalities, 
10 and, together with interest thereon, shall be exempt 
11 from taxation.

§8-33-8. Contributions to commissions; funds and accounts of 
commissions; reports; audits.

1 Contributions may be made to each commission from 
2 time to time by the governmental body or bodies cre-
3 ating and establishing it, and persons that shall desire 
4 to do so. All funds received by each commission shall 
5 be deposited in such banking institution or banking 
6 institutions as the board may direct and shall be with-
7 drawn therefrom in such manner as the board may 
8 direct. Each commission shall keep strict account of 
9 all of its receipts and expenditures and shall each quarter 
10 make a quarterly report thereon to the municipalities, 
11 counties and persons which have made contributions to 
12 it, and such report shall contain 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, each commission shall 
17 make an annual report containing an itemized statement 
18 of its receipts and disbursements for the preceding fiscal 
19 year and publish the same as a Class II-0 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 each county in which the 
23 commission’s facilities are located. The books, records 
24 and accounts of each commission shall be subject to 
25 audit and examination by the state tax commissioner 
26 and by other proper public official or body in the manner 
27 provided by law.

§8-33-9. Authority to convey or transfer property to com-
mission.

1 Any municipality or county is hereby empowered and 
2 authorized to convey or transfer to a commission which 
3 it has created and established either alone or with 
4 another governmental body, property of any kind, here-
5 tofore acquired by said municipality or county, to carry 
6 out the purposes of said commission. When property
is conveyed or transferred as aforesaid, the conveying or transferring municipality or county court and the board shall agree in writing at the time the conveyance or transfer is made as to the fair market value of such property. The members of the board appointed by any municipality or county court conveying or transferring property shall not participate in connection with, otherwise than to provide a quorum, or vote on, any motion or resolution by which the board agrees to the fair market value of the property so conveyed or transferred.

§8-33-10. Sale of property by commission.
1 In the event a majority of the governmental bodies contributing funds or property to a commission shall so direct in writing and if all indebtedness of said commission has been paid in full, the commission shall sell all or any part of its properties and assets so directed and distribute the proceeds thereof among the governmental bodies creating and establishing it in direct proportion to their contributions of funds or property to the commission.

PART IV. WORKMEN'S COMPENSATION; CONSTRUCTION.

1 Each commission shall subscribe to the workmen's compensation fund of this state and pay all necessary premiums thereto, to the end that all eligible employees of such commission shall be covered by workmen's compensation.

§8-33-12. Liberal construction.
1 The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any constitutional, statutory or charter provisions which may now or hereafter be in effect.

ARTICLE 34. JUDICIAL REVIEW.

§8-34-1. General right of appeal.
1 Every person sentenced under this chapter by any mayor or police court judge or municipal court judge
to imprisonment or to the payment of a fine of ten
dollars or more (and in no case shall a fine of less than
ten dollars be given if the defendant, his agent or attorney
object thereto) shall be allowed an appeal de novo to the
circuit or other court of the county exercising jurisdic-
tion over appeals in criminal cases from justices of
the peace courts in the county, upon entering into an
appeal bond with surety deemed sufficient in a penalty
double the amount of fine and costs, with condition that
the person appealing will perform and satisfy any judg-
ment which may be rendered against him by the circuit
or such other court on such appeal. Any such appeal
must be perfected within ten days from and after the
date upon which the sentence is imposed. When the
municipality is located in more than one county, the
appeal shall be taken to the circuit court or other court
as aforesaid of the county in which the major portion
of the territory of the municipality is located. If such
appeal be taken, the appeal bond and other papers in
the case shall be forthwith delivered by the mayor,
recorder or police court judge or municipal court judge
to the clerk of the court to which such appeal is taken,
and such court shall proceed to try the case as upon
indictment or presentment, and render such judgment,
without remanding the case, as the law and the evi-
dence may require. If the judgment be against the
accused, it shall include the costs incurred in the pro-
ceedings before the mayor or police court judge or
municipal court judge, as well as in the said court.

ARTICLE 35. DISSOLUTION OF MUNICIPALITIES.

PART I. FORFEITURE OF CHARTER OR CERTIFICATE
OF INCORPORATION.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice;
dissolution of municipality.

PART II. VOLUNTARY DISSOLUTION OF CLASS III CITY OR
CLASS IV TOWN OR VILLAGE.

§8-35-2. Voluntary dissolution of Class III city of Class IV town or
village.
PART I. FORFEITURE OF CHARTER OR CERTIFICATE OF INCORPORATION.

§8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

Any municipality heretofore incorporated or which shall hereafter be incorporated and which has no substantial indebtedness, and which shall fail for one year to exercise its corporate powers and privileges, or which has not twenty qualified voters, or in which there were not twenty legal votes cast at its last election, or the population of which shall be reduced below one hundred persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited.

The county court of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture of such charter or certificate of incorporation, upon the petition of one or more of its inhabitants, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county court of such county, served upon the mayor and recorder or on the last mayor or recorder thereof, shall be sufficient notice upon which such county court shall so act, and upon the proper proof of the allegations of such petition, any such charter or certificate of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts of such municipality shall be ordered paid and the forfeiture and dissolution shall not become effective until such debts have been paid. Upon such forfeiture and dissolution all interest of such municipality in corporate funds, if any, in excess of the amounts required to pay corporate debts shall be and the same is hereby transferred to and vested in the state of West Virginia to be controlled by the state auditor. If the territory so incorporated, or a major part thereof, either in area or in population, shall, however, within one year next after such declaration of forfeiture and dissolution by the county court be reincorporated under this chapter,
then the auditor of the state of West Virginia shall convey unto such new municipality all of the rights of the state of West Virginia in and to the corporate property, moneys, claims, demands and taxes collected or uncollected, of the former municipal corporation so dissolved.

PART II. VOLUNTARY DISSOLUTION OF CLASS III CITY OR CLASS IV TOWN OR VILLAGE.

§8-35-2. Voluntary dissolution of Class III city or Class IV town or village.

Upon petition of twenty-five or more percent of the legal voters of any Class III city or Class IV town or village, the governing body thereof shall submit to the qualified voters of such municipal corporation at the next regular municipal election, or at a special municipal election called for that purpose, the question of continuing or dissolving such municipal corporation. It shall be the responsibility of the governing body to verify the total number of eligible petitioners and to determine whether the required percentage of petitioners has been obtained. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

□ For Continuance of Municipal Corporation
□ For Dissolution of Municipal Corporation

If a majority of the legal votes cast be for dissolution, then such municipal corporation shall by operation of law be dissolved upon termination of the term of the governing body then in office: Provided, That all debts or other obligations outstanding against such municipal corporation shall be settled in full. If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of section one of this article or this section two: Provided, however, That another election under the provisions of this section two shall not be held within two years of the last such election. Any election under the provisions of this section two shall be held, conducted and super-
intended and the result thereof ascertained, certified, returned and canvassed in the same manner and by the same persons as an election for municipal officers of such municipal corporation.

ARTICLE 36. CONSTITUTIONALITY AND SEVERABILITY.

§8-36-1. Constitutionality and severability.

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

(b) The provisions of subsection (a) of this section shall be fully applicable to all future amendments or additions to this chapter, with like effect as if the provisions of said subsection (a) were set forth in extenso in every such amendment or addition and were reenacted as a part thereof.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 10. COUNTY COURTS; MUNICIPALITIES; GENERAL AUTHORITY AND DUTIES AS TO ROADS, ETC.

§17-10-17. Action for damages occasioned by defective road, bridge, street, etc.

Any person who sustains an injury to his person or property by reason of any road or bridge under the control of the county court or any road, bridge, street, alley
4 or sidewalk in any incorporated city, town or village being out of repair due to the negligence of the county court, incorporated city, town or village may recover all damages sustained by him by reason of such injury in an action against the county court, city, town or village in which such road, bridge, street, alley or sidewalk may be, except that such city, town or village shall not be subject to such action unless it is required by charter, general law or ordinance to keep the road, bridge, street, alley or sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the action and remedy shall be against the county court. When judgment is obtained against the county court, such court shall at the time of the laying of the next annual levy, levy upon the taxable property of the district in which such injury is sustained a sufficient sum to pay such judgment with interest and costs, and the costs of collecting the same, and when it is obtained against the city, town or village the proper municipal authorities thereof shall lay such levies at the time of levying the next annual levy on the property subject to taxation in such city, town or village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit court of the county for which such county court acts or in which such city, town or village or the major portion of the territory thereof is located shall compel the laying of such levy, or the payment of such judgment, or both, by mandamus.

CHAPTER 87
(House Bill No. 910—By Mrs. Withrow and Miss Crandall)

(Passed March 4, 1969; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article two of said chapter; and
to further amend said article two by adding thereto a new section, designated section twenty-two-a, relating to definitions of game animals and game fish; the hunting, tagging and reporting of black bear; and permission to hunt black bear during closed season.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Organization and Administration.
2. Game and Fish.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a different meaning:
2 "Agency" means any branch, department or unit of the state government, however designated or constituted.
3 "Alien" means any person not a citizen of the United States.
4 "Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.
5 "Board" means the water resources board of the department of natural resources.
6 "Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.
7 "Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.
8 "Commission" means the natural resources commission.
9 "Commissioner" means a member of the advisory commission of the natural resources commission.
“Director” means the director of the department of natural resources.

“Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs, or other amphibians, aquatic turtles, and other forms of aquatic life used as fish bait.

“Fur-bearing animals” shall include (a) the mink, (b) the weasel, (c) the muskrat, (d) the beaver, (e) the opossum, (f) the skunk, and civet cat, commonly called polecat, (g) the otter, (h) the red fox, (i) the gray fox, (j) the wildcat, bobcat or bay lynx, (k) the raccoon and (l) the fisher.

“Game” means game animals, game birds and game fish as herein defined.

“Game animals” shall include (a) the elk, (b) the deer, (c) the cottontail rabbits and hares, (d) the fox squirrels, commonly called red squirrels, and gray squirrels, and all their color phases—red, gray, black or albino, (e) the raccoon, and (f) the black bear.

“Game birds” shall include (a) the Anatidae, commonly known as swan, geese, brants and river and sea ducks, (b) the Rallidae, commonly known as rails, sora, coots, mudhens, and gallinales, (c) the Limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellowlegs, and curlews, (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species), and (e) the Columbidae, commonly known as doves and the Icteridae, commonly known as blackbirds, redwings and grackle.

“Game fish” shall include (a) brook trout, (b) brown trout, (c) rainbow trout, (d) golden rainbow trout, (e) Kokanee salmon, (f) largemouth bass, (g) smallmouth bass, (h) Kentucky or spotted bass, (i) striped bass, (j) pickerel, (k) muskellunge, (l) walleye pike, or pike perch, (m) northern pike, (n) rock bass, (o) white bass, (p) white and black crappie, (q) all sunfish and (r) channel and flathead catfish.

“Hunt” means to pursue, chase, catch or take any wild birds or wild animals.
"Lands" means land, waters, and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or non-game birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act," for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not resided continuously in the state of West Virginia for a period of six months immediately prior to the date of his application for a license or permit except any full-time student of any college or university of this state, even though he be paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person," except as otherwise defined elsewhere in this chapter, means the plural "persons," and shall include individuals, partnerships, corporations, or other legal entity.

"Preserve" means all duly licensed private game farm lands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds."

"Resident" means any person who is a citizen of the United States and who has resided continuously in the state of West Virginia for a period of six months or more immediately prior to the date of his application for a license or permit: Provided, That a member of the armed forces of the United States who is stationed beyond the
99 territorial limits of this state, but who was a resident
100 of this state at the time of his entry into such service,
101 and any full-time student of any college or university
102 of this state, even though he be paying a nonresident
103 tuition, shall be considered a resident under the pro-
104 visions of this chapter.
105 “Roadside menagerie” means any place of business,
106 other than a commercial game farm, commercial fish
107 preserve, place or pond, where any wild bird, game bird,
108 unprotected bird, game animal or fur-bearing animal is
109 kept in confinement for the attraction and amusement
110 of the people for commercial purposes.
111 “Take” means to hunt, shoot, pursue, lure, kill, destroy,
112 catch, capture, keep in captivity, gig, spear, trap, ensnare,
113 wound or injure any wildlife, or attempt to do so.
114 “Unprotected birds” shall include (a) the English spar-
115 row, (b) the European starling, (c) the cowbird, and (d)
116 the crow.
117 “Wild animals” means all mammals native to the state
118 of West Virginia occurring either in a natural state or
119 in captivity, except house mice or rats.
120 “Wild birds” shall include all birds other than (a)
121 domestic poultry—chickens, ducks, geese, guinea fowl,
122 peafowls and turkeys, (b) Psittacidae, commonly called
123 parrots and paraquets, and (c) other foreign cage birds
124 such as the common canary, exotic finches and ring dove.
125 All wild birds, either (a) those occurring in a natural
126 state in West Virginia or (b) those imported foreign
127 game birds, such as waterfowl, pheasants, partridges,
128 quail and grouse, regardless of how long raised or held
129 in captivity, shall remain wild birds under the meaning
130 of this chapter.
131 “Wildlife” means wild birds, wild animals, game and
132 fur-bearing animals, fish (including minnows), frogs and
133 other amphibians, aquatic turtles and all forms of aquatic
134 life used as fish bait, whether dead or alive.
135 “Wildlife refuge” means any land set aside by action
136 of the director as an inviolate refuge or sanctuary for the
137 protection of designated forms of wildlife.
ARTICLE 2. GAME AND FISH.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

§20-2-22a. Hunting, tagging and reporting black bear; killing bear destroying property; penalties.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

Each person killing a deer or wild turkey found in a wild state shall immediately after removing the entrails, but in any event, within one hour, and before transporting or removing the carcass in any manner from where it was killed, complete and attach thereto the game tag supplied with his or her hunting license. The game tag shall remain on the carcass until it is dressed for consumption.

If such game bird or game animal has been lawfully killed by a person not required to secure a license, or by a person who has previously killed another species of game bird or game animal for which a game tag is required, or by a person who has lost the tag supplied with his or her license, such person shall make and attach a tag to the carcass within the time specified after such killing. The tag shall bear in plain English, the name and address of the hunter, and the date of killing, or, if holding a license, the license number and the date and county where the game was killed.

The carcass of such game bird or game animal shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

Every failure to have said tag or tags attached, or removing or transporting such animal in any manner, or failure to deliver the carcass to a conservation officer or an official checking station for checking, as herein provided, shall subject the person so neglecting to the penalties provided in this article.

Any deer or wild turkey found and not tagged as herein provided shall be forfeited to the state of West
§20-2-22a. Hunting, tagging and reporting black bear; killing bear destroying property; penalties.

1 No person in any county of this state shall hunt, capture, or kill any black bear, or have in his possession any black bear, or any part thereof, including fresh pelt, except during the open season or as authorized by the director, or as hereinafter provided. A person on killing a bear shall within twenty-four hours after killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. The bear shall have affixed thereto an appropriate tag provided by the department before any part of the bear may be transported more than seventy-five miles from the point of kill. Any bear not properly tagged, or any part of such bear, shall be forfeited to the state for disposal to a charitable institution, or school, or as otherwise designated by the department of natural resources.

It shall be unlawful:

1 (1) To hunt a bear with (a) a shotgun using ammunition loaded with more than one solid ball, or (b) a rifle of less than twenty-five caliber using rimfire ammunition or (c) a crossbow;

2 (2) To kill or attempt to kill any bear through the use of poison, or explosives, or through the use of snares, steel traps or deadfalls other than as authorized herein;

3 (3) To shoot at or kill a cub bear weighing less than one hundred pounds;

4 (4) To have in possession any part of a bear not tagged in accordance with the provisions of this section;

5 (5) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of department personnel: Provided, That the following shall apply to bear destroying property:
(a) Nothing in this article shall be construed to prevent any person, as hereinafter defined, from killing in any legal manner provided by this article, any black bear which such person may find actually engaged in the material destruction of livestock on the property under the control of such person. Notwithstanding the definition of “person” contained in section two, article one of this chapter, the word “person” as used in this section shall mean any person residing on any lands as either the owner or lessee of such lands or as a member of the family of such owner or lessee or as an agent or employee regularly assisting in the care and maintenance of such lands.

Any person suffering damage to livestock may organize a hunt and summon aid from other residents of the state, or nonresidents with prior approval of a representative of the department, for the purpose of destroying the black bear causing said livestock damage: Provided, That a notice of intention to carry out such hunt, containing the names and addresses of all participants, has been given to a representative of the department prior to the beginning of such hunt or within twenty-four hours of the experiencing of said damage. Any such person shall, upon demand of any representative of the department, produce satisfactory evidence that material damage to livestock was caused by a black bear. If such person makes a bona fide attempt to give such notice to a representative of the department without success, he may then proceed with the hunt.

During the progress of a legally organized hunt, the authorized participants may, if necessary, pursue said black bear into any game refuge area, including state forests and state wildlife areas. Said black bear when killed shall be reported within twenty-four hours of killing to a conservation officer or an official state checking station, and the report shall state the weight, sex, date and location of kill of the animal. Any black bear killed and reported in accordance with the provisions of this section may be retained for food by the person organizing the hunt.
(b) Any person who kills a bear in violation of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred nor more than three hundred dollars, or confinement in the county jail for not less than thirty nor more than one hundred days, or both fined and imprisoned within the limitations aforesaid. Any person who violates any other provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty nor more than one hundred dollars. The unlawful killing or capturing of each bear shall be deemed a separate offense: Provided, however, That any person who kills a bear illegally during the open season therefor, and voluntarily reports the same to a conservation officer or other officer shall be fined not less than fifty dollars nor more than one hundred dollars.

CHAPTER 88

(Senate Bill No. 132—By Mr. Gainer and Mr. Fanning)

[Passed March 3, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the policy of the state of West Virginia concerning wildlife resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-1. Declaration of policy.
§20-2-1a. Wildlife resources division; organization and administration.
§20-2-1. Declaration of policy.

1 It is declared to be the public policy of the state of West Virginia that the wildlife resources of this state shall be protected for the use and enjoyment of all the citizens of this state. All species of wildlife shall be maintained for values which may be either intrinsic or ecological or of benefit to man. Such benefits shall include (1) hunting, fishing and other diversified recreational uses; (2) economic contributions in the best interests of the people of this state; and (3) scientific and educational uses.

§20-2-1a. Wildlife resources division; organization and administration.

1 The chief of the division of wildlife resources shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state as defined and constituted in this chapter. He shall organize the division and select competent and qualified personnel therefor so as to effect an orderly, efficient and economical division organization.

CHAPTER 89

(Senate Bill No. 137—By Mr. Gainer and Mr. Fanning)

[Passed February 26, 1969; 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.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it shall be unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

3 (2) Dig out, cut out, or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

4 (3) (a) Make use of, or take advantage of, any artificial light in hunting for, locating, taking, trapping, or killing any wild bird or wild animal; or (b) make use of, or take advantage of, any artificial light in hunting for, taking, attracting, trapping, or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control any firearm, whether cased or uncased, or other implement or device suitable for taking, killing, trapping, skinning, or dressing such wild bird or animal. Any person violating the provisions of division (b) of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned for not less than ten days nor more than one hundred days: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights;

5 (4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

6 (5) Take any beaver or muskrat by any means other than by trap;

7 (6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;
38. (7) Destroy or attempt to destroy needlessly or wilfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

39. (8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for game animals and nonmigratory game birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory game birds, during the open season, in the open fields, open water and open marshes of the state;

40. (9) Except as provided in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trap shooting ground or range and nothing contained in section eighteen, article eight, chapter sixty-one of this code shall prohibit the use of a gun by a licensed hunter before the hour of five o'clock antemeridian on Sunday;

41. (10) To have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;
(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United
States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and game mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), sharp-shinned hawk (Accipiter striatus), Cooper’s hawk (Accipiter cooperii), goshawk (Accipiter gentilis), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosives or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(21) Have both a bow and a gun in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a
point having at least two sharp cutting edges measuring
in excess of three fourths of an inch wide;
(24) Take or attempt to take any wildlife with an
arrow having an explosive head or shaft, a poisoned ar-
row, or an arrow which would affect wildlife by any
chemical action;
(25) Shoot an arrow across any public highway or
from aircraft, motor-driven watercraft, motor vehicle or
other land conveyance;
(26) Permit any dog owned by him or under his con-
trol to chase, pursue or follow upon the track of any game
animal or game bird, either day or night, between the
first day of May and the fifteenth day of August next
following: Provided, That dogs may be trained on game
animals and game birds, except deer and wild turkeys,
and field trials may be held or conducted on the grounds
or lands of the owner or by his bona fide tenant or tenants
or upon the grounds or lands of another person with his
written permission or on public lands, at any time: Pro-
vided, however, That the person training said dogs does
not have firearms or other implements in his possession
during the closed season on such game animals and game
birds, whereby game animals or game birds could be
taken or killed;
(27) Conduct or participate in a field trial, water race
or wild hunt hereafter referred to as trial: Provided, That
any person, group of persons, club or organization may
hold such trial at any time of the year upon obtaining
such permit as is provided for in section fifty-six of this
article. The person responsible for obtaining said permit
shall prepare and keep an accurate record of the names
and addresses of all persons participating in said trial,
and make same readily available for inspection by any
conservation officer upon request; and
(28) Except as provided in section four of this article
no person shall hunt, catch, take, kill or attempt to hunt,
catch, take or kill any wild animal, wild bird or wild fowl
except during the open season established by regulation
of the director as authorized by subdivision six, section
seven, article one of this chapter.
CHAPTER 90  
(House Bill No. 527—By Mr. Ours and Mr. Hawse)

[Passed February 18, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hunting, trapping, fishing on lands of another; damages and compensation.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§20-2-7. Hunting, trapping or fishing on lands of another; damages and compensation.

1. It shall be unlawful for any person to shoot, hunt, fish or trap upon the fenced, enclosed or posted grounds or lands of another person or to peel trees or timber, build fires or do any other act or thing thereon in connection with or auxiliary to shooting, hunting, fishing or trapping on such lands without permission in writing from the owner, tenant or agent of such owner, and every person hunting, fishing, shooting or fowling upon such lands shall have in his possession such written permission when so doing.

11. Any person who, for the purpose of, or while hunting, trapping or fishing, shall, without the permission of the owner, tenant or agent of the owner, enter upon the land of another and while thereon shall kill or injure any domestic animal or fowl, or shall cut, destroy or damage any bars, gates or fence, or any part thereof, or shall leave open any bars or gates thereon resulting in damage to the owner or occupant thereof, shall be guilty of a misdemeanor, and in addition shall be liable to the owner...
or person suffering such damage for all costs and damages resulting therefrom.

It shall be lawful for the owner, lessee, or the person entitled to the possession of such lands, or the agent thereof, to arrest any such person found violating this section and immediately take him before a justice of the peace for trial, and such owner, lessee, person or agent is hereby vested with all the powers and rights of a game protector for such purposes. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

CHAPTER 91

(Senate Bill No. 135—By Mr. Gainer and Mr. Fanning)

[Passed March 5, 1969; in effect January 1, 1970. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the necessity for licensing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.


Except as otherwise provided by law, no resident who has reached his fifteenth birthday and who has not reached his sixty-fifth birthday, and no nonresident shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in
this state without first having secured a license or permit, and then only during the respective open seasons, except that a nonresident who has not reached his fifteenth birthday may fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit. No person under the age of fifteen years shall hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

A resident or nonresident member of any club, organization or association, or persons owning or leasing a game preserve, fish preserve, plant or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law: Provided, however, That resident landowners or their resident children, or bona fide resident tenants of such land may, without a permit or license, hunt and fish on their own land during open seasons in accordance with laws and regulations applying to such hunting and fishing unless such lands have been designated as a wildlife refuge or preserve.

Licenses and permits shall be of the kinds and classes set forth in this article, and shall be conditioned upon the payment of the fees established therefor.

CHAPTER 92

(Senate Bill No. 150—By Mr. Gainer and Mr. Fanning)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-eight, article two, chapter twenty 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 fifty-seven and fifty-eight, all relating to negligent and unlawful shooting and the authority of the director
of the department of natural resources to refuse to issue or revoke licenses or permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GAME AND FISH.

§20-2-38. Refusal or revocation of license or permit.

§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

§20-2-58. Shooting across road or near building or crowd; penalty.

§20-2-38. Refusal or revocation of license or permit.

1 The director may, for cause, refuse a license or permit to any person or revoke a license or permit which had been granted.

4 In case the director desires to refuse a license to any person, he shall notify personnel authorized to issue licenses, in counties where it is expected such license may be sought, of the name and address of such person and such other information in relation thereto as he may desire to give, and such issuing authority shall not issue a license to such person thereafter, and shall report to the director any application made therefor. In case any issuing authority shall, after receiving such notice knowingly issue such license, he shall be guilty of a misdemeanor. The director may revoke any such license so wrongfully issued. The violation of any of the provisions of this chapter by any person holding a license shall be sufficient cause for the director to refuse or revoke a license.

19 All licenses and permits authorized by this chapter to be granted shall be deemed to have been granted by the director, and the power and authority to revoke such licenses is vested in the director. Upon the revocation of any license, the one to whom the same was issued shall, upon having knowledge of such revocation, forth-
with deliver the license and tag so issued to him to the
director, his agent, or the clerk of any county court. A
clerk shall transmit the same to the director.

The hunting license of any person convicted under
section fifty-seven, article two, chapter twenty of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, shall be revoked, and such person shall
not be issued any other hunting license for a period of
five years: Provided, That any person heretofore or
hereafter convicted of any offense under section eleven,
article seven, chapter sixty-one, or under section fifty-
seven, article two, chapter twenty, other than a negligent
shooting which has resulted in the killing of a human
being, after the expiration of two years may petition
the director for reinstatement of all hunting license
privileges and if the director upon a hearing and full
investigation finds that the applicant has paid and sat-
sified all claims against him, if any, and the circumstances
at the time and the nature of the offense indicate that
he is not likely again to commit a like or similar offense
and that the public good does not require that the ap-
plicant’s hunting privileges remain revoked or suspended,
the director may enter an order restoring full hunting
privileges to the applicant.

§20-2-57. Negligent shooting, wounding or killing of human
being or livestock while hunting; penalty.

It shall be unlawful for any person, while engaged in
hunting or pursuing wild animals, wild birds or wild fowl,
carelessly or negligently to shoot, wound or kill any hu-
man being, or any livestock, or destroy or injure any other
chattels or property.

Any person who, in the act of hunting, pursuing, taking
or killing of wild animals or wild birds, in any manner
injures any person or property shall file with the director
a full description of the accident or other casualty, in-
cluding such information as the director may require.
Such report must be filed during a period not to exceed
seventy-two hours following such incident.

Any person violating this section shall be deemed
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not exceeding one thousand dollars, and, in
the discretion of the court trying the case, may in addi-
tion thereto be confined in the county jail for a period not
exceeding one year.

§20-2-58. Shooting across road or near building or crowd;
penalty.

It shall be unlawful for any person to shoot or discharge
any firearms across or in any public road in this state, at
any time, or within four hundred feet of any schoolhouse
or church, or within five hundred feet of any dwelling
house, or on or near any park or other place where per-
sons gather for purposes of pleasure, and any person vio-
lating this section shall be deemed guilty of a misde-
meanor.

CHAPTER 93

(House Bill No. 701—By Mr. Hawse and Mr. Bowman)

[Passed February 18, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section fifty-six, article two,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to permits
to hold a field trial, water race or wild hunt; participants
to have hunting license exemption.

Be it enacted by the Legislature of West Virginia:

That section fifty-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.

§20-2-56. Permit to hold a field trial, water race or wild hunt;
license exemption.

The director may issue a permit to any person, group
of persons, club or organization to hold or conduct a field
trial, water race or wild hunt, hereinafter referred to
as a trial, upon receipt of a written application setting
forth: (1) The name of the person, group of persons, club or organization, (2) the type or kind of trial, (3) the place and county in which the trial is to be held, and (4) the period or date on which the trial is to be held. The fee for the permit shall be five dollars.

No person participating in a field trial, water race or wild hunt being held under a permit authorized by this section shall be required to possess a state hunting license.

CHAPTER 94

(House Bill No. 695—By Mr. Hawse and Mr. Bowman)

[Passed February 19, 1969; in effect ninety days 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 fifty-nine, relating to authority for the director of natural resources to issue a license to take fish and mussels for commercial purposes.

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 fifty-nine, to read as follows:

ARTICLE 2. GAME AND FISH.

§20-2-59. License to take fish and mussels for commercial purposes in certain waters.

1 The director may issue a license to any resident of West Virginia or Ohio to take fish or mussels for commercial purposes from any portion or all of the main stem of the Ohio river bordering West Virginia. Said license shall be required of every person engaged at any time in taking fish or mussels for commercial purposes.
All nets, traps or other devices used to take fish or mussels according to the provisions of this section shall be plainly marked with a durable plate or tag bearing the name and address of the owner of said nets, traps or other devices and an accurate report of any fish or mussels caught therein shall be submitted to the director by the license holder. Species of fish which may be taken, seasons for taking, type of gear, catch limitations, and the frequency and content of said report and other necessary requirements shall be determined by the director in his rules and regulations.

The fee for such license shall be twenty-five dollars for West Virginia residents and one hundred dollars for Ohio residents and the license shall expire on the first day of January following the date of issue.

CHAPTER 95

(House Bill No. 747—By Mr. Hawse and Mr. Edgar)

[Passed March 8, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six and ten, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to forest fire seasons and the prevention of forest fires.

Be it enacted by the Legislature of West Virginia:

That sections five, six and ten, 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.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

§20-3-6. Failure of person to extinguish fire started or used by him; escape of fire to property of another; throwing lighted material on forest land.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires.
§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

The periods of each year between March first and May thirty-first, inclusive, and October first and December thirty-first, inclusive, are hereby designated as forest fire seasons. No person shall during any such fire season, except between the hours of five o'clock P.M. eastern standard time and five o'clock A.M. eastern standard time, set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials. Such prohibition of fires between five o'clock A.M. eastern standard time and five o'clock P.M. eastern standard time shall not be construed to include (1) small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of ten feet, and (2) burning which may be conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow. Any person who sets or causes to be set any fire permitted by this section shall not leave such fire unattended for any period of time.

The director or his designated appointees or employees may issue permits authorizing fires prohibited by the preceding paragraph. Such permits may be granted on such conditions and for such periods of time as the director deems necessary to prevent danger from fire to life or property, and noncompliance with any term of the permit shall be a violation of this section. Any permit which was obtained through wilful misrepresentation shall be invalid. All permit holders shall take all necessary and adequate precautions to confine and control any fire permitted by the authorization; failure to take such action shall be a violation of this section and shall be justification for the director’s obtaining a court order requiring the permit holder to extinguish and cease using fires during the forest fire season.

When the director considers it necessary to prevent danger from fire to life or property, he may, with the prior approval of the governor, prohibit the starting of and require the extinguishment of any fire in any forest area.
designated by the director, and such action may include any fire for which a permit has been issued under the preceding paragraph. In addition, if so deemed necessary, the director may, with the prior approval of the governor, designate any forest area as a danger area and prohibit entry thereon or use thereof except for the purposes and on the conditions he designates. The director by proclamation shall establish such areas and designate which fires are prohibited therein; and if a danger area is established, he shall announce the purposes for which and conditions under which entry thereon or use thereof may be made. Action hereunder may be taken by the director at any time during the year. Notice of any proclamation hereunder shall be posted on each primary road at the entrance to the designated areas and copies of the proclamation shall be furnished at the time of posting to newspapers, radio stations and television stations which serve the area designated. The proclamation shall not be effective until twenty-four hours after it is posted as herein provided. Any proclamation hereunder shall remain in force until the director, with the approval of the governor, by order terminates it. The order shall designate the time of termination, and notice of any such order shall be furnished to each newspaper, radio station and television station which received a copy of the proclamation. The posted notices shall be removed as soon as possible after termination of any such proclamation. Any person who starts or fails to extinguish a fire so prohibited or enters or uses a danger area otherwise than permitted shall be guilty of a violation of this section.

§20-3-6. Failure of person to extinguish fire started or used by him; escape of fire to property of another; throwing lighted material on forest land.

1 Any person who, by himself, or by his servants, agents or guides, or as a servant, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adja-
cent to or in any forest land in this state, shall, before
leaving such fire for any period of time, totally extin-
guish the same.

Any person or his agent or employee who shall set or
cause to be set any fire at any time in the use and occupa-
tion of any land on which the burning was being done,
or who shall permit any such fire to escape to the lands
of another, shall be in violation of the provisions of this
section.

A person shall not at any time throw or place any
lighted match, cigar, cigarette, firecracker or lighted ma-
terial on any forest land, private road, public highway or
railroad right-of-way within this state.

Any person who violates any provision of this section
shall be guilty of a misdemeanor.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard
reduction to protect against fires.

No person, firm or corporation shall use or operate in
forest land, or within one eighth of a mile therefrom, a
sawmill, a power shovel, or an engine or machine capa-
ble of throwing sparks, unless the equipment is pro-
vided with an adequate spark arrester. Escape of fire from
such equipment shall be prima facie evidence that such
appliance was not maintained properly in compliance
with this section.

Any person, firm, or corporation owning any land and
knowing of inflammable waste disposal on said land,
and any person, firm, or corporation using any land for
the purpose of inflammable waste disposal, shall remove
annually all grass, brush, debris and other inflammable
material adjacent to such disposal areas to provide ade-
quate protection to prevent the escape of fire to adjacent
lands. Escape of fire from any such disposal area shall
be prima facie evidence that this section had not been
complied with.

Any person, firm or corporation violating this section
shall be guilty of a misdemeanor.
AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all relating generally to water resources, the water pollution control act, and law enforcement, and more particularly to the definitions of the terms, the general powers and duties of the chief of the division of water resources and the water resources board with respect to water pollution, cooperation with other governments and agencies, requirements for permits for specified activities, making pollution unlawful and declaring it to be a public nuisance, establishment of water quality standards, application for permits, permit fees, procedures concerning permits, providing for the appointment of a responsible agent as attorney in fact for holders of permits, the transfer of permits, orders to compel compliance with permits, information to be filed, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service or orders, providing for discretion of chief to withhold issuance of order, duty to proceed with remedial action upon receipt of permit, emergency orders, progress reports, compliance with remedial orders, continuing jurisdiction, 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, the preservation of certain rights and remedies, and that said article five-a is for the benefit of the state only.
Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty 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 four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-3. General powers and duties of chief of division and board with respect to pollution.
§20-5A-4. Cooperation with other governments and agencies.
§20-5A-5. Prohibitions; permits required.
§20-5A-6. Form of application for permit; information required; fees.
§20-5A-7. Procedure concerning permits required under article; transfer of permits.
§20-5A-8. Inspections; orders to compel compliance with permits; service of orders; prior permits.
§20-5A-8b. Responsible agent; duties, notification of change.
§20-5A-9. Information to be filed by certain persons with division of water resources; tests.
§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.
§20-5A-11a. Power of eminent domain; procedures; legislative finding.
§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.
§20-5A-14. Control by state as to pollution; continuing jurisdiction.
§20-5A-15. Appeal to water resources board.
§20-5A-17. Injunctive relief.
§20-5A-18. Violations; criminal penalties.
§20-5A-20. Existing rights and remedies preserved; article for benefit of state only.


1 Unless the context in which used clearly requires a different meaning, as used in this article:
2 (a) “Director” shall mean the director of the department of natural resources;
3 (b) “Board” shall mean the state water resources board;
(c) "Chief" shall mean the chief of the division of water resources of the department of natural resources;

(d) "Person," "persons" or "applicant" shall mean any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency; political subdivision; county court; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;

(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses;

(f) "Pollution" shall mean (1) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (A) contaminate or substantially contribute to the contamination of any of such waters, or (B) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commerical, industrial, agricultural, recreational, scenic or other legitimate uses; and shall also mean (2) the
discharge, release, escape, deposit, or disposition, directly
or indirectly of treated or untreated sewage, industrial
wastes or other wastes, of whatever kind or character, in
or near any waters of the state in such condition, manner
or quantity, as does, will, or is likely to reduce the quality
of the waters of the state below the standards established
therefor in the rules and regulations of the board;

(g) "Sewage" shall mean water-carried human or
animal wastes from residences, buildings, industrial
establishments or other places, together with such ground
water infiltration and surface waters as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous,
solid or other waste substance, or a combination thereof,
resulting from or incidental to any process of industry,
manufacturing, trade or business, or from or incidental to
the development, processing or recovery of any natural
resources; and the admixture with such industrial wastes
of sewage or other wastes, as hereinafter defined, shall
also be considered "industrial wastes" within the meaning
of this article;

(i) "Other wastes" shall mean garbage, refuse, de-
cayed wood, sawdust, shavings, bark and other wood
debris and residues, sand, lime, cinders, ashes, offal, night
soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other
materials and substances not sewage or industrial wastes
which may cause or might reasonably be expected to
cause or to contribute to the pollution of any of the
waters of the state;

(j) "Establishment" shall mean an industrial establish-
ment, mill, factory, tannery, paper or pulp mill, mine, col-
liery, breaker or mineral processing operation, quarry, re-
finery, well, and each and every industry or plant or
works or activity in the operation or process of which
industrial wastes, or other wastes are produced;

(k) "Sewer system" shall mean pipelines or conduits,
pumping stations, force mains and all other constructions,
facilities, devices and appliances appurtenant thereto,
used for collecting or conducting sewage, industrial
wastes or other wastes to a point of disposal or treat-
ment;
(l) "Treatment works" shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;

(m) "Disposal system" shall mean a system for treating or disposing of sewage, industrial wastes, or other wastes, or the effluent therefrom, either by surface or underground methods, and shall be construed to include sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;

(n) "Outlet" shall mean the terminus of a sewer system or the point of emergence of any water-carried sewage, industrial wastes, or other wastes, or the effluent therefrom, into any of the waters of this state;

(o) "Activity" or "activities" shall mean any activity or activities for which a permit is required by the provisions of section five of this article;

(p) "Disposal well" shall mean any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

(q) "Well" shall mean any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" shall not have included within its meaning any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and
(r) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§20-5A-3. General powers and duties of chief of division and board with respect to pollution.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state. The department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(2) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;
(4) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(5) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(6) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for pollution control and abatement;

(7) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(8) To develop programs for the control and reduction of the pollution of the waters of the state;

(9) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, regulations, permits and orders issued pursuant to the provisions of this article;

(10) In cooperation with the college of engineering at West Virginia University, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or contributions received as aforesaid shall be expended by the chief according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the department;

(11) To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such
permits as are required by this article, or as he deems necessary to carry out the provisions of this article or to carry out the rules and regulations adopted pursuant to the provisions of this article; and

(12) To require any and all persons directly or indirectly discharging, depositing or disposing of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with the division of water resources such information as the chief may require in a form or manner prescribed by him for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of any such discharge, deposit, escape, release or disposition.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To cooperate with any interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to the control and reduction of water pollution; and

(2) To adopt, modify, repeal and enforce rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, (A) implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) establishing standards of quality for the waters of the state under
such conditions as the board may prescribe for the pre-
vention, control and abatement of pollution.

(c) The board is hereby authorized to hire one or
more individuals to serve as hearing examiners on a
full or part-time basis. Such individuals may be at-
torneys at law admitted to practice before any circuit
court of this state. All such hearing examiners shall be
individuals authorized to take depositions under the
laws of this state.

(d) The board, or any member thereof, and the chief,
and their duly authorized representatives, shall have
the power and authority to make investigations, inspec-
tions and inquiries concerning compliance with the pro-
visions of this article, or any order made and entered
in accordance with the provisions of this article, or any
rule or regulation promulgated by the board, or with
the terms and conditions of any permit issued in accord-
ance with the provisions of section seven of this article.
In order to make such investigations, inspections and
inquiries, the board, or any member thereof, and the
chief, and their duly authorized representatives, shall
have the power and authority to enter at all reasonable
times upon any private or public property, subject to
responsibility for their own safety and for any damage
to the property entered. All persons shall cooperate
fully with the person entering such property for such
purposes. Upon refusal of the person owning or con-
trolling such property to permit such entrance or the
making of such inspections, investigations and inquiries,
the board or any member thereof or the chief may apply
to the circuit court of the county in which such prop-
erty is located, or to the judge thereof in vacation, for
an order authorizing such entrance and the making of
such inspections, investigations and inquiries; and juris-
diction is hereby conferred upon such court or judge to
enter such order upon a showing that the relief asked
is necessary for the proper enforcement of this article.
A dwelling occupied for residential purposes shall not
be entered without a search warrant.

(e) The board is hereby authorized and empowered
to investigate and ascertain the need and factual bases for
the establishment of public service districts as a means
of controlling and reducing pollution from unincorporated
communities and areas of the state, and to present re-
ports and recommendations thereon to the county courts
of the areas concerned, together with a request that such
county courts create a public service district or dis-
tricts, as therein shown to be needed and required and
as provided in article thirteen-a, chapter sixteen of this
code. In the event a county court shall fail to act to
establish a county-wide public service district, the board
shall act jointly with the state director of health, the
director of the department of natural resources and the
chief of the division of water resources to order the
county court to take action to establish such public ser-
vice district or districts as may be necessary to control, re-
duce or abate the pollution, and when so ordered the
county court members must act to establish such a county-
wide public service district.


1 (a) In order to carry out the purposes of this article,
the board may promulgate rules and regulations setting
standards of water quality to be applicable to the waters
of this state, which standards of quality shall be such
as to protect the public health and welfare, wildlife, fish
and aquatic life, and the present and prospective future
uses of such waters for domestic, agricultural, industrial,
recreational, scenic and other legitimate beneficial uses
thereof.

10 (b) In establishing, amending, revising or repealing
rules and regulations relating to water quality standards,
the board shall follow all relevant procedures provided
by article three, chapter twenty-nine-a of the code.

14 (c) All persons affected by rules and regulations
establishing water quality standards shall promptly com-
ply therewith: Provided, That where necessary and
proper, the chief may specify a reasonable time for per-
sons not complying with such standards to comply with
such standards, and upon the expiration of any such
period of time, the chief shall revoke or modify any per-
mit previously issued which authorized the discharge of
22 treated or untreated sewage, industrial wastes or other
23 wastes into the waters of this state which result in reduc-
24 tion of the quality of such waters below the standards
25 established therefor by rules and regulations of the board.

§20-5A-4. Cooperation with other governments and agencies.

1 The division of water resources is hereby designated as
2 the water pollution control agency for this state for all
3 purposes of federal legislation and is hereby authorized to
4 take all action necessary or appropriate to secure to this
5 state the benefits of said legislation. In carrying out the
6 purposes of this section, the chief is hereby authorized
7 to cooperate with the federal water pollution control ad-
8 ministration of the United States department of interior,
9 other agencies of the federal government, other states,
10 interstate agencies and other interested parties in all
11 matters relating to water pollution, including the develop-
12 ment of programs for controlling and reducing water
13 pollution and improving the sanitary conditions of the
14 waters of the state; to apply for and receive, on behalf of
15 this state, funds made available under the aforesaid feder-
16 al legislation on condition that all moneys received from
17 any federal agency as herein provided shall be paid into
18 the state treasury and shall be expended, under the direc-
19 tion of the chief, solely for purposes for which the grants
20 shall have been made; to approve projects for which
21 applications for loans or grants under the federal legis-
22 lation are made by any municipality (including any city,
23 town, district or other public body created by or pursuant
24 to the laws of this state and having jurisdiction over
25 the disposal of sewage, industrial wastes or other wastes)
26 or agency of this state or by any interstate agency; and to
27 participate through his authorized representatives in pro-
28 ceedings under the federal legislation to recommend mea-
29 sures for the abatement of water pollution originating in
30 this state. The governor is hereby authorized, in his dis-
31 cretion, to give consent on behalf of this state to requests
32 by the secretary of the United States department of in-
33 terior to the attorney general of the United States for the
34 bringing of actions for the abatement of such pollution.
35 Whenever a federal law requires the approval or recom-
36 mendation of a state agency or any political subdivision
37 of the state in any matter relating to the water resources
38 of the state, the director, subject to approval of the
39 Legislature, is hereby designated as the sole person to
give the approval or recommendation required by the
40 federal law, unless the federal law specifically requires
41 the approval or recommendation of some other state
42 agency or political subdivision of the state.

§20-5A-5. Prohibitions; permits required.

1 (a) It shall be unlawful for any person, unless he
2 holds a permit therefor from the department, which is
3 in full force and effect, to:

4 (1) Allow sewage, industrial wastes, or other wastes,
5 or the effluent therefrom, produced by or emanating from
6 any establishment to flow into the waters of this state;
7 (2) Make, cause or permit to be made any outlet, or
8 substantially enlarge or add to the load of any existing
9 outlet, for the discharge of sewage, industrial wastes, or
10 other wastes, or the effluent therefrom, into the waters
11 of this state;
12 (3) Acquire, construct, install, modify or operate a
13 disposal system or part thereof for the direct or indirect
14 discharge or deposit of treated or untreated sewage, in-
15 dustrial wastes, or other wastes, or the effluent therefrom,
16 into the waters of this state, or any extension to or addi-
17 tion to such disposal system;
18 (4) Increase in volume or concentration of any sew-
19 age, industrial wastes or other wastes in excess of the
20 discharges or disposition specified or permitted under
21 any existing permit;
22 (5) Extend, modify or add to any establishment, the
23 operation of which would cause an increase in the volume
24 or concentration of any sewage, industrial wastes or other
25 wastes discharging or flowing into the waters of the state;
26 (6) Open, reopen, operate or abandon any mine,
27 quarry or preparation plant, or dispose of any refuse or
28 industrial wastes or other wastes from any such mine or
29 quarry or preparation plant: Provided, That the depart-
30 ment's permit shall only be required wherever the afore-
mentioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state; or

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(b) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

§20-5A-6. Form of application for permit; information required; fees.

The chief shall prescribe a form of application for all permits for any activity specified in section five of this article relating other than solely to sewage. The director of the division of sanitary engineering of the state department of health, in cooperation with the chief, shall prescribe a form of application for all permits for any activity relating solely to sewage. All applications for permits for any activity relating other than solely to sewage shall be submitted to the chief of the division of water resources, and those applications for permits for any activity relating solely to sewage shall be submitted to the division of sanitary engineering of the state department of health. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Notwithstanding anything in this article to the contrary, where the activity is an integral part of a secret operating process, the required information shall be limited solely to data which will show the kind, characteristics, amount and rate of flow of sewage, industrial wastes, or other wastes, or the effluent therefrom, into the waters of the state. Until all
such required information is furnished, an application shall not be considered a complete application.

A filing fee of ten dollars shall accompany the application when filed with the division of water resources. The filing fee shall be deposited in the state treasury to the credit of the state general fund. The filing fee shall not be returned to the applicant.

§20-5A-7. Procedure concerning permits required under article; transfer of permits.

(a) The director of the division of sanitary engineering shall promptly make his determination concerning the health aspects of any proposed activity relating solely to sewage. If the plans and specifications of the proposed activity are in accord with all reasonable requirements of the department of health, the director of the division of sanitary engineering shall approve the application and issue the department of health's certificate or permit therefor. If the application is approved, the director of the division of sanitary engineering shall promptly forward his department's certificate or permit, together with the application and the information and data submitted therewith, to the division of water resources for the action of the chief thereof. Any denial of the application by the director of the division of sanitary engineering shall be governed by the provisions of chapter sixteen of this code and not by the provisions of this article.

(b) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining to any activity specified in subdivision (7) of subsection (a) of section five of this article, the chief shall consult with the director of the state geological and economic survey and appropriate officials of the state department of health, and all such persons shall cooperate with the chief and assist him in carrying out the duties and responsibilities imposed upon him under the provisions of this article and the rules and regulations of the board; such cooperation shall include, but not be
limited to, a written recommendation approving or dis-
approving the granting of the permit and the reason or
reasons for such recommendation.

(c) The department's permit shall be issued upon such
reasonable terms and conditions as the chief may direct
if (1) the certificate or permit of the department of
health was issued (in those cases where the director of
the division of sanitary engineering was required to act
as required in subsection (a) hereof); and (2) the appli-
cation, together with all supporting information and data
and other evidence, establishes that any and all dis-
charges, or releases, escapes, deposits, disposition of
treated or untreated sewage, industrial wastes, or other
wastes, or the effluent therefrom, resulting from the ac-
tivity or activities for which the application for a permit
was made will not cause pollution of the waters of this
state or violate any rules and regulations of the board:
Provided, That the chief may issue a permit wherever in
his judgment the water quality standards of the state may
be best protected by the institution of a program of phased
pollution abatement which under the terms of the permit
may temporarily allow a limited degree of pollution of the
waters of the state; and (3) in cases wherein it is re-
quired such applicant shall include the name and address
of the responsible agent as set forth in section eight-b
of this article.

(d) An application for a permit incident to remedial
action in accordance with the provisions of section eleven
of this article shall be processed and decided as any other
application for a permit required under the provisions of
section five of this article.

(e) An application for any permit shall be acted upon
by the chief, and the department's permit delivered or
mailed, or a copy of any order of the chief denying any
such application delivered or mailed to the applicant by
the chief within forty-five days after the date upon which
such application was received from the applicant by the
division of sanitary engineering where the application
relates solely to sewage or within thirty days after the
date upon which such application was received from the
applicant by the division of water resources in all other cases.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) Upon the sale of property which includes an activity for which the department's permit was granted, the permit shall be transferable to the new owner, but the transfer shall not become effective until the provisions of section eight-b of this article are fully complied with, and until such transfer is made in the records of the division of water resources.

§20-5A-8. Inspections; orders to compel compliance with permits; service of orders; prior permits.

After issuance of the department's permit for any activity, the chief or his duly authorized representatives may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the department's permit for any activity, the chief is hereby authorized, after at least twenty days' notice, to make and enter an order revoking or suspending such permit.
The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon the person to whom any such permit was issued. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which such person received the copy of such order.

All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four and which have not been revoked prior to the effective date of this article shall be enforced under the terms and provisions of this article, and shall remain valid unless and until revoked or suspended in accordance with the terms and provisions of this article or in accordance with the terms and provisions of any rules or regulations promulgated thereunder.

§20-5A-8b. Responsible agent; duties, notification of change.

It shall be the duty of every operator of a well, from and after the effective date of this article, in cases wherein such well operator is the holder of a permit issued pursuant to the provisions of this article to designate an individual who is a resident of this state as a responsible agent for such well. The responsible agent shall be the attorney in fact for and in behalf of the operator, and upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. In cases wherein there is a responsible agent designated under the provisions of section one-k, article four, chapter twenty-two of this code, such responsible agent shall be deemed to be the responsible agent required by this section, and shall be so appointed by the operator. Every well operator so appointing an agent, shall within five days after the termination of such appointment, notify the department
§20-5A-9. Information to be filed by certain persons with division of water resources; tests.

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state shall file with the division of water resources such information as the chief thereof may reasonably require on forms prescribed by him for such purpose, including but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the chief has reasonable cause to believe that any establishment is, or may be, polluting the waters of the state, he may require any person owning, operating or maintaining such establishment to furnish such information as may reasonably be required to ascertain whether such establishment is, or may be causing such pollution, and he may conduct any test or tests that he may deem necessary or useful in making his investigation and determination.

§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.

If the chief, on the basis of investigations, inspections and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or regulation of the board, he shall, with the consent of the director, either make and enter an order directing such person to stop such pollution or the violation of the rule or regulation of the board, or make and enter an order directing such person to take corrective or remedial action. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven of this article. The chief shall fix a time limit for the completion of such action. Whether the chief shall make and enter
an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the chief's order shall be stopped thereby.

In the sole discretion of the chief, he may postpone issuing any such order if he feels such pollution can best be controlled or reduced by cooperative efforts with the person or persons responsible therefor.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon such person. The chief shall also cause a notice to be served with the copy of such order, which notice shall advise such person of his right to appeal to the board by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article.


Any person upon whom any order of the chief or any order of the board in accordance with the provisions of sections ten and fifteen of this article, has been served shall fully comply therewith.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution, or when such ceasing does not stop the pollution, he shall forthwith apply for a permit under and in accordance with the provisions of sections five, six and seven of this article. No such remedial action shall be taken until a permit therefor has been issued; however, receipt of a permit shall not in and of itself constitute remedial action.

§20-SA-11a. Power of eminent domain; procedures; legislative finding.

(a) When any person who is owner of an establishment is ordered by the chief to stop or prevent pollution or the violation of the rules and regulations of the board or to take corrective or remedial action, compliance with
which order will require the acquisition, construction
or installation of a new treatment works or the extension
or modification of or an addition to an existing treatment
works, (which acquisition, construction, installation, ex-
tension, modification or addition of or to a treatment
works pursuant to such order is referred to in this section
as "such compliance") such person may exercise the
power of eminent domain in the manner provided in
chapter fifty-four of this code, to acquire such real
property or interests in real property as may be deter-
mined by the chief to be reasonably necessary for such
compliance.

(b) Upon application by such person and after twenty
days' written notice to all persons whose property may
be affected, the chief shall make and enter an order
determining the specific real property or interests in
real property, if any, which are reasonably necessary
for such compliance. In any proceeding under this sec-
tion, the person seeking to exercise the right of eminent
domain herein conferred shall establish the need for the
amount of land sought to be condemned and that such
land is reasonably necessary for the most practical method
for such compliance.

(c) The right of eminent domain herein conferred shall
not apply to the taking of any dwelling house or for the
taking of any land within five hundred feet of any such
dwelling house.

(d) The Legislature hereby declares and finds that
the taking and use of real property and interests in real
property determined to be reasonably necessary for such
compliance promotes the health, safety and general wel-
fare of the citizens of this state by reducing and abating
pollution in the waters of this state in which the public
at large has an interest and otherwise; that such taking
and use are necessary to provide and protect a safe, pure
and adequate water supply to the municipalities and
citizens of the state; that because of topography, pat-
terns of land development and ownership and other
factors it is impossible in many cases to effect such com-
pliance without the exercise of the power of eminent
domain and that the use of real property or interests in
real property to effect such compliance is a public use for which private property may be taken or destroyed.

§20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.

When such person is ordered to take remedial action and does not elect to cease operation of the establishment deemed to be the source of such pollution or when ceasing does not stop the pollution, such person shall immediately take or begin appropriate steps or proceedings to carry out such remedial action. In any such case it shall be the duty of each individual offender, each member of a partnership, each member of the governing body of a municipal corporation and each member of the board of directors or other governing body of a private corporation, association or other legal entity whatever, to see that appropriate steps or proceedings to comply with such order are taken or begun immediately. The chief may require progress reports, at such time intervals as he deems necessary, setting forth the steps taken, the proceedings started and the progress made toward completion of such remedial action. All such remedial action shall be diligently prosecuted to completion.

Failure of the governing body of a municipal corporation, or the board of directors or other governing body of any private corporation, association or other legal entity whatever, to provide immediately for the financing and carrying out of such remedial action, as may be necessary to comply with said order, shall constitute failure to take or begin appropriate steps or proceedings to comply with such order. If such person be a municipal corporation, the cost of all such remedial action as may be necessary to comply with said order shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipal corporation, not otherwise appropriated, and if there be not sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, any direct general obligation bond issue to be subject to the approval of the state
If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendment thereof: Provided, That the provisions of section six of the above-mentioned act, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate shall require a four-fifths vote of the governing body for the issuance of said revenue bonds, shall not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest shall not be authorized, nor shall the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such
order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the chief. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof.


Whenever the chief finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this state, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private or public water supply for drinking purposes, the chief may, with the concurrence in writing of the director of the department of natural resources and the director of the department of health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any such discharge, release, escape, deposit or disposition, and the cessation of any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well, or requiring such other action to be taken as the chief, with the concurrences aforesaid, deems necessary to abate such danger.

Notwithstanding the provisions of any other section of this article, any order issued under the provisions of this section shall be effective immediately and may be served in the same manner as a notice may be served under the
provisions of section two, article seven, chapter twenty-nine-a of the code. Any person to whom such order is directed shall comply therewith immediately, but on notice of appeal to the board shall be afforded a hearing as promptly as possible, and not later than ten days after the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the chief in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of sections fifteen and sixteen of this article shall govern.


The chief shall have the authority, in his sole discretion, to extend the time fixed in any order made and entered by him, or the board in accordance with the provisions of section fifteen of this article, within which any person ordered to take remedial action who does not elect to cease the operation of the establishment deemed to be the source of said pollution, must complete such action, upon written petition filed with him prior to the time fixed in such order, when it shall appear that a good faith effort to comply with said order is being made, and that it shall be impossible for such person to complete such remedial action within the time so fixed. When it shall appear from such petition that due to wartime or other governmental restrictions with respect to labor or material, or both, such compliance with any such order would be impossible or would place an undue burden upon such person, the chief shall stay execution of any such order until such time as it may satisfactorily appear that such wartime or other restrictions no longer exist. The chief may grant as many such extensions as he finds to be warranted by the facts and circumstances involved in any particular case.

§20-5A-14. Control by state as to pollution; continuing jurisdiction.

No right to violate the rules and regulations of the board or to continue existing pollution of any of the
waters of the state shall exist nor shall such right be or be deemed to have been acquired by virtue of past or future pollution by any person. The right and control of the state in and over the quality of all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the chief or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the chief, or pursuant to orders of the chief or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section seven of this article or when a person has completed remedial action pursuant to an order of the chief or board, additional efforts may be required wherever and whenever the rules and regulations of the board are violated or the waters of the state are polluted by such person.

§20-5A-15. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the time required by section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee. If the chief denies a permit because of any disapproval of a permit application by one or more of the public officers required to review such application under the provisions of subsection (b), section seven of this article, such public officers shall be joined as a coappellee or coappellees with the chief in such appeal.
(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the chief’s order pending determination of the appeal, the director or the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the chief’s file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such activity or by such alleged pollution may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha county, West Virginia; and

(2) In accordance with the provisions of section one, article five of said chapter twenty-nine-a, all of the testi-
mony at any such hearing shall be recorded by steno-
graphic notes and characters or by mechanical means.
Such reported testimony shall in every appeal hearing
under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a
quorum of the board, but the parties may by stipula-
tion agree to take evidence before a hearing examiner
employed by the board. For the purpose of conducting
such appeal hearing, any member of the board and the
secretary thereof shall have the power and authority
to issue subpoenas and subpoenas duces tecum in the
name of the board, in accordance with the provisions of
section one, article five, chapter twenty-nine-a of this
code. All subpoenas and subpoenas duces tecum shall be
issued and served within the time and for the fees and
shall be enforced, as specified in section one, article five
of said chapter twenty-nine-a, and all of the said section
provisions dealing with subpoenas and subpoenas
duces tecum shall apply to subpoenas and subpoenas
duces tecum issued for the purpose of an appeal hearing
hereunder.

(f) Any such hearing shall be held within twenty days
after the date upon which the board received the timely
notice of appeal, unless there is a postponement or con-
tinuance. The board may postpone or continue any hear-
ing upon its own motion, or upon application of the ap-
pellant, the appellee or any intervenors for good cause
shown. The chief shall be represented at any such hear-
ing by the attorney general or his assistants. At any such
hearing the appellant and any intervenor may represent
himself or be represented by an attorney at law admitted
to practice before any circuit court of this state.

(g) After such hearing and consideration of all of the
testimony, evidence and record in the case, the board
shall make and enter an order affirming, modifying or
vacating the order of the chief, or shall make and enter
such order as the chief should have entered, or shall make
and enter an order approving or modifying the terms and
conditions of any permit issued. In determining its
course of action, the board shall take into consideration
not only the factors which the chief was authorized to
consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


(a) Any person or the chief adversely affected by an order made and entered by the board after such appeal hearing, held in accordance with the provisions of section fifteen of this article, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of Kanawha county;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of Kanawha county; and
As to cases involving an order directing that any and all discharges or deposits of sewage, industrial wastes, or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed, within the time specified in said section four, in the circuit court of the county in which the establishment is located or in which the pollution occurs.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the chief in all appeal proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his assistants and in appeal proceedings in the circuit court by the prosecuting attorney of the county in which the appeal is taken, all without additional compensation.

§20-5A-17. Injunctive relief.

Upon application by the chief, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules and regulations of the board, the terms and conditions of any permit granted under the provisions of this article, or any order of the chief or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond as
16 a prerequisite to obtaining injunctive relief under this article.

17 An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

18 The judgment of the circuit court upon any application filed under the provisions of this article shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

19 Legal counsel and services for the chief or the board in all injunction proceedings in the circuit courts and in the supreme court of appeals of this state shall be provided by the attorney general or his assistants and by the prosecuting attorneys of the several counties as well, all without additional compensation, or the chief or the board, with the written approval of the attorney general, may employ counsel to represent him or it in a particular proceeding.


1 Any person who causes pollution or who fails or refuses to discharge any duty imposed upon him by this article or by any rule or regulation of the board, promulgated pursuant to the provisions and intent of this article, or by any order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred
dollars nor more than one thousand dollars, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. Any person who wilfully violates any provision of this article, or any rule or regulation of the board, or any order of the chief or board, or any term or condition of a permit, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months or by both such fine and imprisonment. Each day upon which such failure continues shall constitute a separate offense. Any person who fails or refuses to discharge any duty imposed upon him by this article, or by any rule or regulation of the board, or by an order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or by any rule or regulation of the board or who fails or refuses to comply with any term or condition of such permit, may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said person and notwithstanding that an application for an injunction under the provisions of this article has not been filed against such person. Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of such permit, he shall not be subject to criminal prosecution for pollution recognized and authorized by such permit.

§20-5A-22. Existing rights and remedies preserved; article for benefit of state only.

It is the purpose of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health offi-
AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to the establishment of a natural streams preservation system composed of protected streams designated for inclusion therein by the Legislature, providing for the regulation and control thereof and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. NATURAL STREAMS PRESERVATION ACT.

§20-5B-1. Declaration of public policy.
§20-5B-2. Definitions.
§20-5B-1. Declaration of public policy.

1 In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not impound, flood or divert all streams within the state of West Virginia, leaving no streams designated for preservation and protection in their natural condition, it is hereby declared to be the public policy of this state to secure for the citizens of West Virginia of present and future generations the benefits of an enduring resource of free-flowing streams possessing outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archeological, or other scientific or cultural values.

§20-5B-2. Definitions.

1 Unless the context, in which used, clearly requires a different meaning, as used in this article:
2 (a) “Board” shall mean the state water resources board;
3 (b) “Chief” shall mean the chief of the division of water resources of the department of natural resources;
4 (c) “Director” shall mean the director of the department of natural resources;
5 (d) “Free-flowing” shall mean existing or flowing in natural condition without impoundment, by diversion, or flooding of the waterway;
(e) "Modification" shall mean the impounding, diverting or flooding of a stream within the natural stream preservation system;

(f) "Modify" shall mean to impound, divert or flood a stream within the natural stream preservation system;

(g) "Permit" shall mean a permit required by section six of this article;

(h) "Person", "persons" or "applicants" shall mean any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agencies; political subdivision; county court; municipal corporations; industries; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;

(i) "Protected stream" shall mean any stream designated as such in section four of this article, but shall not include tributaries or branches unless specifically designated or described in section four of this article;

(j) "Stream" shall mean a flowing body of water or a section or portion thereof, including rivers, streams, creeks, branches or small lakes.

§20-5B-3. Establishment of natural stream preservation system.

For the purpose of implementing the public policy declared in section one of this article, there is hereby established a natural stream preservation system to be composed of streams designated by the Legislature as "protected streams", and these shall be administered for the use and enjoyment of the citizens of West Virginia in such manner as will leave them unimpaired for future use and enjoyment as free-flowing streams, and so as to provide for the protection and the preservation of these streams in their natural character.
§20-5B-4. Designation of protected streams.

The following streams are hereby designated as protected streams within the natural streams preservation system, namely:

(a) Greenbrier River from its confluence with Knapps Creek to its confluence with the New River.

(b) Anthony Creek from its headwaters to its confluence with the Greenbrier River.

(c) Cranberry River from its headwaters to its confluence with the Gauley River.

§20-5B-5. General powers and duties of chief of division of water resources and water resources board with respect to protected streams.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall exercise general supervision over the administration and enforcement of the provisions of this article, and all orders and permits issued pursuant to the provisions of this article.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have authority to promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law: Provided, That all such rules and regulations shall be consistent with the declaration of public policy set forth in section one of this article.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) The board, any member thereof and the chief, and their duly authorized representatives, shall have the
power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rules or regulations promulgated by the board, and with the terms and conditions of any permit issued in accordance with the provisions of section eight of this article. In order to make such investigations, inspections and inquiries, the board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for any damage to the property entered. Upon entering, and before making any investigation, inspection and inquiry, such person shall immediately present himself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or a subdivision, and before making any investigation, inspection and inquiry, such person shall immediately present himself to the person in charge of the operation, and if he is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon a refusal of the person owning or controlling such property to permit such entrance or the making of such inspections, investigations and inquiries, the board or the chief may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance and the making of such inspections, investigations, and inquiries; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.

§20-5B-6. When permits required; when permits not to be issued.

1 It shall be unlawful for any person, until the department's permit therefor has been granted, to modify any
protected stream or any part thereof. No permit shall be
issued unless the work proposed to be done under such
permit: (a) Will not materially alter or affect the free-
flowing characteristics of a substantial part of a protected
stream or streams; (b) is necessary to prevent an undue
harmfulness; and (c) meets with the approval of the chief.

§20-5B-7. Application for permit; form of application; in-
formation required; fees.

The chief shall prescribe a form of application for all
permits. All applications for permits shall be submitted
to the division of water resources and shall be on the
prescribed form.

A permit fee of ten dollars shall accompany the ap-
lication when filed with the division of water resources.
The permit fee shall be deposited in the state treasury
to the credit of the state general fund.

§20-5B-8. Procedure for issuance or denial of permit; transfer
of permits.

(a) Before issuing a permit, a public hearing shall
be held. The chief shall consider the application and
shall fix a time and place for hearing on such applica-
tion. The hearing shall be held in a county in which
the proposed modification is to be made and, if the
proposed modification is to be made in more than one
county, then a separate hearing shall be held in each
county in which the proposed modification is to be made.
The applicant shall cause a notice of the time and place
of such hearing and the purpose thereof to be pub-
lished as a Class III-0 legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, and the publication area for such publica-
tion shall be the county or counties in which the proposed
modification is to be made. Publication of the notice
shall be completed at least fifteen days before such
hearing. The applicant shall also cause to be served,
at least fifteen days before such hearings, in the manner
provided by law for the service of notice and process,
a notice showing the time, place and purpose of such
hearing, upon every owner of property, and every per-
son holding a lien thereon, abutting on that portion of
the stream on which the modification is to be made,
or abutting on any portion of such stream within two
miles above or below the proposed modification. The
affidavit of publication of such notice shall be filed
with the chief or his duly designated hearing examiner
at or before the hearing as a part of the record in the
proceedings.

(b) At the time and place fixed for the hearings, the
chief or his duly designated hearing examiner shall hear
any evidence relating to the proposed modification, the
necessity therefor, the effect of such modification on the
stream and any and all other matters relevant to the
application and the proposed modification. If the chief
concludes and finds upon the record and evidence in
the proceedings that the proposed modification should
be permitted, he shall proceed to issue the permit: Pro-
vided, however, That the director may attach such con-
ditions, qualifications or limitations to such permit as
he finds appropriate.

(c) An application for any such permit shall be acted
upon by the chief and the department's permit delivered
or mailed, or a copy of any order of the chief denying
any such application mailed as hereinafter specified, as
the case may be, to the applicant by the chief within
forty-five days after the hearings have been completed.

(d) When it is established that an application for
a permit should be denied, the chief shall make and
enter an order to that effect, which order shall specify
the reasons for such denial, and shall cause a copy of
such order to be served on the applicant by registered
or certified mail. The chief shall also cause a notice
to be served with the copy of such order, which notice
shall advise the applicant of his right to appeal to the
board by filing a notice of appeal, on a form prescribed
by the board for such purpose, with the board, in
accordance with the provisions of section ten of this
article, within thirty days after the date upon which
the applicant received the copy of such order. However,
an applicant may offer the plans and specifications for
the proposed modification and submit a new application
for any such permit, in which event the procedure herein-
before outlined with respect to an original application
shall apply.
(e) Upon the sale of property which includes an
activity for which the department's permit was granted,
the permit shall be transferable to the new owner, but
the transfer shall not become effective until it is made
in the records of the division of water resources.

§20-5B-9. Inspections; orders to compel compliance with per-
mits; service of order.

1 After issuance of the department's permit for any such
modification, the chief and his duly authorized representa-
tives may make field inspections of the work on the
modification, and, after completion thereof, may inspect
the completed modification, and, from time to time, may
inspect the maintenance and operation of such modifica-
tion.

2 To compel compliance with the terms and conditions
of the department's permit for any such modification and
with the plans and specifications therefor and the plan of
maintenance and method of operation thereof, the chief
is hereby authorized after reasonable notice to make and
direct the person to whom such permit was issued to
stop or suspend any and all work on such activity or, to
take affirmative action to correct the deficiencies specified
in such order so there will be full compliance with the
terms and conditions of such permit and with the plans
and specifications therefor, and the plan of maintenance
and method of operation thereof.

21 The chief shall cause a copy of any such order to be
served by registered or certified mail or by a conserva-
tion officer or other law-enforcement officer upon the
person to whom any such permit was issued. The chief
shall also cause a notice to be served with the copy of
such order, which notice shall advise such person of his
right to appeal to the board by filing a notice of appeal
on the form prescribed by the board for such purpose,
with the board, in accordance with the provisions of sec-
§20-5B-10. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the time required by section eight of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after the date upon which the appellant received the copy of such order, or received such permit, as the case may be. The filing of the notice of appeal shall stay or suspend execution of any order appealed from. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the chief’s file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such modification may by petition intervene as a part appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors. No such hearing shall be heard on such appeal until ten days following service
of notice of such appeal on all persons shown by the
record to be interested in the matter.

(d) All of the pertinent provisions of article five, chap-
ter twenty-nine-a of this code shall apply to and govern
the hearing on appeal authorized by this section and the
administrative procedures in connection with and follow-
ing such hearing, with like effect as if the provisions of
said article five were set forth in extenso in this section,
with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal
hearing shall be held in the city of Charleston, Kanawha
county, West Virginia; and

(2) In accordance with the provisions of section one,
article five of said chapter twenty-nine-a, all of the testi-
mony at any such hearing shall be recorded by steno-
graphic notes and characters or by mechanical means.
Such reported testimony shall in every appeal hearing
under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a
quorum of the board, but the parties may by stipulation
agree to take evidence before a hearing examiner em-
ployed by the board. Upon request of any party to the
appeal, the evidence taken before a hearing examiner
shall be taken in the county in which the modification is
proposed to take place, or, if the modification is to take
place in more than one county, the hearing shall be held
in the county most extensively affected by the modifica-
tion. For the purpose of conducting such appeal hearing,
any member of the board and the secretary thereof shall
have the power and authority to issue subpoenas duces
tecum in the name of the board, in accordance with the
provisions of section one, article five, chapter twenty-
ine-a of this code. All subpoenas and subpoenas duces
tecum shall be issued and served within the time and for
the fees and shall be enforced, as specified in section one,
article five of said chapter twenty-nine-a, and all of the
said section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and sub-
poenas duces tecum issued for the purpose of an appeal
hearing hereunder.
(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistant. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(g) After such hearing and consideration of all the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into consideration the factors which the chief had to consider in making his order, and fixing the terms and conditions of such permit, as set forth in section eight or nine of this article, as the case may be.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section eleven of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this article.

(a) Any person or the chief adversely affected by a final order made and entered by the board after such appeal hearing, held in accordance with the provisions of section ten of this article, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed, within the time specified in said section four, in the circuit court of any county in which such modification is proposed to be made.

(2) As to cases involving an order revoking or suspending a permit and directing any and all work on such modification to stop, or directing that affirmative action be taken to correct alleged and specified deficiencies concerning any such modification, the petition shall be filed, within the time specified in said section four, in the circuit court of any county in which any part of such modification is proposed to be made.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one, the petition seeking such review must be filed with said supreme court of appeals within ninety days of the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the chief in all appeal proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his assistant and in appeal proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation, or the board or chief, with the written ap-
proval of the attorney general may employ special coun-
self to represent the board or chief in a particular pro-
ceeding.

§20-5B-12. Actions to abate nuisances; injunctive relief.

1 Whether any violation of the provisions of this article or any final order of the chief or the board shall result in prosecution or conviction or not, any such violation shall be deemed a nuisance which may be abated upon application by the chief to the circuit court of the county in which such nuisance or any part thereof shall exist, or to the judge thereof in vacation. Upon application by the chief, the circuit courts of this state may by mandatory or prohibitive injunction compel compliance with all final orders of the chief or board. Any application for an injunction to compel compliance with any final order of the chief or board shall be made to the circuit court of any county in which the modification to which the order relates is proposed to be made, or in which the modification to which the order relates is situate or would be situate upon completion thereof. Upon application by the chief to the circuit court of the county in which a municipal corporation is located, or in which any person resides or does business, or to the judge thereof in vacation, such court may by injunction require the performance of any duty imposed upon such municipal corporation or person by the provisions of this article. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. In cases of modifications where irreparable damage will result from any delay incident to the administrative procedures set forth in this article, the chief, with the consent of the director, may forthwith apply to the circuit court of any county in which the modification is taking place for a temporary injunction. Such court may issue a temporary injunction pending final disposition of the case by the chief or the board, in the event an appeal is taken to the board.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the su-
preme court of appeals. Any such appeal shall be sought
in a manner provided by law for appeals for circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

The chief shall be represented in all such proceedings by the attorney general or his assistant and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation.

§20-5B-13. Priority of actions.

All applications under section twelve of this article and all proceedings for judicial review under section eleven of this article shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases. Where such applications and proceedings for judicial review are pending at the same time, such applications shall take priority on the docket and shall take precedence over proceedings for judicial review.

§20-5B-14. Violations; criminal penalties.

Any person who fails or refuses to discharge any duty imposed upon him by this article or by any final order of the chief or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than two hundred dollars nor more than five hundred dollars, and for a third offense and each subsequent offense by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for a period not to exceed six months, or in the discretion of the court by both such fine and imprisonment.

§20-5B-15. Exceptions as to criminal liabilities.

The criminal liabilities imposed by section fourteen of this article shall not be construed to include any vio-
§20-5B-16. Short title.

This article may be known and cited as the “Natural Streams Preservation Act.”

§20-5B-17. Severability of provisions.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or its application, and to this end the provisions of this article are declared to be severable.

CHAPTER 98

(Com. Sub. for House Bill No. 839—By Mr. Watson and Mr. Seibert)

(Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said chapter by adding thereto a new article, designated five-d, all relating to nursing homes and nursing home administrators; definitions; powers, duties and rights of the West Virginia nursing home licensing board; the license of nursing home administrators; qualifications for licenses; procedures; provisional licenses; emergency permits; judicial review; the nursing home administrators advisory council, its members, powers, duties and procedures; and severability.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred
Ch. 98] Nursing Homes 1023

thirty-one, as amended, be amended and reenacted, and that said chapter be further amended by adding thereto a new article, designated five-d, all to read as follows:

Article
5C. Nursing Homes and Similar Institutions.
5D. Nursing Home Administrators.

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.
§16-5C-2. Definitions.
§16-5C-4. Powers, duties and rights of board.

§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,
5 institution, or other place, for the reception, accommoda-
6 tion, board, care or treatment of not less than twenty-
7 four hours in any week in which an accommodation of
8 three or more beds is maintained, furnished or offered
9 for patients or individuals, who are unable sufficiently
10 or properly to care for themselves, and for which recep-
11 tion, accommodation, board, care or treatment a charge
12 is made: Provided, That the reception, accommodation,
13 board, care or treatment in a household or family, for
14 compensation, of a person or persons related by blood
15 or marriage to the head of such household or family,
16 or to his or her spouse or family, within the degree of
17 consanguinity of first cousins, shall not be deemed to
18 be a nursing home. The term “nursing home” shall
19 include, but not be limited to, homes for the aged, con-
20 valescent homes, and extended care facilities not operated
21 in connection with a hospital. The term “nursing home”
22 shall not include institutions operated by the federal or
23 state governments, or institutions for the treatment and
24 care of psychiatric or alcoholic patients, boarding homes
25 for children, day nurseries, child-care institutions, chil-
26 dren’s homes and child-placing agencies, as defined under
27 the laws of this state, nor hotels or offices of physicians.
28 (b) The term “person” means any individual, firm,
29 partnership, corporation, company, association, or joint-
30 stock association and the legal successor thereof.
(c) The term "board" shall mean the West Virginia nursing home licensing board as herein created.

(d) The term "aged" relates to any individual who has attained the age of sixty-five years.

§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall have the following powers, duties and rights:

(a) To adopt, promulgate, amend, modify and enforce regulations and standards for nursing homes.

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes.

(c) To adopt, promulgate, amend and modify rules and regulations governing the qualifications of applicants for nursing home licenses including but not limited to educational requirements, financial requirements, moral, personal and ethical requirements.

(d) To adopt, promulgate, amend and modify such other reasonable rules and regulations to carry out the intent and purpose of this article.

(e) To receive and disburse funds from appropriations made by the Congress of the United States and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds.

(f) To receive and disburse for authorized purposes any moneys appropriated to it by the Legislature.

(g) To receive and disburse for purposes authorized by this article, any funds that may come into its hands by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from its own operation, or otherwise.

(h) To make contracts, and to execute all instruments necessary or convenient in carrying out its functions and duties; and all such contracts, agreements and instruments shall be executed by the chairman of the board on and in behalf of the board.
(i) To appoint officers, agents, employees and other personnel and fix their compensation.

(j) To offer and sponsor educational and training programs for nursing home administrative, management and operational personnel.

(k) To undertake survey, research and planning projects and programs relating to administration and operation of nursing homes, and to the health, care, treatment and service in general of patients of such homes.

In addition, the board may classify nursing homes into care categories such as homes for the aged, convalescent homes, and extended care facilities not operated by hospitals, and other comparable categories under the terms of this article, if, in the opinion of the board, the best interest of the public is served by so doing. Such classification shall be by rules and regulations duly promulgated and adopted in accordance with the requirements hereinafter set out.

ARTICLE 5D. NURSING HOME ADMINISTRATORS.

§16-5D-1. Definitions.

§16-5D-2. Administrator's license required.

§16-5D-3. Qualifications for license; exceptions; application; fees.

§16-5D-4. Issuance of license; renewal of license; renewal fee; display of license.

§16-5D-5. Provisional license.

§16-5D-6. Emergency permit.

§16-5D-7. Powers and duties of board.

§16-5D-8. Suspension or revocation of license or emergency permit.


§16-5D-10. Judicial review; appeal to supreme court of appeals; legal representation for board.

§16-5D-11. Creation of state nursing home administrators advisory council; members, terms, meetings, officers; general provisions; powers and duties.

§16-5D-12. Severability.

§16-5D-1. Definitions.

1 As used in this article, unless a different meaning appears from the context:

2 (1) The term “nursing home” means a nursing home (as that term is defined in subdivision (a), section two, article five-c of this chapter) which offers professional care homes, rest homes and homes for the aged.
§16-5D-2. Administrator's license required.

On and after July one, one thousand nine hundred sixty-nine, no person shall be or act as a nursing home administrator, except as provided in section nine hereof, unless he is a holder of a currently valid license or provisional license issued pursuant to this article.

§16-5D-3. Qualifications for license; exceptions; application; fees.

(a) To be eligible for a license as a nursing home administrator a person must
   (1) Be of good moral character;
   (2) Possess such qualifications and meet such reasonable standards as the board may prescribe pursuant to subsection (a), section seven of this article;
   (3) Pass the examination prescribed by the board in the subject of nursing home administration; and
   (4) Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which license or certificate are
found by the board to be at least as great as those pro-
vided in this article may be granted a license without ex-
amination if he meets all of the other requirements for
licensing in this state.
(c) Any applicant for any such license shall submit
an application therefor at such time, in such manner,
on such forms and containing such information as the
board may from time to time by reasonable rule and
regulation prescribe, and pay to the board a license fee of
one hundred dollars, which fee shall be returned to the
applicant if he is denied a license.

§16-5D-4. Issuance of license; renewal of license; renewal fee;
display of license.

Whenever the board finds that an applicant meets all
of the requirements of this article for a license as a
nursing home administrator, it shall forthwith issue to
him such license; and otherwise the board shall deny the
same. The license shall be valid for a period ending on
June thirty next ensuing and may be renewed without
examination upon application for renewal on a form
prescribed by the board and payment to the board of a
renewal fee of fifty dollars: Provided, That the board may
deny an application for renewal for any reason which
would justify the denial of an original application for a
license. The board shall prescribe the form of licenses and
each such license shall be conspicuously displayed by the
licensee at the nursing home which he administers.

§16-5D-5. Provisional license.

Persons actively engaged as nursing home administra-
tors prior to June thirty, one thousand nine hundred
sixty-nine, and who fail to meet any of the requirements
of subdivision (2) or (3), subsection (a), section three
of this article may nevertheless be issued a provisional
license as a nursing home administrator if application
is made therefor prior to July one, one thousand nine
hundred sixty-nine. No provisional license shall be re-
newed after July one, one thousand nine hundred seventy-two.
§16-5D-6. Emergency permit.

1 If a licensed nursing home administrator dies or is unable to continue as such for an unexpected cause, the owner, governing body or other appropriate authority in charge of the nursing home involved may designate an acting administrator to whom the board may immediately issue an emergency permit if it finds such appointment will not endanger the safety of the occupants of such nursing home. Such emergency permit shall be valid for a period determined by the board not to exceed six months and shall not be renewed. The fee for an emergency permit shall be fifty dollars.

§16-5D-7. Powers and duties of board.

1 (a) The board shall:
2 (1) Examine applicants and determine their eligibility for a license or emergency permit as a nursing home administrator;
3 (2) Prepare, conduct and grade an apt and proper examination of applicants for a license and determine the satisfactory passing score thereon;
4 (3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;
5 (4) Issue, renew, deny, suspend or revoke licenses and emergency permits in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;
6 (5) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or
experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(6) Employ, direct, discharge and define the duties of personnel necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Approve courses of study or training in the field of nursing home administration as sufficient to meet education and training requirements for nursing home administrators established by this article;

(9) Conduct a course of study or training of the type referred to in subdivision (8) of this subsection if such courses are not otherwise reasonably available to residents of this state; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "West Virginia nursing home licensing board fund". All of the reimbursement of all reasonable and necessary expenses actually incurred by members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund.

§16-5D-8. Suspension or revocation of license or emergency permit.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or emergency permit issued under the provisions of this article.
(b) The board shall suspend or revoke any license or emergency permit when it finds the holder thereof has:

(1) Obtained a license or emergency permit by means of fraud or deceit; or

(2) Failed or refused to comply with the provisions of this article, article five-c of this chapter, or any reasonable rule and regulation promulgated by the board or any order or final decision of the board.

(c) The board shall also suspend or revoke any license or emergency permit if it finds the existence of any ground which would justify the denial of an application for such license or permit if application were then being made for it.


(a) Whenever the board shall deny an application for any original or renewal license or deny an application for an emergency permit or shall suspend or revoke any license or emergency permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or emergency permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a “contested case” set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or emergency permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.
Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a.

At any such hearing the person who demanded the same may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section ten of this article.
§16-5D-10. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section nine of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

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

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

§16-5D-11. Creation of state nursing home administrators advisory council; members, terms, meetings, officers; general provisions; powers and duties.

(a) There is hereby created the state nursing home administrators advisory council which shall be composed of five members appointed by the governor of which members, three shall be nursing home administrators, one shall be a hospital administrator and one shall be the chairman of the board.

(b) The members of the council, other than the chairman of the board (who shall serve for the term of his office) shall be appointed for overlapping terms of four years each and until their respective successors have been appointed and qualified, except that the original appointments shall be for terms of four, three, two and one year respectively. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such
appointment shall be made within sixty days of the occurrence of such vacancy.

(c) The council shall elect annually from its members, a chairman and vice chairman. Meetings may be held as frequently as its business may require, at the call of the chairman upon the request of a majority of members of the council, or as requested by the chairman of the board. A quorum of the council shall consist of not less than three members.

(d) Members of the council shall receive no compensation, but each shall be entitled to receive his reasonable and necessary expenses actually incurred in the performance of his duties, such expenses to be paid from the special fund provided for in subsection (b), section seven of this article.

(e) The board may request the council, and upon such request, the council shall, or upon its own initiative the council may:

(1) Consider any matters relating to the practice of nursing home administration including any matter pertaining to the administration and enforcement of this article and advise the board thereon;

(2) Recommend the enactment or amendment of laws as may be deemed necessary in respect to the practice of nursing home administration;

(3) Recommend to the board the promulgation of rules and regulations, not inconsistent with law, as may be deemed necessary, and the amendment or repeal thereof; and

(4) Recommend to the board the commencement of an investigation into improper practices of licensees.

§16-5D-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
CHAPTER 99
(Com. Sub. for House Bill No. 698—By Mr. Burke)

[Passed March 4, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six and seven, article seventeen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apportionment of the cost of constructing, maintaining and repairing partition fences; persons liable for such costs; persons liable for such costs upon devoting their lands to agricultural, horticultural, grazing or livestock purposes; notice of intention to build or repair partition fences; answer; and liable upon failure to answer.

Be it enacted by the Legislature of West Virginia:

That sections five, six and seven, article seventeen, 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 17. FENCES.

§19-17-5. Apportionment of construction and maintenance of partition fence.

§19-17-6. Sharing cost of constructed fences.

§19-17-7. Notice of intention to build or repair partition fence; answer.

§19-17-5. Apportionment of construction and maintenance of partition fence.

Persons owning adjoining lands, both of which are used for agricultural, horticultural, grazing or livestock purposes, shall bear a just proportion of the cost of the constructing, repairing and maintaining a partition fence between such lands.

§19-17-6. Sharing cost of constructed fences.

Where a person has chosen to let his land lie open, if he shall afterwards enclose or use such land, or portion thereof, for agricultural, horticultural, grazing or livestock purposes, he shall refund to the adjoining owner a just
§19-17-7. Notice of intention to build or repair partition fence; answer.

Any person desiring to build or to repair a partition fence may give notice in writing to the owner of any adjoining lands, or to his agent, of his intention to build or repair such fence and requiring him to build or repair his just portion thereof, which notice shall state the description and kind of the fence proposed to be built or such repairs as are proposed to be made. The person so served with such notice shall, within ten days thereafter make answer in writing and serve the same upon the person desiring to build or repair such fence, which answer shall state any objections to such notice, and upon failure to do so he shall be liable to the person building or repairing such partition fence for his just proportion of the cost thereof if he shall fail to build or repair his proportion of the same.

CHAPTER 100

(Senate Bill No. 296—By Mr. McCourt)

[Passed March 5, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to repeal article sixteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to department of personnel.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to department of personnel.

Article sixteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
AN ACT to amend article three, 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 two-a, relating to abolition of civil actions for breach of promise to marry and for alienation of affections.

Be it enacted by the Legislature of West Virginia:

That article three, 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 two-a, to read as follows:

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-2a. Actions for breach of promise to marry and for alienation of affections prohibited.

1 Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in this state for breach of promise to marry or for alienation of affections, unless such civil action was instituted prior to the effective date of this section.

CHAPTER 102

(Senate Bill No. 791—By Mr. Myles)

[Passed March 8, 1969; in effect ninety days from passage. Approved by the Governor.]
and prohibiting gambling and presence of intoxicating 
liquors in connection with any such lanes or tables.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. LICENSE TAXES.

§11-12-14. Bowling lanes and billiard, pool or bagatelle tables.

The annual license fee to keep or maintain a bowling 
lane, a billiard, pool or bagatelle table, or table of like 
kind, for public use, where any charge is made for the 
use of the same, shall be twenty-five dollars; but, if more 
than one of such lanes or tables be kept or maintained 
in the same building by the same person, the fee shall 
be twenty-five dollars for the first one and fifteen dollars 
for each additional one.

The licensee, his agents or employees shall not permit 
any person in any manner to bet or wager anything of 
value upon any game played upon such lanes or tables.

Such licensee, his agents or employees shall not permit 
anyone to bring any intoxicating liquors of any kind 
into such building or other place where such lanes or 
tables are located.

Persons keeping or maintaining billiard, pool or baga­
telle tables, or other tables of like kind in an establish­
ment where intoxicating liquor or nonintoxicating beer 
is sold shall not permit persons under the age of eighteen 
years to play at such tables or to remain or loiter in the 
room where such tables are located.

CHAPTER 103

(Senate Bill No. 204—By Mr. Martin and Mr. Rogers)

[Passed March 6, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chap­
ter thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact sections four, four-a, six, seven, sixteen, seventeen-a and seventeen-b, article four of said chapter; and to further amend said article four by adding thereto a new section, designated section nineteen, all relating to the regulation of the practice of dentistry and dental hygiene.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions Applicable to all State Boards of Examination or Registration Referred to in Chapter.

4. Dentists, Dental Hygienists and Dental Corporations.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-3. Officers; bond of secretary.

1. Every such board shall elect annually from its members a president and a secretary who shall hold their offices for one year and until their successors are elected:

Provided, That the state board of law examiners, the state board of examiners for nurses and the state board of dental examiners may each elect a secretary from outside its membership. The secretary shall execute a surety bond conditioned as required by law, which bond shall be approved by the attorney general as to form and by the auditor as to sufficiency, and, when so approved, shall be filed and recorded in the office of the secretary of state. The premium on said bond shall be regarded a proper and necessary expense of the board.

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-4. Board of dental examiners.

§30-4-4a. Powers and duties of board.

§30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.
§30-4-7. Refusal to issue, suspension or revocation of license; grounds.

§30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.

§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fee; waiver of payment of fee on retirement or disability; change of address.

§30-4-19. Severability.

§30-4-4. Board of dental examiners.

1 There shall be a state board of dental examiners, known as the “West Virginia board of dental examiners,” which shall consist of five practicing dentists, who shall be appointed by the governor, by and with the advice and consent of the Senate. Each member of the board at the time of his appointment, and during his term as such member, shall be both a resident and licensed dentist of this state, and shall have been both such resident and licensed dentist for a period of not less than five years immediately preceding his appointment: Provided, however, That no person shall be eligible for appointment to said board who is in any way connected with or interested in any dental college or dental department of any institution of learning or in a dental supply business.

The members of the board in office on the date this section takes effect (July 1, 1969) shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. On or before the first day of July, after this section takes effect, and on or before the first day of July in each year thereafter, the governor shall appoint one member to serve a term of five years commencing on the said first day of July: Provided, That during the five-year period immediately following the effective date of this section, the governor shall make appointments to the board at such times as shall be necessary to replace members whose terms expire during such period: And provided further, That during such five-year period, the governor shall appoint members to the board for terms of such respective lengths as shall thereafter permit the term of one member to expire at midnight on the thirtieth
day of June of each year. Any member shall be eligible for reappointment for one additional consecutive term. Each appointment under this section, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental society. In the case of an appointment for a full term such nominations shall be submitted to the governor not later than eight months prior to the date on which the appointment shall become effective. In the case of an appointment to fill a vacancy, such nominations shall be submitted to the governor within thirty days after a request for such nominations shall have been made by the governor to the president of such society. In the event of the failure of the society to submit to the governor nominations for an appointment in accordance with the requirements of this section, the governor may make the appointment without such nominations.

Each member of the board shall receive forty dollars for each day actually spent in attending meetings of the board, or of its committees, and shall also be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of his duties under the provisions of this article.

§30-4-4a. Powers and duties of board.

1 The West Virginia board of dental examiners shall examine all qualified applicants for license to practice dentistry or dental hygiene, and it shall license all such applicants who are qualified under applicable statutes and who pass the examinations that may be required by statute or by any legally adopted rule or regulation. The board shall examine all applications filed in accordance with the provisions of section four-b of this article and shall issue certificates of authorization to all applicants legally entitled to receive the same, such certificates to be signed by the chairman and secretary of the board.

The said board shall have the power to make such examination of all applicants appearing before it for any type of license as may be necessary to determine that the
The applicant is qualified. The board shall also have authority to license dental corporations authorized under the provisions of and subject to the limitations of this article, to practice dentistry through duly licensed dentists. The said board shall also have the power to revoke or suspend any license issued by it, for cause, after having given the person whose license is sought to be revoked or suspended, an opportunity to be heard in the manner provided by section eight, article one, chapter thirty of this code. It shall have the power to reinstate any license revoked or suspended by it.

The said board is authorized and empowered to hold and conduct hearings and investigations on the issuance, suspension, revocation, or reinstatement of licenses and on charges of unauthorized practice of dentistry or dental hygiene.

The board, acting by and through its members, employees, and agents, is further authorized and empowered, at any time during customary office hours, to enter into the office or place of business of any dental laboratory, licensed dentist, dental corporation or other dental practitioner of this state, and to obtain access to, make inspection of, and request information regarding any work authorization which such dental laboratory, licensed dentist, dental corporation or other dental practitioner is required under the provisions of section two-a of this article, to retain therein, and is further authorized and empowered to inspect any items of dental technological work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental prothesis then in the place of business of, or upon the premises occupied by, such dental laboratory for making, production, reproduction, construction, repair, alteration, or restoration, and to request any information which it, its members, employees, or agents deem to be pertinent relating to any such dental technological work and any such dental prothesis. For the purpose of this paragraph the definition of terms contained in subsection A of section two-a of this article is made expressly applicable.
The said board shall have the power to hire, fix the compensation of, and discharge such employees as are necessary for the performance of the powers and duties vested in the said board by law and to expend such sums as said board may deem necessary to maintain an office and to carry out and enforce the provisions of this article.

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of carrying out the provisions of this article. The compensation provided for in this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against or payable out of the general revenue fund of this state.

§30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.

1 An applicant for a dental license shall be of good moral character, a citizen of the United States or an individual who has declared his intention to become and who shows progress toward becoming a citizen of the United States, at least twenty-one years of age at the time of making application, and be a graduate of, and possess an acceptable dental diploma from the faculty of a dental school approved by the board. The board may require the application to be accompanied by sufficient evidence of these qualifications.

The applicant shall transmit with his application an examination fee of thirty-five dollars, which sum the board is authorized to expend in an investigation of the applicant's qualifications.

An applicant whose application has been accepted by the board shall be given an examination on subjects selected by the board from among those currently being taught in approved dental schools which shall test the qualifications of the applicant to practice dentistry. Such examinations shall be given by the board under rules and regulations promulgated by it.
The board may recognize a certificate granted by the national board of dental examiners in lieu of the written portion of the required examination.

An applicant obtaining a satisfactory grade on such examination and otherwise fulfilling the requirements of the board shall be granted a license by the board to practice dentistry, which license shall bear a serial number, the full name of the licensee, the date of issuance of the license, the seal of the board and the signatures of a majority of the members of the board.

The board shall not issue a license to any person found guilty of cheating, deception or fraud in the examination or on any part of the application. All manuscripts used in any examination and all applications for licensure shall be filed for a period of two years by the secretary of the board for the purpose of reference and inspection.

§30-4-7. Refusal to issue, suspension or revocation of license; grounds.

1 The state board of dental examiners may refuse to issue a license to practice dentistry or dental hygiene in this state, or after issuance may suspend or revoke the same, for any of the following causes:
(1) The presentation to the board of any diploma, license or certificate illegally or fraudulently obtained, or one obtained from an institution which is not reputable, or one obtained from an unrecognized or irregular institution or state board.
(2) Be guilty of gross ignorance or gross inefficiency in his profession.
(3) Conviction of a felony; and a certified copy of the record of the court of conviction shall be sufficient proof of such conviction.
(4) Announcing or otherwise holding himself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his practice to any branch of dentistry without first complying with the requirements established by the board of dental examiners for such specialty and having been is-
sued a certificate of qualification in such specialty by the board.

(5) Be guilty of unprofessional conduct. The following acts or any of them shall be conclusively presumed to be unprofessional conduct:

(a) Be guilty of any fraud or deception.
(b) The commission of a criminal operation or conviction of a crime involving moral turpitude.
(c) Chronic or persistent inebriety or addiction to narcotics or drugs.
(d) Be guilty of the violation of any professional confidence or be guilty of disclosing any professional secret.
(e) Be grossly immoral.
(f) Be guilty of employing what are known as "cappers" or "steerers" to obtain business.
(g) The obtaining of any fee by fraud or misrepresentation.
(h) Employ directly or indirectly, or direct or permit any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof.
(i) Practice, or offer or undertake to practice, dentistry under any firm name or trade name or under any name other than his own true name: Provided, That any licensee may practice under a firm name or partnership name containing nothing but the surname of every member of such firm or partnership.
(j) Professional connection or association with, or lending his name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this article.
(k) Make use of any advertising relating to the use of any drug or medicine of unknown formula.
(l) Advertise to practice dentistry or perform any operation thereunder without causing pain.
(m) Advertise professional superiority or the performance of professional services in a superior manner.
(n) Advertise prices charged for professional service.
(o) Advertise by means of large display, flickering, or glaring light signs, or contain as a part thereof the representation of a tooth, teeth, or bridgework, or any portion of the human head.
(p) Employ or make use of advertising solicitors or free publicity press agents.
(q) Advertise to guarantee any dental service.
(r) Advertise in any manner calculated to, or tending to, deceive or mislead the public: Provided, That such licensee may announce, by way of a professional card containing not more than his name, title, degree, office location, office hours, business telephone number, and residence address and telephone number, if desired, and if he limits his practice to a specialty he may announce it, but such card shall not be greater in any case than five inches by six inches in size and such information may be inserted in public print when not more than two newspaper columns in width and two inches in depth; and he may announce his change of place of business, absence from, or return to, business in the same manner, and issue appointment cards to his patients, when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on the professional card, and he may display his name, title, and degree upon the windows or doors of his office and by a doorplate or nameplate or office directory when the information is limited to not more than that contained on the professional card, but the name, title and degree of the licensee shall not be displayed on said doors, windows, doorplates, and nameplates or office directory in lettering greater in height than seven inches.
(s) To solicit subscriptions from individuals within or without the state for, or advertise or offer to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television, or United States mail, or in or by any other means of contacting individuals: Provided, That the foregoing

[Ch. 103] PROFESSIONS AND OCCUPATIONS 1045
provisions of this subparagraph (s) shall not be con-
structured so as to prohibit (i) an individual dentist or dental
hygienist from presenting articles pertaining to pro-
cedures or technique to state or national journals or
accepted dental publications, or (ii) educational insti-
tutions approved by the board from offering courses
or instruction or course materials to individual den-
tists and dental hygienists from within or without the
state.

The term advertising, as used in this section, shall be
construed to include the use of radio or any loud-speaking
device or any other similar method or agency.

This entire section is passed in the interest of the public
health, safety and welfare, and its provisions shall be liber-
ally construed to carry out its object and purpose.

§30-4-16. Dental hygienists from other states who desire to
practice in this state; qualifications.

The board of dental examiners may, at its discretion,
without the examination herein provided, issue a license
to practice dental hygiene to any applicant therefor, who
shall furnish proof satisfactory to the board that he has
been duly licensed to practice as a dental hygienist in an-
other state after full compliance with the requirements
of its dental laws: Provided, however, That his profession-
and preliminary education shall not be less than that
required in this state, and that he shall have been in
active practice at least two years previous to his applica-
tion for a license. The fee for issuing a license to a legal
practitioner of dental hygiene from another state shall
be twenty-five dollars, which shall be paid before the
license is issued.

§30-4-17a. Specialties; qualifications; application for certifi-
cate; fee; limitation of practice.

No licensee shall announce or otherwise hold himself
go to the public as a specialist or as being specially quali-
fied in any particular branch of dentistry, or as giving
special attention to any branch of dentistry, or as limiting
his practice to any branch of dentistry, unless he has
first complied with the requirements established by the
board of dental examiners for such specialty and has been
issued a certificate of qualification authorizing him so to
do.

The board of dental examiners may establish higher
standards and additional requirements for any licensee
who desires to announce or otherwise hold himself out
to the public as being specially qualified in a branch or
specialty of dentistry recognized by the board. The board
may give such examinations and secure such assistance
as it may deem necessary in determining the qualifica-
tions of applicants.

The state board of dental examiners may appoint not
more than three specialists to examine the credentials of
applicants, and each specialist so appointed shall receive
ten dollars for each day actually spent in examining the
credentials of applicants and shall be entitled to be reim-
bursed for all reasonable and necessary expenses actually
incurred in discharging such duties. The state board of
dental examiners may appoint not more than three
specialists to administer and grade the specialty examina-
tion given to applicants, and each specialist so appointed
shall receive forty dollars for each day actually spent in
administering and grading such examinations.

Application to the board for a certificate of qualification
in a specialty of dentistry shall be upon such form and
contain such information as the board may require and
shall be accompanied by a fee of seventy-five dollars. A
licensee found by the board to be qualified under the
standards and other requirements promulgated by the
board in the specialty indicated in his application shall be
issued a certificate of qualification authorizing the licensee
to announce or otherwise hold himself out to the public as
specially qualified in the indicated specialty under such
terms and in a manner approved by the board.

§30-4-17b. Annual information and renewal fee; notice; rein-
statement; penalty fee; waiver of payment of fee
on retirement or disability; change of address.

On or before the first day of February of each year,
every dentist licensed to practice dentistry in this state,
and every dental hygienist licensed to practice dental
hygiene in this state, shall transmit to the secretary of the board upon a form prescribed by the board, his signature, post-office address, office address, the serial number of his license certificate, whether he has been engaged during the preceding year in the active and continuous practice of dentistry or dental hygiene, as the case may be, whether within or without this state, and such other information as may be required by the board, together with an information and renewal fee herein provided for.

The annual information and renewal fee for a dentist shall be twenty dollars and for a dental hygienist shall be ten dollars.

Upon receipt of the required information and the payment of the proper renewal fee, the licensee shall be issued a renewal certificate authorizing him to continue the practice of dentistry or the practice of dental hygiene in this state for a period of one year from the first day of February.

A license to practice dentistry or dental hygiene granted under the authority of this article shall be cancelled on the first day of May if the holder thereof fails to secure a current renewal certificate by that date. Any licensee whose license is thus cancelled by reason of the failure, neglect or refusal to secure the proper renewal certificate may be reinstated by the board at any time within six months from the date of the cancellation of said license upon the payment of the proper renewal fee and an additional fee of fifteen dollars. If the licensee shall not apply for renewal of his license as herein required within the said six months, that person shall, at the discretion of said board, be required to file an application for and take the examination provided in this article should he desire to practice dentistry or dental hygiene in this state.

Upon failure of any licensee to submit the required information and pay the annual renewal fee as herein required by the statutory date, the board shall attempt to notify such licensee in writing by mailing to his last registered address a notice of the requirements of this section apprising him of the fact that his license to practice will be cancelled on the statutory date: Provided,
however, That failure to mail or receive such notice shall
not affect the cancellation of his license.

The board may waive the annual payment of the re-
newal fee herein required, and issue a renewal certificate
to any West Virginia licensee who has held a West Vir-
ginia license for at least twenty-five years and is presently
retired from active practice, or to any West Virginia
licensee who has retired for reasons of physical disability,
so long as such retirement continues: Provided, That
the licensee provides the board with the information re-
quired by this section.

Every licensed dentist within thirty days of changing
his place of practice or establishing additional offices shall
furnish the secretary of the board with his new profes-
sional address.

Every licensed dental hygienist within thirty days of
changing his place of employment shall furnish the secre-
tary of the board with his new professional address and
the name of his employer.

§30-4-19. Severability.

1 If any provision of this article or the application thereof
to any person or circumstance shall be held invalid,
the remainder of the article and the application of such
provision to other persons or circumstances shall not be
affected thereby.

CHAPTER 104

(Senate Bill No. 188—By Mr. Jackson, Mr. President,
and Mr. Gainer)

(Passed February 22, 1969; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact sections four, four-a, five and
seven, article three, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amend-
ed, relating to the practice of medicine and surgery in
the state of West Virginia, the licensing of licensed prac-
tioners of other states, examinations by the medical licensing board, the licensing of foreign medical school graduates, and to the increasing of fees to cover the expenses of the medical licensing board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

§30-3-4a. Biennial registration of physicians and surgeons.

§30-3-5. Examinations; certificates; adherents of particular schools or theories of medicine.

§30-3-7. Fees for reciprocal endorsement.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

1 The following persons and no others shall hereafter be permitted to practice medicine and surgery in this state:
2 (a) All such persons as shall be legally entitled to practice medicine and surgery in this state including those persons holding temporary permits to practice in prescribed areas as of the effective date of this act; (b) all such persons as shall be graduates of Class A medical schools, as classified by the council on medical education and hospitals of the American Medical Association, and then only from such schools, when so classified, as require, as a condition to entrance upon the study of medicine, at least two years of academic work of collegiate grade in a standard college of arts and sciences of equal rank with the college of arts and sciences of West Virginia University, and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided; and (c) all such persons as shall be graduates of foreign medical schools whose diplomas have been authenticated by the medical licensing board, and whose premedical
education shall meet the requirements of subdivision (b) above, and who have become citizens of the United States or who have presented evidence of their declaration of intention and show progress toward becoming citizens of the United States, and who shall pass an examination before the medical licensing board and shall receive a certificate therefrom as hereinafter provided: Provided, however, That the said board, or a majority of them, may accept in lieu of an examination of applicants under subdivision (b) above, the certificate of the national board of medical examiners, or the certificate of license to practice medicine and surgery legally granted by the state board of registration or examination or licensing board of another state or territory, whose standard of qualification for the practice of medicine and surgery is equivalent to that of this state, and grant to such applicant a certificate of license to practice medicine and surgery in this state, provided such state or territory accords like privileges to licentiates of this state: Provided further, That whenever in the judgment of the medical licensing board a condition exists in which medical service may be required, the said board is authorized to grant permits for the practice of medicine to qualified physicians in prescribed areas, and such permits shall be subject to revocation when the agreement, under which they were issued, has been violated. A fee of one hundred dollars shall accompany each application for licensure by examination or reciprocity, twenty-five dollars of which shall be retained by the board in the event an application is withdrawn or rejected. A fee of twenty-five dollars shall accompany each application for temporary licensure and a fee of ten dollars shall accompany each application for an extension thereof.

§30-3-4a. Biennial registration of physicians and surgeons.

Every person who, on or before the thirty-first day of August, one thousand nine hundred forty-nine, is licensed as a physician or surgeon to practice medicine and surgery in this state, shall, on or before the said thirty-first day of August, one thousand nine hundred forty-nine, make application to the medical licensing
board for registration, and shall be registered by the said board, as the holder of such license, which registration shall be for the period ending on the thirtieth day of June, one thousand nine hundred fifty-one. On or before the said thirtieth day of June, one thousand nine hundred fifty-one, and biennially thereafter, on or before the thirtieth day of June of each biennial period, every person licensed as a physician or surgeon in this state shall apply to the said board for registration, or a renewal of registration, as such license holder: Provided, that no registration shall be required of any holder of a certificate of licensure for the biennial period, or any portion thereof, during which such certificate is issued.

Each applicant for registration or renewal thereof shall remit to the board, with his application, a fee of ten dollars.

The failure of any person to comply with the provisions of this section shall operate automatically, and without further proceedings, to cancel the certificate of such person, and the license issued thereunder. Continued practice by any such person after such cancellation of his certificate and license shall constitute practicing without a license, and any person so practicing shall be subject to all of the penalties provided by law for practicing without a license.

Any certificate and license cancelled pursuant to the provisions of this section, and not for any other reason, shall be reinstated by the said board upon submission to it of an application for registration by the person whose certificate has been cancelled, together with current and delinquent fees, and ten dollars reinstatement fee.

§30-3-5. Examinations; certificates; adherents of particular schools or theories of medicine.

The medical licensing board shall, at such times as a majority of them deem proper, hold examinations for the licensing of applicants for license to practice medicine and surgery in this state. No fewer than two examinations shall be held during the year, at such place in the state as may be determined by the medical licensing
board. At such examination written questions shall be submitted to the applicants, covering all the essential branches of the sciences of medicine and surgery, and the examination shall be a thorough and decisive test of the knowledge and ability of the applicant. The chairman and secretary of the board shall issue certificates to all who successfully pass the said examination and to all whose certificates said board, or a majority of them, shall accept in lieu of an examination, as hereinafter provided. Such certificates shall be deemed licenses to practice medicine and surgery in all their branches in this state. The medical licensing board shall give reasonable notice of the time and place of holding such examinations, and all such persons wishing to present themselves for examination shall notify the secretary and comply with the rules of the board. No applicant for license to practice medicine and surgery in this state shall be rejected because of his adherence to any particular school or theory of medicine.

§30-3-7. Fees for reciprocal endorsement.

1 The medical licensing board shall be entitled to charge and collect the following fee, in addition to those provided in article one and this article three of this chapter:
2 The sum of ten dollars for a reciprocal endorsement.

CHAPTER 105

(House Bill No. 840—By Mr. Flanagan and Mr. Ours)

[Passed March 7, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact sections five, nine and fourteen, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article by adding thereto a new section, designated fourteen-a, relating to fees to be charged by the West Virginia board of pharmacy for examination, the registration of pharmacies or drugstores, permits and fees
to operate pharmacies or drugstores, use of funds resulting from increased fees, the operation of pharmacies or drugstores, and providing for certain exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

§30-5-9. Fees.

§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

§30-5-14a. Use of funds resulting from increased fees.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

1 In order to be registered as a pharmacist within the meaning of this article, a person shall be a citizen of the United States, not less than twenty-one years of age, shall present to the board of pharmacy satisfactory evidence that he is a graduate of a recognized school of pharmacy as defined by the board of pharmacy, and in addition thereto he shall have had at least one year of practical experience in a pharmacy or drugstore under the instruction and supervision of a registered pharmacist and shall pass satisfactorily an examination by or under the direction of the board of pharmacy. Each application for examination must be accompanied by a fee of fifty dollars and the same forwarded to the secretary according to law.

15 Every applicant for registration as a pharmacist shall present to the board of pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness or the use of narcotic drugs. The board shall issue certificates of registration to all persons who successfully pass the required examination and are otherwise qualified, and to all those whose certificates
or licenses the board shall accept in lieu of an examination as provided in the next succeeding section.

§30-5-9. Fees.

1 The board of pharmacy shall be entitled to charge and collect the following fees, in addition to those provided in article one of this chapter and in section fourteen and section sixteen of this article: For renewing the registration of a pharmacist, fifteen dollars; for renewing the registration of an assistant pharmacist, fifteen dollars; for issuing a permit to an assistant pharmacist to conduct a pharmacy or drugstore in a village of not more than five hundred inhabitants, twenty-five dollars.

§30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.

1 The board of pharmacy shall require and provide for the annual registration of every pharmacy or drugstore, as defined, doing business in this state. Any person, firm, corporation or copartnership desiring to operate, maintain, open or establish a pharmacy or drugstore, as defined, in this state, shall apply to the board of pharmacy for a permit to do so. The application for such permit or license shall be made on a form prescribed and furnished by the board of pharmacy, which when properly executed, shall indicate the owner, manager, trustee, lessee, receiver, or other person or persons desiring such permit, as well as the location of such pharmacy or drugstore, including street and number, and such other information as the board of pharmacy may require. If it is desired to operate, maintain, open or establish more than one pharmacy or drugstore, separate applications shall be made and separate permits or licenses shall be issued for each. Every initial application for a permit shall be accompanied by the required fee of fifty dollars. The fee for renewal of such permit or license shall be twenty-five dollars annually. If an application is found satisfactory, the secretary of the board of pharmacy shall issue to the applicant a permit or license for each pharmacy or drugstore for which application is made. Permits or licenses issued under this section shall not be transferable and
shall expire on the thirtieth day of June of each calendar year, and if application for renewal of permit or license is not made or a new one granted on or before the first day of August, following, the old permit or license shall lapse and become null and void. Every such place of business so registered shall be in direct charge of a registered pharmacist and operate in compliance with the general provisions governing the practice of pharmacy and the operation of a drugstore or pharmacy.

The provisions of this section shall have no application to the sale of patent or proprietary medicines which are not poisonous, deleterious or habit-forming nor to such ordinary drugs in original retail packages when such are not poisonous, deleterious or habit-forming nor to flavoring extracts or dyestuffs as are usually sold in a country store.

§30-5-14a. Use of funds resulting from increased fees.

The increased funds resulting from the increased fees under sections five, nine and fourteen of this article shall be used only (a) for the employment of an investigator or investigators pursuant to section two of this article, (b) for the reimbursement of necessary expenses of such investigator or investigators upon the submittal of proper vouchers therefor, (c) for the payment of additional expenses necessitated by the conduct of the office of such investigator or investigators, and (d) upon payment of the total expenses, including salaries of such investigator or investigators, any remaining funds shall be used for the conduct of the office of the West Virginia board of pharmacy.

CHAPTER 106

(Senate Bill No. 76—By Mr. Hedrick)

[Passed March 3, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five and seven, article six, chapter thirty of the code of West Vir-
Ch. 106]  PROFESSIONS AND OCCUPATIONS  1057

ginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections thirteen, fourteen, fifteen and sixteen, relating to embalmers and funeral directors and the West Virginia board of embalmers and funeral directors; providing for an executive secretary, clerks, inspectors and assistants for said board; providing certain definitions; relating to the licensing of embalmers and funeral directors and the registration of apprentice funeral directors and apprentice embalmers; providing for certain fees; requiring the licensing of funeral establishments; specifying the methods, procedures and qualifications for licensing of a funeral establishment; relating to the issuance, cancellation, suspension or revocation of funeral establishment licenses; providing for administrative procedures and judicial review in connection with the suspension or revocation of a funeral establishment license; providing for injunctive relief; and providing for the licensing of embalmers and funeral directors on the basis of reciprocity.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five and seven, article six, 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 four new sections, designated sections thirteen, fourteen, fifteen and sixteen, all to read as follows:

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

§30-6-4. Definitions.

§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

§30-6-7. Refusal to grant or renew; suspension or revocation of license or certificate of registration.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

§30-6-14. Suspension or revocation of license to operate a funeral establishment.

§30-6-15. Injunction proceedings.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.
§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifteen dollars per day for each day actually spent by such member upon the business of the board; except that the state health director shall receive only such compensation as he is entitled to receive for his services as state health director, together with actual and necessary traveling expenses while engaged upon the business or in attendance of the board, with such compensation and expenses to be payable from the funds of the state health department. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive secretary and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and the duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive secretary, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer's license or a West Virginia funeral director's license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.
All such expenses, per diem and compensation shall be paid out of the receipts of the board, except such expenses and compensation as may be payable to the state health director, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year, one during the month of April and one during the month of November for the purpose of examining applicants for licenses, such meeting or meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.

The board may hold such other meetings as it may deem necessary and may transact any business at any such meeting. Three or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

The board shall have power and it shall be its duty to make and enforce all necessary rules and regulations, not inconsistent with this article, for the examination and licensing of funeral directors, and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing of funeral establishments and the general operation of funeral establishments, except that no rules and regulations issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license.
The board shall publish in its rules and regulations the subjects to be covered in the said examinations and the standards to be attained thereon. Changes in the rules and regulations shall be published and shall be given due publicity at least ninety days before becoming effective.

The board shall conduct annually a school of instruction to apprise funeral directors and embalmers of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators may be employed by the board for this purpose.

The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it shall be the duty of every licensed funeral director and embalmer to attend at least one such school in every three years.

The board or any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral directing is conducted or practiced or where embalming is practiced.

§30-6-4. Definitions.

1 For the purpose of this article, the following terms shall be construed in the following manner:

"Funeral director" shall mean any person engaged, or holding himself out as engaged, in the business of funeral directing as herein defined, and shall use in connection with his name or business the words or terms "funeral director," "undertaker," "mortician," or any other word, term, or title to imply or designate him as a funeral director, undertaker, or mortician.

"Funeral directing" shall mean the business or profession of directing or supervising funerals for profit by any person, partnership, association, corporation, or other organization, or the business or profession of preparing dead human bodies for burial by means other than embalming by any person, partnership, association, corporation, or other organization, or the disposition
of dead human bodies by any person, partnership, association, corporation, or other organization, or maintenance of a place or establishment for the preparation for disposition or for the care or disposition of dead human bodies by any person, partnership, association, corporation, or other organization, or the use in connection with a business of the word or term “funeral director,” “undertaker,” “mortician,” by any person, partnership, association, corporation, or other organization, directing or the holding out to the public that one is a funeral director by any person, partnership, association, corporation, or other organization.

A “funeral establishment” is a place of business maintained and operated by a person, partnership, association, corporation, or other organization, conducted in a building, or series of buildings, or a separate portion of a building having a specific street address or location, and devoted to such activities as are incident, convenient, or related to the preparation and arrangements, financial and otherwise, for the embalming, funeral, transportation, burial or other disposition of dead human bodies.

“Embalmer” shall mean any person engaged in, or holding himself out to be engaged in, the practice of embalming, whether on his own behalf or in the employ of another, and shall include any person who shall use in connection with his name, the term “embalmer,” or use any word, term, or title intending to imply or designate him as an embalmer or as one engaged in embalming.

“Embalming” is the introduction into the vascular system or hollow organs of a dead human body, by arterial or by hypodermic injection, of any chemical substance, fluids, or gases used for the purpose of preservation or disinfection.

“Apprentice” shall mean any person engaged in this state in the learning of the practice of embalming or of the practice of funeral directing under the instruction and personal supervision of a duly licensed embalmer or a duly licensed funeral director, under the provisions of this chapter.
§30-6-5. Embalmers and funeral directors to be licensed; qualifications and requirements for license; advertising; renewal of license; registration as apprentice; courtesy cards.

No person shall engage in or hold himself out as engaging in, or discharge any of the duties of the business or profession of embalming, or preserving in any manner dead human bodies in this state, whether for himself or in the employ of another, unless he holds an embalmer's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article.

No person shall engage in, or hold himself out as engaging in, or discharge any of the duties of the business or profession of funeral directing in this state, unless he holds a funeral director's license issued to him by the board, and shall at the date of its issuance have complied with the provisions of this article, or conduct a funeral unless he be a licensed funeral director.

No person shall be entitled to an embalmer's license unless he:

1. Is twenty-one years of age or over;
2. A citizen of the United States;
3. Of good moral character and temperate habits;
4. Holds a high school diploma or its equivalent;
5. Has had not less than sixty hours' credit of educational training in an accredited university or college, such credit shall be in such subjects only as are recognized in the university or college where taken, as credit toward a baccalaureate degree;
6. Has completed a one-year course of apprenticeship under the supervision of a licensed embalmer actively and lawfully engaged in the practice of embalming in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment, and under which said apprenticeship he shall have
taken an active part in the operation of embalming not
less than twenty-five dead human bodies, under the su-

(7) Possesses a diploma of graduation from a school
of embalming which requires as a prerequisite to gradu-
ation the completion of a course of study not less than
twelve months' duration, and which said school of em-
balming must be one duly approved by the board;

(8) Passes such examination as the board shall deem
necessary to ascertain his qualification and ability to
engage in the practice of embalming: Provided, however,
That any apprentice embalmer duly registered as such
with the board on or before July first, one thousand nine
hundred fifty-one, may be eligible to take the required
examination for an embalmer's license without having
had the sixty hours resident educational training in a
university or college heretofore mentioned, upon com-
pliance with all the other requirements, prerequisite to
the same, including the two years' apprenticeship.

The board shall issue licenses separately to embalmers
and to funeral directors.

An applicant for a funeral director's license must
furnish satisfactory proof to the board that his business
or profession of funeral directing is to be conducted in a
fixed place or establishment equipped for the care and
preparation for burial or disposition of dead human
bodies. What shall be deemed "necessary equipment"
shall be defined in the rules and regulations of the board,
the same to be in compliance with the public health laws
of the state or the rules of the state board of health of
West Virginia. This shall not be so construed as to deny
an applicant for a funeral director's license such a license
because he is not the owner, or part owner, of an estab-
lishment or proposed funeral business.

Licenses issued under the provisions of this article
shall not be transferable or assignable.

No person shall be eligible to receive a license as a
funeral director unless he:
(1) Holds an embalmer's license issued by this board;
(2) Has been duly registered with the board as an apprentice;
(3) Has served not less than a one-year apprenticeship under the personal supervision of a licensed funeral director actively and lawfully engaged in the business or profession of funeral directing in this state, such apprenticeship to consist of diligent attention to the work in the course of regular and steady employment and not as a side issue to another employment: Provided, however, That any apprentice funeral director twenty-one years of age, or older, who is duly registered with the board as such apprentice on or before July first, one thousand nine hundred fifty-one, and who has served his two years' apprenticeship may be eligible to take the required examination for a funeral director's license, without having first obtained an embalmer's license, upon compliance with all other requirements as to eligibility for such examination.

All funeral homes or establishments or any other places pertaining to funeral directing or the conducting of funerals, shall display in all advertising the name of the licensed funeral director who is actually in charge of the establishment. All branch establishments must display the name of the funeral director who is actually in charge. At least one licensed funeral director shall supervise each main establishment and at least one licensed funeral director shall directly supervise each branch establishment.

No licensed funeral director or licensed embalmer shall be permitted to register or have registered more than five apprentices under his said license at the same time.

Any person now holding a license as an embalmer, funeral director, or assistant funeral director, shall not be required to make a new application, or submit to an examination, but shall, upon the payment of the fee therefore, be entitled to a renewal of his license upon the terms and conditions herein provided for the renewal of licenses of those who may be licensed after the passage of this article, but all such persons shall be subject to every
provision of this article, and such rules and regulations as the board may adopt in pursuance of this article.

No person shall be registered as an apprentice funeral director or apprentice embalmer unless he is eighteen years of age, or over, a citizen of the United States, of good moral character and temperate habits, and the holder of a high school diploma or its equivalent.

The board may issue annual nonrenewable courtesy cards to licensed funeral directors and licensed embalmers of the states bordering on West Virginia, upon application for same made on form prescribed by the board. The annual fee for such courtesy cards shall be twenty-five dollars and said fee shall be paid at the time application is made therefor. Applications for said courtesy cards shall be approved by the board before the same may be issued, and said courtesy cards shall be issued under the following conditions: Holders of courtesy cards shall not be permitted to open or operate a place of business for the purpose of conducting funerals or embalming bodies in the state of West Virginia, nor shall they be permitted to maintain an office or agency in this state. A violation of this section shall be sufficient cause for the board to revoke or cancel the courtesy card of the violator.

§30-6-7. Refusal to grant or renew; suspension or revocation of license or certificate of registration.

The board may either refuse to issue, or may refuse to renew, or may suspend, or may revoke any embalmer’s license or funeral director’s license, or embalmer’s or funeral director’s certificate of registration issued by it for any one or combination of the following causes:

(a) The practice of fraud or deceit in obtaining or attempting to obtain a license or a certificate of registration;

(b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;

(c) Violation of any of the provisions of this article or the public health laws of this state;
(d) The use of false, misleading or unethical advertising by any licensee or applicant for a license or certificate of registration;

(e) Upon satisfactory proof that a licensed embalmer or a licensed funeral director has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his business;

(f) Solicitation of business by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending: Provided, That this shall not be deemed to prohibit proper advertising;

(g) If the applicant therefor or holder thereof knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his supervision; or if any holder of an embalmer's license or funeral director's license issued hereunder knowingly permits any unlicensed person to use his license number or numbers for the purpose of practicing, or discharging any of the duties of, the professions of embalming or funeral directing;

(h) Employment by the licensee of persons as "cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing business;

(i) Employment directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director;

(j) The buying of business by the licensee, his agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his agent, assistants, or employees, for the purpose of securing business;

(k) Gross immorality;

(l) If the applicant therefor or holder thereof has been guilty of habitual drunkenness or is addicted to the use of morphine, cocaine or other habit-forming drugs.
§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

On or before July one, one thousand nine hundred sixty-nine, every funeral establishment operating in West Virginia shall obtain a license for the succeeding fiscal year beginning July one, one thousand nine hundred sixty-nine, as provided for in this section.

An application for a license to operate a funeral establishment shall be in writing and verified on a form provided by the board and shall be accompanied by a fee as herein provided, and upon receipt of the same, the board shall forthwith issue or renew a license to operate a funeral establishment. Such application to operate a funeral establishment shall be made by any person, partnership, association, corporation, organization, or fiduciary having controlling interest in such funeral establishment.

Such application shall be signed by the applicant and by the individual who is duly licensed as a funeral director, and who shall be in charge and responsible for all transactions conducted and services performed therein. If such funeral establishment is owned by a person who is not licensed as a funeral director or by a partnership, association, corporation, or other organization, then such owner shall have in his or its employ and place in charge of such establishment, a person who is duly licensed as a funeral director, who shall manage, conduct and have supervision of the work or business of such establishment and be responsible therefor.

A license to operate a funeral establishment shall expire on the thirtieth day of June of each calendar year and the renewal date for any such license shall be the first day of July of each calendar year.

Each funeral establishment license shall be valid only for one funeral establishment to be located at a specific street address or location; the fee to operate the principal establishment shall be fifty dollars per year and the fee to operate each additional funeral establishment by the same applicant shall be thirty-five dollars per year. Each separate funeral establishment shall have its own license,
which license shall be prominently displayed within the
funeral establishment. No additional license fee shall be
charged if during any given year it shall be necessary
to reapply for a license to operate a funeral establishment
at the same or different location.

The holder of any funeral establishment license who
ceases to operate the funeral establishment at the loca-
tion specified in the application shall, within twenty days
thereafter, surrender the funeral establishment license to
the board and such license shall be cancelled by the
board, except that in the event of the death of an indi-
vidual who was the holder of a funeral establishment
license, it shall be the duty of such holder's personal rep-
resentative to surrender such funeral establishment li-
cense within thirty days of qualifying as such personal
representative. It shall be the duty of any holder of a
funeral establishment license, pursuant to this section,
to notify the board within thirty days if for any reason
the licensed funeral director whose name is signed to
the application for the issuance thereof, ceases to be
employed by such funeral establishment. Within thirty
days after such notification, such holder of a funeral
establishment license may execute a new application
for a funeral establishment license signed by the ap-
plicant and by the licensed funeral director who shall
be in charge of and responsible for all transactions con-
ducted and services performed within the funeral es-
tablishment. Failure to comply with any of these provi-
sions shall be grounds for revocation of a funeral estab-
ishment license.

A licensee whose embalmer's license, funeral director's
license or license to operate a funeral establishment has
been revoked under this article shall not operate, either
directly or indirectly, or hold any interest in any funeral
establishment. Nothing herein contained shall prohibit
a licensee whose license has been revoked from leasing
any property owned by him or them for use as a funeral
establishment so long as he or they do not participate in
the control or profit of such funeral establishment other-
wise than as a lessor of the premises for a fixed rental
not dependent upon earnings.
§30-6-14. Suspension or revocation of license to operate funeral establishment.

1 After notice and hearing given and held as notices and hearings are required to be given and held under the provisions of section eight of this article, the board may revoke or suspend any license to operate a funeral establishment issued under section thirteen of this article, for any one or combination of the following causes:

(a) The practice of fraud or deceit or misrepresentation in obtaining or attempting to obtain a funeral establishment license;

(b) Conviction of a felony as shown by a certified copy of the record of the court of conviction;

(c) Violation of any of the provisions of this article or rules and regulations of the board;

(d) The use of false, misleading or unethical advertising by any holder of a funeral establishment license;

(e) Upon satisfactory proof that a holder of a funeral establishment license has taken undue advantage of his patrons or has committed a fraudulent act in the conduct of his or its business;

(f) Solicitation of business by the holder of a funeral establishment license, his agents, assistants or employees: Provided, That this shall not be deemed to prohibit proper advertising;

(g) If the holder of a funeral establishment license knowingly permits an unlicensed person to engage in the profession or business of embalming or funeral directing under his or its supervision;

(h) Employment by the holder of a funeral establishment license of persons as “cappers,” “steerers” or “solicitors,” or other such persons to obtain funeral directing business;

(i) Employment by the holder of a funeral establishment license directly or indirectly of any apprentice, agent, assistant, embalmer, employee, or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose in-
fluence dead human bodies may be turned over to a particular funeral establishment;

(j) The buying of business by the holder of a funeral establishment license, his or its agents, assistants, or employees or the direct or indirect payment or offer of payment of a commission by the licensee, his or its agent, assistants, or employees, for the purpose of securing business;

(k) Gross immorality.

Any decision of the board suspending or revoking a license to operate a funeral establishment shall be subject to judicial review in the same manner as a decision to suspend or revoke a funeral director's license or embalmer's license is subject to judicial review under the provisions of section eight of this article, and the written notice of appeal specified in said section eight shall be filed with the circuit court of the county in which such funeral establishment is located.

§30-6-15. Injunction proceedings.

The board may bring legal proceedings to enjoin a person, partnership, association, corporation or other organization violating the provisions of this article or any rule or regulation of the board from practicing the science of embalming or conducting the business of funeral directing or operating a funeral establishment, as may be the case, until such person, partnership, association, corporation, or other organization complies with the requirements of this article and the rules and regulations of the board.

§30-6-16. Reciprocity in licensing of embalmers and funeral directors.

The board may recognize licenses issued to funeral directors or embalmers from other states, and, upon presentation of such license, may, upon the payment of the sum of twenty-five dollars to the secretary of the board, issue to the lawful holder thereof, the funeral director's or embalmer's license provided for in this article: Provided, however, That such recognition shall not be extended to funeral directors or embalmers holding licenses from other states unless reciprocal rights are provided
by such other states to holders of funeral director's or embalmer's licenses granted in this state. Such reciprocal licenses may be renewed annually upon payment of the renewal license fee as provided for in section six for license holders residing in this state. No person is entitled to a reciprocal license as a funeral director or embalmer unless he furnishes proof that he has, in the state in which he is regularly licensed, complied with requirements substantially equal to those set out in this article.

CHAPTER 107

(Com. Sub. for Senate Bill No. 78—By Mr. Wolfe and Mr. Brotherton)

[Passed February 24, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to the regulation and licensing of land surveyors; providing definitions; providing for a board of examiners of land surveyors; relating to the organization, functions and funds of such board; relating to the powers and duties of such board; establishing qualifications of applicants for a license to engage in the practice of land surveying; providing exceptions; providing for applications for and the issuance of licenses, renewals thereof and fees therefor; establishing exemptions from licensing requirements; authorizing the board to suspend or revoke a license and establishing the grounds therefor; providing procedures for hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings; authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic suspension of certain orders of the board pending such hearings; relating to the costs for such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for ap-
peals to the supreme court of appeals; providing for legal
counsel for the board; relating to the seal of a licensed land
surveyor; requiring seal to be affixed before certain docu-
ments may be admitted to record; establishing criminal
penalties; providing for injunctive relief; and providing a
severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-1. License required.
§30-13A-3. Board of examiners of land surveyors created; appoint-
ment, terms, removal, etc., of members; officers; meet-
ings; quorum; compensation and expenses.
§30-13A-4. Powers and duties of board; funds.
§30-13A-5. Qualifications of applicants for licenses; exceptions; appli-
cations; fee; examinations.
§30-13A-6. Issuance of license; notice of expiration; renewal; renewal
fee; display.
§30-13A-7. Exemption from regulation and licensing.
§30-13A-8. Suspension or revocation of license.
§30-13A-10. Judicial review; appeal to supreme court of appeals; legal
representation for board.
§30-13A-14. Offenses and penalties.

§30-13A-1. License required.

1 In order to provide for the regulation of land surveying
2 in this state, no person shall engage in, offer to engage in,
3 or hold himself out to the public as being engaged in, the
4 practice of land surveying in this state (except for the
5 persons exempted under the provisions of section seven
6 of this article), unless and until he shall first obtain a
7 license to engage in the practice of land surveying in ac-
8 cordance with the provisions of this article, which license
9 remains unexpired, unsuspended and unrevoked.

1 Unless the context in which used clearly requires a different meaning, as used in this article:
2 (a) "Applicant" means any person making application for an original or renewal license under the provisions of this article;
3 (b) "Licensee" means any person holding a license issued under the provisions of this article;
4 (c) "Board" means the West Virginia state board of examiners of land surveyors created under the provisions of this article;
5 (d) "Practice of land surveying" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, for the public generally, any of the following services:
6 (1) The location, relocation, establishment, reestablishment or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement or alignment;
7 (2) The performance of any survey for the division, subdivision or resubdivision of any tract of land;
8 (3) The determination of the position of any monument or reference point which marks a property line boundary or corner, or setting, resetting or replacing any such monument or reference point, by the use of the principles of land surveying;
9 (4) The determination of the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of mathematics;
10 (5) The performance of cadastral surveying, underground surveying or hydrographic surveying;
11 (6) The preparation of subdivision maps; and
12 (7) The preparation of maps or drawings showing any of the above.
13 (e) "Land surveyor" means any person who engages in the practice of land surveying.
§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

1 (a) There is hereby created the state board of examiners of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article, or in the case of the members first appointed be eligible for such a license.

2 (b) The members of the board shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and qualified, except of the original appointments, one member shall be appointed for a term of three years and until his successor has been appointed and qualified, one member shall be appointed for a term of two years and until his successor has been appointed and qualified and one member shall be appointed for a term of one year and until his successor has been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

3 (c) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examina-
tion hereinafter provided for and to transact such other
business as may come before it.

(d) Members may be paid such reasonable compensa-
tion as the board may from time to time determine, and
in addition may be reimbursed for all reasonable and
necessary expenses actually incurred in the performance
of their duties, which compensation and expenses shall
be paid in accordance with the provisions of subsection
(b), section four of this article.

§30-13A-4. Powers and duties of board; funds.

(a) The board shall have the power and duty to:

(1) Examine applicants and determine their eligibility
for a license to engage in the practice of land surveying;

(2) Prepare, conduct and grade an apt and proper
written, oral or written and oral examination of appli-
cants for a license and determine the satisfactory passing
score thereon;

(3) Promulgate reasonable rules and regulations im-
plementing the provisions of this article and the powers
and duties conferred upon the board hereby, all of which
reasonable rules and regulations shall be promulgated in
accordance with the provisions of article three, chapter
twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses to
engage in the practice of land surveying in accordance
with the provisions of this article;

(5) Investigate alleged violations of the provisions of
this article, reasonable rules and regulations promulgated
hereunder and orders and final decisions of the board
and take appropriate disciplinary action against any
licensee for the violation thereof or institute appropriate
legal action for the enforcement of the provisions of this
article, reasonable rules and regulations promulgated
hereunder and orders and final decisions of the board or
take such disciplinary action and institute such legal
action;

(6) Keep accurate and complete records of its pro-
ceedings, certify the same as may be appropriate, and
prepare, from time to time, a list showing the names
and addresses of all licensees; and
(7) Take such other action as may be reasonably neces-
sary or appropriate to effectuate the provisions of this
article.
(b) All moneys paid to the board shall be accepted by
a person designated by the board and deposited by him
with the treasurer of the state and credited to an account
to be known as the "board of examiners of land surveyors
fund." All of the reasonable compensation of the members
of the board, the reimbursement of all reasonable and
necessary expenses actually incurred by such members
and all other costs and expenses incurred by the board
in the administration of this article shall be paid from
such fund, and no part of the state's general revenue
fund shall be expended for this purpose.

§30-13A-5. Qualifications of applicants for licenses; exceptions;
applications; fee; examinations.

(a) To be eligible for a license to engage in the prac-
tice of land surveying, the applicant must:
(1) Be at least twenty-one years of age;
(2) Be of good moral character;
(3) Have been a resident of the United States for one
year immediately preceding the date of application;
(4) Not have been convicted of a crime involving
moral turpitude;
(5) Have four years or more experience in the prac-
tice of land surveying under the supervision of a licensee,
or a person eligible for a license hereunder, or a person
authorized in another state or country to engage in the
practice of land surveying; and each year of satisfactory
study in an accredited surveying curriculum may be
substituted for one year of experience, but only two years
of such experience requirement may be fulfilled by such
study; and
(6) Have passed the examination prescribed by the
board, which examination shall cover the basic subject
matter of land surveying and land surveying skills and
techniques.
(b) The following persons shall be eligible for a license to engage in the practice of land surveying without examination:

(1) Any applicant who is licensed, certificated or registered to engage in the practice of land surveying in any other state or country, if the requirements to obtain a license or certificate or to become registered in such other state or country are found by the board to be at least as great as those prescribed in this article.

(2) Any applicant who is a graduate of an accredited surveying curriculum and has at least two years of experience in the practice of land surveying under the supervision of a licensee, or a person eligible for a license hereunder, or a person authorized in another state or country to engage in the practice of land surveying, if such applicant meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(3) Any applicant who has been engaged in the practice of land surveying in West Virginia for at least six years prior to the filing of such application, if such application for a license is made within three years after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section. Such applicant must also furnish the names and addresses of ten persons who have engaged such applicant as a land surveyor, together with satisfactory records of such land surveying work.

(c) Any applicant for any such license shall submit an application therefor on forms provided by the board. Such applications shall be verified and shall contain a statement of the applicant's education and experience, the names of five persons for reference (at least three of whom shall be licensees, or persons eligible for a license hereunder, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of his work) and such other information as the board may from time to time by reasonable rule and regulation prescribe.

(d) An applicant shall pay to the board with his application a license fee of twenty dollars, which fee shall be returned if he is denied a license.
Examinations shall be held at least once each year at such time and place as the board shall determine. The scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass an examination may reapply at any time and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee of twenty dollars, which fee shall be returned if the applicant is again denied a license.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of land surveying, it shall forthwith issue to him such license; and otherwise the board shall deny the same. All licenses, whether original or renewal, shall expire on the thirtieth day of June following the date of issuance or renewal. The secretary-treasurer of the board shall mail to every licensee, at least thirty days prior to the expiration of such license, notice of the expiration date and the amount of the renewal fee. A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of five dollars. If a license is not renewed when due, the fee shall increase fifty cents per month for each month or fraction thereof that such renewal fee is not paid, up to a maximum of thirty-six months. No license shall be renewed after expiration of said period of thirty-six months, and the fact that a license cannot be renewed because of the expiration of said period of thirty-six months shall not prevent such person from making application for a new license. The board may deny any application for renewal for any reason which would justify the denial of an original application for a license. The board shall prescribe the form of licenses and each such license shall be conspicuously displayed by the licensee at his principal place of practice. A duplicate license may be issued upon payment of a fee of five dollars.
§30-13A-7. Exemption from regulation and licensing.

The following persons are exempt from regulation and licensing under the provisions of this article and any reasonable rules and regulations promulgated hereunder, and may engage in the practice of land surveying without a license issued under the provisions of this article and any such reasonable rules and regulations:

(a) Any professional engineer authorized to practice the profession of engineering as provided in article thirteen of this chapter;

(b) Any resident of another state, when such practice in this state does not exceed in the aggregate more than thirty days per calendar year, or such additional time as may be approved by the board, if such person is licensed, certificated or registered in his own state and the requirements for obtaining a license or certificate or becoming registered in such other state are not lower than those specified in this article;

(c) Any person who has filed with the board an application for a license and who has paid the fee required by this article, but such exemption shall continue only for such time as the board requires for the consideration and determination of the application for such license;

(d) Any employee of a person holding a license to engage in the practice of land surveying in this state or any employee of a person exempted from regulation and licensing under subdivisions (a) and (b) of this section: Provided, That the work of any such employee is done under the supervision of and certified by his employer;

(e) Any employee of a person, firm, association or corporation, when such employee is engaged in the practice of land surveying exclusively for the person, firm, association or corporation by which employed, or, if a corporation, its parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold himself or itself out to the public as being engaged in the business of land surveying;

(f) Any employee or officer of the United States, this state or any political subdivision thereof, when
such employee is engaged in the practice of land surveying exclusively for such governmental unit.

§30-13A-3. Suspension or revocation of license.

1. (a) The board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license issued under the provisions of this article.

2. (b) The board shall suspend or revoke any license when it finds the holder thereof has:

3. (1) Been convicted of a crime involving moral turpitude;

4. (2) Obtained a license by means of fraud or deceit;

5. (3) Been incompetent, grossly negligent, or guilty of fraud, deceit or other misconduct in the practice of land surveying as defined by the board by reasonable rules and regulations; or

6. (4) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board.

7. (c) The board shall also suspend or revoke any license if it finds the existence of any ground which would justify the denial of an application for such license if application were then being made for it.

8. (d) Any suspension of a license shall continue for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new license, which application shall be processed in the same manner and the application approved or denied and the license issued or refused on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be given such weight in deciding whether to approve or deny such application and issue or refuse to issue such license as is meet and proper under all the circumstances.

(a) Whenever the board shall deny an application for any original or renewal license or shall suspend or revoke any license, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such
hearing any member of the board shall have the power
and authority to issue subpoenas and subpoenas duces
tecum which shall be issued and served within the time,
for the fees and shall be enforced, as specified in section
one, article five of said chapter twenty-nine-a, and all
of the said section one provisions dealing with subpoenas
and subpoenas duces tecum shall apply to subpoenas
and subpoenas duces tecum issued for the purpose of a
hearing hereunder.

(f) At any such hearing the person who demanded
the same may represent himself or be represented by
an attorney at law admitted to practice before any circuit
court of this state. Upon request by the board, it shall
be represented at any such hearing by the attorney
general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of
the testimony, evidence and record in the case, the board
shall render its decision in writing. The written decision
of the board shall be accompanied by findings of fact and
conclusions of law as specified in section three, article five,
chapter twenty-nine-a of this code, and a copy of such
decision and accompanying findings and conclusions shall
be served by certified mail, return receipt requested, upon
the person demanding such hearing, and his attorney of
record, if any.

(h) The decision of the board shall be final unless
reversed, vacated or modified upon judicial review there-
of in accordance with the provisions of section ten of this
article.

§30-13A-10. Judicial review; appeal to supreme court of ap-
peals; legal representation for board.

Any person adversely affected by a decision of the board
rendered after a hearing held in accordance with the
provisions of section nine of this article shall be entitled
to judicial review thereof. All of the pertinent provisions
of section four, article five, chapter twenty-nine-a of this
code shall apply to and govern such judicial review with
like effect as if the provisions of said section four were
set forth in this section.
The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

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


Each licensee shall obtain a seal of the design authorized by the board, bearing his name and the legend, "Licensed Land Surveyor." Plans, plats, maps, drawings and reports issued by a licensee shall be stamped with the seal. It shall be unlawful for anyone to stamp or seal any document with such seal unless the license of the licensee named thereon remains unsuspended, unrevoked and unexpired.


No document prepared by or alleged to have been prepared by a land surveyor shall be filed by any clerk of a county court or accepted by any public official of this state unless the seal required by section eleven of this article has been affixed thereto, except that any document prepared by a person exempted from the regulation and licensing requirements of this article, as provided in section seven of this article, shall not be required to have the seal required by section eleven of this article affixed thereto.


Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred,
is occurring or is about to occur, or the judge thereof
in vacation, for an injunction against such person and
any other persons who have been, are or are about to
be, involved in any practices, acts or omissions, so in
violation, enjoining such person or persons from any
such violation or violations. Such application may be
made and prosecuted to conclusion whether or not any
such violation or violations have resulted or shall result in
prosecution or conviction under the provisions of section
fourteen of this article.

Upon application by the board, the circuit courts of
this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article,
the reasonable rules and regulations promulgated here-
under and all orders and final decisions of the board.
The court may issue a temporary injunction in any
case pending a decision on the merits of any application
filed.

The judgment of the circuit court upon any appli-
cation permitted by the provisions of this section shall
be final unless reversed, vacated or modified on appeal
to the supreme court of appeals. Any such appeal shall
be sought in the manner and within the time provided
by law for appeals from circuit courts in other civil
actions.

The board shall be represented in all such proceedings
by the attorney general or his assistants and in such pro-
ceedings in the circuit court by the prosecuting attorneys
of the several counties as well, all without additional
compensation.

§30-13A-14. Offenses and penalties.

Any person who violates any of the provisions of this
article, any of the reasonable rules and regulations pro-
mulgated hereunder or any order or any final decision
of the board shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by imprisonment
for not more than three months or by a fine of not more
than one hundred dollars, or by both such fine and impris-

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

CHAPTER 108

(Senate Bill No. 77—By Mr. Moreland)

[Passed February 22, 1969; in effect ninety days from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

That section two, article twelve, 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 12. JUDICIAL SALES.

§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 value of five hundred dollars or more, it shall prescribe in the decree that such sale shall be advertised in a newspaper by the commissioner or person appointed to make the sale. It shall always be advertised as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the real estate to be sold is situate.
3 In the advertisement the commissioner shall state the
12  time, terms and place of sale, together with a description
13  of the property to be sold: Provided, That nothing herein
14  shall be construed to limit the power of the court to direct
15  sales of lands to be advertised in newspapers where the
16  value may be less than five hundred dollars.

CHAPTER 109
(Com. Sub. for House Bill No. 676—By Mr. Edgar)

[Passed March 8, 1969; in effect July 1, 1969. 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 ten-f, relating to requiring all public buildings and facilities constructed with public funds to be accessible to and usable by the physically handicapped; creating the state board of public buildings; authorizing rules and regulations; providing for enforcement by the director of the division of vocational rehabilitation and the state board of public buildings; authorizing judicial action; and providing a severability clause.

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-f, to read as follows:

ARTICLE 10F. HANDICAPPED PERSONS AND PUBLIC BUILDINGS AND FACILITIES.

§18-10F-1. Purpose.
§18-10F-2. Application of article.
§18-10F-3. Rules and regulations.
§18-10F-4. State board of public buildings created; membership; expenses.
§18-10F-5. Enforcement of article.
§18-10F-6. Severability.
§18-10F-1. Purpose.
1 It is hereby declared to be the public policy of this state that all public buildings and facilities covered by this article, as specified in section two of this article, be accessible to and functional for the physically handicapped, without loss of function, space or facilities so far as the general public is concerned.

§18-10F-2. Application of article.
1 (a) The provisions of this article and the reasonable rules and regulations promulgated hereunder shall apply to all temporary, emergency or permanent buildings and facilities used by the public which are constructed after the effective date of this article in whole or in part by the use of state, county or municipal funds or the funds of any other political subdivision of this state, except as hereinafter provided.

1 (b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article and the reasonable rules and regulations promulgated hereunder shall also be applicable to all buildings and facilities used by the public and which are under construction on the effective date of this article by the use in whole or in part of state, county or municipal funds or the funds of any other political subdivision of this state, unless the governmental authorities responsible for the construction shall determine that the construction has reached a state where compliance is impractical.

§18-10F-3. Rules and regulations.
1 In order to implement the provisions of this article, the director of the division of vocational rehabilitation of the state board of education, with the approval of the state board of public buildings hereinafter created, shall promulgate reasonable rules and regulations. The director and the board, in promulgating and approving such reasonable rules and regulations, shall take into account the following:

1 (1) Use of buildings and facilities by persons confined to wheelchairs, persons using crutches or other walking
aids, persons afflicted by sight or hearing loss, persons
disabled by age, and any other persons whose mobility
is limited; and data shall be gathered to determine the
needs of any such persons;
(2) Frequency of use by disabled persons as above
enumerated; and
(3) Additional construction cost required to comply
with the provisions of this article and such reasonable
rules and regulations.
The director shall have the authority to except build-
ings and facilities from the provisions of this article and
such reasonable rules and regulations, in whole or in
part, if, in his opinion, compliance therewith would
create a financial hardship, be impractical or serve no
benefit.
All such reasonable rules and regulations shall be
promulgated in accordance with the provisions of article
three, chapter twenty-nine-a of this code, and shall in-
clude, but not be limited to, provisions pertaining to the
following:
(1) Reservation of parking spaces for the disabled,
where possible;
(2) Construction of exterior walkways and ramps;
(3) Design and construction of doorways;
(4) Design and construction of interior floors, steps,
ramps, and doorways;
(5) Design of and accessibility to elevators;
(6) Design and construction of toilet facilities for use
by the disabled;
(7) Design and location of public telephones, water
fountains and other conveniences to facilitate their use
by the disabled; and
(8) Accessibility of at least one primary entrance to
individuals in wheelchairs.
§18-10F-4. State board of public buildings created; member-
ship; expenses.
There is hereby created the state board of public build-
ings which shall consist of five members appointed by the
governor, one member to be a representative of the state building commission, one member to be a representative of a municipality, one member to be a representative of a county court, one member to be a representative of the state board of education, and one member to be an architect. Each member shall serve at the will and pleasure of the governor. The members of the board shall receive no compensation for their services on such board, but they shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board.

§18-10F-5. Enforcement of article.

It shall be the duty of the director to enforce the provisions of this article and all reasonable rules and regulations promulgated hereunder, and it shall be the duty of the state, any county, municipality or other political subdivision thereof, or any department, agency, commission, board or bureau thereof, responsible for the construction of any public building or facility to comply with the provisions of this article and all such reasonable rules and regulations. Whenever the director ascertains that any such public building or facility is about to be constructed or is under construction (which construction began after the effective date of this article) in violation of the provisions of this article or any such reasonable rules and regulations, he may petition the circuit court of the county wherein the construction is to be or is taking place for an order to compel compliance with the provisions of this article and such reasonable rules and regulations, and the court may compel compliance unless such court finds that compliance would create a financial hardship, be impractical or serve no benefit.

§18-10F-6. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
CHAPTER 110

(House Bill No. 651—By Mr. Varney and Mr. Simpkins)

[Passed February 15, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees retirement system; providing that the state treasurer shall be a member of the board of trustees of such system by virtue of his office; and reducing the number of members of the board of trustees to be appointed by the governor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-5. Board of trustees created; powers and duties generally; composition.

The board of trustees of the West Virginia public employees retirement system is hereby created. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor, are hereby vested in the said board of trustees, except as is otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

(a) The auditor of the state, by virtue of his office;
(b) The treasurer of the state, by virtue of his office;
(c) The commissioner of finance and administration, by virtue of his office;
(d) A resident of the state, who is not a member, retirant, or beneficiary of the retirement system, to be
AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees retirement system and providing that a member of the system who was not in the employ of a political subdivision within a period of twenty-five years immediately preceding the date the political subdivision became a participating public employer may not be credited with prior service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided,
2 That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him
in any calendar year; nor shall any member who was not
in the employ of a political subdivision within a period
of twenty-five years immediately preceding the date the
political subdivision became a participating public em-
ployer be credited with prior service.
(b) The board of trustees may grant service credit to
employees of boards of health, the clerk of the House of
Delegates and the clerk of the state Senate who are partic-
ipating members, for service previously credited by the
state teachers retirement system, and may require a
transfer of the members contributions to the retire-
ment system, and may also require a deposit, with in-
terest, of any withdrawals of contributions.
(c) Court reporters who are acting in an official capac-
ity, although paid by funds other than the county court
or state auditor, may receive prior service credit for such
time as served in such capacity.

CHAPTER 112
(Senate Bill No. 306—By Mr. Palumbo)

[Passed March 8, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to reem-
ployment after retirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT
ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a par-
2 ticipating public employer, payment of his annuity shall
be suspended during the period of his reemployment and he shall become a contributing member to the retirement system. If his reemployment is for a period of one year or longer, his annuity shall be recalculated and he shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary employment for a participating employer so long as he shall not receive compensation in excess of eighteen hundred dollars per year and continue to draw his annuity.

CHAPTER 113

(Senate Bill No. 39—By Mr. Jackson, Mr. President)

[Passed March 3, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public libraries generally and authorizing the West Virginia library commission to make payments and contributions to libraries so as to further the education of the people of the state as a whole, thereby aiding in the discharge of the responsibility of the state to encourage and foster education, all in accordance with rules and regulations to be promulgated by said commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-20. Aid to libraries by library commission.

1 The West Virginia library commission is hereby autho-
3 financial, advisory and/or otherwise, to public, school, county, or regional libraries, whether established or maintained by said library commission or not, under such conditions and rules and regulations as the said commission deems necessary to further the interests of the state and best increase the efficiency of the service it is expected to render the public.

Having determined that the development and support of such libraries will further the education of the people of the state as a whole and will thereby aid in the discharge of the responsibility of the state to encourage and foster education, the West Virginia library commission is authorized and empowered to pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this article or any special act of the Legislature such sum or sums of money as may be available from funds included in appropriations made for the West Virginia library commission for such purpose. The amount of any such payment or contribution by the commission to any such local library board of directors shall be determined in accordance with rules and regulations promulgated by the commission. The library commission shall have authority to promulgate rules and regulations governing the manner in which such amount or amounts of money shall be accounted for and expended.

CHAPTER 114

( Senate Bill No. 230—By Mr. Sawyers and Mr. Deem)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the functions of the chief inspector of public offices in the conducting of post-audits of local governmental offices or agencies.
Be it enacted by the Legislature of West Virginia:

That section seven, article nine, 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 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-7. Examinations into affairs of local public officers.

1 The chief inspector shall have power by himself, or by any person appointed by him to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and shall make such an examination at least once a year, if practicable. On every such examination inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office, whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with, and also inquire into the methods and accuracy of the accounts, and as to such other matters of audit and accounting as the chief inspector may prescribe. He or any of his assistants shall have power and may exercise all the authority to issue subpoenas and compulsory process, and to direct the service thereof by any constable or sheriff, to compel the attendance of witnesses and the production of books and papers before him at any designated time and place, selected in their respective county, and to administer oaths. If any person shall refuse to appear before said chief inspector or his assistants when required so to do, or shall refuse to testify in regard to any matter or refuse to produce any books or papers in his possession or under his control, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned not more than six months. Wilful false swearing in such examinations shall be punishable as such. A report of each examination shall be made in duplicate, one copy to be filed in the
office of the state tax commissioner and one in the auditing department of the agency. If any such examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be filed with the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the attorney general for such legal action as is proper in the premises. At the time of the filing of such certified audit the chief inspector shall notify the proper legal authority, the said prosecuting attorney, and the attorney general, in writing, of his recommendation as to the legal action that the chief inspector considers proper in the premises, whether criminal prosecution or civil action to effect restitution, or both. If the proper legal authority or said prosecuting attorney, within nine months of the receipt of such certified audit and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the said recommendations, then the chief inspector shall have the right to institute the necessary proceedings, or to participate therein, and to prosecute the same in any of the courts of the state, to a final conclusion.

CHAPTER 115

(Senate Bill No. 143—By Mr. Jackson, Mr. President)

[Passed March 6, 1969; in effect July 1, 1969. 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.”

(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, so as to produce a revenue of three hundred twenty thousand dollars per annum, which fees shall be paid on or before the twentieth day of January in each year. Such sum of three hundred twenty thousand dollars, together with that provided in subsection (b) hereof shall be paid into the state treasury and kept as a special fund, designated “public service commission fund,” to be appropriated as provided by law for the purpose of paying the salaries of the commission, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the public service commission, so as to produce a revenue of six hundred forty thousand dollars per annum, in addition to such fees as may be fixed by the auditor under the provisions of subsection (a) hereof and which fees shall be paid on or before the
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 twenty-four-b, relating to empowering the public service commission to regulate the safety aspects of certain pipeline facilities and the transportation of natural and other gas by pipeline in the state of West Virginia; and providing for compensation of the members of the public service commission of West Virginia in relation thereto, and for the payment of fees by certain pipeline companies.

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 twenty-four-b, to read as follows:

CHAPTER 24B. GAS PIPELINE SAFETY.

Article
1. Purpose and Definitions.
2. Powers and Duties of the Commission.
3. Duties of Pipeline Companies.
4. Hearings; Burden of Proof; Enforcement.
5. Employees of Commission; Compensation to Commissioners; Funding.
ARTICLE 1. PURPOSE AND DEFINITIONS.
§24B-1-1. Purpose.

§24B-1-1. Purpose.

It is hereby declared to be the purpose and policy of the Legislature in enacting this chapter to empower the public service commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, to prescribe and enforce safety standards for pipeline facilities as hereinafter defined, and to regulate safety practices of persons engaged in the transportation of gas as hereinafter defined.


When used in this chapter:

(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage;

(4) "Pipeline facilities" means without limitation, new and existing pipe, pipe right-of-ways and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation; but "right-of-ways" as used in this chapter does not authorize the commission to prescribe the location or routing of any pipeline facility;

(5) "Municipality" means a city, county, or any other political subdivision of the state;

(6) "Interstate transmission facilities" means facilities used in the transportation of gas which are subject to the jurisdiction of the federal power commission under the act of Congress known as the Natural Gas Act;

(7) "Director" means the director of the gas pipeline safety division of the commission;
(8) “Commission” means the public service commission of West Virginia;

(9) “Secretary” means the United States secretary of transportation;

(10) “Pipeline company” means a person engaged in the operation of pipeline facilities or the transportation of gas subject to the provisions of this chapter; and


ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

§24B-2-1. Jurisdiction.

1 The commission shall have power and authority to prescribe and enforce safety standards for pipeline facilities, and to regulate safety practices of persons engaged in the transportation of gas, to the extent permitted by the “Act of 1968” and any amendments thereto. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the commission shall find a particular facility to be hazardous to life or property, it shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the commission shall consider:

(a) Relevant available pipeline safety data;

(b) Whether such standards are appropriate for the particular type of pipeline transportation;

(c) The reasonableness of any proposed standards;

and

(d) The extent to which such standards will contribute to public safety.

The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this chapter without distinction based on the interstate or intrastate character of the person, thing or activity to which such rules and regulations apply.


The commission shall have power to investigate all methods and practices of pipeline companies; to require the maintenance and filing of reports, records and other information in such form and detail as the commission may prescribe; to enter upon and to inspect the property, buildings, plants, and offices of such pipeline companies; and to inspect books, records, papers and documents relevant to the enforcement of this chapter.

§24B-2-4. Cooperation with the federal government.

The commission shall cooperate with the secretary and other agencies of the United States in the enforcement of this chapter and the "Act of 1968" and amendments thereto; and to this end, the commission shall take such steps as may be necessary to make annual certifications to the secretary under section five (a) of the "Act of 1968," and shall file such certificates with the secretary. The commission is hereby authorized and empowered (a) to act as the secretary's agent in the enforcement of the "Act of 1968" and amendments thereto with respect to interstate transmission facilities; and (b) to accept for the state of West Virginia, and expend for the purpose designated, any funds that may hereafter be made available to the commission out of the federal treasury by an act or acts of Congress and allocated to this state for the purpose of carrying out the provisions of this chapter and the "Act of 1968" and amendments thereto.

ARTICLE 3. DUTIES OF PIPELINE COMPANIES.

§24B-3-1. In general.
§24B-3-2. Inspection and maintenance plans.
§24B-3-3. Annual safety reports.
§24B-3-4. Effect of chapter.
§24B-3-1. In general.
1 Every pipeline company shall comply with the provisions of this chapter and of all valid regulations and orders issued by the commission.

§24B-3-2. Inspection and maintenance plans.
1 Every pipeline company shall file with the commission a plan for inspection and maintenance of the pipeline facilities owned or operated by it, and shall subsequently file any changes in such plan, in form and content as the commission may prescribe.

§24B-3-3. Annual safety reports.
1 Every pipeline company shall file with the commission an annual report showing: (1) Name and address of the pipeline company filing the report; (2) all accidents or incidents involving its pipeline facilities that occurred during the preceding twelve months involving personal injury requiring hospitalization, fatality, or property damage exceeding one thousand dollars, together with a summary of the pipeline company’s investigation as to the cause and circumstances surrounding such accident or incident; and (3) such other information as the commission may require.

§24B-3-4. Effect of chapter.
1 Nothing in this chapter shall affect the common law or statutory tort liability of any person.

ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.

§24B-4-1. Hearings.
§24B-4-2. Burden of proof.
§24B-4-4. Witnesses; testimony; subpoena.
§24B-4-5. Enforcement of lawful orders.
§24B-4-6. Penalties.

§24B-4-1. Hearings.
1 To carry out the purposes of this chapter, the commission is authorized to conduct conferences, formal and informal hearings, to make findings of fact and con-
§24B-4-2. Burden of proof.

Where an issue is made of the propriety of a plan submitted under section two, article three hereof, the burden of proof of the propriety of such plan shall be on the pipeline company submitting such plan.


The commission shall prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations, and hearings of cases, the commission shall not be bound by the technical rules of pleadings and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matter before it.

§24B-4-4. Witnesses; testimony; subpoena.

The commission shall, either as a commission or by any of its members, or by designated employees, subpoena witnesses, take testimony, administer oaths to any witness in any proceeding or examination instituted before or conducted by it with reference to any matter within its jurisdiction hereunder. In all hearings or proceedings before the commission or its designated employees, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing within the state; and in the case of disobedience to a subpoena or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in the state in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. And such court, in case of refusal to obey this subpoena issued to any person or other witness, shall issue an order requiring such person or other witness to appear before the commission or designated employees
and produce books and papers, if so ordered, and give
evidence touching the matter in question. Any failure
to obey such order of the court may be punished by such
court as contempt thereof. A claim that such testimonial
evidence may intend to incriminate the witness giving
the same shall not excuse any witness from testifying,
but such witness shall not be prosecuted for any offense
concerning which he is compelled hereunder to testify.

§24B-4-5. Enforcement of lawful orders.
1 The commission may compel obedience to its lawful
2 orders by mandamus or injunction or other proper pro-
3 ceedings in the name of the state in any circuit court
4 having jurisdiction of the parties or of the subject matter,
5 or the supreme court of appeals direct.

§24B-4-6. Penalties.
1 (a) Any person who violates any provision of this
2 chapter or any valid regulation or order issued there-
3 under, shall be subject to a civil penalty to be imposed
4 by the commission of not to exceed one thousand dollars
5 for each violation for each day that the violation persists:
6 Provided, That the maximum civil penalty shall not ex-
7 ceed two hundred thousand dollars for any related series
8 of violations.
9 (b) Any civil penalty may be compromised by the
10 commission. In determining the amount of penalty, or
11 the amount agreed upon in compromise, the appropriate-
12 ness of the penalty to the size of the business of the
13 person charged, the gravity of the violation, and the good
14 faith of the person charged in attempting to achieve
15 compliance, after notification of the violation, shall be
16 considered. The amount of the penalty, when finally
determined, or the amount agreed upon in compromise,
may be deducted from any sums owing by the state to
the person charged or may be recovered in a civil action
in the state courts.
18 (c) Civil penalties collected under this section shall
19 be paid into the state treasury and be kept in a special
fund established by subsection (b), section three, article
five hereof.
ARTICLE 5. EMPLOYEES OF COMMISSION; COMPENSATION TO COMMISSIONERS; FUNDING.

§24B-5-1. Director and other employees.

The commission shall appoint a director of the gas pipeline safety division of the public service commission, and such other employees as may be necessary to carry out the provisions of this chapter, and shall fix their respective salaries or compensation. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter, which employees are hereby empowered to administer oaths in all parts of this state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

Each member of the commission shall receive a salary of one thousand dollars per annum as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided for by law, to be paid in monthly installments from the public service commission gas pipeline safety fund.

§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the auditor and levied by him upon each of such pipeline companies according to the number of three inch equivalent pipeline miles included in its pipeline facilities, and shall be apportioned among such pipeline companies upon the basis of the pipeline companies’ reports submitted to the auditor in such form as the commission may prescribe, so as to produce a revenue of not more than ninety thousand dollars per annum, which fees shall be paid on or before the first day of July in each year: Provided, That the expenses for the period between the effective date hereof...
and June thirty, one thousand nine hundred sixty-nine, shall be payable from the public service commission fund. (b) Such sums collected under section six, article four hereof and under subsection (a) of this section shall be paid into the state treasury and kept as a special fund, designated "public service commission gas pipeline safety fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensation, costs and expenses of its employees. Any balance in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and may be appropriated as provided in this subsection.

ARTICLE 6. JUDICIAL REVIEW; NATURE OF COMMISSION'S POWERS.

§24B-6-1. Appeal from commission's action.
§24B-6-2. Commission's powers additional in nature.

§24B-6-1. Appeal from commission's action.

1 Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present a petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The petitioner shall deliver a copy of such petition to the secretary of the commission before presenting the same to the court or the judge. The court or judge shall fix a time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. For such hearing the commission shall file with the clerk of said court all papers, documents, evidence and records
or certified copies thereof as were before the commission
at the hearing or investigation resulting in the entry
of the order from which the petitioner appeals. The com-
mission shall file with the court before the day fixed
for the final hearing a written statement of its reasons
for the entry of such order, and after arguments by
counsel the court shall decide the matter in controversy
as may seem to be just and right.

§24B-6-2. Commission's powers additional in nature.
1 The powers conferred and duties imposed upon the
2 commission by this chapter are in addition to, and not
3 in derogation of, the powers conferred and duties imposed
4 upon the commission by chapter twenty-four and chapter
5 twenty-four-a of the code.

CHAPTER 117
(Senate Bill No. 122—By Mr. Jackson, Mr. President)

[Passed March 4, 1969; in effect ninety days from passage. Approved by the Governor.]
§4-4-3. Powers and duties generally; clerical personnel; rules and regulations; meetings.

§4-4-1. Citizens hearing committee of purchasing division; composition; terms of members.

The citizens hearing subcommittee of the purchasing division, heretofore existing under the rules and regulations of the department of finance and administration, is hereby continued as a statutory body, to be known as the citizens hearing committee of the purchasing division. This committee shall be composed of six private citizens to be appointed as follows: Three members by the speaker of the House of Delegates, no more than two of whom shall be of the same political party and three members by the president of the Senate, no more than two of whom shall be of the same political party.

The initial appointments shall be as follows: The speaker and the president will each appoint two members for a one-year term and one member each for a two-year term. After the initial term all terms will be for two years. All such members may be reappointed.

§4-4-2. Expenses of committee; approval of joint committee on government and finance.

The expenses of the committee shall be paid from the funds of the joint committee on government and finance. The members of the committee shall receive no compensation for their services, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of their duties hereunder, but the committee shall obtain the advance approval of the joint committee on government and finance before incurring any expenses to be paid out of the funds of the joint committee on government and finance as aforesaid.

§4-4-3. Powers and duties generally; clerical personnel; rules and regulations; meetings.

It shall be the duty of the committee to hold hearings throughout the state at which time vendors and members of the general public shall have an opportunity to voice
their criticisms and opinions of the purchasing practices of the state. All interviews will be private and reports concerning the information obtained shall be made annually to the joint committee on government and finance, together with any recommendations as to legislation deemed necessary or desirable.

The legislative auditor shall provide the committee all necessary clerical personnel. The committee shall formulate its own rules and regulations and file same with the legislative auditor.

Meeting rooms shall be provided for the committee at the state capitol.

CHAPTER 118
(House Bill No. 632—By Mr. Speaker, Mr. Boiarsky)

(Passed February 10, 1969; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section fourteen, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purchasing division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-14. Bids to be based on standard specifications; awards to lowest responsible bidder; uniform bids; record of bids.

Bids shall be based on the standard specifications promulgated and adopted in accordance with the provisions of section five of this article. All open market orders, purchases based on advertised bid requests, or contracts made by the director or by a state department shall be
awarded to the lowest responsible bidder, taking into
consideration the qualities of the articles to be supplied,
their conformity with specifications, their suitability to
the requirements of the state government, and the de-
ivery terms. Any or all bids may be rejected. If all
bids received on a pending contract are for the same unit
price or total amount, the director shall have authority to
reject all bids, and to purchase the required commodities
and printing in the open market, if the price paid in the
open market does not exceed the bid prices.

All bidders submitting bid proposals to the purchasing
division are required to submit an exact or duplicate
copy to the state auditor. Both copies must be received
at the respective offices prior to the specified date and
time of the bid openings. The failure to deliver or the
nonreceipt of these bid forms at either of these offices
prior to the appointed date and hour are grounds for
rejection of the bids. Any deviation between the bids
submitted to the purchasing division and the state auditor
are cause for rejection of the bids.

Each bid, with the name of the bidder, shall be en-
tered on a record and each record, with the successful
bid indicated thereon, shall, after the award of the order
or contract, be open to public inspection.

At the request of either the state auditor or the director
of purchasing, the legislative auditor shall make a check
of old bids and destroy same if space limitations demand.

CHAPTER 119
(House Bill No. 633—By Mr. Speaker, Mr. Boiarsky)

[Passed February 17, 1969; in effect ninety days from passage. Approved by the
Governor.]
duties of the director of purchasing and specifying that they may be exercised and discharged only with the approval of the commissioner of finance and administration.

Be it enacted by the Legislature of West Virginia:

That article three, chapter five-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 forty-six, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-46. Powers, authority and duties to be exercised and discharged by director with approval of commissioner.

Notwithstanding any other provision in this article to the contrary, the powers, authority and duties set forth in this article to be exercised and discharged by the director shall be exercised and discharged in each instance only with the approval of the commissioner.

CHAPTER 120

(House Bill No. 1033—By Mr. Speaker, Mr. Boiarsky, and Mr. Seibert)

(Passed March 8, 1969; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section seven, article one, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to trustees taking and holding property and providing that in the absence of gross negligence a trustee shall not be personally liable for any tort arising from or growing out of the ownership of property as a trustee.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. RELIGIOUS ORGANIZATIONS.

§35-1-7. Same—May take and hold property.

The trustee or trustees of any church, religious sect, society or denomination, or of any individual church, parish, congregation or branch, within this state, shall have power to receive donations, gifts and bequests of personal property, and, subject to the limitations of section eight of this article, to take by devise, conveyance or dedication or to purchase and to hold, real property, in trust for such church, religious sect, society or denomination, or for any individual church, parish, congregation or branch; and in their own name or names to sue or be sued in all proper actions and suits, for or on account of the real or personal property so held or claimed, and for and on account of any matters relating thereto: Provided, That, in the absence of gross negligence, no trustee shall be personally liable for any tort arising from or growing out of the ownership of property as a trustee and no such action or suit shall abate because of the death, removal or resignation of any trustee, or the appointment of another trustee, but may be proceeded with in the name of the trustee or trustees by or against whom it was instituted, or in the name of the succeeding trustee or trustees. The trustee or trustees shall be accountable to that church, religious sect, society, or denomination, or to that individual church, parish, congregation or branch, for which he or they hold in trust, for the use and management of such property, and shall surrender it to any person or persons authorized to demand it.

CHAPTER 121

(Senate Bill No. 91—By Mr. Barnett)

[Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article two-a, chapter seventeen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to relocation assistance to persons dislocated by highway construction.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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.

§17-2A-20. Relocation assistance to persons dislocated by highway construction.

1 The payment of relocation costs to persons dislocated by highway construction is hereby declared to be a cost of highway construction and may be paid from the state road fund, subject to the provisions of this section. The state road commissioner shall make the payments authorized by this section to reduce hardships to persons so dislocated. In addition, the commissioner shall render advisory assistance to persons affected and shall call upon and coordinate the services of such other agencies of state and local government as may be capable of rendering such assistance to reduce hardships to persons affected and to reduce delays in highway construction. In rendering such advisory assistance, the commissioner may accumulate and maintain lists of various kinds of properties available to which persons affected may be relocated, and acquire and file such other information and take such other action as may be necessary to render such advisory assistance. With respect to persons dislocated by federal-aid highway projects, the commissioner shall provide a relocation assistance program which will comply with and implement the federal laws and regulations relating to relocation assistance to displaced persons.

Any individual, family, business concern (including the operation of a farm) or nonprofit organization to be displaced by a highway construction project shall be compensated consistent with the provisions and limitations of this section for reasonable and necessary costs to be incurred in consequence of being so displaced. When a
family is displaced, no additional payments shall be made
to individuals who are members of such family; but, if
two or more displaced families occupy the same dwelling
or comprise a single household, each family within such
dwelling or household may receive relocation costs as
provided in this section. Payments under this section are
subject to the following limitations and to any rules
and regulations made by the commissioner as herein
authorized:

(1) With respect to state highway projects not on the
federal-aid highway system.

(a) Payments shall not exceed two hundred dollars
in the case of a family or an individual, or three thou-
sand dollars in the case of a business concern (including
the operation of a farm) or nonprofit organization.

(b) In the case of a business concern (including the
operation of a farm) and in the case of a nonprofit organi-
zation, the allowable expense for transportation under
this section shall not exceed the reasonable and neces-
sary cost of moving fifty miles from the point from which
such business or organization is being displaced and no
expenses shall be allowed if a substantial portion of such
business or organization is to be relocated outside the
state.

(2) With respect to federal-aid highway projects, the
commissioner shall have authority to make such pay-
ments for relocation costs, replacement housing costs,
and expenses incidental to the transfer of property
as are authorized by the federal laws and regula-
tions relating to relocation payments to displaced
persons.

The commissioner shall establish by rules and regula-
tions a procedure for the payment of relocation costs with-
in the limits of and consistent with the policies of this
section. Such rules and regulations may authorize lump
sum payments to individuals or families, in lieu of their
respective provable costs, based upon the size of the
dwelling being vacated or the number of persons being
affected or any other reasonable basis. The commissioner
may authorize the obligations of or payment of relocation
costs in advance of expenditure for relocation by any person, firm or organization eligible to receive such payment where such advance obligation or payment would speed the clearance of highway construction sites or reduce hardships.

Nothing contained in this section or in the federal laws and regulations relating to relocation assistance and payments to displaced persons shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the effective date of this section (June 5, 1969) or of the federal laws and regulations relating to relocation assistance and payments to displaced persons.

CHAPTER 122

(Senate Bill No. 253—By Mr. Jackson, Mr. President, and Mr. Barnett)

[Passed March 5, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen 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 erection of signs within right-of-ways of interstate highway pursuant to new federal legislation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE ROAD FUND.

§17-3-9. Signs along interstate highways.

1 The state road commissioner shall agree in behalf of this state to permit the erection of signs within the right-
of ways of the interstate highway system, as authorized by subsection (f) of Section 131, Title 23, United States Code, to the full extent authorized or agreed to by the secretary of transportation.

CHAPTER 123

(House Bill No. 939—By Mr. Speaker, Mr. Boiarsky)

[Passed March 8, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and nineteen-a, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the acquisition by the state road commission of any turnpike project, permitting the issuance of special obligation bonds for such purposes and granting the permission of the state for the turnpike commission to seek voluntary bankruptcy in accordance with Title 11 of the United States Code, §§ 401 to 403, inclusive.

Be it enacted by the Legislature of West Virginia:

That sections five and nineteen-a, article sixteen-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 16A. WEST VIRGINIA TURNPIKE COMMISSION.

§17-16A-19a. Additional powers of commission; issuance of special obligation bonds.


1 The commission is hereby authorized and empowered:
2 (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
3 (2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded. Any and all actions against the commission shall be brought only in the county in which the principal office of the commission shall be located;

(5) To construct, maintain, repair and operate turnpike projects as hereinabove defined at such locations within the state as may be determined by the commission;

(6) To issue turnpike revenue bonds of the state of West Virginia, payable solely from revenues, for the purpose of paying all or any part of the cost of any one or more turnpike projects;

(7) To fix and revise from time to time tolls for transit over each turnpike project constructed by it;

(8) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;

(9) To acquire in the name of the state by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, right-of-ways, property, rights, easements and interests, as it may deem necessary for carrying out the provisions of this article. No compensation shall be paid for public lands, playgrounds, parks, parkways or reservations so taken, and all public property damaged in carrying out the powers granted by this article, shall be restored or repaired and placed in its original condition as nearly as practicable;

(10) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the commission to insure the proper operation and maintenance of such project, and to pro-
hibit entrance to such project from any point or points not so designated;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation. All such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this article or from revenues;

(12) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(13) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article; and

(14) To file the necessary petition or petitions pursuant to Title 11, United States Code, § 401 (being section 81 of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended) and to prosecute to completion all proceedings permitted by Title 11, United States Code, §§ 401-403 (being sections 81 to 83, inclusive, of said act of Congress). The state of West Virginia hereby consents to the application of said Title 11, United States Code, §§ 401-403, to the West Virginia turnpike commission.

§17-16A-19a. Additional powers of commission; issuance of special obligation bonds.

(a) In addition to all powers granted by the foregoing sections of this article, the commission in connection with a proceeding prosecuted to completion under Title 11, United States Code, §§ 401-403 as permitted by subdivi-
sion (14), section five of this article is hereby authorized
to provide by resolution for the issuance of special obliga-
tion bonds of the state for the purpose of exchanging such
special obligation bonds for all bonds then outstanding
which shall have been issued under the provisions of
this article. Special obligation bonds issued under the
provisions of this section shall not be deemed to consti-
tute a debt of the state or of any political subdivision
thereof or a pledge of the faith and credit of the state
or of any such political subdivision, but such bonds shall
be payable solely from the funds herein provided there-
for from pledged property and income therefrom as
provided in subdivision (1) of this subsection. All such
special obligation bonds shall contain on the face thereof
a statement in accordance with the preceding sentence.
The issuance of such bonds, the maturities and other
details thereof, the rights of the holders thereof, and the
rights, duties and obligations of the commission in respect
of the same shall be governed by the provisions of this
article insofar as the same may be applicable with the
following express exceptions:

(1) The principal of and the interest on such special
obligation bonds shall not be payable from tolls or reve-
nues of any turnpike project but shall be payable solely
from such other property purchased and pledged as secur-
ity therefor as the commission shall determine together
with the income derived therefrom which other property
may include direct obligations of, or obligations the prin-
cipal of and the interest on which are guaranteed by, the
United States government or participation certificates or
other obligations issued by or by authority of the United
States government; and

(2) Following the issuance of such special obligation
bonds there shall be no obligation to fix, revise, charge
and collect tolls for the use of any turnpike project and
any turnpike project shall be transferred to the state road
commission and shall thereafter be maintained by the
state road commission free of tolls. At such time as the
special obligation bonds are issued, then section sixteen of
this article shall be of no further force and effect.
(b) Financial, legal, engineering and feasibility consultants may be employed to perform such services as the commission shall deem necessary or desirable in connection with the Title 11 proceedings mentioned above and the issuance and exchange of the special obligation bonds.

(c) The entire powers herein granted by this section to the commission may be exercised by the state road commission in which event the special obligation bonds herein authorized shall be signed by the governor or with a facsimile signature of the governor and by the state road commissioner, and the official seal of the state road commission shall be affixed thereto and attested by the executive secretary of the state road commission, and any coupons attached thereto shall bear the facsimile signature of the state road commissioner. In the event that the state road commission shall elect to exercise the powers granted by this section, it shall file a statement to that effect in the office of the chairman of the commission and in the office of the secretary of state, and upon the issuance of the special obligation bonds herein provided for the state road commission shall succeed immediately to the principal functions of the commission and the commission shall then be abolished.

(d) The state road commission is hereby empowered to acquire by purchase the turnpike commission and all its right-of-ways, equipment, facilities and any and all other rights or interest the turnpike commission has or had in any turnpike project, from any funds available to it, and to pay any expenses incident to such acquisition under the provisions of this article: Provided, That the contribution of the state road commission in making such acquisition shall not exceed the sum of twenty million dollars from all sources of public moneys of the state of West Virginia, excluding any funds reimbursed or reimbursable or otherwise provided or to be provided by the federal government. No funds derived from the sale of the three hundred fifty million dollars bond issue authorized by the roads development amendment shall be included in the acquisition of the West Virginia turnpike.
AN ACT to amend and reenact section two, chapter fifty, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, so as to remove the maximum rate of interest on bonds issued and sold, under authority of said chapter, during the fiscal year ending June thirtieth, one thousand nine hundred sixty-nine, for the purpose of raising funds for the building and construction of free state roads and highways.

Be it enacted by the Legislature of West Virginia:

That section two, chapter fifty, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, be amended and reenacted to read as follows:

§2. Transfer fee; registration fee; where payable; interest; tax exempt.

1 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, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by
the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

CHAPTER 125
(Senate Bill No. 146—By Mr. McCourt and Mr. Carrigan)

[Passed March 1, 1969; 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 seventy, 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.

§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 thirty, one thousand nine hundred seventy, 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 justi-
§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

1. 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, payable semi-annually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

1. The bonds shall be signed on behalf of the state of West Virginia, by the treasurer thereof, under the great
seal of the state, and countersigned by the auditor of
the state, and shall be in the following form or to the
following effect, as nearly as may be, namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)

OF THE
STATE OF WEST VIRGINIA

$ No.

The state of West Virginia, under and by virtue of
authority of an amendment to the constitution, which
was proposed by House Joint Resolution No. 10, adopt-
ed the seventh day of March, one thousand nine hundred
sixty-three, and was ratified by a vote of the people
at the general election on the third day of November,
one thousand nine hundred sixty-four, which is hereby
made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and here-
by promises to pay to the bearer hereof (in case of a
coupon bond) or to

assigns (the owner of record, in case of registered bonds)
on the... day of..., 19__, in lawful
money of the United States of America at the office of
the treasurer of the state of West Virginia at the capitol
of said state, or at the option of the holder at

bank in the city of New York, the
sum of... dollars, with interest there-
on at... per centum per annum from the date,
payable semiannually in like lawful money of the
United States of America at the treasurer's office or
bank aforesaid, on the first day of... and the
first day of... of each year, (and in the
case of coupon bonds) according to the tenor of the an-
nexed coupons bearing the facsimile signature of the
treasurer of the state of West Virginia, upon surrender of
such coupons. This bond (in case of a coupon bond) may
be exchanged for a registered bond of like tenor upon
application to the treasurer of the state of West Virginia.

To secure the payment of the principal and interest
of this bond, the state of West Virginia covenants and
agrees with the holder as follows: (1) That this bond shall
constitute a direct and general obligation of the state of
West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district, or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer of the state of West Virginia, and the countersignature of the auditor of the state, hereto affixed according to law, dated the __________ day of __________, one thousand nine hundred __________, and the seal of the state of West Virginia.

(SEAL) ------------------------------------

Treasurer of the State of West Virginia

Countersigned:

Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No._______________________ Coupon No._______________________

On the first day of __________, 19____, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or at the option of the holder at __________ bank in the city of New York, the sum of __________ dollars, the same being semiannual interest on Road Bond No._______________________

____________________________________

Treasurer of the State of West Virginia
The signature of the treasurer to such coupon shall be by his facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in the office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§§. Listing by auditor.

All coupons and registered bonds issued under this bill shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and post-office address of the person, firm or corporation registered as the owner thereof.

§§. State road sinking fund sources used to pay bonds and interest; investment of remainder.

Into the state road sinking fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all money belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be turned over by the state treasurer to the state sinking fund commission, whose duty it shall be to invest the same in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision
thereof: Provided, That bonds or other obligations so purchased by the state sinking fund commission shall mature so as to provide sufficient money to pay off all bonds herein provided to be issued as they become due; and the money so paid into the state road sinking fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable and for no other purpose except that the fund may be invested until needed, as herein provided.

§7. Covenants of state.

1. The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

1. The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the building and construction of free state roads and highways, as herein provided, upon the recommendation of the state road commissioner, and after reviewing the program of the state road commission and subject to the limitations contained in section one hereof. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer.
and rendered ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund; expenditures.

1 The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account in the state road fund, and shall be used and appropriated solely for the building and construction of free state roads and highways provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: Provided, That no such investment or reinvestment shall adversely affect the current operating balances of such account.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. Payment of expenses.

1 All necessary expenses incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.
CHAPTER 126
(House Bill No. 694—By Mr. Seibert)

[Passed March 8, 1969; 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 seventy million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy, 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.

§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 seventy million dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy, 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.
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 payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the bank designated by the governor, upon presentation and surrender of interest coupons, then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district, or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be signed on behalf of the state of West Virginia, by the treasurer thereof, under the great seal of the state, and countersigned by the auditor of the state, and shall be in the following form or to the following effect, as nearly as may be, namely:

**COUPON ROAD BOND**

(Or registered road bond, as the case may be)

**OF THE STATE OF WEST VIRGINIA**

The state of West Virginia, under and by virtue of authority of an amendment to the constitution, which was proposed by Senate Joint Resolution No. 2, adopted the eighth day of February, one thousand nine hundred sixty-eight, and was ratified by a vote of the people at the general election on the fifth day of November, one thousand nine hundred sixty-eight, which is hereby made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and hereby
promises to pay to the bearer hereof (in case of a
coupon bond) or to _______________________________ or
assigns (the owner of record, in case of registered bonds)
on the ______ day of _________________________, 19______, in
lawful money of the United States of America at the
office of the treasurer of the state of West Virginia at
the capitol of said state, or at the option of the holder
at ________________________________, bank in
the city of New York, the sum of ________________________
dollars, with interest thereon at _____________ per centum
per annum from the date, payable semiannually in like
lawful money of the United States of America at the
treasurer’s office or bank aforesaid, on the first day of
_________________ and the first day of _______________
of each year, (and in the case of coupon bonds) ac-
cording to the tenor of the annexed coupons bearing the
facsimile signature of the treasurer of the state of West
Virginia, upon surrender of such coupons. This bond
(in case of a coupon bond) may be exchanged for a
registered bond of like tenor upon application to the
treasurer of the state of West Virginia.

To secure the payment of the principal and interest of
this bond, the state of West Virginia covenants and
agrees with the holder as follows: (1) That this bond
shall constitute a direct and general obligation of the
state of West Virginia; (2) that the full faith and credit
of the state is pledged to secure the payment of the
principal and interest of this bond; (3) that an annual
state tax shall be collected in an amount sufficient to
pay as it may accrue the interest on this bond and the
principal thereof; and (4) that such tax shall be levied
in any year only to the extent that the moneys in the
state road fund irrevocably set aside and appropriated
for and applied to the payment of the interest on and
principal of this bond becoming due and payable in
such year are insufficient therefor.

This bond is hereby made exempt from any taxation
by the state of West Virginia, or by any county, district,
or municipal corporation thereof.
In testimony whereof, witness the signature of the
treasurer of the state of West Virginia, and the counter-
signature of the auditor of the state, hereto affixed ac-
cording to law, dated the __________ day of __________,
one thousand nine hundred __________, and
the seal of the state of West Virginia.

(SEAL)

Treasurer of the State of West Virginia

Countersigned:

Auditor of the State of West Virginia

§4. **Form of coupon.**

The form of coupon shall be substantially as follows,
to wit:

STATE OF WEST VIRGINIA

Bond No. ___________________ Coupon No. ___________________

On the first day of __________, 19__ , the state of West Virginia will pay to the bearer, in lawful
money of the United States of America, at the office of
the treasurer of the state, or at the option of the holder
at ______________________ bank in the city of New
York, the sum of ______________________ dollars, the
same being semiannual interest on Road Bond No. __________.

Treasurer of the State of West Virginia

The signature of the treasurer to such coupon shall be by his facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in the office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§5. **Listing by auditor.**

All coupons and registered bonds issued under this bill shall be separately listed by the auditor of the state 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 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
10 separate 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
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. Bonds or other obligations so purchased by the
22 state sinking fund commission shall mature so as to
23 provide sufficient money to pay off all bonds herein pro-
24 vided to be issued as they become due; and the money
25 so paid into the state road sinking fund under the pro-
26 visions of this act shall be expended for the purpose of
27 paying the interest and principal of the bonds hereby
28 provided for as they severally become due and payable
29 and for no other purpose except that the fund may be
30 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 fol-
lows: (1) That such bonds shall constitute direct and
general obligation of the state of West Virginia; (2) that
the full faith and credit of the state is hereby pledged
to secure the payment of the principal and interest of
such bonds; (3) that an annual state tax shall be collected
in an amount sufficient to pay as it may accrue the
interest on such bonds and the principal thereof; and
(4) that such tax shall be levied in any year only to the
extent that the moneys in the state road fund irrevocably
set aside and appropriated for and applied to the payment
of the interest on and principal of said bonds becoming
due and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at
such time or times as he may determine necessary to
provide funds for the building and construction of free
state roads and highways, as herein provided, upon the
recommendation of the state road commission, and after
reviewing the program of the state road commission and
subject to the limitations contained in section one hereof.
All sales shall be at not less than par and accrued interest.
All interest coupons becoming payable prior to the sale
date shall be cancelled by the treasurer and rendered
ineffective, before the delivery of the bonds so sold.

§9. Proceeds paid into separate account in state road fund;
 expenditures.

The proceeds of all sales of bonds herein authorized
shall be paid into a separate and distinct account in the
state road fund, and shall be used and appropriated
solely for the building and construction of free state
roads and highways provided for by the state consti-
tution and the laws enacted thereunder. Except for
such sums necessary for current operating balances, such
account shall be invested and reinvested in short-term
obligations of the United States treasury. No such invest-
ment or reinvestment shall adversely affect the current
operating balances of such account.
§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.

1 The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. Payment of expenses.

1 All necessary expenses incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

CHAPTER 127

(Senate Bill No. 34—By Mr. Jackson, Mr. President, and Mr. Carrigan)

(Passed January 16, 1969; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain state officers.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. COMPENSATION AND ALLOWANCES.

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

1 Effective on and after the first Monday after the second
2 Wednesday in January, one thousand nine hundred sixty-
3 nine, the salary of the governor shall be thirty-five thou-
4 sand dollars per year.
5 The salary of the attorney general, the auditor, the
6 superintendent of free schools, the state treasurer, the
7 secretary of state and the commissioner of agriculture
8 shall each be twenty-two thousand five hundred dollars
9 per year.
10 The salary of each of the judges of the supreme court
11 of appeals shall be twenty-seven thousand five hun-
12 dred dollars per year.

CHAPTER 128
(Senate Bill No. 35—By Mr. Carrigan)

[Passed January 21, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven,
chapter six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to appointment,
removal and salaries of certain appointive state officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

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

1 Notwithstanding any other provision of this code to the
2 contrary, on and after the effective date of this section
3 each of the following named appointive state officers
shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor and until the respective state officer’s successors have been appointed and qualified. Each of such appointive state officers shall hereafter be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office. The annual salary of each such named appointive state officer shall be as follows:

The state road commissioner, thirty thousand dollars; director of mental health, twenty-two thousand five hundred dollars; commissioner of commerce, eighteen thousand five hundred dollars; commissioner of finance and administration, fifteen thousand dollars; tax commissioner, twenty thousand dollars; director of department of natural resources, eighteen thousand five hundred dollars; commissioner of department of welfare, eighteen thousand five hundred dollars; alcohol beverage control commissioner, sixteen thousand dollars; director of department of mines, twenty thousand dollars; commissioner of public institutions, sixteen thousand dollars; commissioner of employment security, eighteen thousand five hundred dollars; commissioner of labor, seventeen thousand dollars; director of personnel civil service commission, seventeen thousand dollars; superintendent of department of public safety, sixteen thousand dollars; insurance commissioner, fifteen thousand dollars; commissioner of motor vehicles, fifteen thousand dollars; commissioner of banking, fifteen thousand dollars; members of the board of probation and parole, twelve thousand dollars; nonintoxicating beer commissioner, twelve thousand dollars; state historian and archivist, twelve thousand dollars; adjutant general, twelve thousand dollars; director of civil and defense mobilization, twelve thousand dollars; director of veterans affairs, twelve thousand dollars; members of board of review of employment security, twelve thousand dollars; members of workmen’s
AN ACT to amend and reenact section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to training of teachers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diplomas.

The education of teachers in the state shall be under the general direction and control of the state board of education, which shall, through the state superintendent of schools, exercise supervisory control over teacher preparation programs in all institutions of higher education, including student teaching in the public schools, in accordance with standards for program approval stated in writing by the board. To give prospective teachers the teaching experience needed to demonstrate competence, as a prerequisite to licensure, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include (1) the
16 minimum qualifications for the employment of public
17 school teachers selected as supervising teachers; (2) the
18 remuneration to be paid public school teachers by the
19 state board, in addition to their contractual salaries, for
20 supervising student teachers; and (3) minimum standards
21 to guarantee adequacy of facilities and program of the
22 public school selected for student teaching. The student
23 teacher, under the direction and supervision of the superv-
24 vising teacher, shall exercise the authority of a substitute
25 teacher.

26 Institutions of higher education approved for teacher
27 preparation may cooperate with each other and with one
28 or more county boards of education in the organization
29 and operation of centers to provide selected phases of the
30 teacher preparation program such as student teaching
31 or internship programs, instruction in methodology,
32 seminar programs for college students, first year teachers
33 and supervising teachers.

34 Such institutions of higher education and participating
35 county boards of education may budget and expend funds
36 for the operation of such centers through payments to
37 the appropriate fiscal office of the county designated by
38 mutual agreement of participating county school boards
39 and higher education institutions to serve as the admin-
40 istering agency of the center.

41 The provisions of this section shall not be construed
42 to require the discontinuation of an existing student
43 teacher training center or school which meets the stand-
44 ards of the state board of education.

45 The state board of education shall make rules and regu-
46 lations for the accreditation, classification and standard-
47 ization of all schools in the state, except institutions of
48 higher education, and shall determine the minimum
49 standards for the granting of diplomas and other certifi-
50 cates of proficiency, except those conferred or granted
51 by institutions of higher education. No institution of less
52 than collegiate or university status may grant any
53 diploma or other certificate of proficiency on any basis
54 of work or merit below the minimum standards pre-
55scribed by the state board of education. All institutions
of higher education approved for teacher preparation in
the school year of nineteen hundred sixty-two—sixty-
three shall continue to hold that distinction so long as
they measure up to the minimum standards for teacher
preparation. Nothing contained herein shall infringe
upon the rights granted to any institution by charter
given according to law previous to the adoption of this
code.

No charter or other instrument containing the right to
issue diplomas or other certificates of proficiency shall
be granted by the state of West Virginia to any institu-
tion or other associations or organizations of less than
collegiate or university status within the state until the
condition of granting or issuing such diplomas or other
certificates of proficiency has first been approved in
writing by the state board of education.

CHAPTER 130

(House Bill No. 783—By Mr. Galperin and Mr. Bobbitt)

[Passed March 3, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-b,
chapter eighteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; to amend and
reenact section one, article seventeen of said chapter; and
to further amend said chapter by adding thereto a new
article, designated article twenty-six, all relating to the
state board of vocational education and the director of
the division of vocational education; the control, supervi-
sion and management of the West Virginia schools for
the deaf and blind; and the establishment of a West Vir-
ginia board of regents; its membership, organization, staff,
powers, duties and authorities; the transfer of powers,
duties and authorities, title to property, agreements, orders,
resolutions, rules and regulations of the state commission
on higher education, the board of governors of West Vir-
ginia University, and the West Virginia board of edu-
cation with respect to state colleges and universities, to
the West Virginia board of regents; the abolishment and
repeal of the board of governors of West Virginia Uni-
versity; and the appointment of advisory boards for each
state college and university.

Be it enacted by the Legislature of West Virginia:

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

Article

2B. Area Vocational Program.
17. West Virginia Schools for the Deaf and the Blind.
24. West Virginia Board of Regents.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-2. State board of vocational education; authority to
establish programs, etc.; division of vocational
education established; rules and regulations;
director.

1 For the purpose of this article, the state board of edu-
cation is designated as the state board of vocational
education serving and meeting as the sole agency respon-
sible for the administration of vocational education and
for supervision of the administration thereof by local
educational agencies and is hereby authorized and em-
powered to establish, operate and maintain area voca-
tional educational programs including the acquisition
by purchase, lease, gift or otherwise of necessary lands
and the construction, expansion, remodeling, alteration
and equipping of necessary buildings for the purpose of
operating and conducting educational training centers.
To this end, there is hereby expressly established in the
state board of education a division of vocational edu-
cation which shall establish the area or areas in which
the programs are to be conducted and shall have au-
uthority to promulgate rules and regulations necessary
to carry out the provisions of this article. The admin-
Article 17. West Virginia Schools for the Deaf and The Blind.

§18-17-1. Continuation; management.

1 The West Virginia schools for deaf pupils and blind pupils heretofore established and located at Romney, in Hampshire county, shall be continued and shall be known as the "West Virginia schools for the deaf and the blind." The schools shall be maintained for the care and education of the deaf youth and blind youth of the state. The educational or business affairs of the schools shall be under the control, supervision and management of the state board of education and the state board shall employ the superintendent, principals, teachers and other employees and shall fix the yearly or monthly salary to be paid to each person so employed.

Article 26. West Virginia Board of Regents.

§18-26-1. Legislative purpose.

§18-26-2. Definitions.

§18-26-3. West Virginia board of regents created.

§18-26-4. Composition of board; terms of members; qualifications of members.

§18-26-5. Commencement of original term of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18-26-6. Meetings; quorum; per diem and expenses of members.

§18-26-7. Organization of board; staff; offices.


§18-26-10. State agency for participation in federal and private grants to higher education.

§18-26-11. Transfer of powers, duties, property, obligations, etc., of board of governors of West Virginia University to board of regents.

§18-26-12. Transfer of powers, duties, property, obligations, etc., of state board of education with respect to state colleges and universities to board of regents.

§18-26-1. Legislative purpose.

1 The purpose of the Legislature in the enactment of this article is to establish a state agency to be known as the West Virginia board of regents which will have
the general determination, control, supervision and management of the financial, business, and educational policies and affairs of all state colleges and universities. The board’s responsibilities shall include, without limitation, the making of studies and recommendations respecting higher education in West Virginia; allocating among the state colleges and universities specific functions and responsibilities; and submitting budget requests for the state colleges and universities.

Except as otherwise provided in this article, the president of each state college and university shall exercise all the duties and powers conferred upon him by law in the government of the institution under his management and control.

§18-26-2. Definitions.

Notwithstanding the provisions of section one, article one of this chapter, the following words when used in this article shall have the meaning hereafter ascribed to them unless the context clearly indicates a different meaning:

(a) The term “board” shall mean the West Virginia board of regents.

(b) The term “state colleges” shall mean Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology and West Virginia State College.

(c) The term “state college” shall mean one of the state colleges.

(d) The terms “state universities” and “universities” shall mean Marshall University and West Virginia University, including Potomac State College thereof.

(e) The terms “state university” and “university” shall mean one of the state universities.

(f) The term “institutions of higher education” shall have the meaning ascribed to it by the federal higher education facilities act of one thousand nine hundred sixty-three, as amended.
§18-26-3. West Virginia board of regents created.

There is hereby created a state agency to be known as the West Virginia board of regents, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal.

§18-26-4. Composition of board; terms of members; qualifications of members.

The board shall consist of ten members, of whom one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of six years, except that three of the original appointments shall be for terms of two years, three of the original appointments shall be for terms of four years, and three of the original appointments shall be for terms of six years.

Each of the members appointed to the board shall be especially qualified in the field of higher education by virtue of his knowledge, learning, experience or interest in the field.

No person shall be eligible for appointment to membership on the board who is an officer, employee or member of an advisory board of any state college or university, or an officer or member of any political party executive committee, or the holder of any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or an appointee or employee of the board. Of the nine members appointed by the governor from the public at large, not more than five thereof shall belong to the same political party. At least one member of the board shall be appointed from each congressional district.

§18-26-5. Commencement of original term of members; vacancies; eligibility for reappointment; oath of office; removal from office.

The governor shall appoint the nine members of the
board to be appointed by him as soon after the effective
date of this article as is practicable, and the original
terms of the nine members appointed by the governor
and of the one member, who is such by virtue of being
the state superintendent of schools, shall commence
on July one, one thousand nine hundred sixty-nine.

The governor shall appoint a member to fill any
vacancy among the nine members of the board appointed
by the governor, by and with the advice and consent of the
Senate, which member appointed to fill such vacancy shall
serve for the unexpired term of the vacating member.

All members of the board appointed by the governor
shall be eligible for reappointment. A person who has
served as a member during all or any part of two con-
secutive terms shall be ineligible to serve as a member
for a period of three years immediately following the
second of the two consecutive terms.

Before exercising any authority or performing any
duties as a member of the board, each member shall
qualify as such by taking and subscribing to the oath
of office prescribed by section five, article four of the
state constitution, the certificate whereof shall be filed
with the secretary of state.

No member of the board appointed by the governor
may be removed from office by the governor except for
official misconduct, incompetence, neglect of duty, or
gross immorality and then only in the manner prescribed
by law for the removal by the governor of state elective
officers.

§18-26-6. Meetings; quorum; per diem and expenses of
members.

The board shall hold at least six meetings in every
fiscal year commencing July one and ending the follow-
ing June thirty, one of which meetings, to be known as
the annual meeting, shall be held in July, or as soon
thereafter as practicable, in the year one thousand nine
hundred sixty-nine and in June of each subsequent year.
The first annual meeting of the board to be held in
July, or as soon thereafter as practicable, in the year
of the nine appointed, five members of the board shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the board. The members of the board shall be paid fifty dollars per diem for actual time spent in the performance of duties under this article, and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the board.

§18-26-7. Organization of board; staff; offices.

At its first annual meeting in July, or as soon thereafter as practicable, in the year one thousand nine hundred sixty-nine, the board shall elect a president and such other officers as the board may deem necessary or desirable from the members of the board appointed by the governor, to serve for a term ending June thirty, one thousand nine hundred seventy. At its annual meeting in June, one thousand nine hundred seventy, and at each annual meeting held in each June thereafter, the board shall elect a president and such other officers as the board may deem necessary or desirable from the members of the board appointed by the governor for a one-year term commencing on July one following the annual meeting and ending June thirty the following year. The president of the board shall not be eligible to succeed himself.
The board shall employ a chancellor, and such other professional, administrative, clerical and other employees as may be necessary to assist the board in the performance of its duties and responsibilities. The board shall prescribe the duties and fix the compensation and emoluments of all such employees, and they shall serve at the will and pleasure and under the direction and control of the board or its designated representative. The board shall provide suitable offices for the chancellor and his staff in Charleston.


On and after the effective date of this article, the general determination, control, supervision and management of the financial, business and educational policies and affairs of all state colleges and universities shall be under the control, supervision and management of the board. In addition, the board is fully authorized and empowered to make studies and recommendations relating to all aspects of higher education in the state; it shall, upon reasonable basis, prescribe and allocate among the state colleges and universities specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication; and it shall consider, revise, and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state colleges and universities or the board may, in its discretion, submit a single budget for the state colleges and universities and allocate among them appropriations made for the state colleges and universities.

The power herein given to the board to prescribe and allocate among the state colleges and universities specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state colleges and universities but such power shall supersede any such provision of law: Provided, That the board may delegate, with prescribed standards and limitations, such part of its power and control over
the business affairs of a particular university or state college to the president or other administrative head of such university or college in any case where it deems such delegation necessary and prudent in order to enable such institution to function in a proper and expeditious manner. Any such delegation or power and control may be rescinded by the board at any time, in whole or in part.

The board is authorized and empowered, from time to time, to promulgate such rules and regulations as it may deem necessary and convenient to insure the full implementation of its powers and duties.


Each state college and university president or other administrative head shall be authorized to nominate persons for appointment to an advisory board, consisting of seven members, to serve as advisors and consultants to him.

The board of regents shall appoint members of the advisory board from the persons so nominated for terms of seven years, except that the original appointments shall be for terms of one, two, three, four, five, six and seven years. Thereafter each member shall be appointed to serve for a term of seven years or until his successor is appointed. An appointment to fill a vacancy shall be for the unexpired term of the vacating member.

Members of advisory boards shall be eligible to succeed themselves. Members of advisory boards shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.

§18-26-10. State agency for participation in federal and private grants to higher education.

With the exception of Titles I, II and III of the Higher Education Facilities Act of 1963 and Titles I and VI of the Higher Education Act of 1965, the administration of which are reserved to the commission on higher educa-
tion, the board of regents, on behalf of the state of West Virginia, is authorized and empowered to apply for, to accept and administer and expend for the purpose or purposes designated, any funds which now are, or may be, made available to the board or institutions under its authority from federal or private grants, appropriations, allocations and programs.

§18-26-11. Transfer of powers, duties, property, obligations, etc., of board of governors of West Virginia University to board of regents.

All powers, duties and authorities which the board of governors of West Virginia University, established by article eleven of this chapter or by any other provisions of law, may have had immediately prior to the effective date of this article, are hereby transferred from the board of governors of West Virginia University to the West Virginia board of regents; and on and after the effective date of this article all of the policies and affairs of West Virginia University shall be determined, controlled, supervised and managed, and all such powers, duties and authorities of the board of governors of West Virginia University shall be exercised and performed by the West Virginia board of regents, and the board of governors of West Virginia University shall be abolished and repealed.

The title to all property vested in the board of governors of West Virginia University is hereby transferred to and vested in the West Virginia board of regents.

Each valid agreement and obligation of the board of governors of West Virginia University shall on or after the effective date of this article become and be deemed the agreement and obligation of the West Virginia board of regents.

All orders, resolutions, rules and regulations adopted or promulgated by the board of governors of West Virginia University, and in effect immediately prior to the effective date of this article, shall continue in effect and shall be deemed the orders, resolutions, rules and regulations of the West Virginia board of regents until re-
§18-26-12. Transfer of powers, duties, property, obligations, etc., of state board of education with respect to state colleges and universities to board of regents.

1 All powers, duties and authorities which the West Virginia board of education may have had with respect to state colleges and universities immediately prior to the effective date of this article, are hereby transferred from the West Virginia board of education to the West Virginia board of regents; and on and after the effective date of this article, all of the policies and affairs of the state colleges and universities shall be determined, controlled, supervised and managed, and all powers, duties and authorities shall be exercised and performed by the West Virginia board of regents: Provided, That the standards for education of teachers and teacher preparation programs at the state colleges and universities shall continue to be under the general direction and control of the West Virginia board of education, and the West Virginia board of education shall have sole authority to continue, as authorized by section six, article two of this chapter, to enter into agreements with county boards of education for the use of the public schools to give prospective teachers teaching experience.

The title to all property heretofore acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities, is hereby transferred to and vested in the West Virginia board of regents.

Each valid agreement and obligation of the state board of education with respect to the state colleges and universities shall on or after the effective date of this article become and be deemed the agreement and obligation of the West Virginia board of regents.

All orders, resolutions, rules and regulations respecting the state colleges and universities adopted or promulgated...
by the West Virginia board of education and in effect immediately prior to the effective date of this article shall continue in effect and shall be deemed the orders, resolutions, rules and regulations of the West Virginia board of regents until rescinded by the board; and all such orders, resolutions, rules and regulations may be rescinded, revised, altered or amended by the board in the manner and to the extent authorized and permitted by law.

CHAPTER 131
(House Bill No. 637—By Mr. Goodwin and Mr. Church)

(Passed March 3, 1969; in effect July 1, 1969. Approved by the Governor.)

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings; quorum; compensation of members of county boards of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations; dues and traveling expenses.

1 The board shall meet on the first Monday in January, and upon the dates provided by law for the laying of levies, and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers,
or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the board, on or before the first Monday in May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers’ last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.

Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members shall receive compensation at the rate of twenty-five dollars per meeting attended. But they shall not receive pay for more than thirty-six meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board of education deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards of education out of
funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.

CHAPTER 132

(Senate Bill No. 190—By Mr. McKown)

(Passed March 7, 1969; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact section thirteen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to membership in the state teachers retirement system; cessation of membership and payments for membership rights.

Be it enacted by the Legislature of West Virginia:

That section thirteen, 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.
§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.

1 The membership of the retirement system shall consist of the following:

(a) All persons, except new entrants, employed as teachers at the time they become eligible for membership who, within a year after becoming eligible for membership, notify the retirement board in writing of their decision to become members. Any such persons who fail to notify the board shall automatically be constituted members one year after they become eligible, unless the retirement board receives written notice from them declining membership in the system.
(b) New entrants, whose membership in the system shall be compulsory upon employment as teachers.

The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of his accumulated contributions after the cessation of teaching service, or (2) upon retirement, or (3) at death, or (4) if service amounts to less than five years in any period of ten consecutive years. For the sole purpose of preventing loss of membership under subdivision four, a deposit by the member to his individual account in the teachers accumulation fund of an amount equalling his last annual contribution shall be the amount necessary to maintain membership status for a period of one year.

Any former member of the retirement system who has withdrawn his accumulated contributions but subsequently reenters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus payment for absence as provided herein, and shall be accorded all the rights to prior service and experience as he held at the time of withdrawal of such accumulated contributions.

Any person in subdivision (a) of this section who elects to become a member after having declined to accept membership, shall be permitted to enter the retirement system, but shall be accorded only the rights of a new entrant, unless he deposits in the reserve fund twenty-five dollars for each year of his prior service. After making such a deposit, he shall be deemed a present teacher, and may elect to contribute retroactively to retirement account for those years, if any, during which he served as a teacher but elected not to contribute. No member shall be eligible for prior service credit unless he is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.
AN ACT to amend and reenact sections fourteen and twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions taken from members and computation of retirement allowance for certain annuitants.

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.

§18-7A-14. Contributions by members.


§18-7A-14. Contributions by members.

1 At the end of each month every member of the retirement system shall contribute four and one-half percent of his monthly earnable compensation to the retirement board: Provided, 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.

10 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 de-
ductions, however, shall be made from the earnable com-
pensation of any teacher who retired because of age or
service, and then resumed service as a teacher.

The retirement board shall each year determine to the
nearest dollar the amount of the supplementary fee to
be paid by each member, so that the sum of such fees
paid by all members shall be sufficient to defray one half
of the cost of the retirement benefit provided for in sub-
division (e) of Plan A of section twenty-six of this article.
The amount so fixed shall not exceed twenty dollars, nor
shall it in any case exceed one sixth of the annual contri-ution of the member. All supplementary fees shall be
deposited in the benefit fund.

The aggregate of employer contributions, due and pay-
able under this article, shall equal annually the total
deductions from the earnable compensation of members
required by this section. All employer contributions shall
be credited to the employers accumulation fund, from
which fund an amount equalling annually the supple-
mentary fees of members shall be transferred to the
benefit fund.

Payment by an employer to a member of the sum
specified in the employment contract minus the amount
of the employee's deductions shall be deemed to be a full
discharge of the employer's contractual obligation as to
earnable compensation.

Each contributor shall file with the retirement board
or with the employer to be forwarded to the retirement
board an enrollment form showing his date of birth and
other data needed by the retirement board. Upon notice
from the retirement board to the employer that a contri-
butor has failed to file such forms as prescribed, the em-
ployer shall withhold the salary of the contributor until
the needed form is filed with the retirement board.


Annuitants whose annuities were approved by the re-
tirement board prior to the effective date of this article
(July 1, 1963) shall be paid the annuities which were approved by the retirement board. Annuities approved by the board after the effective date of this article shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of either Plan A or Plan B, whichever provides the larger annuity.

Plan A shall be computed as follows:

(a) The actuarial equivalent of the contributions and deposits of the member in his individual account up to the time of his retirement, with regular interest.

(b) The actuarial equivalent of the contributions of the employer up to the time of the member's retirement, which shall equal the sum in subdivision (a) of Plan A minus deposits with regular interest on such deposits.

(c) Where prior service credit has been granted, an allowance of one and one-half percent of the member's average final salary multiplied by the number of years of prior service credited to him.

(d) The actuarial equivalent of the amounts that would have accumulated under subdivisions (a) and (b) of Plan A, if the member had contributed to his individual account until he was fifty years old, at the annual rate of his past actual contributions, but this subdivision shall apply only as additional income to members who qualify for disability retirement before they are fifty years old.

(e) Twelve dollars multiplied by his total service credit as a teacher.

(f) The member shall receive in addition to the allowances under subdivisions (c) and (d) an amount equal to six dollars multiplied by his total service credit: Provided, That the maximum allowance under this subdivision shall be one hundred and ninety-two dollars: Provided, however, That this subdivision shall be effective on and after July first, one thousand nine hundred fifty-seven.

(g) Twelve dollars multiplied by the member's total service credit as a teacher.
For the purpose of subdivision (c) in Plan A:

1. An allowance for prior service shall in no case exceed three fifths of the member's average final salary.
2. Average final salary for this purpose shall in no case exceed two thousand five hundred dollars, nor shall it be less than twelve hundred dollars.

Plan B shall be computed as follows:

(a) One percent of the member's average salary multiplied by his total service credit as a teacher. In this paragraph "average salary" shall mean the average of the highest annual salaries received by the member during any five years contained within his last fifteen years of total service credit: Provided, That the highest annual salary used in this calculation for members employed by the board of governors of West Virginia University, or by the West Virginia board of education at institutions of higher education under its control, shall be four thousand eight hundred dollars.

(b) The actuarial equivalent of the deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments.

All annuities shall be paid in twelve monthly payments. In computing such monthly payments, fractions of a cent shall be deemed a cent. Such monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are
83 retroactive 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 134

(House Bill No. 868—By Mr. Speaker, Mr. Boiarisky, and Mr. McManus)

[Passed March 8, 1969; in effect July 1, 1969. 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-c, 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-c, to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26c. Supplemental benefits for certain annuitants.

1 As an additional supplement to other retirement allow-
2 ances provided, each annuitant whose annuity was ap-
proved by the retirement board prior to January one, one thousand nine hundred sixty-nine, shall receive a monthly amount equal to fifty cents multiplied by his total service credit.

CHAPTER 135

(Senate Bill No. 218—By Mr. Jackson, Mr. President, and Mr. Brotherton)

[Passed March 7, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact sections one and eight, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twelve; and to amend and reenact sections one, two, three, four, five, six, seven and eight, article ten-b, all of said chapter eighteen, all relating to vocational rehabilitation and vocational rehabilitation centers and workshops.

Be it enacted by the Legislature of West Virginia:

That sections one and eight, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve; and that sections one, two, three, four, five, six, seven and eight, article ten-b, all of said chapter eighteen, be amended and reenacted, all to read as follows:

Article

10A. Vocational Rehabilitation.
10B. Vocational Rehabilitation Facilities.

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.
§18-10A-8. Eligibility for vocational rehabilitation.
§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.
§18-10A-1. Definitions.

1. As used in this article:

2. (1) "State board" means the state board of vocational education.

3. (2) "Division" means the division of vocational rehabilitation established by this article.

4. (3) "Director" means the director of the division of vocational rehabilitation.

5. (4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.

6. (5) "Disabled individual" means any person who has a substantial employment handicap.

7. (6) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counselling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials.

8. (7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

9. (8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent
home care, drugs, medical and surgical supplies, and
prosthetic appliances, but excluding curative treatment
for acute or transitory conditions.

(9) "Prosthetic appliance" means any artificial device
necessary to support or take the place of a part of the
body or to increase the acuity of a sense organ.

(10) "Occupational licenses" means any license, permit
or other written authority required by any governmental
unit to be obtained in order to engage in an occupation.

(11) "Maintenance" means money payments not ex-
ceeding the estimated cost of subsistence during voca-
tional rehabilitation.

(12) "Regulations" means regulations made by the di-
rector with the approval of the state board.

§18-10A-8. Eligibility for vocational rehabilitation.

Vocational rehabilitation services shall be provided to
any disabled individual who is present in the state at the
time of filing his application therefor, if the director after
full investigation shall determine that his rehabilitation
can be satisfactorily achieved. Such services shall also
be provided to any person who is eligible therefor under
the terms of an agreement with another state or with the
federal government.

Except as otherwise provided by law or as specified
in an agreement with the federal government with re-
spect to classes of individuals certified to the state board
thereunder, the following rehabilitation services shall be
provided at public cost only to disabled individuals found
to require financial assistance with respect thereto:

(1) Physical restoration.

(2) Transportation, for any other purpose than that of
determining the eligibility of the individual for vocational
rehabilitation services and the nature and extent of the
services necessary.

(3) Occupational licenses.

(4) Customary occupational tools and equipment.

(5) Maintenance.

(6) Training books and materials.
The rights of a disabled individual under the provisions of this article shall not be transferable or assignable at law or in equity.

§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

1. The state board of vocational education is authorized and directed to cooperate with the federal government in providing vocational evaluation and work adjustment services to disadvantaged individuals.

   "Vocational evaluation and work adjustment services" include, as appropriate in each case, such services as:

   (a) A preliminary diagnostic study to determine that the individual is disadvantaged, has an employment handicap, and that services are needed;

   (b) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

   (c) Services to appraise the individual's patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

   (d) Any other goods or services provided to a disadvantaged individual, determined (in accordance with regulations of the federal government) to be necessary for, and which are provided for the purpose of, ascertaining the nature of the handicap to employment and whether it may reasonably be expected the individual can bene-
fit from vocational rehabilitation services or other services available to disadvantaged individuals;
(e) Outreach, referral, and advocacy; and
(f) The administration of these evaluation and work adjustment services.

As used in this section, the term "disadvantaged individuals" means (1) disabled individuals as defined in subdivision five, section one of this article, (2) individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment, and (3) other members of their families when the provision of vocational rehabilitation services to family members is necessary for the rehabilitation of the individual described in subdivision one or two above.

ARTICLE 10B. VOCATIONAL REHABILITATION FACILITIES.

§18-10B-1. Definitions.
§18-10B-2. Establishment of state vocational rehabilitation facilities.
§18-10B-3. Establishment of local vocational rehabilitation facilities.
§18-10B-4. Rules and regulations.
§18-10B-5. Cooperation with federal government in vocational rehabilitation facility program.
§18-10B-6. Cooperation with state department of health.
§18-10B-7. Personnel.
§18-10B-8. Advisory committee.

§18-10B-1. Definitions.

1 As used in this article:
2 (1) "Vocational rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to, or gainful employment for, handicapped individuals, or, for providing evaluation and work adjustment services for disadvantaged individuals, and which provides singly or in combination one or more of the following services for handicapped individuals: (a) Comprehensive rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services; (b) testing, fitting, or training in the use of prosthetic and orthopedic devices; (c) vocational conditioning or recrea-
(d) physical and occupational therapy; (e) therapy for speech and hearing pathology; (f) psychological and social services; (g) evaluation; (h) personal and work adjustment; (i) vocational training (in combination with other rehabilitation services); (j) evaluation or control of special disabilities; and (k) extended employment for the severely handicapped who cannot be readily absorbed in the competitive labor market; but all medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to practice medicine or surgery in the state.

(2) "Workshop" means a particular type of vocational rehabilitation facility where any manufacture or handicraft is carried on and which is operated by a public agency or by a private corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, or by a cooperative, for the primary purpose of providing remunerative employment to disabled persons (a) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or (b) during such time as employment opportunities for them in the competitive labor market do not exist; or (c) for providing vocational evaluation and work adjustment services for disadvantaged persons.

(3) "Cooperative" means an association, or membership corporation, whose membership is limited to disabled individuals and which is organized and operated on a cooperative basis for the exclusive benefit of its members and, by its charter or bylaws, is required to divide any profits, realized from the operation of workshops operated by it and not reinvested in such workshops, among its disabled members actually working therein.

(4) "Nonprofit institution" means a corporation or association no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(5) "State board," "division," and "director" shall have the same meaning as in article ten-a of this code.
§18-10B-2. Establishment of state vocational rehabilitation facilities.

1 The state board, through the division, is authorized and empowered to establish, operate, and maintain vocational rehabilitation facilities: Provided, That to establish vocational rehabilitation facilities includes the acquisition by purchase, lease, gift, or otherwise, of necessary lands, and the construction, expansion, remodeling, or alteration and equipment of necessary buildings; or, for any particular facility, the making of contracts and agreements with any state, county, or municipal agency, or nonprofit institution providing for the equipment, operation or maintenance by the state board, through the division, of any facility of such agency or institution in accordance with, and for the purpose of this article: Provided further, That notwithstanding any other provisions of law, the state board, through the division, shall, itself, properly operate, maintain, repair, and manage and control the fiscal affairs of vocational rehabilitation facilities established pursuant to this section: Provided further, That the state board, through the division, is authorized and empowered to make and enter into all contracts and agreements necessary and incidental to the performance of its powers and duties under this section, in connection with which it is also authorized and empowered to cooperate with other agencies of the state.

§18-10B-3. Establishment of local vocational rehabilitation facilities.

1 Counties and municipalities in accordance with rules, regulations and standards made and adopted by the director, individually or jointly with any one or more such counties or municipalities are authorized and empowered to establish, operate, and maintain necessary vocational rehabilitation facilities for disabled persons: Provided, That to establish vocational rehabilitation facilities includes the acquisition by purchase, lease, gift, or otherwise, of necessary lands, and the construction, expansion, remodeling, or alteration and equipment of necessary buildings.
§18-10B-4. Rules and regulations.

The director shall make and adopt rules, regulations, and standards for the establishment, operation and maintenance, government and control of vocational rehabilitation facilities established pursuant to this article, including such rules, regulations and standards as may be necessary for cooperation under and compliance with any existing or future federal statutes pertaining to grants-in-aid for vocational rehabilitation facilities.

§18-10B-5. Cooperation with federal government in vocational rehabilitation facility program.

The state board, through the division, is hereby designated the sole state agency to cooperate with the federal government in any federal program relating to the establishment, operation and maintenance of vocational rehabilitation facilities; and is hereby authorized and empowered to adopt and supervise the administration of such a statewide plan, if such statewide plans, for the establishment of vocational rehabilitation facility or workshop programs as may be necessary to comply with the requirements and conditions of federal law with respect to federal grants-in-aid for such purposes.

§18-10B-6. Cooperation with state department of health.

The state board, through the division, and the state department of health shall cooperate to assure coordination of the vocational rehabilitation facility program under this article with the hospital construction program provided for under chapter sixteen, article one, section fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§18-10B-7. Personnel.

The director shall appoint in accordance with chapter eighteen, article ten-a, section five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all personnel he deems necessary for the efficient and economical operation and maintenance of vocational rehabilitation facilities established, operated and maintained pursuant to section two of this article.
§18-10B-8. Advisory committee.

1. There shall be an advisory committee of not less than five and not more than ten members to serve as advisors and consultants to the director of the division. The committee shall meet at least twice each year and at the call of the director of the division. The members of the committee shall annually elect one of its members to serve as chairman.

2. The advisory committee shall be appointed by the director, by and with the advice and consent of the state board, and shall include among its members representatives of state and nongovernmental agencies concerned with the establishment, operation or utilization of vocational rehabilitation services and facilities, and at least one of the members shall be a person well versed in problems related to employment of the disabled.

3. The members shall serve for five-year terms, or until replaced, except that in the first year one fifth of the members shall be named for a one-year term, one fifth for a two-year term, one fifth for a three-year term, one fifth for a four-year term, and one fifth for a five-year term. Thereafter each member shall be appointed for five years or until his successor is appointed. In the case of a vacancy the appointee shall serve the remainder of the unexpired term.

4. Members of the advisory committee shall be eligible to succeed themselves. Members of the advisory committee shall serve without compensation but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of their office.

CHAPTER 136

(House Bill No. 780—By Mr. Lohr)

[Passed March 5, 1969; 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 ten-e, relating to an interstate compact on qualifications of educational personnel.

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-e, to read as follows:

ARTICLE 10E. INTERSTATE COMPACT ON QUALIFICATIONS OF EDUCATIONAL PERSONNEL.

§18-10E-1. Enactment of compact.
§18-10E-2. Effective date.

§18-10E-1. Enactment of compact.

1. The interstate compact on qualifications of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

INTERSTATE COMPACT ON QUALIFICATIONS OF EDUCATIONAL PERSONNEL

Article I. Purpose, Findings and Policy.

1. The states party to this compact, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this compact to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party states find that included in the large movement of population among all sections of the nation
are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions.

As used in this compact and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

2. "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this compact.

3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

4. "State" means a state, territory or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating state" means a state and the subdivision thereof, if any, whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving state" means a state and the subdivisions thereof which accept educational personnel in accord-
Article III. Interstate Educational Personnel Contracts.

1. The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

2. Any such contract shall provide for:
   (a) Its duration;
   (b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;
   (c) Such waivers, substitutions and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards;
   (d) Any other necessary matters.

3. No contract made pursuant to this compact shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this compact shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January one, one thousand nine hundred fifty-four.
5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

6. A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs.

1. Nothing in this compact shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

2. To the extent that contracts made pursuant to this compact deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation.

The party states agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this compact.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.
Article VI. Agreement Evaluation.

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the compact, and to formulate recommendations for changes.

Article VII. Other Arrangements.

Nothing in this compact shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect and Withdrawal.

1. This compact shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

3. No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in
In accordance with the following provisions, county boards of education throughout the state having five
or more exceptional children of any one of the types
or classifications hereinafter provided for shall establish
and maintain special schools, classes, home-teaching or
visiting-teacher services for such type or classification
in order to provide for educating exceptional children
between the ages of six and twenty-one, but who differ
from the average or normal in physical, mental or emo-
tional characteristics, or in communicative or intellectual
deviation characteristics, or in both communicative and
intellectual deviation characteristics, to the extent that
they cannot be educated safely or profitably in the regu-
lar grades of the public schools, and for whom special
educational provisions need to be made in order to edu-
cate them in accordance with their capacities, limitations
and needs. In addition, county boards of education may
establish and maintain other educational services for
such types or classifications as the state superintendent
of free schools may approve.

The general types and classifications of exceptional
children for whom provision may be made under this
article are the following areas of exceptionality: Visu-
ally impaired, hearing impaired, physically or ortho-
pedically handicapped, epileptic, mentally retarded, speech
handicapped, multiple handicapped, autistic, intellectually
gifted, socially or emotionally maladjusted including the
delinquent, learning disabilities both physical and psy-
chological and any other areas of exceptionality which are
identified and approved by the state superintendent of
free schools.

By the school year beginning on the first day of July,
one thousand nine hundred seventy-four, county boards
of education shall establish and maintain these special
schools, classes, home-teaching and visiting-teacher ser-
dices. The state superintendent of free schools shall adopt
rules and regulations to advance and accomplish this
program.

Nothing in this section shall be construed to prevent
county boards of education from providing special schools,
classes, home-teaching or visiting teacher's services for
exceptional children between the ages of three and six.
CHAPTER 138
(House Bill No. 683—By Mr. Speaker, Mr. Boiarsky and Mr. Lohr)

[Passed March 4, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-two-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to student loan trust fund; special fund created in state treasury.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-two-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 22A. GUARANTEED STUDENT LOAN PROGRAM.
§18-22A-8. Trust fund established; limitations on the use of the fund; duties of the treasurer in connection therewith; special account created.

1 The appropriation made to the commission under this article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this article, and such appropriation, payments, revenue and interest, as well as other income received in connection with such obligations, is hereby established as a trust fund. Such fund shall be used for the purposes of the commission other than maintenance and operation.

10 The maintenance and operating expenses of the commission shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

15 The commission shall be the trustee of the trust fund hereby created and all investments to be made from the assets of such trust shall be made by the state
Ch. 139]  

SCHOOLS 1179

18 treasurer in the manner provided by law. For the pur-
19 poses of this article there is hereby created in the
20 treasury of this state a special revolving account for
21 deposits and withdrawals as herein provided. The state
22 treasurer shall be the custodian of the assets of the com-
23 mission. All payments from the accounts thereof shall
24 be made by him upon warrants issued by the auditor
25 upon vouchers signed by such persons as are designated
26 by the commission. A duly attested copy of a resolution
27 of the commission designating such persons and bearing
28 on its face the specimen signatures of such persons shall
29 be filed with the state treasurer as his authority for
30 issuing warrants upon such vouchers.

CHAPTER 139

(Senate Bill No. 351—By Mr. Brotherton and Mr. Carrigan)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to repeal article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended; to repeal sections two, seven, eight, nine, twelve, thirteen, fourteen, seventeen, eight-
teen and twenty-one through thirty-four, inclusive, article one, chapter twenty-five of said code; to repeal articles one-a and three of said chapter twenty-five; to amend article two, chapter five-a of said code by adding thereto a new section, designated section thirty-five; and to amend chapter eighteen of said code by adding thereto three new articles, designated articles twenty-three, twenty-four and twenty-five, relating to approval by commissioner of the department of finance and administration of requisitions of certain offices and agencies not having an office at the state capital; powers, duties and responsibilities of governing boards of state institutions of higher edu-
cation with reference to deeds and contracts, condemnation, sale or exchange of property, acceptance of gift or
§ 139.1. Dept. of Finance and Administration.

§ 25-A. Education.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, seven, eight, nine, twelve, thirteen, fourteen, seventeen, eighteen and twenty-one through thirty-four, inclusive, article one, chapter twenty-five of said code be repealed; that articles one-a and three of said chapter twenty-five be repealed; that article two, chapter five-a of said code be amended by adding thereto a new section, designated section thirty-five, and that chapter eighteen of said code be amended by adding thereto three new articles, designated articles twenty-three, twenty-four and twenty-five, all to read as follows:
CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 2. BUDGET DIVISION.

§5A-2-35. Appropriations for officers, commissions, boards or institutions without office at capital.

1 All appropriations now or hereafter made for officers, commissions, boards or institutions, public or private, other than state institutions of higher education, state charitable institutions, state hospitals and sanatoriums and state penal and correctional institutions, not having an office at the state capital, shall, unless otherwise provided by law, be expended on requisitions of such officer, commission, board or institution, after approval by the commissioner of the department of finance and administration.

CHAPTER 18. EDUCATION.


24. Fees and Other Money Collected at State Institutions of Higher Education.

25. Tax Sheltered Annuities for Teachers and Employees.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-1 Governing boards defined.
§18-23-2. Execution of deeds and contracts.
§18-23-3. Condemnation generally; sale or exchange of property.
§18-23-4. Gifts to state institutions.
§18-23-6. Bonds of officers and employees of state institutions of higher education.
§18-23-7. Disposition of state moneys in possession of officers of state institutions of higher education; manner of expending appropriations; certification of deficiency in appropriations.
§18-23-8. Visitation and inspection of state institutions of higher education.
§18-23-10. Records of state institutions of higher education for statistical and other purposes; conference of chief officers.
§18-23-11. Special investigation of any state institution of higher education by governor or committee appointed by him.
§18-23-12. Governing boards to perform duties required by governor.
§18-23-1. Governing boards defined.

1 For purposes of this chapter, "governing board" or "governing boards" means any board or other agency having general control, supervision and management of the business and educational affairs of any state institutions of higher education.

§18-23-2. Execution of deeds and contracts.

1 All deeds, contracts, agreements and other such writings may be executed by the governing boards by the signing of the name of the board thereto by the president of the board attested by the signature of the secretary of the board; and, when so executed, the same may be acknowledged and recorded as other writings.

§18-23-3. Condemnation generally; sale or exchange of property.

1 The governing boards shall have power to acquire by condemnation land or buildings for the use and benefit of any of the state institutions subject to their control and management, and, by and with the consent of the governor, to sell or exchange any property held by or for such institutions. All condemnation proceedings had hereunder shall be governed by chapter fifty-four of this code.
§18-23-4. Gifts to state institutions.

1 The governing boards are hereby empowered to accept any gift or devise of any property or thing which lawfully may be given. If such gift or devise is to any particular state institution of higher education, whatever profit shall arise from its use or investment shall be paid into the state treasury for the use and benefit of such institution, and the governing board of each such institution is hereby invested with the title to the property which is or may be the subject of such gift or devise.


1 The governing boards shall have authority to employ competent architects for the preparation of plans and specifications for all new buildings to be built for state institutions of higher education or for the repairing or remodeling of such existing buildings, or the construction of additions thereto; to employ competent persons to superintend the work of constructing such new buildings or of such repairs, remodeling or additions; and to call for bids and award contracts for such work. The governing boards shall have authority to erect any new building, or to make repairs or additions to, or changes in, any building already constructed that is used for higher education, without letting the same to contract, or by employing thereon the labor of the inmates of any institution of the state subject to the approval of the director of the department of correction, whenever in the judgment of the governing boards the best interests of the state will be served thereby. The governing boards may also arrange with contractors for the erection of new buildings or for additions or repairs to old ones, to use thereon the labor of such inmates subject to approval of the director of the department of correction. The governing boards shall have authority, whenever in their judgment a new building is needed by a state institution of higher education, or whenever it is necessary to build an addition or make material repairs to such building already in existence, with the approval of the governor, to employ a competent architect or architects to make plans and specifications there-
for, and estimates of the cost thereof, for submission to the next session of the Legislature, to aid that body in making an appropriation for the purpose. The governor nor may pay the cost of such plans and specifications and estimates out of his civil contingent fund, or the governing boards may cause the same to be paid out of the current expense fund, or out of any appropriation made for buildings and land or for repairs and improvements of the institution for which the building or work is designed. So far as practicable all buildings erected for the use of the state shall be fireproof.

§18-23-6. Bonds of officers and employees of state institutions of higher education.

The governing boards shall have authority to cause the head officer or any other officer of any state institution of higher education or any employee thereof under its control or management in whole or in part, or any of its own employees, to give bond, in such sum as the governing boards may require, conditioned for the faithful performance of their duties, and for accounting for and paying over all money and other property of the state which shall come into their hands or control by virtue of their office. The governing boards may provide that the surety in any such bond shall be a surety or bonding company authorized to do business in this state, and cause the premiums for bonds so given to be paid out of the current or contingent expense fund of the institution or governing board with which the person so bound is connected. All such bonds shall be approved by the attorney general as to form, and by the governing boards as to sufficiency, and, when so approved, shall be filed with the treasurer of the governing boards and by him recorded and safely kept.

§18-23-7. Disposition of state moneys in possession of officers of state institutions of higher education; manner of expending appropriations; certification of deficiency in appropriations.

All moneys and funds belonging to the state which shall come into the possession or under the control of
the head officer, or any other officer, of any state institution of higher education, or of any person connected therewith, under the control and management of the governing boards in whole or in part, or the fiscal or financial affairs of which are subject to the control and management of the governing boards, shall be paid to the treasurer of said boards monthly, on or before the tenth day of the month succeeding the month in which such moneys or funds were received, under such rules and regulations as the governing boards shall prescribe. They shall cause such moneys and funds to be paid into the state treasury immediately in the manner provided in article two, chapter twelve of this code.

All moneys appropriated for the governing boards or for any state institution of higher education under their supervision and management may be expended on proper requisitions issued by the appropriate governing board. Whenever the appropriations by the Legislature for any of said institutions are insufficient to pay the expenses of conducting such institution, the deficiency shall be certified by the appropriate governing board to the governor. Such certificate shall state the name of the institution and the items and amount in detail needed, and the governor may direct payment of the same or any part thereof out of any appropriation available for that purpose.

§18-23-8. Visitation and inspection of state institutions of higher education.

The governing boards, or one or more of their members, shall visit each of the state institutions of higher education under their control and management in whole or in part as often as may be necessary, and may hold a regular meeting of the governing boards at any such institution. During any such visitation the governing boards or any member thereof shall thoroughly inspect all the departments thereof and investigate the condition and management of the same; and for the purpose of aiding any such investigation the governing boards or any member thereof shall have power to summon and compel the attendance of witnesses, to be examined
under oath, which any member shall have the power to administer; and the governing boards or any member thereof shall have access to all books, papers and property necessary to any such investigation, and may order the production of any books, papers or property. Witnesses, other than employees of the state, shall be entitled to the same fees as in civil cases in the circuit court. In any investigation by the governing boards, or by any member thereof, they or he may cause the testimony to be taken in shorthand and transcribed and filed in the office of the governing board as soon after the same is taken as practicable. Any person refusing or failing to obey the order of the governing boards or any member thereof, issued under the provisions of this section, or to give or produce any evidence required, shall be reported by the governing boards or the member thereof conducting the investigation to the proper circuit court or the judge thereof, and such person so refusing or failing shall be dealt with by the court or judge as for contempt.


The governing boards shall cause to be kept at their office a proper and complete set of books and accounts with each state institution of higher education under their respective control, which shall clearly show every expenditure authorized and made thereat. The books shall exhibit an account of all appropriations made by the Legislature concerning any institution under their control, and of all other funds under the control of the governing boards. They shall, in conjunction with and subject to the approval of the chief inspector of public offices, prescribe the form of vouchers, records and methods of keeping accounts at and by each of the institutions under their control. Such vouchers, records and methods of accounts of the institutions shall be as nearly uniform as possible. The governing boards, or any member thereof, shall have the power to investigate the conditions and to examine and check the records of any of said institutions at any time. The governing boards shall also have the power to authorize any of their members
or officers, its bookkeeper, accountant, or other employee, to proceed to any of the institutions under their control, and to examine and check its records, take inventory of its property, or that of any of its departments or for any other purpose the governing boards may deem necessary. Any person doing such work shall receive, in addition to regular compensation, his actual expenses incurred thereby. Upon the completion of any such special work the governing boards shall cause a full and complete written report of the same to be made to it as soon as practicable.

§18-23-10. Records of state institutions of higher education for statistical and other purposes; conference of chief officers.

1 The governing boards shall prescribe the records to be kept for statistical and other purposes in the state institutions of higher education under their respective control. Each month they shall require a copy of such record to be transmitted to them for the preceding month, and they shall keep in their office in a substantially bound book a copy of every report that they may require from the chief officers of any institution under their control. The governing boards shall have authority to assemble the chief officers of the institutions under their respective control or any of them at their office, for the purpose of discussing any question which may be common to their welfare. The actual expenses made necessary in traveling to and from such meeting, and while in attendance thereat, shall be paid out of the funds of the several institutions involved in any such meetings.

§18-23-11. Special investigation of any state institution of higher education by governor or committee appointed by him.

1 The governor is hereby empowered to make a special investigation, either in person or by a committee appointed by him, of the condition, management or affairs of any state institution of higher education, and for the purpose of aiding any such investigation the governor
or committee shall have the same powers as are conferred upon the governing boards by section eight of this article, in making similar investigations.

§18-23-12. Governing boards to perform duties required by governor.

1. The governor may require the governing boards to perform any duty or work pertaining to the management and control of any of the institutions under their control and consistent with the objects of this article.


1. The governing boards are hereby authorized to provide, construct, erect, improve, equip, maintain and operate dormitories, homes or refectories on land owned by the state for students or teachers at the various state educational institutions of higher education under their control, but the cost of construction, erection, improvement or equipment shall be solely by means of or with the proceeds of the revenue bonds hereinafter authorized.

2. The governing boards shall have power and authority to employ engineering, architectural and construction experts, and such other employees as may be necessary in their judgment, and fix their compensation, all of whom shall do such work as the governing boards shall direct, all of which shall be included as part of the cost of construction and equipment thereof.

§18-23-14. Construction and operation of gymnasiums, etc.

1. The governing boards, within their discretion, are hereby authorized to provide, construct, erect, improve, equip, maintain and operate gymnasiums or stadia for athletic games, contests or exhibitions or physical training, dormitories, homes, refectories, swimming pools, or such other structures or buildings, for students, teachers, officers and employees at the various state institutions of higher education under their control and management subject to the provisions and limitations of sections thirteen, fifteen, sixteen, seventeen, eigh-
11 teen, nineteen, twenty, twenty-one, twenty-two, twenty-
12 three and twenty-four of this article.

1 Whenever it shall become necessary, the governing
2 boards may condemn any interest, right or privilege,
3 land or improvement which in their opinion may be
4 necessary, in the manner provided by law for the acquisi-
5 tion by this state of property for public purposes. The
6 state shall be under no obligation to accept and pay
7 for any property condemned and shall in no event pay
8 for the same except from the funds provided herein-
9 after, and in any proceedings to condemn, such orders
10 shall be made by the court having jurisdiction of the
11 suit, action or proceedings as may be just to the state
12 and to the owners of property to be condemned, and
13 a bond or other security may be required by the court
14 securing such owners against any loss or damage to be
15 sustained by reason of the failure of the state to accept
16 and pay for the property, but such bond or security
17 shall impose no liability or debt on or of the state as
18 contemplated by the provisions of the constitution of
19 the state in relation to state debt.

§18-23-16. Cost of dormitories, homes and refectories to be
paid from proceeds of revenue bonds.
1 The governing boards may pay the cost as defined in
2 sections thirteen to twenty-four, inclusive, of this article,
3 of any one or more of such dormitories, homes or re-
4 fectories out of the proceeds of revenue bonds of the
5 state. The governing boards are authorized to issue
6 revenue bonds of the state, by a resolution of the board
7 which shall recite an estimate by the board of such cost,
8 the principal and interest of which bonds shall be pay-
9 able solely from the special fund herein provided for
10 such payment. The board, after any such issue of bonds
11 or simultaneously therewith, may issue further issues
12 of bonds to pay the cost of any other one or more of
13 such dormitories, homes or refectories, in the manner
14 and subject to all of the provisions herein contained
15 as to the bonds first mentioned in this section. All such
bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code. Such bonds shall bear interest, payable semiannually, and shall mature in not more than thirty years from their date or dates and may be made redeemable at the option of the state, to be exercised by the governing boards, at such price and under such terms and conditions as they may fix prior to the issuance of such bonds. They shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the governor and the president of the appropriate governing board, under the great seal of the state, attested by the secretary of the state, and the coupons attached thereto shall bear the facsimile signature of the president of the appropriate board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The governing boards shall fix the denominations of such bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of said state, or, at the option of the holder, at some bank or trust company in the city of New York to be named in the bonds, either in lawful money or in gold coin of the United States of America, of or equal to the then current standard of weight and fineness, as may be determined by the governing boards. Such bonds shall be exempt from taxation by the state of West Virginia or any county, school district or municipality therein. The governing boards may provide for the registration of such bonds in the name of the owner as to principal alone and as to both principal and interest under such terms and conditions as the governing boards may determine, and shall sell such bonds in such manner as they may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser and the terms and con-
ditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the dormitories, homes or refectories, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than six per centum per annum to the purchaser based on the purchase price thereof.

The proceeds of such bonds shall be used solely for the payment of the cost of such dormitories, homes or refectories, and shall be checked out by the president of the appropriate governing board and the treasurer thereof and under such further restrictions, if any, as the board may provide. If the proceeds of such bonds, by error or otherwise, shall be less than the cost of such dormitories, homes or refectories, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund, without preference or priority of the bonds first issued for the same dormitory or dormitories, home or homes, or refectory or refectories. If the proceeds of bonds issued for any such dormitories, homes or refectories shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued.

Prior to the preparation of definitive bonds, the governing boards may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions and things than those proceedings, conditions and things
which are specified and required by this article or by
the constitution of the state.

§18-23-17. Agreements with trustees for bondholders.

1. The governing boards may enter into an agreement
or agreements with any trust company or with any bank
having the powers of a trust company, either within
or outside of the state, as trustee for the holders of the
bonds issued hereunder, setting forth therein such duties
of the state and of the governing boards in respect of the
acquisition, construction, erection, improvement, mainte­
nance, operation, repair and insurance of the dormi­
tories, homes or refectories, the conservation and
application of all moneys, the insurance of moneys on
hand or on deposit, and the rights and remedies of the
trustee and the holders of the bonds, as may be agreed
on with the original purchasers of such bonds, and in­
cluding therein provisions restricting the individual
right of action of bondholders as is customary in trust
agreements respecting bonds and debentures of corpo­
rations, protecting and enforcing the rights and remedies
of the trustee and the bondholders, and providing for
approval by the original purchasers of the bonds, of the
appointment of consulting engineers and of the security
given by those who contract to make improvements,
and by any bank or trust company in which the pro­
cceeds of bonds or rents, fees or charges shall be de­
posited, and for approval by the consulting engineers
of all contracts for improvements. All expenses incurred
in carrying out such agreement may be treated as a
part of the cost of maintenance, operation and repair of
the dormitories, homes or refectories affected by the
agreement. Any such agreement entered into by the
governing boards shall be binding in all respects on
such governing boards from time to time in accordance
with its terms and all the provisions thereof shall be
enforceable by appropriate proceedings at law or in
equity, or otherwise.

§18-23-18. Operation and control of fiscal affairs of dormi­
tories, homes or refectories.

1. The governing boards shall properly maintain, repair,
operate, manage and control the fiscal affairs of such
dormitories, homes or refectories, fix the rates of rents,
fees or charges and establish rules and regulations for
the use and operation of such dormitories, homes or re-
fectories, for the welfare of the students or teachers,
and may make and enter into all contracts or agree-
ments necessary and incidental to the performance of
their duties and the execution of their powers under this
article.

§18-23-19. Payment of principal and interest of construction
bonds from revenues of dormitories, homes and
reectories; redemption of bonds.

Whenever bonds are issued for the construction, erec-
tion or equipment of dormitories, homes or refectories, or
for the improvement or equipment of existing dormi-
tories, homes or refectories, or for any or all of such
purposes, as joint or several projects, for which a single
or several issues of bonds may be issued within the dis-
cretion of the governing boards, rents, fees and charges
shall be fixed, charged and collected in connection with
the use or occupancy of, or service to be thereby ren-
dered and furnished by, such dormitories, homes or re-
fectories, and shall be so fixed or adjusted, in respect
of the aggregate of rents, fees and charges from the
dormitories, homes or refectories so constructed, erected,
improved or equipped by means of or with the proceeds
of a single issue of bonds, as to provide a fund sufficient
to pay the principal and interest of each such issue of
bonds and to provide an additional fund to pay the cost
of maintaining, repairing, operating and insuring such
dormitories, homes or refectories. Whenever bonds are
issued to finance, at any one time, the construction and
errection of dormitories, homes or refectories together
with additions or extensions to an existing dormitory,
home or refectory for students or teachers at state edu-
cational institutions, as a single construction project, the
revenues derivable from both such dormitories, homes
or refectories and such additions or extensions to an
existing dormitory, home or refectory, as constructed
from the proceeds of a single issue of bonds, as a single
construction project, may be pledged to provide a fund sufficient to pay the principal and interest of such single issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, operating and insuring such dormitories, homes or refectories, and such additions or extensions to an existing dormitory, home or refectory. The rents, fees and charges from the dormitories, homes or refectories for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing, operating and insuring during any period in which such cost is not otherwise provided for (during which period the rents, fees and charges may be reduced accordingly), shall be transmitted each month to the state sinking fund commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the sinking fund commission, within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption by lot of any bonds which by their terms are then redeemable, at the redemption price then applicable: Provided, however, That if said revenue bonds are sold to and purchased by the United States of America or any federal or public agency or department created under and by virtue of the laws of the United States of America, then at the option of the United States of America or such federal or public agency or department in lieu of such moneys being transmitted to the sinking fund commission and by it placed in a special fund, the rents, fees and charges from the dormitories, homes or refectories for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing, operating and insuring as provided aforesaid, may be transmitted and paid to a trustee designated and named by the United
§18-23-20. When dormitories, homes or refectories become property of state.

When the particular bonds for any dormitory or dormitories, home or homes, refectory or refectories, and the interest on such bonds, shall have been paid, or a sufficient amount has been provided for their payment and shall continue to be held for that purpose, the said dormitories, homes or refectories shall thereafter be exclusively the property of the state of West Virginia, and thereafter the rents, fees and charges collected for the use or occupancy of, or service rendered and furnished by, such dormitories, homes or refectories shall be paid into the state treasury as provided by the provisions of section two, article two, chapter twelve of this code, as amended, and used and expended for the benefit of the institution where collected.

§18-23-21. State debt not to be incurred for dormitories, homes or refectories; federal and private assistance; provisions separable.

Nothing in these sections dealing with dormitories, homes or refectories shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the constitution of this state in relation to the state debt. The dormitories, homes or refectories herein are of the character described as self-liquidating projects under the laws of the United States.

Any governing board authorized to issue bonds under the provisions of this article is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of construction of the dormitories, homes or refectories and the other purposes herein authorized, from the United
15 States of America or such federal or public agency or
department of the United States or any private agency,
corporation or individual, which temporary advances
may be repaid out of the proceeds of the bonds au-
19 thORIZED to be issued under the provisions of this ar-
ticle and to enter into the necessary contracts and
agreements to carry out the purposes hereof with the
United States of America or such federal or public
agency or department of the United States, or with
any private agency, corporation or individual: Pro-
vided, however, That if such bonds are not sold to
and purchased by the United States of America or
any such federal or public agency or department, then
the governing board shall advertise such bonds for
sale, on sealed bids, which advertisement shall be pub-
31 ·lished as a Class II legal advertisement in compli-
32 ance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such
publication shall be the state. Such advertisement shall
be so published within the fourteen consecutive days
next preceding the date fixed for the reception of bids.
Such advertisement shall also be published in a finan-
37 cial paper published either in the city of New York,
in the state of New York, or the city of Chicago, in
the state of Illinois. The governing board may reject
any and all bids. If the bonds be not sold pursuant to
such advertisement, they may, within sixty days after
the date advertised for the reception of bids, be sold
by the governing board at private sale, but no private
sale shall be made at a price less than the highest bid
which shall have been received pursuant to such adver-
sesement. If not sold, such bonds shall be readvertised
in the manner herein provided.

38 The provisions and parts of this section are separable
and are not matters of mutual essential inducement,
and it is the intention to confer the whole or any part
of the powers herein provided for, and if any of the
sections or provisions, or parts thereof, are for any
reason illegal or invalid, it is the intention that the re-
remaining sections and provisions or parts thereof shall
remain in full force and effect.
§18-23-22. Sections regarded as supplementary.

1 Sections thirteen to twenty-four, inclusive, of this article, shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws: Provided, however, That when any revenue bonds are issued hereunder for the purposes provided by sections thirteen to twenty-four, inclusive, of this article, for the benefit of any particular state educational institution, no dormitories, homes or refectories shall thereafter be constructed, built or erected at such state educational institution until the appropriate governing board shall, by investigating and hearing had thereon, under such rules as it may prescribe, determine that there is an imperative public need for the construction, building or erection of such dormitories, homes or refectories, and that their construction, building or erection and subsequent maintenance or operation will not materially injure the revenues of and from any dormitories, homes or refectories constructed, built, erected, maintained or operated at such state educational institution under the provisions of sections thirteen to twenty-four, inclusive, of this article.

§18-23-23. Approval of dormitories, homes or refectories.

1 It shall not be necessary to secure from any officer or board not named in sections thirteen to twenty-four, inclusive, of this article, any approval or consent or any certificate or finding, or to hold any election, or to take any proceedings whatever, either for the acquisition, construction or erection of such dormitories, homes or refectories, or the improvement thereof, or their maintenance, operation, repair or insurance, or for the issuance of bonds hereunder, except such as are prescribed in the sections herein named or are required by the constitution of the state.


1 Sections thirteen to twenty-four, inclusive, of this article, being necessary for the health, welfare and con-
venience of the students and teachers at the various state educational institutions, shall be liberally construed to effectuate the purposes thereof.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.
§18-24-2. Scholarships—Undergraduate schools.
§18-24-3. Same—Professional and graduate schools.
§18-24-4. Collection, disposition and use of additional registration fee; creation of special capital improvements fund; revenue bonds.
§18-24-5. Authority to excuse students in certain educational programs from payment of enrollment fees.
§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.
§18-24-7. Fees and money derived from athletic contests.
§18-24-8. Student activity fees.
§18-24-9. Fees from operation of dormitories, faculty homes, dining halls, and cafeterias.
§18-24-12. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

§18-24-1. Enrollment, tuition and other fees at educational institutions; refund of fees.

1 The governing boards of state educational institutions shall fix enrollment, tuition, and other fees for each semester or school term for the different classes or categories of students enrolling at the state educational institutions, and may include among such fees any one or more of the following: (1) Health service fees; (2) infirmary fees; (3) student activities, recreational, athletic and extracurricular fees; and (4) graduate center fees, and branch college fees, or either, if the establishment and operation of graduate centers or branch colleges are otherwise authorized by law. All fees collected under (1), (2) and (3) shall be paid into special funds and shall be used only for the purposes for which the fees are collected; and all fees collected at any graduate center or at any branch college shall be paid into special
funds and shall be used solely for the maintenance and
operation of the graduate center or branch college at
which they were collected: Provided, however, That
except in the case of graduate center fees or branch
college fees, the minimum tuition fee for full-time resi-
dent students shall be twenty-five dollars per semester
and the minimum tuition fee for full-time nonresident
students shall be one hundred seventy-five dollars per
semester at all state institutions of higher education
except West Virginia University: And provided further,
That the minimum tuition fee for full-time resident stu-
dents at West Virginia University shall be forty dollars
per semester and the minimum tuition fee for full-time
nonresident students at West Virginia University shall
be two hundred five dollars per semester: And provided
further, That except for graduate center fees, branch
college fees, and the student union fees hereinafter au-
thorized, the maximum fees to be collected under this
section for resident students shall not exceed two hun-
dred dollars per semester; and for nonresident students,
five hundred dollars per semester. The schedule of all
fees, and any changes therein, shall be entered in the
minutes of the meeting of the governing board, and the
governing board shall file with the state auditor and
director of the budget division a certified copy of such
schedule and changes.

In addition to the fees mentioned in the preceding
paragraph, the governing board of any state educational
institution may impose and collect a student union build-
ing fee. All such building fees collected at the institution
shall be paid into a special student union building fund
for such institution, which is hereby created in the state
treasury, and shall be used only for the construction,
operation, and maintenance of a student union building
or a combination student union and dining hall building
or for the renovation of an existing structure for use as
a student union building or a combination student union
and dining hall building or for the payment of the prin-
cipal of and interest on any bonds issued to finance part
or all of the construction of a student union building
or a combination student union and dining hall building
or the renovation of an existing structure for use as a
student union building or a combination student union
and dining hall building, all as more fully provided in
section six of this article. Any moneys in such funds
not immediately needed for such purposes may be in-
vested in any such bonds or other securities as are now
or may hereafter be authorized as proper investments
for state funds.

Refund, as an erroneous payment, may be made of
any such fees, upon the voluntary or involuntary with-
drawal from classes of any student, until eight weeks
of the school semester or term have expired, but no
refund may be made thereafter.

§18-24-2. Scholarships—Undergraduate schools.

1 Scholarships entitling recipients to waiver of enroll-
ment, tuition, registration, and other fees, heretofore
established by the governing boards of state educational
institutions, may be continued and other such scholar-
ships may be established from time to time by the
governing boards, subject to the following conditions
and limitations:

8 (1) No state educational institution shall have in
effect at any time such scholarships in a number which
exceeds five percent of the maximum number of full-
time students registered at any time during the immedi-
ately preceding academic year.

2 (2) Each such scholarship shall entitle the recipient
thereof to attend a designated state educational institu-
tion without payment of such enrollment, tuition, regis-
tration, and other fees as may be prescribed by the
governing board of that institution and for a period of
time not to exceed eight semesters of undergraduate
study.

3 (3) The governing boards shall make rules governing
the award of such scholarships, the issuance and can-
cellation of certificates entitling the recipients to the
benefits thereof, the use of such scholarships by the
recipients, and the rights and duties of the recipients in
§18-24-3. Same—Professional and graduate schools.

1 In addition to the scholarships heretofore authorized for undergraduate study by the provisions of section two of this article, the governing board of West Virginia University is hereby authorized and empowered to establish from time to time scholarships for study in the school of medicine, the school of dentistry, the college of law, and the graduate school, entitling the recipients to waiver of enrollment, tuition, registration, and other fees, subject to the following conditions and limitations:

(1) The number of such scholarships in effect at any one time shall not exceed six for each class in the school of medicine, five for each class in the school of dentistry, four for each class in the college of law, and four for graduate students in social work. Such scholarships may be for a period of time not to exceed eight semesters of study in medicine and dentistry, six semesters of study in law, and five semesters of study in graduate social work.

(2) Each such scholarship shall entitle the recipient to waiver of such enrollment, tuition, registration and other fees as may be prescribed by the board.

(3) The board shall make rules governing the award of such scholarships, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of such scholarships by the recipients, and the rights and duties of the recipients in respect to such scholarships. Such rules shall not be inconsistent with the provisions of this section.

(4) The awarding of such scholarships shall be entered in the minutes of the meeting of the board, and
the board shall file with the state auditor and the director of the budget division a certified copy of the rules governing the award of such scholarships and a list of the names of the recipients thereof.

*§18-24-4. Collection, disposition and use of additional registration fee; creation of special capital improvements fund; revenue bonds.*

1 In addition to all other fees imposed by the governing boards of state institutions of higher education, there is hereby imposed and the governing board of each state institution of higher education is hereby directed to provide for the collection of an additional registration fee from all students in the amounts as hereinafter provided.

2 For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The governing boards shall have authority to increase such additional registration fee at any institution of higher education under their respective control for students who are nonresidents of this state. For all part-time students and for all summer school students, the respective governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

*Clerk's note—This section combines §18-24-4 as enacted by Acts 1969, c. 139, effective July 1, 1969, with §25-1A-1b as amended by Acts 1969, cc. 13 and 141, effective March 8, 1969. The substance of §25-1A-1b was transferred to §18-24-4 by c. 139, which repealed article 1A of chapter 25 of the Code and enacted this article in its stead. Acts 1969, c. 13, amended §25-1A-1b by substituting “governor” for “board of public works” near the end of the seventh paragraph; the word “governor” also appears in the corresponding provision of §18-24-4 as enacted by c. 139. Acts 1969, c. 141, however, deleted two provisions in the ninth paragraph of §25-1A-1b which were carried over in §18-24-4 as enacted by c. 139. In order to give effect to the evident legislative intent, these two provisions have been deleted in the section as set out above. The omitted provisions are as follows:

“bear interest at such rate or rates not exceeding five per centum per annum;” (following the semicolon in line 97 of this section); and

“such sale to be made at a price not lower than a price which will show a net return of not more than six per centum per annum to the purchaser upon the amount paid therefor computed to the stated maturity dates of such revenue bonds without regard to any right of prior redemption” (following the word “state” in line 114 of this section).
The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

There is hereby created in the state treasury a special capital improvements fund, to be expended by the governing board of West Virginia University for the benefit of West Virginia University and Potomac State College of West Virginia University, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at West Virginia University and at Potomac State College.

There is hereby created in the state treasury a second special capital improvements fund, to be expended by the governing board for the benefit of all other state institutions of higher education, as provided in this section. On and after the first day of July, one thousand nine hundred sixty-three, there shall be paid into such special fund all proceeds of the additional registration fees collected from students at such institutions.

The respective boards may make expenditures from such special capital improvements funds at the various state institutions of higher education under their control to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes: (1) The acquisition of land or any rights or interest therein, (2) the construction or acquisition of new buildings, (3) the renovation or construction of additions to existing buildings, (4) the acquisition of furnishings and equipment for any such buildings, and (5) the construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such build-
The respective boards, at their discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: Provided, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the governing boards to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education under their control, in such order of priority as shall have been agreed upon by the respective boards and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued from time to time by the respective boards to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the respective boards shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the respective board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment
and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as such respective board shall determine. Such revenue bonds shall be signed by the governor and by the president of the respective board authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of such respective board. Such revenue bonds shall be sold in such manner as the respective board may determine to be for the best interests of the state.

Such respective board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the same board under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by such respective board in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education under the control of the board which issued the bonds shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.
Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the negotiable instruments law of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

§18-24-5. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal agency or from any foundation, corporation, or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state educational institution administering such program shall have the authority to excuse all students enrolled in such program from the payment of tuition, registration and other enrollment fees.

§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.

Wherever the term “student union building” is used in this section the same shall mean a student union building or a combination student union building and dining hall building; and wherever the term “building fund” is used in this section the same shall mean the respective special student union building funds created as provided in section one of this article for each state educational institution which has imposed student union fees pursuant to section one of this article, to be expended by the governing boards for the benefit of the state educational institutions under their control.

The respective boards may make expenditures from such building funds at the various state educational
14 institutions under their control to finance in whole or
15 in part, together with any federal, state or other grants
16 or contributions, any one or more of the following
17 purposes: (1) The construction and acquisition of new
18 student union buildings. (2) The acquisition, renovation
19 and improvement of existing buildings to be used as
20 student union buildings. (3) The construction of addi-
21 tions, extensions and improvements to existing student
22 union buildings. (4) The acquisition of furnishings and
23 equipment for any existing student union buildings or
24 student union buildings to be constructed or acquired,
25 or the construction of any roads, utilities or other prop-
26 erties, real or personal, or for any other purposes neces-
27 sary, appurtenant or incidental to the construction, ac-
28 quisition, financing and placing in operation of such stu-
29 dent union buildings. (5) The payment of the cost of the
30 operation and maintenance of such student union build-
31 ings, subject however to any covenants or agreements
32 made with the holders of revenue bonds heretofore or
33 hereafter issued pursuant to this section or pursuant to
34 section one of this article.

The respective boards, at their discretion, may use the
35 moneys in such building funds to finance the costs of
36 the above purposes on a cash basis, or may from time
37 to time issue revenue bonds of the state as provided
38 in this section to finance all or part of such purposes
39 and pledge all or any part of the moneys in such building
40 funds for the payment of the principal of and interest
41 on such revenue bonds, and for reserves therefor. Any
42 pledge of such building funds for such revenue bonds
43 shall be a prior and superior charge on such special
44 funds over the use of any of the moneys in such funds
45 to pay for the cost of any of such purposes on a cash
46 basis, or for the payment of the cost of operation and
47 maintenance, or any part thereof, of such student union
48 buildings, under such terms and conditions as shall
49 be provided in the proceedings which authorized the
50 issuance of such revenue bonds.

Such revenue bonds may be authorized and issued
51 from time to time by the respective boards to finance
in whole or in part the purposes at any state educational
institution under their control provided for in this sec-
tion in an aggregate principal amount not exceeding
the amount which the respective boards shall determine
can be paid as to both principal and interest and reason-
able margins for a reserve therefrom from the moneys in
such building funds.

The issuance of such revenue bonds shall be author-
ized by a resolution adopted by the respective board,
and such revenue bonds shall bear such date or dates,
mature at such time or times not exceeding forty years
from their respective dates; bear interest at such rate
or rates not exceeding five per centum per annum;
be in such form either coupon or registered, with such
exchangeability and interchangeability privileges; be
payable in such medium of payment and at such place
or places, within or without the state; be subject to
such terms of prior redemption at such prices not
exceeding one hundred five per centum of the principal
amount thereof; and shall have such other terms and
provisions as such respective board shall determine.
Such revenue bonds shall be signed by the governor and
by the president of the respective board authorizing the
issuance thereof, under the great seal of the state,
attested by the secretary of state, and the coupons
attached thereto shall bear the facsimile signature of
the president of such respective board. Such revenue
bonds shall be sold in such manner as the respective
board may determine to be for the best interests of
the state, such sale to be made at a price not lower
than a price which will show a net return of not more
than six per centum per annum to the purchaser upon
the amount paid therefor computed to the stated maturity
dates of such revenue bonds without regard to any right
of prior redemption.

Such respective boards may enter into trust agree-
ments with banks or trust companies, within or without
the state, and in such trust agreements or the resolutions
authorizing the issuance of such bonds may enter into
valid and legally binding covenants with the holders
of such revenue bonds as to the custody, safeguarding
and disposition of the proceeds of such revenue bonds,
the moneys in such building funds, sinking funds, re-
serve funds, or any other moneys or funds; as to the
rank and priority, if any, of different issues of revenue
bonds issued by the same board for the same educational
institution under the provisions of this section; as
to the maintenance or revision of the amounts of such
student union fees, and the terms and conditions, if
any, under which any of such student union fees may
be reduced; and as to any other matters or provisions
which are deemed necessary and advisable by such
respective board in the best interests of the state and to
enhance the marketability of such revenue bonds.

Any revenues or income derived from the operation
of such student union buildings may, in the discretion
of the respective boards, be used to pay the cost of
the operation and maintenance of such student union
buildings, or for the debt service on any bonds issued
pursuant to this section or pursuant to any other law.

After the issuance of any of such revenue bonds, the
student union fees at the state educational institution
for which such revenue bonds were issued shall not be
reduced as long as any of such revenue bonds are out-
standing and unpaid except under such terms, provi-
sions and conditions as shall be contained in the reso-
lution, trust agreement or other proceedings under which
such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable
instruments under the law merchant and the negotiable
instruments law of the state, shall, together with the
interest thereon, be exempt from all taxation by the
state of West Virginia, or by any county, school district,
municipality or political subdivision thereof; and such
revenue bonds shall not be deemed to be obligations or
debts of the state, and the credit or taxing power of
the state shall not be pledged therefor, but such revenue
bonds shall be payable only from the student union
fees pledged therefor as provided in this section.
The provisions of this section shall constitute an additional, alternative and complete authority for the exercise of the powers and the issuance of the bonds provided for in this section, but shall not prevent said respective boards from exercising similar or related powers or issuing bonds therefor under any other law or laws, but such respective boards, in exercising the powers and issuing the bonds provided for in this section, shall only be required to comply with the provisions of this section and shall not be required to comply with or be subject to the provisions of any other law or laws.

§18-24-7. Fees and money derived from athletic contests.

The directors of athletics at state educational institutions may fix and charge admission fees to athletic contests at state educational institutions and may enter into contracts, spend and receive money under such contracts for the student athletic teams of state educational institutions to contest with other athletic teams inside or outside the state.

All money derived from such fees and under such contracts shall be used to defray the cost of maintaining the athletic department and athletic program of such institutions. The operation of training camps and training tables and providing room accommodations for participants in the athletic program of such institutions shall be recognized and considered as a proper part of such maintenance, but the specific mention of training camps and training tables and providing room accommodations shall not be construed or understood to limit in any way the general power and authority otherwise granted and conferred by this section.

§18-24-8. Student activity fees.

The president of any state educational institution may authorize the collection of fees from students for the support of extracurricular activities of the students, and after authorizing the collection of such fees, the president shall file with the state auditor and state budget director a certified detailed statement of the fees authorized to be collected and the purpose for which they are to be spent.
§18-24-9. Fees from operation of dormitories, faculty homes, dining halls, and cafeterias.

The governing board of each state educational institution shall fix the fees to be charged students and faculty members for rooms, board and meals at the dormitories, faculty homes, dining halls, and cafeterias operated by the board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to pay the operating and maintenance costs of the dormitories, faculty homes, dining halls, and cafeterias and to meet interest, principal, and sinking fund requirements due on any outstanding revenue bonds for which such receipts may have been pledged as security. Any such receipts not needed for these purposes may be expended by the governing board to defray the costs in whole or in part for the construction of any such facility.


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, supplies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the book store.
All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. The governing board shall, subject to the approval of the governor, fix and from time to time change the amount of the revolving fund necessary for the proper and efficient operation of each book store. Whenever at the end of any fiscal year the unencumbered balance in the book store special revenue fund shall exceed the amount of the revolving fund so established, the excess shall be transferred by the state auditor to the general revenue fund and become a part of the general revenue of the state.

Moneys derived from the operation of the book store shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store. From any balance in the Marshall University book store fund not needed for operation and maintenance and replenishing the stock of goods, the governing board of that institution shall have authority to expend a sum not to exceed two hundred thousand dollars for the construction of quarters to house the book store in the university center at Marshall University. Until such quarters for housing the book store are completed, the governing board of Marshall University and the governor shall take this authorization into account in fixing the amount of the revolving fund for the Marshall University book store.


Any county board of education, county court, municipal corporation, or any two of them, may jointly establish with an approved educational institution, an approved two-year branch college offering transfer, terminal, technical and adult vocational programs. The respective governmental bodies operating such a two-year terminal branch and community college may provide by agreement among themselves all matters connected with such programs, subject to the approval of the state board of education, and determine what items of cost and expense shall be paid by each.
§18-24-12. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

1 The governing board of each state educational institution shall have authority to provide special services and special programs at such institutions and may fix and collect special fees or charges therefor. Such special services and special programs may include any one or more of the following:

(1) The conduct of music camps and band, orchestra, or voice clinics for secondary school students or other youth groups, summer tutoring programs for primary and secondary school students, speech therapy clinics and services, educational and psychological testing programs, student guidance programs, and statistical studies and calculations by electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff, and visitors.

(3) Rental of musical recordings, educational films, slides, and other audiovisual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses, and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools, consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

All fees or charges collected for any such special services or programs shall be paid into a special fund and shall be expended solely for the maintenance, operation, and support of such services and programs.

Whenever any such special service is provided by one school, division or department of an educational institution for the benefit of any other school, division or department in the same institution, the cost shall be paid by the school, division or department requesting the service.
and shall be deposited and expended as provided above.

Whenever a motor pool is provided by the governing board of a state educational institution, such board may charge any school, college, department or division of such institution for which a vehicle is used a reasonable amount for such use, which amount shall be paid by such school, college, department or division and shall be deposited and expended as above provided.


All funds in the state treasury heretofore collected from any of the sources defined in the foregoing sections shall remain in the state treasury and those funds and any such additional funds collected hereafter may be expended only as authorized in the foregoing sections.

ARTICLE 25. TAX SHELTERED ANNUITIES FOR TEACHERS AND EMPLOYEES.

§18-25-1. Authority to purchase tax sheltered annuities for teachers and employees.

A county board of education, the teachers retirement board, the West Virginia board of education and the board of regents and their agencies may provide by written agreement between any such board or agency and any teacher or other employee, to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction to an insurance company licensed to do business in this state as premiums on an annuity contract owned by such teacher or other employee, which annuity contract shall be in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code, or to pay an amount equal to the amount of such reduction as voluntary deposits to the teachers retirement board as provided by section eighteen, article seven-a, chapter eighteen of this code. The amount of such reduction shall not exceed the amount excludable from income under section 403(b) of the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's
or employee’s salary for all purposes other than federal and state income tax.

The purchase of such tax sheltered annuity for a teacher or other employee by a board of education, the teachers retirement board, the West Virginia board of education and the board of regents and their agencies shall impose no liability nor responsibility whatsoever on said boards or members thereof except to show that the payments have been remitted for the purposes for which deducted.

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to repeal article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter eighteen-a, relating to school personnel.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18A. SCHOOL PERSONNEL.

Article
3. Training, Certification, Licensing.
4. Salaries, Wages, and Other Benefits.
5. Authority; Rights; Responsibility.
6. County Retirement Fund.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.
§18A-1-1. Definitions.

1 The definitions contained in section one, article one of chapter eighteen shall be applicable to this chapter. In addition, 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 personnel" shall mean all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of three categories: Professional personnel, auxiliary personnel and service personnel.

   b. "Professional personnel" shall mean persons who meet the certification and/or licensing requirements of the state, and shall include the professional educator and other professional employees.

   c. "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

      (1) "Classroom teacher": The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.

      (2) "Principal": The professional educator whose duties relate to the instructional program but whose major time is devoted to responsibility for the whole of the school and the teachers and other personnel therein.

      (3) "Supervisor": The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

      (4) "Central office administrator": The superintendent, associate superintendent, assistant superintendent, and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned
part of the total program of the county-wide school system.

d. "Other professional employee" shall mean that person from another profession who is properly licensed and is employed to serve the public schools.

e. "Auxiliary personnel" shall mean those persons selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide, general aide.

f. "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch.


1 The provisions of any articles or parts of articles, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, which are inconsistent with the provisions of this chapter, are hereby repealed to the extent of such inconsistency.


1 If any provision of this chapter or the application thereof to any person or circumstances shall be held to be unconstitutional and invalid, such unconstitutionality and invalidity shall not affect any one of the provisions or applications of the chapter which can be given effect without the invalid provisions or applications; and to this end the provisions of this chapter are separable. The Legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that such other part or parts thereof would be declared unconstitutional and invalid.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-2. Employment of teachers; contracts; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.


§18A-2-5. Employment of service personnel.

§18A-2-6. Termination of employment of auxiliary and service personnel.
§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent.

§18A-2-8. Suspension and dismissal of school personnel by board.

§18A-2-1. Employment in general.

1. The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and by state board regulation.

§18A-2-2. Employment of teachers; contracts; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

1. Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

10. A teacher's contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the said three year probationary period shall upon qualifying for said professional certificate...
based upon a bachelor's degree, if reemployed, be granted continuing contract status. The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before April first of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, however, That the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided further, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred sixty-two and one thousand nine hundred sixty-three shall remain in full force and effect: And provided further, That a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation of teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment: Provided, That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

In the assignment of position or duties of a teacher under said continuing contract, the board shall have
authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges, or benefits under the provisions of this chapter.

Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause, or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year, and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: Provided, however, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.


1 The county superintendent, subject to approval of the county board, shall have authority to employ and assign substitute teachers to any of the following duties: (a) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (b) to fill a teaching position of a regular teacher on leave of absence; and (c) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing such absence is approved by the board of education in accordance with the law. Such substitute shall be a duly certified teacher.


1 The board is authorized to employ auxiliary personnel for the purpose of assisting professional personnel in such duties and services as the board may approve. Before entering upon their duties such personnel shall execute with the board a written contract which may be in letter form and shall state the classification and terms of work, the employment period and pay, and shall certify that said employment has been made a matter of minute record.
§18A-2-5. Employment of service personnel.

The board is authorized to employ such service personnel as is deemed necessary for meeting the needs of the county school system. Before entering upon their duties such personnel shall execute with the board a written contract which may be in letter form and shall state the classification and terms of work, the employment period and pay, and shall certify that said employment has been made a matter of minute record. The letter shall provide space for an acceptance provision and shall be signed and returned to the board by the employee, or otherwise he shall forfeit his right to employment.

§18A-2-6. Termination of employment of auxiliary and service personnel.

After three years of acceptable employment each auxiliary and service personnel, at the end of his contractual period of employment, shall be notified in writing on or before the first day of May in the year in which such employment shall terminate if he is not to be reemployed for the ensuing year. Such notice shall be by certified mail, return receipt requested, and the employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent.

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter:
Provided, That the superintendent at a meeting of the board on or before the first Monday in May, shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment. The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education, and such period of suspension shall not exceed thirty days unless extended by order of the board.

§18A-2-8. Suspension and dismissal of school personnel by board.

Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance or wilful neglect of duty, but the charges shall be stated in writing and the employee so affected shall be given an opportunity to be heard by the board upon not less than ten days’ written notice, which charges and notice shall be served upon the employee within five days of the presentation of the charges to the board. The hearing may be held at the next regular meeting of the board or at a special meeting called for that purpose; and in any case when the board is not unanimous in its decision to suspend or dismiss, the person so suspended or dismissed shall have the right of appeal to the state superintendent of schools.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING.

§18A-3-1. Teacher certification; required; expiration; qualifications; certification of aliens.
§18A-3-1. Teacher certification; required; expiration; qualifications; certification of aliens.

Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him to teach in the public schools in the specializations and grade levels as shown on his certificate for the period of his employment. If a teacher is employed in good faith on the anticipation that he is eligible for a certificate and it is later determined that he was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his ineligibility, whichever shall occur first. All certificates shall expire on June thirtieth of the last year of their validity irrespective of the date of issuance. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except, that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach and who has filed a declaration of intention to become a naturalized citizen, may be granted a permit to teach within the public schools of the state.

§18A-3-2. Authority of state superintendent to issue certificates; kinds of certificates.

The state superintendent of free schools shall have authority to issue certificates valid in the public schools
of the state in accordance with standards and require-
ments approved by the state board of education. Certifi-
cates authorized to be issued include:

(1) **Professional teaching certificate.**

In accordance with state board regulations and an ap-
proved program completed by the applicant, a profes-
sional certificate for teaching in the public schools may be
issued to a person who has completed the requirements
for a bachelor’s degree from an accredited institution of
higher education. The certificate shall be endorsed to
indicate the grade level or levels, or areas of specializa-
tion in which the person is licensed to teach or to serve
in the public schools. The initial professional certificate
shall be issued provisionally and for a period of three
years. This certificate may be converted to a professional
certificate valid for five years, or renewed subject to the
regulations of the state board.

(2) **Professional administrative certificate.**

In accordance with an approved program completed and
state board regulations, a professional administrative
certificate, endorsed for serving in the public schools, may
be issued to a person who has completed requirements for
a master's degree in an institution of higher education ac-
credited to offer a master's degree. Beginning September
one, one thousand nine hundred seventy, the initial pro-
fessional administrative certificate shall be issued pro-
visionally for a period of three years. This certificate may
be converted to a professional administrative certificate
valid for five years or renewed, subject to the regulations
of the state board.

(3) **Other certificates; permits.**

Other certificates and permits may be issued, subject to
the approval of the state board, to persons who do not
qualify for the professional certificate. Such certificates or
permits shall not be given permanent status and persons
holding such shall meet renewal requirements provided
by law and by regulation, unless the state board declares
certain of these certificates to be the equivalent of the
professional certificate.
§18A-3-3. Renewal of certificates; permanent certification.

1 Until the person qualifies for a permanent certificate, any professional or first class certificate based upon a bachelor's degree shall be renewable provided the holder:

2 (1) Files application on a prescribed form with the state department of education; (2) presents an official transcript of six semester hours of approved credit, as may be prescribed by the state board: Provided, That such renewal is completed after the beginning of the period of validity of the certificate to be renewed and within the five-year period immediately preceding the date of application for renewal; and (3) submits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which he last taught or resides.

3 The holder of a professional certificate, valid for five years, shall have his certificate made permanent upon meeting either of the following requirements: (1) Completion of the third renewal, in accordance with the provisions set forth in (2) above; (2) after five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American library association. In either event the person must file application on a prescribed form with the state department of education and must submit a recommendation from the county superintendent of schools of the county in which he last taught or resides.

4 All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

5 If the applicant seeking renewal has cause to believe that his county superintendent refuses to give a recommendation without just cause, he shall have the right, in such case, to appeal to the state superintendent of schools whose responsibility it shall be to investigate the matter
and issue a certificate if, in his opinion, the county superintendent's recommendation was withheld arbitrarily.

A person who has reached the age of sixty and holds a renewable certificate, as provided in this section, need not present renewal credit but shall meet all other renewal requirements.

§18A-3-4. Validity of present certificates.

Nothing in this article shall be construed or interpreted in such way as to invalidate or in any manner change or shorten the validity period of certificates, including grade-level teaching rights, in force on the effective date of this act, nor the right to renew or make permanent such certificates.

§18A-3-5. Validity of certificates held by members of armed forces.

A certificate held by a member of the armed forces of the United States shall have the period of validity extended to June thirtieth of the year following his or her separation from active duty or honorable discharge provided the certificate was valid at the time of entry into the armed forces.

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him unfit for the proper performance of his duties as a teacher, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit, or for any other cause which would have justified the withholding of a certificate when the same was issued.

It shall be the duty of any county superintendent who knows of any immorality or neglect of duty on the part of any teacher to report the same, together with all the facts and evidence, to the state superintendent for such action as in his judgment may be proper.
16 If a certificate has been granted through an error, oversight, or misinformation, the state superintendent of schools shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board of education.


1 The fee for the issuance or renewal of any certificate, if applicable, shall be established by the state board of education.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

1 For the purpose of this section, salaries shall be defined as: (a) "basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers. "Classification of certification" means the class or type of certificate issued by the state superintendent of schools under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (10) inclusive.
The column heads of the state minimum salary schedule, set forth in section two, are defined as follows:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher were under contract to teach at the time of his induction. For the purpose of section two of this article, the teacher's experience shall be limited to that allowed under his training classification as found in the minimum salary schedule.

(2) "Fourth class" means all certificates previously identified as (a) "certificates secured by examination," (b) "other first grade certificates."

(3) "Third class" means all certificates previously identified as (a) "standard normal certificates" and (b) "third class temporary (sixty-four semester hours) certificates."

(4) "Second class" means all certificates previously identified as "second class temporary certificates based upon the required ninety-six hours of college work."

(5) "B. A." means a bachelor's degree, from an accredited institution of higher education, which has been issued to, or for which the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(6) "B. A. +15" means a bachelor's degree as defined above plus fifteen hours of graduate work, from an accredited institution of higher education certified to do graduate work, in an approved planned program at the graduate level which requirements have been met by a person who qualifies for or holds a professional certificate or its equivalent.

(7) "M. A." means a master's degree, earned in an institution of higher education approved to do graduate work, which has been issued to, or the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(8) "M. A. +15" means the above-defined master's degree plus fifteen hours of graduate work, earned in an in-
Institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(9) "M. A. +30" means the above-defined master’s degree plus thirty graduate hours, earned in an institution approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(10) “Doctorate” means a doctor’s degree, which is of the type normally associated with the educational system, from a university qualified and approved to confer such a degree, which has been issued to or the requirements for such have been met by a person who qualifies for or holds a professional certificate or its equivalent.

§18A-4-2. State minimum salary schedule.

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§18A-4-3. Salary increments for principals.

In addition to the present recommended salary schedules in each county for principals, the following schedule of monthly salary increments for principals shall be paid from state funds appropriated therefor, beginning with...
the fiscal year commencing on the first day of July, one
thousand nine hundred sixty-nine:

**Bachelor's Degree**

<table>
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<th>No. of Teachers</th>
<th>or Lesser Certification</th>
<th>Master's Degree</th>
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§18A-4-4. Responsibility of state board.

1 The state board of education shall establish the minimum salary schedule for teachers where specialized training may be required for vocational, technical, and adult education, and such other permits as may be authorized by said board.

6 No teacher holding a valid professional certificate shall have his salary reduced as a result of being assigned out of his teaching field by the superintendent, with the approval of the county board, under any authorization or regulation of the state board.

§18A-4-5. Authority of county boards.

1 County boards of education in fixing the salaries of teachers shall use as a minimum the salaries established under the provisions of this article. The board may estab-
lish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility, and other requirements; and also may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, for teachers of one-teacher schools; and may provide additional compensation for any teacher assigned duties in addition to his regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county, from the effective date of this act, shall reduce local funds allocated for instructional salaries and used in supplementing the state mandated salaries as provided for in this article, unless forced to do so by failure of a special levy, or a loss in assessed values, or state aid, or events over which it has no control.

§18A-4-6. Change in classification.
1 Upon the change of the training classification of any teacher, his salary shall be made to comply with requirements of this article and of any county schedule, where such exist, based upon his new classification and allowable years of experience.

§18A-4-7. Substitute teachers.
1 The pay of the substitute teacher shall be based upon his training classification and experience and shall be in accordance with the salary schedule of the regularly employed teachers of the county in which he is employed.

§18A-4-8. Minimum pay for service personnel.
1 Until such time as a state minimum pay scale is established for service personnel, not less than fifty percent of the allowance made for supporting services and other current expense, under the provisions of section twelve-a,
article nine-a of chapter eighteen, shall be used to employ, to adjust, and/or to increase the pay of service personnel: Provided, That fifty percent of the increase for supporting services for the school year one thousand nine hundred sixty-nine—one thousand nine hundred seventy shall be used to provide a pay increase for all service personnel.

§18A-4-9. Payment of teachers and other employees; withholdings.

Teachers and all other employees whose salaries or wages are payable out of the school current fund shall be paid for their services by orders drawn upon the sheriff or treasurer and duly signed by the president and secretary of the board in accordance with the following provisions: Notwithstanding any other provisions of this chapter and chapter eighteen, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: Provided, That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon twelve calendar months. In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year. Adjustments for time loss due to absence may be made in the next pay check following such time loss.

The board may withhold the pay of any teacher or employee until he has made the reports required by the board or the state superintendent.

§18A-4-10. Personal leave for illness and other causes.

At the beginning of his employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative to a total of sixty days and shall be transferable within the state. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.
A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or other cause authorized or approved by the board, shall be paid his full salary from his regular budgeted salary appropriation during the period which he is absent, but not to exceed the total amount of leave to which he is entitled. Where the cause for leave had its origin prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term.

The board may establish reasonable regulations for reporting and verification of absence for causes; and if any error in reporting absences should occur it shall have authority to make necessary salary adjustments in the next pay after the employee has returned to duty or in the final pay if the absence should occur during the last month of his employment term. When such allowable absence does not directly affect the instruction of the pupils or when a substitute employee may not be required because of the nature of the work and the duration of the cause for the allowable absence of the regular employee, the administration, subject to board approval, may use its discretion as to the need for a substitute where limited absence may prevail. Any board of education shall have authority to supplement such leave provisions in any manner it may deem advisable.

If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

§18A-4-11. Group insurance.

Whenever a majority of the full-time instructional and administrative employees of a county or state board of education, or a majority of the full-time nonteaching employees of such board shall indicate in writing to the board of education that it has adopted a group plan or plans of insurance for life, health and accident, hospitalization or surgery insurance, or death benefit plan on a group basis, and such majority has selected a licensed in-
insurance company or companies duly licensed to do business in this state to write or provide for any one or more of such group insurance, or death benefit coverages, the board shall make proper periodical premium deductions from the regular salary of any such employee as specified in a written assignment furnished it by each such employee subscribing thereto, and pay the aggregate of such salary deductions over to the insurance company or companies or voluntary association so selected. Only those companies whose plan or plans receive the majority vote shall have the privilege of such deductions.

§18A-4-12. Tax sheltered annuities for teachers and other employees.

For the purpose of this section when an employee shall have attained the age of eighteen years, the said employee may be eligible to participate in the defined group plans. A county board of education, the teachers retirement board, the West Virginia board of education and the board of regents of West Virginia and their agencies may provide by written agreement between any such board or agency and any teacher or other employee, to reduce the cash salary payable to such teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of such reduction to an insurance company licensed to do business in this state as premiums on an annuity contract owned by such teacher or other employee, which annuity contract shall be in such form and upon such terms as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code, or to pay an amount equal to the amount of such reduction as voluntary deposits to the teachers retirement board as provided by section eighteen, article seven-a, chapter eighteen of this code. The amount of such reduction shall not exceed the amount excludible from income under section 403 (b) of the United States Internal Revenue Code, and amendments and successor provisions thereto, and shall be considered a part of the teacher's or employee's salary for all purposes other than federal and state income tax.
Ch. 140] SCHOOLS 1235

27 The purchase of such tax sheltered annuity for a
teacher or other employee by a board of education, the
teachers retirement board, the West Virginia board of
education and the board of regents of West Virginia
and their agencies shall impose no liability nor responsi-
bility whatsoever on said boards or members thereof
except to show that the payments have been remitted
for the purposes for which deducted.

§18A-4-13. Compliance with this article.

1 Any board failing to comply with the provisions of
2 this article may be compelled to do so by mandamus.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion
of pupils having infectious diseases; suspension or expul-
sion of disorderly pupils.

§18A-5-2. Holidays; closing of schools; time lost because of such;
special Saturday classes.

§18A-5-3. Exemption from jury service.


§18A-5-5. Records; reports by professional and other personnel.


§18A-5-1. Authority of teachers and other school personnel;
exclusion of pupils having infectious diseases;
suspension or expulsion of disorderly pupils.

1 The teacher shall stand in the place of the parent or
guardian in exercising authority over the school, and
shall have control of all pupils enrolled in the school
from the time they reach the school until they have
returned to their respective homes, except that where
transportation of pupils is provided, the driver in charge
of the school bus or other mode of transportation shall
exercise such authority and control over the children
while they are in transit to and from the school. Sub-
ject to the rules of the state board of education, the
teacher shall exclude from the school any pupil or pupils
known to have or suspected of having any infectious
disease, or any pupil or pupils who have been exposed
to such disease, and shall immediately notify the proper
health officer, or medical inspector, of such exclusion.

Any pupil so excluded shall not be readmitted to the
school until such pupil has complied with all the require-
ments of the rules governing such cases, or has presented
a certificate of health signed by the medical inspector
or other proper health officer. The teacher shall have
authority to suspend any pupil guilty of disorderly, re-
fractory, indecent or immoral conduct, and the district
board of education may expel or exclude any such pupil if,
on investigation, the conduct of such pupil is found to
be detrimental to the progress and the general conduct
of the school.

For the purpose of this section: (1) "Pupil" shall
include any child, youth, or adult who is enrolled in
any instructional program or activity conducted under
board authorization and within the facilities of or in
connection with any program under public school di-
rection: Provided, That in the case of adults the pupil-
teacher relationship shall terminate when the pupil
leaves the school or other place of instruction or activity;
(2) "teacher" shall include principals, regular teachers,
substitute teachers, student teachers, teacher aides and
other school employees or persons assigned responsibility
for directing or supervising instructional programs or
board-approved activities.

Teachers shall exercise such other authority and per-
form such other duties as may be prescribed for them
by law or by the rules of the state board of education
not inconsistent with the provisions of this chapter and
chapter eighteen.

§18A-5-2. Holidays; closing of schools; time lost because of
such; special Saturday classes.

Schools shall not be kept open on any Saturday nor
on the following days which are designated as legal
school holidays, namely: Independence Day, Labor Day,
Veterans Day, Thanksgiving Day, Christmas Day, New
Year's Day, Memorial Day, and any day on which a
primary election, general election, or special election is
held throughout the state or school district and any
day appointed and set apart by the president or the
governor as a holiday of special observance by the people
of the state. When any such holiday falls within the
employment term, it shall be considered as a day of
the employment term and the full-time school personnel
shall receive his pay for same. When any of the above
designated holidays, except a special election, falls on
Saturday, the schools shall be closed on the preceding
Friday; when any such falls on Sunday, the schools shall
be closed on the following Monday.

Special classes may be conducted on Saturdays, pro-
vided they are conducted on a voluntary basis, for pupils
and by teachers and service personnel, and that such
teachers and service personnel shall be remunerated in
ratio to the regularly contracted pay.

Any school or schools may be closed by proper authori-
ties on account of the prevalence of contagious disease,
conditions of weather or any other calamitous cause over
which the board has no control. Under any or all of the
above provisions, the time lost by the closing of schools
shall be counted as taught and as meeting a part of the
requirements of the minimum term of one hundred and
eighty days of instruction. The teacher shall receive
pay the same as if school were in session. Insofar as
funds are available or can be made available during the
school year, the board may extend the employment term
for the purpose of making up time that might affect the
instructional term.

In addition to any other provisions of this chapter,
the board is further authorized to provide in its annual
budget for meetings, workshops, vacation time and/or
other holidays through extended employment of person-
nel at the same rate of pay.

§18A-5-3. Exemption from jury service.

Notwithstanding any other provision of law, profes-
sional personnel and other persons actively engaged in
school work in this state shall be required to serve on any
jury during the period of his contract with a board of
education unless excused therefrom by judge of the court.
In the case of service on a jury the board shall pay the
difference between that allowed for such jury service
and the amount of salary due the person for such period
of time.

1 A county board of education may approve the attendance of any or all teachers at educational conventions, conferences, or other professional meetings of teachers on school days when in the judgment of the superintendent it is necessary or desirable. Attendance at such meetings may be substituted for an equal amount of teaching and teachers so attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of expenses of any personnel whom it may designate to represent it at any such professional or educational meetings or in visitation to another school system.

§18A-5-5. Records; reports by professional and other personnel.

1 Every teacher, principal, supervisor, or other person employed by a board of education shall keep such records and shall make such reports as may be required by the state superintendent of schools, and such records shall be kept and such reports shall be made according to the forms and blanks prescribed and furnished by the state superintendent. Teachers shall also keep such other records and make such other reports as may be required by the board of education employing them.


1 A school census of youths from birth through twenty years of age as of September first of the year in which taken, or of such ages as otherwise may locally be determined and of mentally and physically handicapped persons of all ages, may be made as directed by a county board of education. The school census may be taken by the teachers or as otherwise directed by the county board of education. Teachers taking the school census shall be entitled to use school hours not to exceed a total of one school day, and shall be compensated for such time as for time taught.

12 The state superintendent of schools shall have authority to require a statewide enumeration by the counties at such times as he may direct and may establish the procedures therefor.
In order that the census record may be as currently accurate as possible, and a reliable source of reference through the school year, it shall be the duty of each county superintendent of schools to establish and administer through the office of the county director of school attendance a system of cumulative census records which may be prescribed by the state superintendent of schools.


Every teacher shall, at the time of signing his contract to teach, take an oath to support the constitution of the United States and the constitution of the state of West Virginia, and to honestly demean himself in the teaching profession and to the best of his ability execute his position of teacher. Such oath shall be printed on the contract form prescribed by the state superintendent.

ARTICLE 6. COUNTY RETIREMENT FUND.

§18A-6-1. Retirement fund for school employees.

Boards of education shall have authority to establish and maintain a teachers retirement fund for both teachers and nonteaching employees of their districts. The administration of such funds shall be in accordance with the rules and regulations of the state board of education relating thereto.

AN ACT to amend and reenact section one-b, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rates of interest on revenue bonds payable from special registration fees charged at each state institution of higher education.
Be it enacted by the Legislature of West Virginia:

That section one-b, 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-1b. Collection, disposition and use of additional registration fee; creation of special capital improvements fund; revenue bonds.

1 In addition to all other fees imposed by the governing boards of state institutions of higher education, there is hereby imposed and the governing board of each state institution of higher education is hereby directed to provide for the collection of an additional registration fee from all students in the amounts as hereinafter provided.

2 For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The board of governors of West Virginia University and the West Virginia board of education shall have authority to increase such additional registration fee at any institution of higher education under their respective control for students who are non-residents of this state. For all part-time students and for all summer school students, the respective governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

3 The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provisions of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

4 There is hereby created in the state treasury a special capital improvements fund, to be expended by the board of governors of West Virginia University for the benefit of West Virginia University and Potomac State College of West Virginia University, as provided in this section.

5 On and after the first day of July, one thousand nine hun-
dred sixty-three, there shall be paid into such special
fund all proceeds of the additional registration fees col-
lected from students at West Virginia University and at
Potomac State College.

There is hereby created in the state treasury a special
capital improvements fund, to be expended by the West
Virginia board of education for the benefit of the state
institutions of higher education under its control, as pro-
vided in this section. On and after the first day of July,
one thousand nine hundred sixty-three, there shall be
paid into such special fund all proceeds of the additional
registration fees collected from students at such institu-
tions.

The respective boards may make expenditures from
such special capital improvements funds at the various
state institutions of higher education under their control
to finance in whole or in part, together with any federal,
state or other grants or contributions, any one or more
of the following purposes: (1) The acquisition of land
or any rights or interest therein. (2) The construction or
acquisition of new buildings. (3) The renovation or con-
struction of additions to existing buildings. (4) The ac-
quisation of furnishings and equipment for any such build-
ings. (5) The construction or acquisition of any other
capital improvements or capital educational facilities at
such state institutions of higher education, including any
roads, utilities or other properties, real or personal, or
for other purposes necessary, appurtenant or incidental
to the construction, acquisition, financing and placing in
operation of such buildings, capital improvements or
capital educational facilities.

The respective boards, at their discretion, may use the
moneys in such special capital improvements funds to
finance the costs of the above purposes on a cash basis,
or may from time to time issue revenue bonds of the
state as provided in this section to finance all or part of
such purposes and pledge all or any part of the moneys
in such special funds for the payment of the principal of
and interest on such revenue bonds, and for reserves
therefor. Any pledge of such special funds for such
revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: Provided, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the board of governors of West Virginia University and the West Virginia board of education to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education under their control, in such order of priority as shall have been agreed upon by the respective boards and presented to the board of public works for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued from time to time by the respective boards to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the respective boards shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the respective board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as such respective board shall determine. Such revenue bonds shall be signed by the governor and by the president of the respective board authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of
such respective board. Such revenue bonds shall be sold in such manner as the respective board may determine to be for the best interests of the state.

Such respective board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the same board under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by such respective board in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education under the control of the board which issued the bonds shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the law merchant and the Uniform Commercial Code of the state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.
AN ACT to amend and reenact section one, article four, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expenditures for the West Virginia state guard.

Be it enacted by the Legislature of West Virginia:

That section one, article four, 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 4. WEST VIRGINIA STATE GUARD.

§15-4-1. Governor authorized to organize and maintain West Virginia state guard.

1 Whenever any part of the national guard of this state is in active federal service, the governor is hereby authorized to organize and maintain within this state during such period, under such regulations as the secretary of defense of the United States may prescribe for discipline in training, such military forces as the governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the national guard and shall be known as the “West Virginia state guard:”

Provided, That any funds appropriated by the Legislature to the adjutant general for the organization, administration, training and supply of the organized militia may be expended for such purposes with respect to the West Virginia state guard. Such forces shall be uniformed.
AN ACT to amend and reenact sections two, three-a and nine, article fifteen, chapter eleven 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 one-a and thirty-one, all relating to definitions of terms in and exemptions under the consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That sections two, three-a and nine, article fifteen, chapter eleven 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 two new sections, designated sections one-a and thirty-one, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-1a. Legislative findings.
§11-15-3a. Temporary additional definitions, additional exemptions and replacement exemptions.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that it is the intent of the Legislature that the consumers sales tax imposed by the provisions of article fifteen and the use tax imposed by the provisions of article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be complementary laws and wherever possible be construed and applied to accomplish such intent as to the imposition, administration and collection of such taxes.


1 For the purpose of this article:
1. "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator;

2. "Tax commissioner" shall mean the state tax commissioner;

3. "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted;

4. "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose;

5. "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property;

6. "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property;

7. "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons;

8. "Tax" shall include all taxes, interest and penalties levied hereunder;

9. "Service" or "selected service" shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include personal services or the services rendered by an employee to his employer or any service rendered for resale;
(10) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article;

(11) "Personal service" shall include those:
   (a) Compensated by the payment of wages in the ordinary course of employment;
   (b) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services;

(12) "Taxpayer" shall mean any person liable for the tax imposed by this article;

(13) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

§11-15-3a. Temporary additional definitions, additional exemptions and replacement exemptions.

For the purpose of providing additional revenue for a one-year period only (April 1, 1969 through March 31, 1970) the provisions of this section shall, effective April one, one thousand nine hundred sixty-nine, replace and stand in lieu of, or be in addition to, as hereinafter indicated, the provisions of sections two and nine of this article for such period, but not thereafter, and shall expire at midnight, March thirty-one, one thousand nine hundred seventy.

The following definitions are to be read as if set forth with and in addition to the definitions contained in section two of this article:

(14) "Raw materials" shall mean materials which are partially or wholly consumed or become a component part or the whole of a marketable product. Raw materials shall also include the following property and/or services and as limited, apply to the following specified businesses:
   (a) Coal used and consumed in the generation of electric energy;
   (b) Poles, wires and cables purchased and used by a
person engaged in the business of transmitting and/or
distributing electrical energy;
(c) Central office communication equipment, station
connections and equipment and services connected with
the installation thereof, poles, wires and cables purchased
and used by persons engaged in the business of com-

munication;
(d) Meters, pipes, pumps, and chemicals purchased
and used by a person engaged in the business of supply-
ing water and purchases of materials and services by
water and sewage disposal plants owned by municipalities
and public service districts;
(e) Sales of materials and services used and consumed
by municipally owned electric power plants which gen-
erate and/or distribute electrical energy;
(f) Sales of meters, pipes and compressors used and
consumed by persons engaged in the business of selling
oil, liquified or natural gas;
(g) Materials and services furnished by a contractor
which are incorporated into the marketable product and
transferred to a purchaser; the term “marketable prod-

tect” shall include any partially or wholly completed
project or permanent improvement to real property by a
contractor;
(h) Materials and services purchased and wholly con-
sumed and/or rendered wholly nonusable or nonre-
coverable by persons engaged in the business of produc-
ing coal or other natural resources;
(i) Sales of materials and/or services which are par-
tially or wholly consumed or become a component part
or the whole of a marketable product, in the process of
manufacturing, including containers, caps and labels, but
not repair services on machinery and equipment;
(j) Purchases of tangible personal property to be used
by a transportation company or person as or in rolling
stock.
(15) “Contractor” shall mean a person who sells or
furnishes services, or both materials and services, in
the fulfillment of a contract for the construction, altera-
§ 143. Taxation

60 tion, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.

63 (16) "A transportation company" shall mean a person engaged in the transportation of persons or property for a consideration and subject to the control of the public service commission or the interstate commerce commission.

68 The following exemptions are to be read with and as if set forth with the exemptions in section nine of this article and are intended to replace and stand in lieu of the same numbered subdivisions therein or be in addition to such exemptions contained therein:

73 Subdivisions:

74 (6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render: Provided, however, that the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the organizations named above;

77 (8) Sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article: Provided, however, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

80 (9) Sales of tangible personal property and/or services for the purpose of resale in the form of tangible personal property and/or services;

83 (14) Sales of raw materials;

86 (15) Sales of raw materials and services, or services, only, by a contractor, under contracts entered into on or after the first day of April, one thousand nine hundred sixty-nine;

89 (16) Sales of tangible personal property or services for the acquisition, construction, development and maintenance of water pollution control facilities and air pollution control facilities;

1. The following sales and services shall be exempt:

2. (1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;

3. (2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

4. (3) Sales of textbooks required to be used in any of the schools of this state;

5. (4) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

6. (5) Sales of motor vehicles which are titled by the department of motor vehicles which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

7. (6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

8. (7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

9. (8) Sales of tangible personal property and services rendered for use or consumption in connection with the
Sec. 37. Conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article: Provided, however, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

(9) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;

(10) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work;

(11) Sales and services, fire fighting, or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia;

(12) Sales of newspapers when delivered to consumers by route carriers;

(13) Sales of drugs dispensed upon prescription.


If any of the provisions of this article are held invalid, such invalidation shall not affect other provisions which can be given effect without the invalid provision and to this end the provisions of this article are declared to be severable.

CHAPTER 144

(Com. Sub. for Senate Bill No. 163—By Mr. Carrigan)

[Passed March 4, 1969; in effect April 1, 1969. Approved by the Governor.]

AN ACT to repeal section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact sections one and three of said article fifteen-a; to further amend said article fifteen-a by adding thereto a new section, designated section one-a, all relating to definitions of terms in and exemptions under the use tax law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15A. USE TAX.


§11-15A-1a. Legislative findings.


1 The following words, terms, and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

2 (1) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

3 (2) "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property or by any transaction in which possession of tangible personal property is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property.

4 (3) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

5 (4) "Purchase price" means the total amount for which tangible personal property is sold, valued in money,
(5) "Tangible personal property" means tangible goods, wares, and merchandise when furnished or delivered within this state to consumers or users within this state.

(6) "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this article: Provided, however, That when in the opinion of the tax commissioner it is necessary for the efficient administration of this article to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the tax commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article.

(7) "Retailer maintaining a place of business in this state" or any like term shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution houses, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to section seventy-nine, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one.

(8) The word "commissioner" means the state tax commissioner.

(9) The word "taxpayer" includes any person within the meaning of subdivision one hereof, who is subject to
§11-15A-1a. Legislative findings.

1 The Legislature hereby finds and declares that it is the intent of the Legislature that the use tax imposed by the provisions of article fifteen-a and the consumers sales tax imposed by the provisions of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be complementary laws and wherever possible be construed and applied to accomplish such intent as to the imposition, administration and collection of such taxes.


1 The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

1. All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while within the state.

2. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of sections three-a and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.

3. Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That the exemptions granted in this subdivision three are hereby suspended, nullified and made inoperative during the period from the first day of April, one thousand nine hundred sixty-nine to midnight of the thirty-first day of March, one thousand nine hundred seventy: Provided further, That after midnight of the thirty-first day of March, one thousand nine hundred seventy, the exemptions granted
26 in this subdivision three shall again be in full force and
27 effect as if they had not been suspended, nullified and
28 made inoperative as heretofore provided.
29 4. Tangible personal property, the gross receipts or
30 the gross proceeds from the sale of which are required
31 to be included in the measure of the tax imposed by
32 article fifteen, chapter eleven of the code of West Vir-
33 ginia, one thousand nine hundred thirty-one.
34 5. Tangible personal property the sale of which in
35 this state is not subject to the West Virginia consumers
36 sales tax.

CHAPTER 145
(Senate Bill No. 243—By Mr. Brotherton)

[Passed March 4, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section seven-b, article seven-
teen, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to bond for wholesale cigarette dealers.

Be it enacted by the Legislature of West Virginia:

That section seven-b, 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.

§11-17-7b. Conditions precedent to issuance of licenses; dis-
qualification for license.

1 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
section, major cigarette manufacturers will be those manufacturers who are among the six companies showing the largest taxable cigarette removals during the previous calendar year, as indicated by the records of the tobacco tax branch of the United States Internal Revenue Service. This section shall not apply to applications for renewal of licenses provided the applicant is, at the time of applying for renewal, purchasing from at least three of the major cigarette manufacturers.

Wholesaler's or subjobber's licenses shall be issued only to persons, except corporations, of good moral character, who are not less than twenty-one years of age. No wholesaler's or subjobber's license shall be issued to any person who has been convicted within the past five years of any offense against the cigarette laws of this state or who has been convicted in this state, or any state of the United States, during the past five years of any offense designated as a felony by such state or the United States, or to a corporation, any of whose officers have been so convicted. The term "conviction" shall include the adjudication of guilt on a plea of nolo contendere, or the forfeiture of a bond when charged with a crime. The commissioner may refuse to issue any license provided for under this section to any person, firm or corporation whose license under the cigarette law has been suspended or revoked or to any corporation, an officer of which has had his cigarette license suspended or revoked, or to any person who is or has been an officer of a corporation whose cigarette license has been suspended or revoked.

CHAPTER 146

(Senate Bill No. 238—By Mr. McCourt)

[Passed March 4, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to
credits against personal income tax for tax imposed on incomes of certain carriers.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.

§11-21-8. Credits against tax.

(a) Business and occupation tax credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen of chapter eleven of this code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(b) Carrier income tax credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax
under article twelve-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-a shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation which is included in the taxpayer's West Virginia taxable income.

(c) Cross reference.—For credit in respect of:

(1) Taxes withheld on wages, see section seventy-three,

(2) Taxes imposed on a resident by other states, see section twenty,

(3) Taxes imposed on a nonresident by the state of his residence, see section forty.

CHAPTER 147

(Senate Bill No. 282—By Mr. Carrigan)

[Passed March 4, 1969; 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.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of
the United States relating to income taxes, unless a dif-
ferent meaning is clearly required. Any reference in this
article to the laws of the United States shall mean
the provisions of the Internal Revenue Code of 1954, as
amended, and such other provisions of the laws of the
United States as relate to the determination of income
for federal income tax purposes. All amendments made
to the laws of the United States prior to the first day
of January, one thousand nine hundred sixty-nine, shall
be given effect in determining the taxes imposed by this
article for the tax period beginning the first day of
January, one thousand nine hundred sixty-nine, and
thereafter, but no amendment to the laws of the United
States made on or after the first day of January, one
thousand nine hundred sixty-nine, shall be given effect.

CHAPTER 148
(Senate Bill No. 234—By Mr. Hylton)

[Passed March 1, 1969; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend chapter one hundred fifty-one, acts of the
Legislature, regular session, one thousand nine hundred
thirty-nine, by adding thereto a new section, designated
section twelve-a, and to constitute said chapter one hun-
dred fifty-one, as so amended, article eleven-a, chapter
forty-seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, said section twelve-a
prohibiting the voluntary and unsolicited sending of goods,
wares or merchandise and providing that the receipt of
any such unsolicited goods, wares or merchandise shall
for all purposes be deemed an unconditional gift to the
recipient who may use or dispose of the same in any
manner he sees fit without any obligation on his part to
the sender.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred fifty-one, acts of the Legislature,
regular session, one thousand nine hundred thirty-nine, be
amended by adding thereto a new section, designated section twelve-a, and that said chapter one hundred fifty-one, as so amended, be and the same is hereby constituted article eleven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, said section twelve-a to read as follows:

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-12a. Unsolicited goods.

1 No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

CHAPTER 149

(Senate Bill No. 321—By Mr. Brotherton)

[Passed March 6, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three hundred two, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to secured transactions.

Be it enacted by the Legislature of West Virginia:

That section three hundred two, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS,
CONTRACT RIGHTS AND CHATTEL PAPER.

§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of
this article do not apply.

1 (1) A financing statement must be filed to perfect all
security interests except the following:

2 (a) A security interest in collateral in possession of
the secured party under section 9-305 [§46-9-305];

3 (b) A security interest temporarily perfected in instru-
ments or documents without delivery under section 9-304
[§46-9-304] or in proceeds for a ten-day period under
section 9-306 [§46-9-306];

4 (c) A purchase money security interest in farm equip-
ment having a purchase price not in excess of $2500; but
filing is required for a fixture under section 9-313 [§46-9-
313] or for a motor vehicle required to be licensed;

5 (d) A purchase money security interest in consumer
goods; but filing is required for a fixture under section
9-313 [§46-9-313] or for a motor vehicle required to be
licensed;

6 (e) An assignment of accounts or contract rights
which does not alone or in conjunction with other as-
signments to the same assignee transfer a significant part
of the outstanding accounts or contract rights of the
assignor;

7 (f) A security interest of a collecting bank (section
4-208) [§46-4-208] or arising under the article on sales
(see section 9-113) [§46-9-113] or covered in subsection
(3) of this section.

8 (2) If a secured party assigns a perfected security
interest, no filing under this article is required in order
to continue the perfected status of the security interest
against creditors of and transferees from the original
debtor.

9 (3) The filing provisions of this article do not apply to
a security interest in property subject to a statute
(a) of the United States which provides for a national registration or filing of all security interests in such property; or
(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

(5) Part four of this article shall not apply to a security interest in property of any description created by a deed of trust, mortgage or indenture or any supplemental deed of trust, mortgage or indenture made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected in all types of property and interests in property covered by this article by filing such deed of trust, mortgage or indenture or supplemental deed of trust, mortgage or indenture in the office of the secretary of state. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement, and if a copy of such a deed of trust, mortgage or indenture or supplemental deed of trust, mortgage or indenture with respect to which financing statements have heretofore been filed in any filing office in this state shall be filed in the office of the secretary of state as provided herein such instrument shall also thereafter remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed in the office of the secretary of state. The secretary of state shall be a filing officer for the foregoing purposes.
AN ACT to repeal section seven, article ten, chapter seventeen-c; section seven, article three, chapter twenty-four; and section twenty-four, article ten, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter five of said code by adding thereto a new article, designated article fifteen, relating to blind persons; providing for certain rights for blind persons and a penalty for this violation; providing that drivers take certain precautions concerning blind persons; providing for white cane day.

Be it enacted by the Legislature of West Virginia:

That section seven, article ten, chapter seventeen-c; section seven, article three, chapter twenty-four; and section twenty-four, article ten, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter five of said code be amended by adding thereto a new article, designated article fifteen, to read as follows:

ARTICLE 15. WHITE CANE LAW.


This article shall be known as the "White Cane Law".


It is the policy of this state to encourage and enable blind persons to participate fully in the social and
3 economic life of the state and to engage in remunerative
4 employment.

1 For the purpose of this article, a person shall be con-
2 sidered to be blind only if his central visual acuity does
3 not exceed twenty/two hundred in the better eye with
4 correcting lenses, or if his visual acuity is greater than
5 twenty/two hundred but is occasioned by a limitation
6 in the fields of vision such that the widest diameter of
7 the visual field subtends an angle no greater than twenty
8 degrees.

§5-15-4. Equal right to use public facilities.
1 (a) Blind persons shall have the same right as persons
2 with normal sight to the full and free use of the high-
3 ways, roads, streets, sidewalks, walkways, public build-
4 ings, public facilities, and other public places.
5 (b) Blind persons are entitled to full and equal ac-
6 commodations, advantages, facilities and privileges of
7 all common carriers, airplanes, motor vehicles, railroad
8 trains, motor buses, streetcars, boats or any other public
9 conveyances or modes of transportation, hotels, lodging
10 places, restaurants, other places of public accommoda-
11 tion, amusement or resort, and other places to which the
12 general public is invited, subject only to the conditions
13 and limitations established by law and applicable alike
14 to all persons.
15 (c) Every blind person shall have the right to be ac-
16 companied by a guide dog, wearing a harness, especially
17 trained for the purpose, in any of the places, accommoda-
18 tions or conveyances specified in subsection (b) of this
19 section without being required to pay an extra charge for
20 the admission of such guide dog, but the blind person
21 shall, upon request, present for inspection credentials is-
22 sued by an accredited school for training guide dogs.
23 The blind person shall be liable for any damage done by
24 a guide dog to the premises or facilities or to persons
25 using such premises or facilities.
§5-15-5. Standard of care to be exercised by and with respect to blind persons.

A blind person shall exercise that degree of care for his own safety in any of the places, accommodations or conveyances specified in section four of this article which an ordinarily prudent person so handicapped would exercise under similar circumstances.

The driver of a vehicle approaching a blind pedestrian who knows, or in the exercise of reasonable care should know, that such pedestrian is blind because such pedestrian is carrying a cane predominantly white or metallic in color (with or without a red tip) or is using a guide dog or otherwise shall exercise care commensurate with the situation to avoid injuring such pedestrian.

§5-15-6. Annual proclamation of white cane day.

Each year the governor shall take suitable public notice of October fifteen as white cane day. He shall issue a proclamation in which he:

(a) Comments upon the significance of the white cane;

(b) Calls upon the citizens of the state to observe the provisions of the white cane law and to take precautions necessary for the safety of the blind;

(c) Reminds the citizens of the state of the policies with respect to the blind herein declared and urges the citizens to cooperate in giving effect to them;

(d) Emphasizes the need of the citizens to be aware of the presence of blind persons in the community and to keep safe for the blind the highways, roads, streets, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort and other places to which the public is invited, and to offer assistance to blind persons upon appropriate occasions.


It is the policy of this state that blind persons shall be employed in the state service, the service of the political subdivisions of the state, in the public schools and in all other employment supported in whole or in part by public funds on the same terms and conditions as persons with
normal sight, unless it is shown that the disability prevents the performance of the work involved.

§5-15-8. Interference with rights hereunder; penalties.
1 Any person, firm or corporation, or the agent of any person, firm or corporation, who denies or interferes with admittance to or enjoyment of the places, accommodations or conveyances specified in section four of this article or otherwise interferes with the rights of a blind person under the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars.

CHAPTER 151
(Senate Bill No. 322—By Mr. Brotherton and Mr. Carrigan)

[Passed March 6, 1969; in effect 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 five-a, relating to compelling a witness to give evidence that may incriminate or tend to incriminate him and granting him immunity from prosecution resulting therefrom, all relating to a committee or commission of the Legislature created by general law or concurrent resolution.

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 five-a, to read as follows:

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS.

§4-1-5a. When witness may be compelled to give evidence against himself; immunity of witness from prosecution.
1 In any proceeding by a committee or commission of the Legislature, created by it by general law or any concurrent
resolution, which has the authority to issue subpoenas or
subpoenas duces tecum, no person shall be excused from
testifying or from producing documentary or other evi-
dence upon the ground that such testimony or evidence
may incriminate or tend to incriminate him, if the commit-
tee or commission before which he is examined is of the
opinion that the ends of justice may be promoted by
compelling such testimony or evidence. If, but for this
section, the person would have been excused from so testi-
ying or from producing such evidence, then if the person
is so compelled to testify or produce other evidence and if
such testimony or evidence is self-incriminating, such
self-incriminating testimony or evidence shall not be used
or receivable in evidence against him in any proceeding
against him thereafter taking place other than a prosecu-
tion for perjury in the giving of such evidence, and the
person so compelled to testify or furnish evidence shall
not be prosecuted for the offense in regard to which he is
so compelled to testify or furnish evidence, and he shall
have complete legal immunity in regard thereto.

CHAPTER 152

(House Bill No. 1040—Originating in the House Committee
on the Judiciary)

(Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.)

AN ACT to amend and reenact section seventeen, article one;
to amend and reenact sections one, two, three, four, six,
six-a, eight, eight-a, eight-b, eight-c, eight-d, eight-e, ten,
fourteen, fifteen, fifteen-b and fifteen-c, article four, all
of chapter twenty-three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, re-
lating to annual reports by commissioner, occupational
pneumoconiosis board and occupational diseases medical
board; black lung; workmen’s compensation; occupational
diseases, including occupational pneumoconiosis; defini-
tions; self-inflicted injuries; injuries intentionally caused
by employer; rules and safety appliances; schedule of maximum disbursements for medical, surgical, and hospital treatment; prohibited acts; penalties; funeral expenses; classification of disability benefits; benefit and mode of payment; physical examination of claimant; the occupational pneumoconiosis board; the terms, duties and remuneration of the members of said board; procedures for such board; autopsies; reports of such board; a presumption of occupational pneumoconiosis; classification of death benefits; computation of benefits; application for benefits; determination of nonmedical questions; and hearings.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, be amended and reenacted; that sections one, two, three, four, six, six-a, eight, eight-a, eight-b, eight-c, eight-d, eight-e, ten, fourteen, fifteen, fifteen-b and fifteen-c, article four, all of 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.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-17. Annual report by commissioner, occupational pneumoconiosis board and occupational diseases medical board.

1. Annually, on or about the fifteenth day of September in each year, the commissioner, the occupational pneumoconiosis board and the occupational diseases medical board, shall make a report as of the thirtieth day of June addressed to the governor, which shall include a statement of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the respective medical boards and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific support for such techniques, and a summary of public and private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recom-
mandations for improvements in the workmen's compensation law and for more efficient and responsive administration thereof, which the commissioner may deem appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; rules and safety appliances; "wilful self-exposure" defined.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

§23-4-4. Funeral expenses.

§23-4-6. Classification of disability benefits.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

§23-4-8. Physical examination of claimant.

§23-4-8a. Occupational pneumoconiosis board—Created; term of office; duties; remuneration.

§23-4-8b. Same—Procedure; autopsy.

§23-4-8c. Same—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

§23-4-8d. Occupational diseases medical board—Created; qualifications; term of office; duties; remunerations.

§23-4-8e. Same—Procedure; autopsy.

§23-4-10. Classification of death benefits; "dependent" defined.


§23-4-15b. Determination of nonmedical questions by commissioner—Claims for occupational pneumoconiosis; hearing.

§23-4-15c. Same—Hearing on claim for occupational diseases other than occupational pneumoconiosis.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis 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 include occupational pneumoconiosis 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 hazards of occupational pneumoconiosis or other occupational disease, and have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis, in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless in the state of West Virginia the employee has been exposed to the hazards of occupational pneumoconiosis over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each, and the commissioner may allo-
cate to and divide any charges on account of such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the filing of the application. The allocation shall be based upon the time and degree of exposure with each employer.

For the purpose of this chapter disability or death resulting from occupational pneumoconiosis, as defined in the immediately succeeding sentence, shall be treated and compensated as an injury by accident.

Pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time which has produced pinhead or other nodulation or pathological or abnormal physiological change generally accepted by recognized specialists in the field of respiratory diseases as supporting a diagnosis of pneumoconiosis and which can be identified by X rays or other medical evidence and a pneumoconiosis shall be considered to be an occupational pneumoconiosis when the pneumoconiosis results from causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” shall include, but shall not be limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, tuberculo-silicosis, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

X-ray evidence shall not necessarily be held conclusive insofar as it bears upon the absence or presence of occupational pneumoconiosis.

For the purpose of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment
shall be compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; rules and safety appliances; “wilful self-exposure” defined.

Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on ac-
count of any personal injury to or death to any employee
caused by a self-inflicted injury, wilful misconduct, wil-
ful disobedience to such rules and regulations as may
be adopted by the employer and approved by the com-
missioner of labor or director of the department of
mines, and which rules and regulations have been and
are kept posted in conspicuous places in and about the
work, wilful self-exposure in case of occupational pneu-
moconiosis or other occupational disease, as defined
herein, or the intoxication of such employee, or the failure
of such employee to use or make use of any protective
or safety appliance or appliances prescribed by the com-
missioner and furnished by the employer for the use
of or applicable to such employee. For the purpose of
this chapter, the commissioner may cooperate with the
state department of mines and the state department of
labor in promoting general safety programs and in form-
ulating rules and regulations to govern hazardous em-
ployments. If injury or death result to any employee
from the deliberate intention of his employer to produce
such injury or death, the employee, the widow, widower,
child or dependent of the employee shall have the priv-
ilege to take under this chapter, and shall also have
cause of action against the employer, as if this chapter
had not been enacted, for any excess of damages over
the amount received or receivable under this chapter.

As used in this section the term “wilful self-exposure”
cauing the contraction of the disease of occupational
pneumoconiosis or other occupational disease shall also
include: (1) Failure or omission on the part of an em-
ployee truthfully to state to the best of his knowledge,
in answer to inquiry made by the employer, the place,
duration and nature of previous employment; (2) failure
or omission on the part of an employee truthfully to
furnish, to the best of his knowledge, in answer to an
inquiry made by the employer, full information as to
the previous state of his health, as to exposure to lung
diseases, to any other occupational disease, or to any
condition likely to cause an occupational disease, and
as to any special medical attention that he may have
previously received in connection with any such disease.
§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

The commissioner shall establish, and alter from time to time as he may determine to be appropriate, a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter. Except in the case of occupational pneumoconiosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required and as are, in the case of medical, surgical, dental or hospital treatment only, within the maximum amount provided for by schedule established by the commissioner as aforesaid, but not as to any one injured employee in excess of three thousand dollars: Provided, that in special cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of said sum of three thousand dollars, the commissioner may pay out of any available funds such additional sum as may be necessary, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him un-
less duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within six months after the cessation of such treatment or the delivery of such appliances: Provided, however, that no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner’s schedule established as aforesaid.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to his or its employees and shall not avail himself of any of the common-law defenses mentioned in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars or undergo imprisonment not exceeding one year, or both.

(d) When an injury has been reported to the commissioner by the employer without protest, the commis-
sioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

§23-4-4. Funeral expenses.

In case the personal injury causes death, and disability is continuous from the date of such injury to date of death, reasonable funeral expenses, not to exceed seven hundred fifty dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provisions of this chapter for a personal injury, such compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia," as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof of weekly benefits as follows: On and after July one, one thousand nine hundred sixty-nine, and through June thirty, one thousand nine hundred seventy, inclusive, the employee shall receive a minimum of twenty-six dollars per week and a maximum weekly benefit to be computed on the basis of sixty-six and two-thirds percent of the average weekly earnings, wherever earned, of the in-
20 jured employee, at the date of injury, not to exceed
21 forty-five percent of the average weekly wage in West
22 Virginia; and on and after July one, one thousand nine
23 hundred seventy, the employee shall receive a minimum
24 of not less than twenty-six dollars per week and a max-
25 mum of sixty-six and two-thirds percent of the average
26 weekly wage earnings, wherever earned, of the injured
27 employee, at the date of injury, not to exceed fifty per-
28 cent of the average weekly wage in West Virginia.
29 (c) Subdivision (b) shall be limited as follows: Aggre-
30 gate award for a single injury causing temporary dis-
31 ability shall be for a period not exceeding two hundred
32 eight weeks.
33 (d) If the injury causes permanent disability, the
34 percentage of disability to total disability shall be de-
35 termined and the award computed and allowed as fol-
36 lows:
37 On and after July one, one thousand nine hundred
38 sixty-nine, and through June thirty, one thousand nine
39 hundred seventy, inclusive, for permanent disability of
40 from one percent to eighty-four percent, inclusive, sixty-
41 six and two-thirds percent of the average weekly earn-
42 ings, wherever earned, of the injured employee, at the
43 date of injury, not to exceed forty-five percent of the
44 average weekly wage in West Virginia, for a period to
45 be computed on the basis of four weeks compensation
46 for each percent of disability determined.
47 On and after July one, one thousand nine hundred
48 seventy, for permanent disability of from one percent
49 to eighty-four percent, inclusive, sixty-six and two-thirds
50 percent of the average weekly earnings, wherever earned,
51 of the injured employee at the date of injury, not to
52 exceed fifty percent of the average weekly wage in West
53 Virginia, for a period to be computed on the basis of
54 four weeks compensation for each percent of disability
55 determined.
56 On and after July one, one thousand nine hundred
57 sixty-nine, through June thirty, one thousand nine hun-
58 dred seventy, inclusive, for a disability of eighty-five
59 percent to one hundred percent, inclusive, sixty-six and
two-thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed forty-five percent of the average weekly wage in West Virginia, during the remainder of life.

On and after July one, one thousand nine hundred seventy, for a disability of eighty-five percent to one hundred percent, inclusive, sixty-six and two-thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed fifty percent of the average weekly wage in West Virginia, during the remainder of life.

(e) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (d) of this section:

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of fore part of foot shall be considered a thirty percent disability.

The loss of foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.
The loss of little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability.

For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

(f) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or non-compensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, however, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(g) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be in the same proportion and shall be computed and allowed by the commissioner.
(h) The percentage of all permanent disabilities other than those enumerated in subdivisions (d), (e), (f) and (g) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (d).

(i) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed the maximum weekly benefit specified in subdivision (b) of this section, nor to be less than a minimum of twenty-six dollars a week.

(j) Where an injury results in temporary total disability for which compensation is awarded under subdivision (b) of this section and such injury is later determined permanent partial disability under subdivision (d), the amount of compensation so paid in excess of ten weeks shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (d): Provided, That in cases where the amount of permanent partial disability is specifically provided for under subdivision (e) of this section, payments made under subdivision (b) shall not be considered as payment of the compensation for such injury. Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(k) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d).
§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability shall be determined by the commissioner in accordance with the facts in the case and with the advice and recommendation of the occupational pneumoconiosis board. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (f), (g), (h) and (i) of the preceding section of this article.

2 Impairment of the employee's ability to function normally or to undergo normal prolonged exertion when compared with an average man of his age and like general physical condition may be considered in the determination of the employee's disability from occupational pneumoconiosis.

3 If the employee dies from occupational pneumoconiosis within ten years from the date of his last exposure to such disease, the benefits shall be in the amounts and to the persons provided for in section ten of this article; as to such benefits sections eleven to fourteen, inclusive, of this article shall apply.

4 In cases of permanent disability or death due to occupational pneumoconiosis, as defined in section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

5 The provisions of section sixteen, article four and sections one-a, one-b, one-c and one-d, article five of this chapter providing for the further adjustment of claims shall be applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.
§23-4-8. Physical examination of claimant.

1 The commissioner shall have authority, after due notice to the employer and claimant, whenever in his opinion it shall be necessary, to order a claimant of compensation for a personal injury other than occupational pneumoconiosis or other occupational disease to appear for examination before a medical examiner or examiners selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner or examiners selected by the commissioner. The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner or examiners selected by the commissioner, or each may file with the commissioner a separate report, which separate report shall be considered by the commissioner in passing upon the claim. If the compensation claimed is for occupational pneumoconiosis, the commissioner shall have the power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the occupational pneumoconiosis board hereinafter provided. If the compensation claimed is for an occupational disease other than occupational pneumoconiosis, the commissioner shall have the power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the occupational diseases medical board hereinafter provided. In any case the claimant shall be entitled to reasonable traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the amount allowed under this chapter for medical, surgical, dental and hospital treatment.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, in addition to the reasonable traveling and other expenses, not to exceed the
expenses paid when a claimant is examined by a physician
or physicians selected by the commissioner, such claimant shall be reimbursed by the employer for loss of
wages necessarily incurred by him in connection with
such examination or examinations.

§23-4-8a. Occupational pneumoconiosis board—Created; term of office; duties; remuneration.

The medical board created by the former provisions of this section and known as the “Silicosis Medical Board” shall continue in existence but on and after the effective date of this act shall be known and designated as the “Occupational Pneumoconiosis Board.” Such medical board shall consist of three licensed physicians, who shall be appointed by the commissioner. No person shall be appointed as a member of such board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the occupational pneumoconiosis board shall be physicians of good professional standing, admitted to practice medicine and surgery in this state, and one of them shall be a roentgenologist. One of the board shall be designated annually as chairman by the commissioner. The term of office of each member of such board shall be six years. The three members of the existing board, as redesignated herein, in office on the effective date of this act shall continue to serve until their terms expire and until their successors have been appointed and have qualified. Any member of the board may be appointed to any number of terms. The function of the board shall be to determine all medical questions relating to cases of compensation for occupational pneumoconiosis under the direction and supervision of the commissioner. The commissioner, from time to time, shall fix the per diem salary, computed on the basis of actual time devoted to the discharge of their duties, to be paid each member of such board, and they shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.
§23-4-8b. Same—Procedure; autopsy.

1 The occupational pneumoconiosis board, upon refer-
2 ence to it by the commissioner of a case of occupational
3 pneumoconiosis, shall notify the employee, or in case
4 he is dead, the claimant, and the employer, to appear
5 before such board at a time and place stated in the
6 notice. If the employee be living, he shall appear before
7 the board at the time and place specified and submit
8 to such examination, including clinical and X-ray exam-
9inations, as the board may require. If a physician li-
10 censed to practice medicine in the state shall make
11 affidavit that the employee is physically unable to appear
12 at the time and place designated by the board, such
13 board shall, on notice to the proper parties, change the
14 place and time as may reasonably facilitate the hearing
15 or examination of the employee. The employee, or in
16 case he is dead, the claimant, and the employer shall
17 also produce as evidence to the board all reports of
18 medical and X-ray examinations which may be in their
19 respective possession or control, showing the past or
20 present condition of the employee. If the employee be
21 dead, the notice of the board shall further require that
22 the claimant produce necessary consents and permits
23 so that an autopsy may be performed, if the board shall
24 so direct. When in the opinion of the board an autopsy
25 is deemed necessary accurately and scientifically to
26 ascertain and determine the cause of death, such au-
27 topsy examination shall be ordered by the board, which
28 shall designate a duly licensed physician, a pathologist,
29 or such other specialists as may be deemed necessary
30 by the board, to make such examination and tests to
31 determine the cause of death and certify his or their
32 written findings, in triplicate, to the board, which find-
33 ings shall be public records. In the event that a claim-
34 ant for compensation for such death refuses to consent
35 and permit such autopsy to be made, all rights for com-
36 pensation shall thereupon be forfeited.

37 The employee, or if he be dead, the claimant, and the
38 employer, shall be entitled to be present at all exam-
39 inations conducted by the board, and to be represented
40 by attorneys and physicians.
§23-4-8c. Same—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his employment for a period of ten years during the fifteen years immediately preceding the date of his last exposure to such hazard and that such claimant or deceased employee has sustained a medically diagnosable disease of the lungs consistent with a diagnosis of occupational pneumoconiosis, then it shall be presumed that such claimant or deceased employee is suffering from occupational pneumoconiosis which arose out of and in the course of his employment. This presumption shall not be conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis, and if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's pneumoconiosis or to have perceptibly aggravated an existing pneumoconiosis.
37 (3) What, if any, physician appeared before the board
38 on behalf of the claimant or employer, and what, if any,
39 medical evidence was produced by or on behalf of the
40 claimant or employer.
41 If either party objects to the whole or any part of such
42 findings and conclusions of the board, he shall file with
43 the commissioner, within fifteen days of the mailing of
44 such copy to him, unless for good cause shown the com-
45 missioner extends such time, his objections thereto in
46 writing, specifying the particular statements of the
47 board's findings and conclusions to which he objects.
48 After the time has expired for the filing of objections
49 to the findings and conclusions of the board, the com-
50 missioner shall proceed to act as provided in this chap-
51 ter. If after the time has expired for the filing of ob-
52 jections to the findings and conclusions of the board no
53 objections have been filed, the report of a majority of the
54 board of its findings and conclusions on any medical
55 question shall be taken to be plenary and conclusive
56 evidence of the findings and conclusions therein stated.
57 If objection has been filed to the findings and conclusions
58 of the board, notice thereof shall be given to the board,
59 and the members thereof joining in such findings and con-
60 clusions shall appear at the time fixed by the commis-
61 sioner for the hearing to submit to examination and
62 cross-examination in respect to such findings and con-
63 clusions. At such hearing evidence to support or con-
64 trovert the findings and conclusions of the board shall
65 be limited to examination and cross-examination of the
66 members of the board, and to the taking of testimony of
67 other qualified physicians and roentgenologists.

§23-4-Sd. Occupational diseases medical board—Created; qual-
ifications; term of office; duties; remunerations.
1 There shall be a medical board, known as the "Occupa-
2 tional Diseases Medical Board," which shall consist of
3 three licensed physicians to be appointed by the commis-
4 sioner. No person shall be appointed as a member of such
5 board, or as a consultant thereto, who has not by special
6 study or experience, or both, acquired special knowledge
7 of occupational diseases. All members of the board shall
be physicians of good professional standing, admitted to practice medicine and surgery in this state. One of the board shall be designated annually as chairman by the commissioner. The term of office of each member of such board shall be six years. The function of the board shall be to determine all medical questions relating to cases of compensation for occupational diseases other than occupational pneumoconiosis, under the direction and supervision of the commissioner. The commissioner from time to time, shall fix the per diem salary, computed on the basis of actual time devoted to the discharge of their duties, to be paid the members of such board, and they shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

In the event the board shall deem it desirable, it may appoint a physician or physicians of good professional standing, admitted to practice medicine and surgery in this state, to conduct such clinical, physical and X-ray examinations of claimants as may in the opinion of the board be necessary. Such examiner or examiners shall prepare a written report setting forth their findings with respect to all medical questions involved in the claim; copies of such report shall be furnished the employee and employer and filed with the board, together with a copy of all hospital records, laboratory findings, X rays or other evidence considered by such examiner or examiners; such records and reports shall then be considered by the board in passing upon the medical issues involved in the claim. Any such examiners shall be paid such fees and expenses as may be prescribed by the commissioner.

§23-4-8e. Same—Procedure; autopsy.

1 The occupational diseases medical board, upon reference to it by the commissioner of a case involving an occupational disease other than occupational pneumoconiosis, shall notify the employee, or in case he is dead, the claimant, and the employer, to appear before such board, or before an examiner or examiners appointed by it, at the time and place stated in the notice. If the employee be living, he shall appear at the time and place
9 specified and submit to such examination, including clini-
10 cal and X-ray examinations, as the board may require.
11 If a physician licensed to practice medicine in the state
12 shall make affidavit that the employee is physically unable
13 to appear at the time and place designated by the board,
14 such board shall, on notice to the proper parties, change
15 the place and time as may reasonably facilitate the hear-
16 ing or examination of the employee. The employee, or in
17 case he is dead, the claimant, and the employer shall also
18 produce as evidence for the board, or for any examiner
19 appointed by it, all reports of medical and X-ray exami-
20 nations which may be in their respective possession or
21 control, showing the past or present condition of the
22 employee. If the employee be dead, the notice of the
23 board shall further require that the claimant produce
24 necessary consents and permits so that an autopsy may
25 be performed, if the board shall so direct. When in the
26 opinion of the board an autopsy is deemed necessary
27 accurately and scientifically to ascertain and determine
28 the cause of death, such autopsy examination shall be
29 ordered by the board, which shall designate a duly
30 licensed physician, a pathologist, or such other specialists
31 as may be deemed necessary by the board, to make such
32 examination and tests to determine the cause of death
33 and certify his or their written findings, in triplicate, to
34 the board, which findings shall be public records. In the
35 event that a claimant for compensation for such death
36 refuses to consent and permit such autopsy to be made,
37 all rights for compensation shall thereupon be forfeited.
38 The employee, or if he be dead, the claimant, and the
39 employer, shall be entitled to be present at all examina-
40 tions conducted by the board, or by any examiner ap-
41 pointed by it, and to be represented by attorneys and
42 physicians.

§23-4-10. Classification of death benefits; “dependent” defined.
1 In case a personal injury other than occupational
2 pneumoconiosis or other occupational disease, suffered
3 by an employee in the course of and resulting from his
4 employment, causes death within the period of ten years
5 and disability is continuous from date of such injury un-
6 til date of death, or if death results from occupational
pneumoconiosis or from any other occupational disease
within ten years from the date of the last exposure to
the hazards of occupational pneumoconiosis or to the
other particular occupational hazard involved, as the case
may be, the benefits shall be in the amounts and to the
persons as follows:

(a) If there be no dependents, the disbursements
shall be limited to the expense provided for in sections
three and four of this article.

(b) If the deceased employee leaves a dependent
widow or invalid widower, the payment shall be one
hundred ten dollars a month until death or remarriage
of such widow or widower, and in addition thirty-five
dollars a month for each child under eighteen years of
age, to be paid until such child reaches such age, or where
such child after reaching eighteen years of age con-
tinues as a full-time student in an accredited high school,
college, university, business or trade school, to be paid
until such child reaches the age of twenty-two years, or,
if an invalid child, forty dollars a month, to continue as
long as such child remains an invalid: Provided, how-
ever, That if such widow or invalid widower shall re-
marry within ten years from the date of the death of
such employee, such widow or widower shall be paid at
the time of remarriage twenty percent of the amount
that would be due for the period remaining between the
date of such remarriage and the end of ten years from
the date of death of such employee, and such widow or
widower shall be advised in writing by the commissioner
of his or her rights under this proviso at the time of mak-
ing the original award: Provided, further, That if upon
investigation and hearing, as provided in article five of
this chapter, it shall be ascertained that such widow or
widower is living with a man or woman, as the case may
be, as man and wife and not married, or that the widow
is living a life of prostitution, the commissioner shall
stop the payments of the benefits herein provided to such
widow or widower.

If the deceased employee be a widow or widower and
leaves a child or children under the age of eighteen years,
the payments shall be forty-five dollars a month to each
child until he or she reaches the age of eighteen years, or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school to be paid until such child reaches the age of twenty-two years.

In all awards of compensation to children, unless otherwise provided herein, the award shall be until they reach the age of eighteen years or until their death prior thereto.

(c) If the deceased employee leaves no dependent widow or widower and leaves a wholly dependent father or mother, he or she shall be paid the sum of eighty dollars a month, payments to continue until death, and if there be no widow or widower and both the father and mother are wholly dependent, then a joint award shall be made to the father and mother in the sum of eighty dollars a month until death.

Upon the death of either the father or mother in any case in which a joint award has been made to them, the full award of eighty dollars a month shall be paid to the survivor until his or her death.

(d) If the deceased employee leaves no dependent widow or widower or wholly dependent father or mother but there are other wholly dependent persons, as defined in subdivision (f) of this section, the payment shall be sixty-five dollars a month, to continue for six years after the death of the deceased, except as otherwise provided herein.

(e) If the deceased employee leaves no dependent widow or widower, child under eighteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be thirty-five dollars a month, to continue for such portion of the period of six years after the death of the deceased, except as otherwise determined, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b), (c), (d) and (e) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the depend-
ent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under eighteen years of age, or under twenty-two years of age when a full-time student as provided herein, invalid child or posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions: Stepchild under eighteen years of age, or under twenty-two years of age when a full-time student as provided herein, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-two years of age when a full-time student as provided herein, father, mother, grandfather or grandmother, who at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; and invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.


The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner of employment security, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

In cases involving occupational pneumoconiosis or other occupational diseases, the “date of injury” shall be the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct the amount of all prior workmen’s compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an
award for occupational pneumoconiosis otherwise payable under this article.

The expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury," within the meaning of this chapter, shall be two months, six or twelve months immediately preceding the date of the injury.

The expression "average weekly wage in West Virginia," within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner of employment security in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other applicable provisions of said chapter twenty-one-a.


To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within one year from and after the injury or death, as the case may be, and all proofs of dependency in fatal cases must likewise be filed with the commissioner within one year from and after the death. In case the employee is mentally or physically incapable of filing such application, it may be filed by his attorney or by a member of his family. It shall be the duty of every employer to report to the commissioner every injury sustained by any person in his employ. Such report shall be on forms prescribed by the commissioner and shall be made within sixty days from the date the employer first receives knowledge of such injury.

To entitle any employee to compensation for occupational pneumoconiosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office
of the commissioner within three years from and after
the last day of the last continuous period of sixty days
or more during which the employee was exposed to
the hazards of occupational pneumoconiosis, or, in the
case of death, the application shall be filed as aforesaid
by the dependent of such employee within one year
from and after such employee's death.

To entitle any employee to compensation for occup-

tional disease other than occupational pneumoconiosis
under the provisions hereof, the application therefor must
be made on the form or forms prescribed by the com-
missioner and filed in the office of the commissioner
within three years from and after the day on which
the employee was last exposed to the particular occu-
pational hazard involved, or, in the case of death, the
application shall be filed as aforesaid by the dependent
of such employee within one year from and after such
employee's death.

§23-4-15b. Determination of nonmedical questions by com-
missioner—Claims for occupational pneumo-
coniosis; hearing.

If a claim for occupational pneumoconiosis benefits be
filed by an employee, the commissioner shall determine
whether the claimant was exposed to the hazards of oc-
cupational pneumoconiosis for a continuous period of
not less than sixty days while in the employ of the
employer within three years prior to the filing of his
claim, whether in the state of West Virginia the claimant
was exposed to such hazard over a continuous period of
not less than two years during the ten immediately
preceding the date of his last exposure thereto and
whether the claimant was exposed to such hazard over
a period of not less than ten years during the fifteen
years immediately preceding the date of his last ex-
posure thereto. If a claim for occupational pneumocon-
iosis benefits be filed by a dependent of a deceased
employee, the commissioner shall determine whether
the deceased employee was exposed to the hazards of
occupational pneumoconiosis for a continuous period of
not less than sixty days while in the employ of the
employer within ten years prior to the filing of the
claim, whether in the state of West Virginia the de-
ceased employee was exposed to such hazard over a
continuous period of not less than two years during
the ten years immediately preceding the date of his
last exposure thereto and whether the claimant was
exposed to such hazard over a period of not less than
ten years during the fifteen years immediately preceding
the date of his last exposure thereto. The commissioner
shall also determine such other nonmedical facts as
may in his opinion be pertinent to a decision on the
validity of the claim.

The commissioner shall give each interested party
notice in writing of his findings with respect to all such
nonmedical facts and such findings shall be subject to
objection and hearing as provided in section one, article
five of this chapter.

§23-4-15c. Same—Hearing on claim for occupational diseases
other than occupational pneumoconiosis.

On the hearing of a claim for compensation for an
occupational disease other than occupational pneumoco-
niosis, the commissioner shall hear, determine and file
findings covering, but not limited to, the following non-
medical questions:

(a) Whether the employee was in fact, within three
years prior to the filing of his claim, in the employ of
the employer, and, if so, the duration of such employment
and whether or not such employment was subject to the
provisions hereof.

(b) The occupation or occupations, process or pro-
cesses, in which the employee was engaged during such
employment and the approximate periods of work in each
such occupation or process.

(c) The employments, previous and subsequent to the
employment out of which the claim arose, the duration
thereof and the exposure therein to the hazard causing
the occupational disease.

(d) Whether the last injurious exposure to the hazard
causing occupational disease in the employment with the
employer occurred within three years prior to the filing of the claim, and if the employee is no longer in the service of the employer, the date upon which such employee ceased so to work; and, if the employee has died, the date and place of such death, and the place of interment of the body.

The parties may in writing waive the hearing required by this section, in which case the commissioner shall determine the nonmedical facts listed above, and such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts, and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

CHAPTER 153

(Senate Bill No. 140—By Mr. Martin)

[Passed February 10, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the expenditure of surplus funds by the Berkeley county court.

Be it enacted by the Legislature of West Virginia:

BERKELEY COUNTY.

§1. Special fund for county’s bicentennial celebration.

In addition to any and all authority and power heretofore granted to the county court of Berkeley county with respect to the expenditure of unexpended sums and surpluses such county court is hereby authorized and empowered to use fifteen thousand dollars of unexpended sums and surpluses, presently or hereafter existing, in the general fund or in any special fund of said county, for
the purpose of paying for the expenses of the Berkeley county bicentennial celebration.

CHAPTER 154

( House Bill No. 862—By Mr. Bobbitt and Mrs. Smirl)

[Passed March 3, 1969; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter two hundred nine, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, relating to the domestic relations court of Cabell county.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred sixty-eight, acts of the Legislature, regular session, one thousand nine hundred twenty-one, as last amended and reenacted by chapter two hundred nine, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows.

DOMESTIC RELATIONS COURT OF CABELL COUNTY.

§2. Jurisdiction.

1 The said domestic relations court shall have jurisdiction within the said county of Cabell, concurrent with the circuit court, of all matters and causes arising out of or pertaining to annulment of marriages, separate maintenance suits, divorce, alimony, the custody and maintenance of children of litigants and the adjudication of property rights arising out of the same, and all other matters and causes coming within the purview of chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, and all amendments and reenactments thereof concerning domestic relations, habeas corpus proceedings involving the award and custody of children under
the age of twenty-one years; of all matters and causes
coming within the purview of chapter forty-nine of the
code of West Virginia, one thousand nine hundred thirty-
one, as enacted by chapter one, acts of the Legislature
of West Virginia, one thousand nine hundred thirty-
six, and of all amendments and reenactments thereof,
commonly known as the child welfare law; of all mat-
ters and causes coming within the purview of chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, and all amendments and reenact-
ments thereof, commonly called the general school law;
of all matters and causes coming within the purview of
chapter forty-eight of the code of West Virginia, one
thousand nine hundred thirty-one, and of all amendments
and reenactments thereof, commonly known as the re-
ciprocal dependency law; of all matters and causes com-
ing within the purview of chapter forty-eight of the code
of West Virginia, one thousand nine hundred thirty-one,
and all amendments and reenactments thereof, commonly
known as the adoption law; and of all matters and causes
coming within the purview of chapter forty-eight of the
code of West Virginia, one thousand nine hundred thirty-
one, and of all amendments and reenactments thereof,
commonly known as the change of name law; and of all
matters and causes coming within the purview of chap-
ter forty-eight of the code of West Virginia, one thou-
sand nine hundred thirty-one, and of all amendments and
reenactments thereof, commonly known as the mainten-
ance of illegitimate children law; and of all matters and
causes coming within the purview of chapter forty-four,
article ten, section fourteen of the code of West Virginia,
one thousand nine hundred thirty-one, and of all amend-
ments and reenactments thereof, commonly known as
the approval of the compromising of infants' claims for
damages; and of all matters and causes coming within
the purview of chapter forty-eight, article one, section
six-c of the code of West Virginia, one thousand nine
hundred thirty-one, and of all amendments and reenact-
ments thereof, commonly known as the issuance of mar-
riage license in case of emergency or extraordinary cir-
cumstances; and of all matters and causes coming within
the purview of chapter thirty-seven of the code of West
Virginia, one thousand nine hundred thirty-one, and of
all amendments and reenactments thereof, commonly
known as the approval of the sale, lease or mortgage of
infants' lands, and of all matters and causes coming
within the purview of all other or future acts of the
Legislature touching the subject matter of any and all
said laws and acts, and the amendments and reenact-
ments thereof, and of the common law of said state relat-
ing to the subject matter thereof. Independently of any
of the foregoing matters, the said domestic relations
court shall also have and is hereby given what was here-
tofore recognized as general equity jurisdiction concur-
rent with the circuit court, excepting in cases involving
the enforcement of criminal laws and labor disputes, and
excepting cases where it shall appear from the pleadings
that matter or thing in controversy exceeds in value the
sum of three hundred fifty thousand dollars. The pro-
ceedings and modes of procedure and power and jurisdic-
tion conferred by law upon the circuit court or the
common pleas court in any and all of said matters and
causes are hereby conferred upon and shall be exercised
by said domestic relations court.

The court is authorized and empowered to appoint and
discharge one chief probation officer at a yearly salary
of eight thousand seven hundred fifty dollars and a pro-
bation officer at a yearly salary of eight thousand five
hundred dollars, which said salaries shall be paid by the
county court monthly, and in addition thereto the said
county court shall reimburse the said probation officers
of their necessary expenses actually incurred monthly
in the performance of official duties including an allow-
ance of ten cents per mile for their automobile driven
in the performance of official duties. The court is fur-
ther authorized and empowered to appoint and discharge
such medical, clerical and secretarial assistance as shall
enable it to discharge all of the duties required of it
under the provisions of this act and the general laws of
the state and such person or persons shall be paid by the
county court monthly upon the written approval of the
judge of the said court.
AN ACT to amend and reenact chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as last amended by chapter one hundred seventy-four, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, relating to the creation and maintenance of a children's shelter in Hancock county.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as last amended by chapter one hundred seventy-four, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

HANCOCK COUNTY CHILDREN'S HOME.

§1. County court authorized to create board of trustees.

§2. Name of home.

§3. Board of trustees—Duties.

§4. Same—Appointment; terms; vacancies.

§5. Same—Powers and duties; rules and regulations; budget.

§6. Same—Appointment of superintendent and personnel; compensation.

§7. Same—Officers; meetings.

§8. Hancock county children's shelter fund; special funds.

§9. Title to property.

§10. Repeal of inconsistent acts.

§1. County court authorized to create board of trustees.

1 The county court of Hancock county is hereby authorized and empowered by order entered of record, to create a board of trustees for the purpose of establishing, improving, maintaining, administering and managing a children's shelter in Hancock county.
§2. Name of home.
1. The home created hereby shall be designated the Hancock county children's home.

§3. Board of trustees—Duties.
1. The board of trustees created by the county court authorized by this act shall be known as the Hancock county children's home board of trustees. The board of trustees shall provide, maintain, administer and manage at the expense of Hancock county, a suitable home or place for a children's shelter.

§4. Same—Appointment; terms; vacancies.
1. There is hereby created a board of trustees of the children's shelter in Hancock county, hereinafter referred to as the board of trustees which shall be composed of nine members. Three members of the board of trustees shall be the commissioners of the county court of Hancock county and six remaining members shall be two residents from each of the three magisterial districts in Hancock county, to be appointed by the county court of Hancock county. The terms of office for each of the six members shall be six years; and shall continue to be in rotation as they have been in the past; also all present members shall serve out their respective terms. Should any appointed member remove his residence from the magisterial district from which he is appointed, his office shall be deemed vacated. The county court shall fill all vacancies that may arise from time to time for the unexpired terms. All appointments of trustees shall be made upon recommendation of the board of trustees. No more than three of the noncounty court members of the board shall belong to the same political party.

§5. Same—Powers and duties; rules and regulations; budget.
1. The board of trustees shall be responsible to the county court of Hancock county for the performance of its duties. The members of the board of trustees shall serve without compensation except such as may be fixed by the board from time to time for the secretary and trea-
surer and approved by the county court; the board of
trustees shall formulate policy and adopt administrative
procedures; they shall provide for the employment and
shall have the power to remove and fix the compensation
of such persons as in its opinion may be necessary for
the operation, maintenance, administration and manage-
ment of the property under its control, subject, however,
to the prior approval of the county court to all of the
foregoing and to the appropriation of funds for such
purposes. The power and authority to manage and
control shall include the power to make rules and reg-
ulations and to enforce such rules and regulations as
may be necessary for the management of said home.
The board shall prepare and submit to the county court
an annual budget for the operation of the home. No
expenditure in excess of said budget shall be made by
the board of trustees without prior approval by the county
court.

§6. Same—Appointment of superintendent and personnel;
compensation.

It shall be the duty of the board of trustees to appoint
a superintendent to take charge of the home and chil-
dren, together with other adequate personnel, and gen-
erally to maintain order and discipline among the children
so committed into their keeping. The salary or com-
ensation to be paid to said superintendent and the
personnel of said home shall be fixed by the board of
trustees and certified to the county court as one of the
expenses of maintaining said home, with prior written
approval of the county court.

§7. Same—Officers; meetings.

(a) The officers of the said board shall be a chairman,
who shall be the president of the county court, a vice
chairman, who shall be a nonmember of the county
court, a secretary and a treasurer both of whom shall be
nonmembers of the county court.

(b) The treasurer shall furnish bond every year with
surety approved by the county court for a sum set by
the county court which shall be a minimum of one half of the annual budget for the operation of the shelter.

(c) The board of trustees shall have the authority to fix the time and place of their meetings: Provided, however, That the board shall hold at least one meeting every month. Special meetings may be called when desired. Five members present at a meeting shall constitute a quorum. No member may vote by proxy. The chairman shall preside at all meetings and may vote only in case of a tie. In the absence of the chairman, the vice chairman of the board shall be the presiding officer; if both chairman and vice chairman are absent, then, the board, if a quorum is present, may elect a presiding officer for the meeting to be held.

(d) All meetings of the board of trustees shall be held in accordance with Robert's Rules of parliamentary procedure except where otherwise provided herein.

§8. Hancock county children's shelter fund; special funds.

(a) The county court of Hancock county is hereby authorized and empowered to create and maintain a fund to be known and designated as the "Hancock County Children's Shelter Fund". In addition to the authority to transfer certain surpluses from its various funds here-tofore given to the Hancock county court by legislative enactment, the county court of Hancock county is hereby authorized and empowered to transfer all funds not used by the various departments and administrative divisions, for which funds have been and will in the future be lawfully appropriated by the said county court of Hancock county, to the said children's shelter fund. Said transfer may be effected only on the last day of each fiscal year. The said fund shall be in the custody of the sheriff of Hancock county who shall be ex officio the treasurer for said board and who shall be liable on his official bond to the board and shall account to the board annually therefor in like manner as he accounts for other public moneys.

The county court is hereby authorized and empowered to levy annually as it does for all other county funds,
for the purpose of maintenance, making improvements, additions, purchase of additional buildings and facilities, installation and construction and improvement of recreational facilities, to, for, and in behalf of said children's shelter.

(b) The board of trustees is hereby authorized and empowered to create, establish and maintain a fund to be designated as the “Board of Trustees Children’s Shelter Fund”. This fund shall be under the control and custody of and administered by the said board. No money raised by taxation or by transfer of funds raised by taxation shall be deposited in this fund. Only money raised by or received from any source or method or means other than by taxation or by transfer of funds created by taxation shall be deposited in the said fund. All disbursements from the said fund in the custody and control of the board of trustees shall be on authorization of the said board recorded in the minutes of the said board and on voucher signed by the chairman of the said board and the treasurer thereof.

All record books of the board of trustees shall be available to the public for inspection at the office of the clerk of the county court of Hancock county during regular hours of business on the last five days of each calendar month, and at no time while said books are in the office of the said clerk shall anyone be permitted to remove them therefrom.

(c) The board of trustees is further authorized and empowered to create, establish and maintain a fund to be designated as the “Hancock County Children’s Home Education Fund”. No money raised by taxation or by transfer of funds raised by taxation shall be deposited in this fund. Said fund shall be used exclusively for educational purposes for the children of said shelter both before and after graduation from high school, including trade school and college expenses, in order to prepare said children to properly maintain and support themselves. All disbursements from said fund shall be made in the manner prescribed in subsection (b) above.
§9. Title to property.
1 All property, real and personal, purchased either on
2 order of the county court or on order of the board of
3 trustees shall become the property of Hancock county
4 under the control and custody of the Hancock county
5 court in the same manner and to the same effect as all
6 other county property.

§10. Repeal of inconsistent acts.
1 All acts or parts of acts inconsistent herewith are
2 hereby repealed to the extent of their inconsistency.

CHAPTER 156
(Senate Bill No. 295—By Mr. Brotherton)

[Passed February 27, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact chapter two hundred eighteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty-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 two hundred eighteen, acts of the Legislature of West Virginia, regular session, one thousand nine hundred sixty-seven, be amended and reenacted to read as follows:

CIRCUIT COURT OF KANAWHA COUNTY.

§1. Law assistant; appointment; qualifications; salary.
1 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
for the purpose of maintenance, making improvements, additions, purchase of additional buildings and facilities, installation and construction and improvement of recreational facilities, to, for, and in behalf of said children's shelter.

(b) The board of trustees is hereby authorized and empowered to create, establish and maintain a fund to be designated as the “Board of Trustees Children’s Shelter Fund”. This fund shall be under the control and custody of and administered by the said board. No money raised by taxation or by transfer of funds raised by taxation shall be deposited in this fund. Only money raised by or received from any source or method or means other than by taxation or by transfer of funds created by taxation shall be deposited in the said fund. All disbursements from the said fund in the custody and control of the board of trustees shall be on authorization of the said board recorded in the minutes of the said board and on voucher signed by the chairman of the said board and the treasurer thereof.

All record books of the board of trustees shall be available to the public for inspection at the office of the clerk of the county court of Hancock county during regular hours of business on the last five days of each calendar month, and at no time while said books are in the office of the said clerk shall anyone be permitted to remove them therefrom.

(c) The board of trustees is further authorized and empowered to create, establish and maintain a fund to be designated as the “Hancock County Children’s Home Education Fund”. No money raised by taxation or by transfer of funds raised by taxation shall be deposited in this fund. Said fund shall be used exclusively for educational purposes for the children of said shelter both before and after graduation from high school, including trade school and college expenses, in order to prepare said children to properly maintain and support themselves. All disbursements from said fund shall be made in the manner prescribed in subsection (b) above.
§9. Title to property.

1 All property, real and personal, purchased either on
2 order of the county court or on order of the board of
3 trustees shall become the property of Hancock county
4 under the control and custody of the Hancock county
5 court in the same manner and to the same effect as all
6 other county property.

§10. Repeal of inconsistent acts.

1 All acts or parts of acts inconsistent herewith are
2 hereby repealed to the extent of their inconsistency.

CHAPTER 156

(Senate Bill No. 295—By Mr. Brotherton)

[Passed February 27, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact chapter two hundred eighteen,
acts of the Legislature of West Virginia, regular session,
one thousand nine hundred sixty-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 two hundred eighteen, acts of the Legislature
of West Virginia, regular session, one thousand nine hundred
sixty-seven, be amended and reenacted to read as follows:

CIRCUIT COURT OF KANAWHA COUNTY.

§1. Law assistant; appointment; qualifications; salary.

1 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
state, and who shall discharge such secretarial duties as
may be assigned to him by the judge; said law assistant,
while acting as such, shall not engage in the practice of
law, but shall devote his time to the duties of his office,
and may be removed and his successor appointed at any
time by the judge. Said law assistant shall receive a
salary of twelve thousand dollars per year payable month-
ly, and the county court of Kanawha county shall an-
nually, at its levy session, provide for the payment out
of general county funds the amount of the salary so
fixed.

CHAPTER 157

(Senate Bill No. 317—By Mr. Brotherton and
Mr. Poffenbarger)

[Passed March 4, 1969; In effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-five, acts of the Legislature,
regular session, one thousand nine hundred seven, by add-
ing thereto a new section, designated section thirty-eight,
relating to the intermediate court of Kanawha county,
West Virginia, and authorizing the appointment of more
than one official reporter for such court.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-five, acts of the Legislature, regular
session, one thousand nine hundred seven, be amended by
adding thereto a new section, designated section thirty-eight,
to read as follows:

INTERMEDIATE COURT OF KANAWHA COUNTY.
§38. Judge authorized to appoint more than one official re-
porter.

In order to insure that records of trials in such court
may be promptly prepared so as to enable convicted
persons to seek judicial review, without at the same time
delaying the trial of other cases pending in such court, the judge of such court is hereby authorized, subject to the limits of available funds, to appoint, in accordance with the provisions of section one, article seven, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, more than one official reporter for such court.

CHAPTER 158

(House Bill No. 604—By Mr. Watson)

[Passed February 20, 1969; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to establishing, housing, equipping and maintaining the public library of Marion county, and to provide for the transfer of all funds and other assets of the public library of Marion county to the Marion county library effective with its organization under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY LIBRARY.

§1. Act creating public library of Marion county repealed; transfer of funds and assets to Marion county library.

Chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, is hereby repealed, and the public library of Marion county is hereby authorized to transfer its funds and other assets to the Marion county library effective with its organization under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended.
CHAPTER 159
(Senate Bill No. 270—By Mr. Carrigan)

[Passed March 8, 1969; in effect July 1, 1969. Approved by the Governor.]

AN ACT to amend and reenact section eleven, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-four; and to amend and reenact section fourteen, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred sixty-five, all relating to the common pleas court of Marshall county.

Be it enacted by the Legislature of West Virginia:

That section eleven, chapter thirty-six, acts of the Legislature, regular session, one thousand nine hundred sixty-four, be amended and reenacted; and that section fourteen, chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred sixty-five, be amended and reenacted, all to read as follows:

COMMON PLEAS COURT OF MARSHALL COUNTY.

§11. Supplies; finances; seal; courtrooms and offices.

§14. Probation officer same as circuit court.

§11. Supplies; finances; seal; courtrooms and offices.

1 It shall be the duty of the county court of Marshall county to provide all record and other books and stationery, postage, and supplies that may be necessary for said court. Likewise a seal for said court shall be provided and full faith and credit shall be given to the records of the court and certificates of its judge or clerk in like manner and with the same effect as if the same were records of the circuit court similarly authenticated.

2 The county court of Marshall county shall likewise furnish such rooms, furniture and equipment for the proper conduct and administration of said court and shall, through annual levy and appropriations, make provision for the payment for all such rooms, supplies and equipment. It shall be the duty of the county court of Mar-
Ch. 160] MASON COUNTY 4-H AND YOUTH CAMP

§ 1. Expenditure of county funds authorized.

The county court of Mason county shall have authority to make provisions in its budget and to expend county funds for the improvement, maintenance and equipment of a Four-H and youth camp for educational and recreational purposes in Mason county, and creating a board for the control, management and supervision thereof.

Be it enacted by the Legislature of West Virginia:

MASON COUNTY 4-H AND YOUTH CAMP.

§ 1. Expenditure of county funds authorized.

The county court of Mason county shall have authority to make provisions in its budget and to expend county funds for the improvement, maintenance and equipment of a Four-H and youth camp for educational and recreational purposes in Mason county, and creating a board for the control, management and supervision thereof.

AN ACT authorizing the county court of Mason county to expend funds for the improvement, maintenance and equipment of a Four-H and youth camp for educational and recreational purposes in Mason county, and creating a board for the control, management and supervision thereof.

Be it enacted by the Legislature of West Virginia:

MASON COUNTY 4-H AND YOUTH CAMP.

§ 1. Expenditure of county funds authorized.

§ 2. Mason county Four-H and youth camp board; appointment and duties.

§ 3. Organization meeting of the board.

§ 4. Employees of the board; expenditures.

§ 5. Estimates of expenditures; limitations.

§ 6. Additional funds.

§ 14. Probation officer same as circuit court.

The probation officer for the circuit court shall also be and act as the probation officer for the common pleas court for which he shall receive no additional compensation. The judge may appoint a juvenile probation officer to supervise all juveniles placed on probation by the court. For his services such probation officer shall be paid an annual salary, to be determined by the judge and by the county court.

CHAPTER 160

(House Bill No. 792—By Mr. Ball)

[Passed February 20, 1969; in effect ninety days from passage. Approved by the Governor.]
§2. Mason county Four-H and youth camp board; appointment and duties.

There is hereby created a board of Four-H and youth camp commissioners to be known as the "Mason County Four-H and Youth Camp Board." The board shall consist of five members and shall be a body corporate. The members of the board shall be appointed by the county court of Mason county as hereinafter provided. The board shall have control, management and supervision of the camp and its use.

All members of the board shall be residents and qualified voters of Mason county.

Before serving as a member of the "Mason County Four-H and Youth Camp Board" each member shall take and subscribe an oath that he will faithfully perform his duties as a member of the board. Such oath shall be administered by the clerk of the county court of Mason county.

§3. Organization meeting of the board.

The first meeting of the board shall be held at the time and place to be designated by the county court, within thirty days after the effective date of this act. Thereafter, regular meetings shall be held as prescribed by rules adopted by the board. Special meetings may be held at any time as prescribed by such rules, or when called by the president or any three members of the board. The board shall elect from its members a president and a secretary. The president shall preside as chairman of the meetings and shall not vote upon any matter except in case of a tie. A majority of the members shall constitute a quorum for the transaction of business.

The secretary shall keep, or cause to be kept, a record of all receipts and expenditures of the board. Such record shall be submitted to the county court at least every six months, or more often if required by the county court.
§4. Employees of the board; expenditures.

1 The Four-H and youth camp board shall employ only such persons as may be approved by the county court.
2 No expenditure shall be made for any purposes under this act, except upon written recommendation of the board.

§5. Estimates of expenditures; limitations.

1 The Four-H and youth camp board may each year, prior to the levy term of county court, submit to the court a detailed estimate of the amount needed for any of the purposes enumerated in section one of this act. In making its levy estimate, the court may provide for all, or any portion, of the funds needed by the board for such purposes.

§6. Additional funds.

1 The county court of Mason county may, from time to time, authorize the Four-H and youth camp board to expend moneys for the purposes of this act in addition to county funds, but before any such expenditures are authorized to be made by the board, the limit of such expenditures shall be fixed by the court. Neither the court nor the county shall, in any event, be liable for any expenditures made or indebtedness incurred by the board.
2 The board is authorized to solicit and receive donations and gifts for use and maintenance of the camp.

CHAPTER 161

(House Bill No. 938—By Mr. Sparacino and Mr. McManus)

[Passed February 28, 1969; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the Raleigh county public library to serve the residents of the county of Raleigh 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:

RALEIGH COUNTY PUBLIC LIBRARY.

§1. Created; joint support by board of education and county court.

§2. Board of directors; appointment, terms, meetings, powers and duties generally; officers; bylaws, rules and regulations.

§3. Same—A body corporate.

§4. Title to property.

§5. Levies for support, maintenance and operation.

§6. Deposit and disbursement of funds.

§7. Workmen's compensation, social security and public employees retirement benefits for employees.

§8. Effect of future amendments of general law.


§1. Created; joint support by board of education and county court.

There is hereby created a public library, which shall be known as the "Raleigh County Public Library," which shall be supported by the board of education of the county of Raleigh and the county court of Raleigh county, as a joint endeavor of the two governing authorities in the manner hereinafter prescribed.

§2. Board of directors; appointment, terms, meetings, powers and duties generally; officers; bylaws, rules and regulations.

There shall be a board of five directors, who shall serve without compensation. Before the first day of July, one thousand nine hundred sixty-nine, the board of education of the county of Raleigh shall appoint two members of the said board of directors, appointing one person for a term of one year, and one person for a term of three years; the county court of Raleigh county shall appoint two members of the said board of directors, appointing one person for a term of two years, and one person for a term of four years; and the city of Beckley shall appoint one member of the said board of directors for a term of five years. Said initial terms of office shall
commence July first, one thousand nine hundred sixty-nine. Each successor member of said board of directors shall be appointed by that governing authority which shall have appointed the predecessor member, and each such successor member shall be appointed for a term of five years each, except that any person appointed to fill a vacancy occurring before the expiration of the term vacated shall serve only for the unexpired term. A member shall be eligible for reappointment. The governing authority which appointed any member may remove such member for cause. There shall be an annual meeting of the board of directors on the second Friday in July in each year, and a monthly meeting on the day in each month which the board may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the board, and shall be held only after all the directors are given notice thereof. At all meetings three members shall constitute a quorum. At each annual meeting the board of directors shall elect, from its membership, a president, a vice president, a secretary and a treasurer: Provided, however, That the librarian may be elected secretary and/or treasurer. The board of directors shall adopt such bylaws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all property belonging thereto. The board of directors shall have all the powers necessary, convenient and advisable for the proper operation, equipment and management of the said library; and, except as otherwise specially provided in this act, shall have the powers and be subject to the duties which are conferred and imposed, respectively, upon library directors by sections six, seven, eight, nine, ten and eleven of article one of chapter ten of the West Virginia code. The board of directors shall have the benefits arising out of the creation and continuance of the state library commission of West Virginia.

§3. Same—A body corporate.

The board of directors of the public library hereby created shall be a corporation. As such it may contract
and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.

§4. Title to property.

1 The title to all property, both real and personal, now devoted to public library purposes by the board of education of the county of Raleigh in connection with the operation by it of a public library in the city of Beckley and the county of Raleigh, shall, on July first, one thousand nine hundred sixty-nine, vest in the board of directors of the Raleigh county public library hereby created.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance and operation of the public library hereby created and any and all branches thereof the said supporting governing authorities shall, upon written request by the board of directors of the public library, levy annually as follows within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the property taxable in the area served by it according to the last assessment for state and county purposes, amounts not exceeding the following amounts for the fiscal year beginning July first, one thousand nine hundred sixty-nine:

A. The county court of Raleigh county, for the first year of the act and annually thereafter: Class one, one and seven hundredths of a cent; class two, two and fourteen hundredths of a cent; class three and class four, four and twenty-eight hundredths of a cent.

B. The board of education of the county of Raleigh for the first year of the act and annually thereafter: Class one, one and seven hundredths of a cent; class two, two and fourteen hundredths of a cent; class three and class four, four and twenty-eight hundredths of a cent.

In addition to the aforesaid amounts which, upon written request by said board, the governing authorities shall levy, each such governing authority may support the public library with any other general or special revenues or excess levies. All income realized by the operation of the public library from any sources other...
§6. Deposit and disbursement of funds.

All money collected or appropriated by said two governing authorities for library purposes shall be deposited in a special account of the board of directors of the Raleigh county public library, and shall be disbursed by that board for the purpose of operating a public library system.

§7. Workmen's compensation, social security and public employees retirement benefits for employees.

All employees of the public library hereby created shall be entitled to the benefits of the provisions of chapter twenty-three and of articles seven and ten of chapter five of the West Virginia code.

§8. Effect of future amendments of general law.

Amendments to article one, chapter ten of the West Virginia code, and other general laws shall control this act only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this act is clear and unmistakable.


If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.
in the school building fund of one thousand nine hundred fifty-nine to the permanent improvement fund the sum of twenty-four thousand nine hundred ninety-six dollars and forty-five cents.

Be it enacted by the Legislature of West Virginia:

WYOMING COUNTY.

§1. Board of education authorized to transfer funds.

1 The county board of education of Wyoming county is hereby authorized to transfer from the unexpended balances in the school building fund of one thousand nine hundred fifty-nine to the permanent improvement fund the sum of twenty-four thousand nine hundred ninety-six dollars and forty-five cents.
RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature are included in this volume.)

HOUSE CONCURRENT RESOLUTION NO. 6
(Mr. Speaker, Mr. Boiarsky)
[Adopted January 10, 1969]

Commending Mrs. Mary Alice Smith on her outstanding accomplishments toward beautification and improvement of the Governor's Mansion.

WHEREAS, During the past four years Mrs. Mary Alice Smith, wife of Governor Hulett C. Smith, has devoted much time and effort toward enhancing the historic and artistic values of the Governor's Mansion in keeping with its architecture; and

WHEREAS, Upon her recommendation the Legislature established the Governor's Mansion Advisory Committee and provided for a Governor's Mansion Director; and

WHEREAS, A visit to the Mansion today is convincing proof of the wisdom of Mrs. Smith's recommendations and the tremendous progress that has been made in the decoration and furnishing of the Mansion, all resulting in making it a place of real beauty in which all West Virginians may take justifiable pride; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature does hereby recognize the worthy accomplishments of Mrs. Smith, acknowledge on the part of the State of West Virginia a debt of gratitude to her, and extend to her the genuine appreciation of the Legislature for the valuable service she has given to the State in the enhancement and beautification of the Mansion from the standpoints of decor, arrangement, decoration and furnishing.
Directing the Joint Committee on Government and Finance to conduct a study of state aid to nonpublic schools and institutions of higher learning.

WHEREAS, A crisis in nonpublic elementary and secondary education and in private institutions of higher learning exists in the Nation and in the State of West Virginia involving (a) the new recognition of our intellectual and cultural resources as prime national assets and of the national imperative now to spur the maximum educational development of every young American’s capacity; (b) rapidly increasing costs occasioned by the rising student population, consequent demands for more teachers and facilities and new but costly demands in the endeavor for excellence upon education generally; the general impact of inflation upon the economy; and the struggle of this State, commonly with other states, to find sources by which to finance education, while also attempting to bear the mounting financial burden of the many other areas of modern state governmental responsibility; and

WHEREAS, Nonpublic education in West Virginia today, as during past recent decades, bears the burden of educating a number of school pupils in West Virginia; the requirements of the compulsory attendance laws of the State are fulfilled through nonpublic education; nonpublic education today absorbs what would otherwise be an expense to all West Virginia taxpayers; and

WHEREAS, The elementary, secondary and higher education of young people is today recognized as a public purpose; nonpublic education, through providing instruction in secular subjects, makes an important contribution to the achievement of such public purpose; the governmental duty to support the achievement of public purposes in education may be fulfilled in part through the government’s support of the purely secular education objectives achieved through nonpublic education; and

WHEREAS, The freedom to choose nonpublic education, meeting reasonable state and academic standards, for a student is a
fundamental liberty and basic right reserved to that student and to his parents; and

WHEREAS, The State of West Virginia has the right and freedom, in the fulfillment of its duties to grant state monetary aid for the purchase of services from persons or institutions either public or nonpublic, sectarian or nonsectarian; and

WHEREAS, Should a majority of parents of the present nonpublic school population desire to remove their children to the public schools and state-supported institutions of higher learning in West Virginia, an added financial burden to the public would result, as well as space and equipment problems and a possible impairment of education in West Virginia; and such hazard to the education of children may be substantially reduced and all education in the State improved through financial aid for the purchase of secular educational services from West Virginia nonpublic schools and private institutions of higher learning; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to conduct a comprehensive general study of the legality, possibility, feasibility and desirability of granting state monetary aid for the purchase of secular educational services from West Virginia nonpublic schools and private institutions of higher learning; and, be it

Further Resolved, That a report containing the results of such study and any recommendations and drafts of proposed legislation be submitted to the Legislature at its regular session, 1970; and, be it

Further Resolved, That the expenses necessary to conduct such study be paid from the appropriate joint fund.

HOUSE CONCURRENT RESOLUTION NO. 23
(By Mr. Speaker, Mr. Boiarsky)
[Adopted March 8, 1969]

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 continues to face increasing problems as it attempts to fulfill its responsibilities to the people of the State of West Virginia; and

WHEREAS, The Citizens Advisory Commission on the Legislature of West Virginia, under the authority of Senate Concurrent Resolution No. 12 adopted at the regular session of the Legislature, 1967, has made a study of the West Virginia Legislature and has made a report of its recommendations; and

WHEREAS, This study and report indicate the wisdom of using the ability, knowledge and experience of private citizens of the State to analyze the legislative process; and

WHEREAS, In spite of efforts by the first Citizens Advisory Commission on the Legislature of West Virginia, which Commission expires on April 15, 1969, time did not permit every matter to be studied thoroughly and a number of problem areas have been left unresolved; and

WHEREAS, The West Virginia Legislature has a sincere desire to improve its legislative processes for the general improvement of state government and for the benefit of the State in general; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby creates a Citizens Advisory Commission on the Legislature of West Virginia, consisting of outstanding citizens from all walks of life, including members of the Legislature. 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 House, no more than two may be of the same political party. Unless otherwise directed by concurrent resolution, the Commission will expire on April 15, 1971. The President of the Senate and the Speaker of the House of Delegates shall serve ex officio on the Commission until its expiration or until their respective terms as President and Speaker expire, whichever occurs first. Other members of the
Senate and House of Delegates appointed to the Commission shall serve on the Commission until its expiration or until their individual terms expire, whichever occurs first. However, members of the Legislature, who are members of the Commission and whose terms expire prior to expiration of the Commission, shall continue to serve as advisory nonvoting members of the Commission until its expiration. Private citizens appointed to the Commission shall serve until its expiration. Any vacancy, however created, shall be filled in the same manner as original appointments; and, be it

Further Resolved, That the President of the Senate and the Speaker of the House of Delegates shall make appointments of the members of the Commission and shall convene the Commission as soon as practicable, on or after April 15, 1969, at the State Capitol, and the Commission shall meet and organize by selecting from its nonlegislative members a chairman and such other officers as it considers necessary. The Commission 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 and the advisory members, if any, shall serve without compensation but shall be reimbursed for necessary expenses actually incurred in the performance of their duties; and, be it

Further Resolved, That the Commission may employ and fix the compensation of such employees and staff assistants as it considers necessary, and the Commission shall have full access and use of all legislative records and facilities. The Commission, with the consent of the Joint Committee on Government and Finance, may be provided professional and clerical assistance from the staff or consultants of that Committee; and, be it

Further Resolved, That the Commission shall review the report of the first Citizens Advisory Commission on the Legislature of West Virginia and shall continue the study of legislative needs, organization, facilities and function for the purpose of improving and strengthening the ability of the Legislature to fulfill its responsibilities in our representative democracy. The Legislature intends that this study shall be broad and comprehensive in scope. In addition, the Commission shall, within available funds, inform the citizens of West Virginia regarding any proposed amendments to the West Virginia Constitution
that relate to the Legislature or to the legislative process that may be submitted to the voters for their approval at the General Election in November, 1970. The Commission shall submit interim reports as it deems necessary. The Commission shall submit a final report to the Legislature on December 15, 1970. In its final report the Commission shall report on the problems as it has found them to exist, together with its recommendations and proposed legislation; and, be it

Further Resolved, That all expenses necessary to conduct the study, prepare reports, draft proposed legislation, inform the citizens of West Virginia regarding any constitutional amendments, reimburse the members of the Commission and advisory members, if any, for expenses actually incurred in the discharge of their duties, and for compensation of employees and staff assistants, and to fulfill the purposes of this resolution, shall be paid out of the legislative appropriations made to the Joint Committee on Government and Finance after prior approval of these expenses by said Joint Committee. 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.

HOUSE CONCURRENT RESOLUTION NO. 25
(By Mr. Kopelman)
[Adopted February 26, 1969]

Directing the Joint Committee on Government and Finance to conduct a detailed study into the rising cost of hospitalization in this State and the reasons therefor.

WHEREAS, Economical and inexpensive medical services are essential to the well-being of the citizens of this State; and

WHEREAS, The rapidly increasing cost of adequate hospitalization has in many cases placed the cost of this essential service beyond the reach of many persons and has adversely affected those persons who can least afford the increased cost; and

WHEREAS, The Legislature considers this to be a problem of great importance to the citizens of this State; therefore, be it
Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is directed to conduct a detailed study into the high cost of medical services within the hospitals of this State, including the cost of room, board and ancillary and miscellaneous expenses and all other charges made within hospitals; such study to include the reasons for such increased costs as well as the means by which such costs can be limited or reduced and to report its findings, conclusions and recommendations to the Legislature at its regular session, 1970, together with any drafts of proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses 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. 31
(By Mr. Speaker, Mr. Boiarsky and Mr. McManus)

[Adopted March 8, 1969]

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 from 1965 to the present time 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; that it broaden same by seeking and securing the advice, counsel, and active participation of all elements of the West Virginia industrial and business community and of all segments of organized labor in this State in continuing the study; and that the Committee consider, 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, 1970, 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 expenses 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. 33
(By Mr. Speaker, Mr. Boiarsky)
[Adopted March 8, 1969]

Expressing gratitude and appreciation to Mrs. Ethel Wither­spoon Alexander and the other trustees of the Alexander Foundation for generous acts of philanthropy.
WHEREAS, Mrs. Ethel Witherspoon Alexander, the widow of the late Oakey Logan Alexander, a native of West Virginia, has created the Oakey Logan Alexander and Ethel Witherspoon Alexander Foundation Trust to enhance health, well being and education in the communities in which the Alexanders lived and in the communities in which the Pocahontas Fuel Company operated; and

WHEREAS, Oakey Logan Alexander, born in 1878 in West Virginia and raised by his grandfather on a farm in Greenbrier County, attended Concord College (then Concord State Normal School) from 1895 to 1897, became one of the Nation's foremost industrialists and a leading operator in the development of the coal industry in southern West Virginia, was a pioneer in the modernization and mechanization of all aspects of the coal industry from mining to shipping and delivery, and was, at the time of his death in 1950, President and Chairman of Pocahontas Fuel, President and Chairman of the Board of the American Enka Corporation, a Director of the Irving Trust Company, and a Director of fifteen other major corporations; and

WHEREAS, The Alexander Foundation, since 1964, has made contributions of almost one million dollars to Concord College for the benefit of the people of West Virginia, namely, $15,000 for general budgetary support, $448,000 toward the construction of The Oakey Logan Alexander Center for the Creative and Performing Arts, and $450,000 for the development of a faculty housing complex; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature go on record as expressing its gratitude and appreciation to Mrs. Ethel Witherspoon Alexander and to the other trustees of the Alexander Foundation for these generous, wise and timely acts of philanthropy and for the genuine concern for helping other people that have been so prominent in the life of Mrs. Ethel Witherspoon Alexander, who established the Alexander Foundation; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to transmit a copy of this resolution to Mrs. Ethel Witherspoon Alexander, to Dr. F. Edward Repetto, Trustee, to
the Irving Trust Company of New York City, Corporate Trustee, and to the President of Concord College.

HOUSE CONCURRENT RESOLUTION NO. 35
(By Mr. Speaker, Mr. Boiarsky)
[Adopted March 8, 1969]

Authorizing the expenditure by the State Building Commission of West Virginia of a sum not exceeding fifty thousand dollars out of funds available to it to have prepared preliminary designs and estimates for Phase Three and Phase Four in the “State Capitol Master Plan, State of West Virginia.”

WHEREAS, Article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, provides that the State Building Commission of West Virginia shall issue no bonds and incur no obligations unless and until the Legislature by concurrent resolution has approved the purpose and amount of each separate project; and

WHEREAS, The Legislature has previously approved the issuance of bonds for the purpose of proceeding with the completion of Phase One and Phase Two of the aforementioned State Capitol Master Plan; and

WHEREAS, The State Building Commission of West Virginia cannot be in a position to submit cost estimates and plans for Phase Three and Phase Four of the aforementioned State Capitol Master Plan to the Legislature for approval until it is authorized to expend funds for the purpose of having those plans and cost estimates prepared; therefore, be it

Resolved by the Legislature of West Virginia:

That the State Building Commission of West Virginia be authorized to expend a sum not exceeding fifty thousand dollars out of funds available to it to have prepared preliminary designs and cost estimates for Phase Three and Phase Four 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.
Approving the issuance of revenue bonds by the State Building Commission of West Virginia in an amount not to exceed five million dollars for the purpose of acquiring or constructing buildings and additions to buildings (and to equip and furnish the same), including remodeling, renovation and repair, as may be required for the safety and care of patients, guests and inmates at hospitals under the jurisdiction and supervision of the Department of Mental Health, and for all the plans and specifications necessary and incident thereto.

WHEREAS, Engrossed Senate Bill No. 54 was enacted by the 1968 session of the fifty-eighth Legislature, providing that the State Building Commission shall be authorized to plan and make capital improvements upon and capital additions to hospitals under the jurisdiction and supervision of the Department of Mental Health of West Virginia; and

WHEREAS, Said statute provides that no bonds or obligations may 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 Legislature of West Virginia:

That the issuance of revenue bonds by the State Building Commission of West Virginia in an amount not to exceed five million dollars is hereby approved by the Legislature for the purpose of acquiring or constructing buildings and additions to buildings (and to equip and furnish the same), including remodeling, renovation and repair, as may be required for the safety and care of patients, guests and inmates at hospitals under the jurisdiction and supervision of the Department of Mental Health, and for all the plans and specifications necessary and incident thereto; and, be it

Further Resolved, That the purpose for which said revenue bonds are to be issued is likewise hereby approved; and, be it
Further Resolved, That the Clerk of the House of Delegates 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.

HOUSE CONCURRENT RESOLUTION NO. 41
(Originating in the Committee on State and Federal Affairs)
[Adopted March 8, 1969]

Directing the Joint Committee on Government and Finance to conduct a study into the field activities, responsibilities and policies of the Office of Economic Opportunity, including the VISTA Program, the Headstart Program and other related programs.

WHEREAS, The Office of Economic Opportunity, through many of its programs and subordinate offices, is involved in numerous activities in the State of West Virginia affecting the lives of numerous citizens in this State; and

WHEREAS, There is much confusion as to the policies of the Office of Economic Opportunity and an apparent lack of coordination between many of the subordinate offices and programs; and

WHEREAS, The Office of Economic Opportunity is directly involved in many of the programs in which the State of West Virginia has expended considerable moneys; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to conduct a detailed and comprehensive study into the policies and programs of the Office of Economic Opportunity and any of its subordinate offices and programs as they exist in the State of West Virginia, and the study shall include an examination of the VISTA Program and the Headstart Program. The study shall also include the effect of the policies and programs of the Office of Economic Opportunity on state and local funded programs, consultation with the federal administrative agencies involved and any subject allied with any of the foregoing. The Joint Committee is hereby directed to submit a report of its findings, conclusions and recommendations
to the Legislature at its regular session, 1970, together with any drafts of proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses necessary to conduct such study, to prepare a report and to draft the proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 42
(By Mr. Belknap)
[Adopted March 8, 1969]

Directing the Joint Committee on Government and Finance to conduct a study into the leasing practices of the State and the need, desire and feasibility of permitting the State to lease real estate for periods of more than one year.

WHEREAS, Under current practices and procedures, the State of West Virginia does not lease real estate from private individuals for periods of more than one year; and

WHEREAS, It is the opinion of many persons that such practices and procedures work hardships and inequities both for the lessors and the State of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is directed to conduct a detailed and comprehensive study into the leasing practices and procedures of the State of West Virginia, including the legal and statutory requirements relating thereto, and also including the need, desire and feasibility of permitting certain leases in which the State is lessee to extend for periods of more than one year, and to report its findings, conclusions and recommendations to the Legislature at its regular session, 1970, together with any drafts of proposed legislation to carry its recommendations into effect; and, be it

Further Resolved, That the expenses 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.
Proposing an amendment to the Constitution of the State, amending section two, article fourteen thereof, relating to making amendments to the Constitution.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy, which proposed amendment is that section two, article fourteen thereof be amended to read as follows:

ARTICLE XIV. AMENDMENTS.

§2. How amendments are made.

Any amendment to the Constitution of the State may be proposed in either House of the Legislature at any regular or extraordinary session thereof; and if the same, being read on three several days in each House, be agreed to on its third reading, by two thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the Journals, and it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the State for ratification or rejection, at a special election, or at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. And if a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the same time, the vote on the ratification or rejection shall be taken on each separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment. Whenever one or more amendments are
submitted at a special election, no other question, issue or matter shall be voted upon at such special election.

HOUSE JOINT RESOLUTION NO. 16
(By Mr. Seibert and Mr. Watson)
[Adopted March 6, 1969]

Proposing an amendment to the Constitution of the State, amending sections thirteen, eighteen, twenty-two, twenty-four and thirty-three, article six, and sections fourteen and fifteen, article seven thereof, relating to eligibility to seat in the Legislature, time and place of assembly of Legislature, length of legislative session, rules governing legislative proceedings, compensation and expenses of members, presentation of bills to the Governor and the Governor’s approval or disapproval of 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 the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy, which proposed amendment is as follows:

That sections thirteen, eighteen, twenty-two, twenty-four and thirty-three, article six, and sections fourteen and fifteen, article seven thereof be amended, all to read as follows:

ARTICLE VI. LEGISLATURE.

§13. Eligibility to seat in Legislature.

No person holding any other lucrative office or employment under this State, the United States, or any foreign government; no member of Congress; and no person who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

§18. Time and place of assembly of Legislature.

The Legislature shall assemble annually at the seat of government, and not oftener unless convened by the Governor. Regular sessions of the Legislature shall commence on the second Wednesday of January of each year. Upon the conven-
ing of the Legislature in each odd-numbered year, each House shall proceed to organize by the election of its officers for two-year terms and both Houses shall then in joint assembly open and publish the election returns delivered to the Legislature as prescribed by other provisions of this Constitution and by general law. When all of these matters have been completed in the year one thousand nine hundred seventy-three and every fourth year thereafter, the Legislature shall adjourn until the second Wednesday of February following. Notwithstanding the provisions of section fifty-one of this article and any other provisions of this Constitution, on and after the effective date hereof, there shall be submitted by the Governor to the Legislature, on the second Wednesday of February in the year one thousand nine hundred seventy-three and every fourth year thereafter, and on the second Wednesday of January of all other years, unless a later time in any year be fixed by the Legislature, a budget for the next ensuing fiscal year and a bill for the proposed appropriations of such budget.

§22. Length of legislative session.

The regular session of the Legislature held in the year one thousand nine hundred seventy-three and every fourth year thereafter shall, in addition to the meeting days preceding the adjournment provided for in section eighteen of this article, not exceed sixty calendar days computed from and including the second Wednesday of February, and the regular session held in all other years shall not exceed sixty calendar days computed from and including the second Wednesday of January. Any regular session may be extended by a concurrent resolution adopted by a two-thirds vote of the members elected to each House.


A majority of the members elected to each House of the Legislature shall constitute a quorum. But a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, as each House may provide. Each House shall determine the rules of its proceedings and be the judge of the elections, returns and qualifications of its own members. The Senate shall choose, from its
own body, a President; and the House of Delegates, from its own body, a Speaker. Each House shall appoint its own officers, and remove them at pleasure. The oldest Delegate in point of continuous service present at the assembly of the Legislature at which officers thereof are to be selected, and if there be two or more such Delegates with equal continuous service the one agreed upon by such Delegates or chosen by such Delegates by lot, shall call the House to order, and preside over it until the Speaker thereof shall have been chosen, and have taken his seat. The oldest member of the Senate in point of continuous service present at the assembly of the Legislature at which officers thereof are to be selected, and if there be two or more such members with equal continuous service the one agreed upon by such members or chosen by such members by lot, shall call the Senate to order, and preside over the same until a President of the Senate shall have been chosen, and have taken his seat.

§33. Compensation and expenses of members.

Each member of the Legislature shall receive as compensation for his services the sum of three thousand dollars per year. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of fifteen dollars per day for each day served during any session as presiding officer. Each member of the Legislature serving as a member of any committee of the Legislature established by and operating under general law and designated for the performance of interim assignments by the Legislature shall receive an additional compensation of twenty-five dollars per day for each day actually engaged in the performance of duties as a member of any such committee, subject to such requirements and conditions as shall be prescribed by general law.

Each member of the Legislature shall receive travel expenses incident to the performance of his duties as a member of the Legislature or any committee thereof and incident to attendance at any party caucus held in advance of the date of the assembly of the Legislature in odd-numbered years for the purpose of selecting candidates for officers of the two Houses to the extent provided for and subject to such requirements and conditions as shall be prescribed by general law, but
during any regular session travel expenses shall not be paid to any member for more than four round trips to and from the seat of government and his place of residence and during any extraordinary session travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and his place of residence.

In addition to any travel expenses, each member of the Legislature shall also be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in connection with any regular session and extraordinary sessions to the extent provided for and subject to such requirements and conditions as shall be prescribed by general law, but the total of any and all such reimbursed session expenses, exclusive of any travel expenses, for any member shall not under any circumstances exceed the sum of one thousand five hundred dollars per year.

In addition to any travel expenses and any such reimbursements for any and all such session expenses as authorized in the immediately preceding paragraph of this section, each member of the Legislature serving as a member of any committee of the Legislature established by and operating under general law and designated for the performance of interim assignments by the Legislature shall also be entitled to be reimbursed for all reasonable and necessary expenses actually incurred incident to the performance of duties as a member of any such committee to the extent provided for and subject to such requirements and conditions as shall be prescribed by general law, but the total of any and all such reimbursed interim expenses, exclusive of any travel expenses and any such reimbursements for any such session expenses as authorized in the immediately preceding paragraph of this section, for any such member shall not under any circumstances exceed the sum of twenty-five dollars per day for each day actually engaged in the performance of duties as a member of any such committee.

Notwithstanding any other provision of this Constitution, the compensation herein provided for, and such expenses as may be provided for by general law subject to the limitations set forth in this section, shall be paid to each member of the Legislature on and after the ratification of this amendment.
ARTICLE VII. EXECUTIVE DEPARTMENT.

§14. Governor's approval or disapproval of bills passed by the Legislature.

Subject to the provisions of section fifteen of this article, every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approves, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its Journal, and may proceed to reconsider the returned bill. Notwithstanding the provisions of section fifty-one, article six of this Constitution, any such bill may be reconsidered even if the Legislature is at the time in extended session for the sole purpose of considering the budget bill, as specified in said section fifty-one. If, after any such reconsideration, a majority of the members elected to that House agree to pass the bill, it shall be sent, together with the objections of the Governor to the other House, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law, notwithstanding the objections of the Governor. If upon any such reconsideration the bill is amended and reenacted, then it shall be again sent to the Governor and he shall act upon it as if it were before him for the first time. In all cases the vote of each House shall be determined by yeas and nays and the result entered on the Journal.

Any bill which shall not be returned by the Governor within five days, Sundays excepted, after it shall have been presented to him shall be a law, in the same manner as if he had signed it, unless the Legislature shall, by adjournment sine die, prevent its return, in which case it shall be filed with his objections in the office of the Secretary of State within fifteen days, Sundays excepted, after such adjournment, or become a law.

§15. Governor's approval or disapproval of bills making appropriations of money.

A bill passed by the Legislature making appropriations of money must be submitted to the Governor for his approval
or disapproval to the extent and only to the extent required by section fifty-one, article six of this Constitution, and any provision therein contained as to such approval or disapproval shall govern and control as to any such bill.

SENATE CONCURRENT RESOLUTION NO. 5
(By Mr. Jackson, Mr. President)

[Adopted March 3, 1969]

Directing the Joint Committee on Government and Finance to conduct a study of consultant service contracts and honorariums entered into by the state government.

WHEREAS, The State of West Virginia spends at least one and a half million dollars per year in retaining consultant services and granting honorariums; and

WHEREAS, The Joint Committee on the study of purchasing in its report to the Governor and the Legislature, dated December 15, 1968, recommended that the Joint Committee on Government and Finance conduct a study into these aspects of state purchasing; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to conduct a study of consultant service contracts entered into by the various departments of the state government, the granting of honorariums by such departments and the rules, regulations, practices and procedures governing the same, and report its findings, conclusions and recommendations to the Legislature at its regular session, 1970, together with any proposed legislation to carry its recommendations into effect; and, be it

Resolved further, That the expenses 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 Committee on Transportation)
[Adopted March 8, 1969]

Providing for a comprehensive study into the management structure, organization, powers, duties and responsibilities of the State Road Commission.

WHEREAS, At the request of the State Road Commission a management research project was conducted by Roy Jorgenson and Associates during the years 1963-64, which resulted in a report dated September 30, 1964, making certain recommendations relative to the top management and organizational structure of the State Road Commission; and

WHEREAS, During the 1969 regular session of the Legislature of West Virginia, Senate Bills Nos. 81 through 88 inclusive, were introduced as an attempt to implement these recommendations; and

WHEREAS, Certain questions arose as to whether or not these bills went far enough or too far in eliminating apparent inconsistencies in the use of terms "State Road Commission Advisory Board," "State Road Commission," "State Road Commissioner," etc., which appeared to point out the need for a study into the structure of the State Road Commission, the assignment of responsibilities, the delegation of authorities and the appointment powers; and

WHEREAS, The method of meeting the obligations incurred under the two hundred million dollar and three hundred fifty million dollar road bond issues is uncertain and undetermined at this time; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct an intensive study into the structural organization, assignment of responsibilities, delegation of authorities, appointment powers, and all other matters dealing with the structure of the State Road Commission, whether created by statute or by commission directive, to the end that recommendations can be made to the next special or regular session of the Legislature, accom-
panied by appropriate proposed legislation that would tend to streamline the operations of the Commission and make it more responsive to the needs of the people of this State; and, be it

Resolved further, That the committee consult and confer with any and all persons and agencies, public or private, as have information, data or opinions as to these matters; call upon any department or agency in state government for such assistance as it may be able to provide; and require of all state and local governmental personnel and agencies cooperation to the fullest extent in its deliberations; and, be it

Resolved further, That the committee hold such hearings and meetings at such times and places as it may deem necessary or advisable; and, be it

Resolved further, That the committee is hereby authorized to examine and to exercise its subpoena powers over all books, records, persons or other services of information as it believes will be helpful in completing this study; and, be it

Resolved further, That the committee is hereby directed to conduct a study in depth as to the ways and means of meeting the obligations incurred under the bonds issued pursuant to the authority granted in the two hundred million dollar and three hundred fifty million dollar road bond issues.

SENATE CONCURRENT RESOLUTION NO. 10
(By Mr. Gainer)
[Adopted March 8, 1969]

In support of securing federal funds for the reclamation of strip-mined orphan lands.

WHEREAS, Orphan lands resulting from unregulated strip mining, prior to existing laws in some states of Appalachia, are causing stream pollution and accumulation of stagnant water, soil erosion, flooding, landslides, destruction of esthetic values, counteracting efforts for the conservation of soil, water and other natural resources and impairing the health, safety, welfare and property of the citizens of Appalachia; and
WHEREAS, These existing land sores have become fertile material for magazine articles and the entire news media, resulting in an undesirable and damaging reflection on the entire region which hampers efforts to encourage industrial growth and tourism; and

WHEREAS, Much of the area mined was performed in times of national emergency and thus the entire populace of the United States of America received benefits thereof; and

WHEREAS, The costs of reclaiming these orphan lands are of such magnitude as to prohibit realistic efforts by the states of Appalachia to achieve their proper reclamation; and

WHEREAS, Some of the states in Appalachia have demonstrated sincere concern by adopting strong strip-mine controls so as to prevent further destruction of the land and waters of the region; and

WHEREAS, Financial efforts directed towards the reclamation of these orphan lands would create opportunities for productive labor for the economically depressed area of Appalachia; and

WHEREAS, The President of the United States and the Congress have expressed concern by initiating studies relevant to the stated problem; therefore, be it

Resolved by the Legislature of West Virginia:

That we respectfully request the President and the Congress to exercise every effort to provide federal funds for the proper reclamation of these orphan lands either by amending Section 205 of the Appalachian Redevelopment Act to include private lands or by other means as may be determined by the President or the Congress; and, be it

Resolved further, That such funds be allocated directly to the states where existing strong strip-mining controls appropriately identify the State's concern; and, be it

Resolved further, That the Clerk is hereby directed to forward copies of this resolution to the President of the United States of America and to the members of Congress representing those states of Appalachia where such orphan lands exist.
SENATE CONCURRENT RESOLUTION NO. 17
(By Mr. Palumbo and Mr. Poffenbarger)
[Adopted March 7, 1969]

Directing the Joint Committee on Government and Finance to conduct a study into the need, desirability and feasibility of transferring West Virginia State College, located at Institute, from the State Board of Education to the West Virginia University Board of Governors, and into the feasibility, if any, of removing the West Virginia University Kanawha Valley Graduate Center from West Virginia State College to a location in Charleston known as the old Hillcrest Sanitarium.

WHEREAS, Both West Virginia State College and the West Virginia University Kanawha Valley Graduate Center are presently located at Institute, West Virginia; and

WHEREAS, Educational administration, plant facilities, personal service and operational standards and techniques are continually being studied in order that more modern and advanced methods to serve the needs of society may be established; and

WHEREAS, West Virginia University has announced recently its intention to move the Kanawha Valley Graduate Center from the campus of West Virginia State College to a site in Charleston known as the old Hillcrest Sanitarium; and

WHEREAS, This Legislature recognizes the urgent need for a thorough study and analysis of the manner and feasibility of the consolidation of higher education and the common use by all of the state colleges and universities of many of the existing physical facilities now operated and used by a single institution; 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 need, desirability and feasibility of transferring West Virginia State College from the authority of the State Board of Education to the West Virginia University Board of Governors and, at the same time, conduct a study regarding the proper place to locate
the West Virginia University Kanawha Valley Graduate Center; and, be it

Resolved further, That the findings, conclusions and recommendations growing out of such study, together with any legislation to put into effect said recommendations be reported by the committee to the Legislature at its regular session, 1970; and, be it

Resolved further, That the expenses necessary to conduct such study, to prepare a report and to draft proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 18
(By Mr. McKown)
[Adopted March 3, 1969]

Directing the Joint Committee on Government and Finance to make a study of the responsibility and authority of the West Virginia Board of Education to establish and maintain standards for privately operated schools.

WHEREAS, Technological developments of recent years have created a considerable demand for certain types of technicians; and

WHEREAS, There is limited provision in state-supported schools and colleges for providing training for such personnel; and

WHEREAS, A number of private schools have begun operation within the State, and substantial numbers located in other states, purporting to offer such training, are recruiting students in West Virginia; and

WHEREAS, Present laws do not clearly provide for determining or assuring the quality of programs offered by private schools; and

WHEREAS, The language of various sections of the Code of West Virginia does not clearly authorize the West Virginia Board of Education to insure adequate standards in various types of private schools; therefore, be it
Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to make a study of the present and needed responsibility and authority of the West Virginia Board of Education to establish and maintain satisfactory standards for privately operated schools located within the State and to ascertain the quality of private schools located in other states but recruiting students in West Virginia; and, be it

Resolved further, 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 Legislature at its regular session, 1970; and, be it

Resolved further, That the expenses necessary to conduct such study, to prepare its reports and to draft any proposed legislation shall be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 19
(By Mr. Deem and Mr. Bowling)
[Adopted March 3, 1969]

Directing the Joint Committee on Government and Finance to conduct a detailed study of revenue bond financing.

WHEREAS, In recent years revenue bonds have been the source of financing construction and improvements at state spending units; and

WHEREAS, Today over one hundred fifty-five million four hundred ninety-eight thousand dollars in revenue bonds are issued and outstanding; and

WHEREAS, Public service districts have outstanding over fifteen million dollars in revenue bonds; and

WHEREAS, At the present time revenue bonds exceed general obligation bonds at the state level by thirty-two million dollars; and

WHEREAS, Revenue bonds demand a higher interest rate than general obligation bonds and result in a greater cost to the spending unit; and
WHEREAS, State funds may not be invested in the purchase of these revenue bonds; and

WHEREAS, It is believed that a study of the existing practice of issuance of revenue bonds should be made; and

WHEREAS, The Legislature considers the matter of revenue bonds to be a problem of great importance to the citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is directed to conduct a detailed study into the issuance of revenue bonds within this State, including the need for any legislation to allow the investment of state funds in said revenue bonds as well as legislation to limit the issuance of said bonds and spending units or public service districts until approved by an appropriate state agency and to report its findings, conclusions and recommendations to the Legislature at its regular session, 1970, together with any drafts of proposed legislation to carry its recommendations into effect; and, be it

Resolved further, That the expenses 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. 20
(By Mr. Floyd)
[Adopted March 8, 1969]

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. Senate Concurrent Resolution No. 11, adopted regular session, 1957, and last continued by House Concurrent Resolution No. 34, adopted regular session, 1968, relating to institutions of higher education.

2. Senate Concurrent Resolution No. 11, adopted regular session, 1967, and continued by House Concurrent Resolution No. 34, adopted regular session, 1968, relating to election laws.

3. Senate Concurrent Resolution No. 15, adopted regular session, 1968, relating to a highway safety program.

4. Senate Concurrent Resolution No. 23, adopted regular session, 1967, and continued by House Concurrent Resolution No. 34, adopted regular session, 1968, relating to the water resources of West Virginia.

5. House Concurrent Resolution No. 17, adopted regular session, 1967, and continued by House Concurrent Resolution No. 18, adopted regular session, 1968, relating to mental health and public institutions.

6. House Concurrent Resolution No. 42, adopted regular session, 1967, and continued by House Concurrent Resolution No. 34, adopted regular session, 1968, relating to the tax structure of West Virginia.

7. House Concurrent Resolution No. 8, adopted regular session, 1968, relating to the proposed Potomac River Basin Compact; and, be it

Resolved further, That all provisions of said concurrent resolutions be continued in force; and, be it

Resolved further, That all reports, together with findings, conclusions, recommendations, and any proposed drafts of legislation, be made to the Legislature at its regular session, 1970.

SENATE CONCURRENT RESOLUTION NO. 22
(By Mr. Sharpe and Mr. Holliday)
[Adopted March 8, 1969]

Directing the Joint Committee on Government and Finance to make a study of the Department of Mental Health and its
SENATE CONCURRENT RESOLUTIONS 1345

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 thereof 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 conducted, investigated and analyzed between the current session of the Legislature and the next regular session thereof, to be held in January, 1970; 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

Resolved further, That three members of the Senate Standing Committee on Public Institutions, to be designated by the President of the Senate, and three 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 two 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 four 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 Correction, 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. 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

Resolved further, That the Joint Committee on Government and Finance shall make a report to the Legislature at its regular session, 1970, on its findings, conclusions and recommendations, together with drafts of any proposed legislation that shall be necessary to carry its recommendations into effect. Such report shall be distributed to each member of the West Virginia Legislature and a copy of such report shall be submitted to the Governor, the Director of the Department of Mental Health, the Commissioner of Public Institutions, the Director of the Division of Correction and the chief administrative officer of any other department or agency of state government under whose jurisdiction any such institution may be; and, be it
Resolved further, 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. 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

Resolved further, 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.

SENATE CONCURRENT RESOLUTION NO. 27
(By Mr. Hubbard)
[Adopted March 7, 1969]

Directing the Joint Committee on Government and Finance to conduct a study of the Uniform Consumer Credit Code and problems of consumer credit transactions.

WHEREAS, The volume of consumer credit transactions has expanded in recent years and these transactions are continuing to grow both in dollar volume and complexity; and

WHEREAS, To meet this problem, the National Conference of Commissioners on Uniform State Laws has promulgated, after a four-year study, the Uniform Consumer Credit Code which is designed as a balanced consumer protection law; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study of the Uniform Consumer Credit Code and the problems of consumer credit transactions and report to the regular session of the Legislature, 1970, on its findings, conclusions and recommendations, together with drafts of proposed legislation necessary to carry its recommendations into effect; and, be it
Resolved further, That the expenses necessary to conduct such study, to prepare a report, and to draft proposed legislation be paid from appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 28
(By Mr. McKown)
[Adopted March 7, 1969]
Authorizing the President of the Senate and Speaker of the House of Delegates to appoint two members of the Legislature as members of the Education Commission of the States.

WHEREAS, The Compact for Education was enacted into law and entered into by West Virginia by action of the Legislature at its regular session, 1967; and

WHEREAS, The terms of the Compact, contained in Article 10D, Chapter 18 of the Code, provided for the selection of seven members to represent West Virginia on the Education Commission of the States, and for two thereof to be members of the state Legislature selected by the respective Houses and serving in such manner as the Legislature may determine, which selection and determination the Legislature has not provided for or made; therefore, be it

Resolved by the Legislature of West Virginia:

That the President of the Senate and Speaker of the House of Delegates be and are authorized to appoint from their respective Houses one member each to serve on the Education Commission of the States from West Virginia, which members shall serve at the will and pleasure of the presiding officer who appoints them; and said President and Speaker shall have authority in the same manner to fill any vacancy in the membership on the Commission from the Legislature.

SENATE CONCURRENT RESOLUTION NO. 29
(Originating in the Committee on the Judiciary)
[Adopted March 8, 1969]
Directing the Joint Committee on Government and Finance to make a comprehensive study of the various general laws
and local acts pertaining to county employees and establishing salaries or wages which may be paid to such county employees.

WHEREAS, There are a number of general laws and local acts specifying the employees which may be selected, appointed or employed by the counties generally or certain specific counties; and

WHEREAS, These general laws or special acts specify the salaries or wages which may be paid to such county employees; and

WHEREAS, It therefore becomes necessary for legislative enactment to be sought each time the counties or a particular county desires to create a new employee position or change the salary or wages paid or to be paid to county employees; and

WHEREAS, These matters are purely county matters and should not be matters of legislative concern and the proposals seeking legislative enactment take an increasing amount of legislative time each session; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to make a comprehensive study of all such general law and local act provisions, with a view to preparing legislation which would confer upon the various counties the authority to create employee positions and fix the salaries of all county employees and thereby obviate the necessity of seeking legislative enactment from time to time with respect to these matters; and, be it

Resolved further, That the final report containing the conclusions and recommendations of the Joint 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, 1970; and, be it

Resolved further, That the expenses to conduct such study and prepare any such drafts of proposed legislation be paid from the legislative appropriations made to the Joint Committee on Government and Finance.
SENATE CONCURRENT RESOLUTION NO. 33
(Originating in the Committee on the Judiciary)
[ Adopted March 8, 1969]

Directing the Joint Committee on Government and Finance to conduct a comprehensive study of the problem of garbage and rubbish disposal in West Virginia.

WHEREAS, The presence of garbage and rubbish is an ever present threat to the health and safety of the people of this State; and

WHEREAS, The unregulated and uncontrolled disposal of garbage and rubbish causes the spread of disease and the infestation of rodents, vermin and insects; and

WHEREAS, This State has not yet developed an adequate statewide program for the regulation and control of garbage and rubbish disposal in this State; and

WHEREAS, There is an urgent need to develop an adequate statewide program for the regulation and control of garbage and rubbish disposal under the jurisdiction of the State Department of Health, calling for the disposal of garbage and rubbish by use of sanitary landfills, incineration and other disposal methods approved by the State Department of Health; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to conduct a comprehensive study of the problem of garbage and rubbish disposal in West Virginia and to prepare legislation which would establish a statewide program for the regulation and control of garbage and rubbish disposal in this State under the jurisdiction of the State Department of Health, which legislation shall establish or provide for the establishment of adequate standards for the disposal of garbage and rubbish by the use of sanitary landfills, incineration and other disposal methods approved by the State Department of Health; and, be it

Resolved further, That the Joint Committee on Government and Finance submit its report to the regular session of the Legislature, 1970, concerning its findings, conclusions and
recommendations, together with drafts of any proposed legislation determined necessary to carry its recommendations into effect; and, be it

Resolved further, That the expenses necessary to conduct such study, to prepare such report and draft such proposed legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.
AN ACT making supplementary appropriations of public money out of the treasury for certain state departments and institutions, and making certain amendments, adjustments and revisions of certain accounts of chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, known as the "Budget Bill", all embracing appropriations for departments of state government.

WHEREAS, The Board of Public Works has advised the Legislature that as a result of the balance remaining in the general revenue fund for the fiscal year ending June 30, 1968, exceeding the estimated balance reported to the 1968 Legislature, cutbacks in expenditures for said fiscal year, and a revised statement of funds available for the fiscal year ending June 30, 1969, the board finds that an amount in excess of the supplementary appropriations made by this act is now available, and also recommended that certain amendments, adjustments and revisions be made in appropriations made by chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-eight; therefore,
Be it enacted by the Legislature of West Virginia:

That Account No. 210, Account No. 837 and Account No. 854, title two, chapter six, acts of the Legislature, regular session, one thousand nine hundred sixty-eight, be amended and re-enacted, and that said title two be further amended by adding thereto, following Account No. 450, a new account, numbered and designated Account No. 451, Department of Employment Security, all to read as follows:

TITLE 2. APPROPRIATIONS.

Acct. No. 210—Department of Finance and Administration
Acct. No. 451—Department of Employment Security
Acct. No. 837—Alcohol Beverage Control
Acct. No. 854—West Virginia Board of Education—Special Capital Improvement Fund

  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 Major Building Repairs 325,000.00

  12 Total $ 2,336,244.00

13 The Workmen's Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Road Commission, State Health Department and State Tax Department—Income Tax Division, shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service.

14 Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government
shall refund to the Postage account of the
Department of Finance and Administration
such amounts. Should this appropriation for
Postage be insufficient to meet the mailing
requirements of the State spending units as
set out above, any excess postage meter
service requirements shall be a proper
charge against the units, and each spending
unit shall refund to the Postage appropriation of the Department of Finance and Ad-
ministration any amounts required for that
Department for postage in excess of this
appropriation.

Any unexpended balance remaining in the
"Postage Account" and all "Records Manage-
ment Accounts" at the close of the fiscal
year 1967-68 are hereby reappropriated for
expenditure during the fiscal year 1968-69.

The State Road Commission shall reimburse
the appropriation of the Department of Fi-
nance and Administration monthly for all
actual expenses incurred pursuant to (the
provision of) chapter 17, article 2-a, section
13 of the code of West Virginia.

Department of Employment Security
Acct. No. 451

1 Work Incentive Program .................................... $ 819,928.00

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

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$ 14,000.00</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>3,842,950.00</td>
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<tr>
<td>Current Expenses</td>
<td>898,200.00</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>40,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>45,300.00</td>
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<tr>
<td>Social Security Matching Fund</td>
<td>181,633.00</td>
</tr>
<tr>
<td>Public Employees Retirement Matching Fund</td>
<td>204,531.00</td>
</tr>
<tr>
<td>Total</td>
<td>$ 5,226,614.00</td>
</tr>
</tbody>
</table>
9 The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.
14 There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor, as provided by law.
18 It is the purpose of this appropriation to provide additional funds to the West Virginia Alcohol Beverage Control Commissioner to permit him to make adjustments in salaries of employees providing a five percent increase for the full 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 ........................................ $ 1,676,600.00
2 Service ..................................................................................
3 Concord College — Additional Amount for Maintenance Building .................................................. 27,500.00
4 W. Va. Institute of Technology—Purchase of Maintenance Buildings ........................................ 77,500.00
5 Glenville State College — Forest Technology Building .................................................. 150,000.00
6 Glenville State College—Land Acquisition ........................................................................ 10,000.00
7 Bluefield State College—Additional Amount for Tech. - Science Bldg. Addition ..................... 150,000.00
8 Bluefield State College—Basic Science Building .......................................................... 2,100,000.00
9 Bluefield State College—Land Acquisition ........................................................................ 70,000.00
10 W. Va. Institute of Technology — Library Building .......................................................... 1,800,000.00
11 W. Va. Institute of Technology—Land Acquisition .......................................................... 100,000.00
Ch. 1] APPROPRIATIONS

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 Marshall University—Communications Building 
25 __________________________________________________ 750,000.00
26 West Virginia State College—Classroom-Office 
27 Building ________________________________________ 3,000,000.00
28 West Virginia State College—Land Acquisi-
29 tion ____________________________________________ 130,000.00
30 Concord College—Health-Phy. Educ. Building 
31 Concord College—Land Acquisition __________ 125,000.00
32 Fairmont State College—Science Building ______ 2,800,000.00
33 Glenville State College—Classroom Building 
34 ____________________________________________ 2,100,000.00
34 Glenville State College—Land Acquisition ______ 100,000.00
35 Shepherd College—Fine Arts Building ________ 1,900,000.00
37 Building ________________________________________ 1,000,000.00
38 Marshall University—Engineering-Science 
39 Building ________________________________________ 4,000,000.00
40 Marshall University—Land Acquisition _________ 250,000.00
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
53 to be paid on a cash basis and made avail-
54 able from date of passage and the cost of
55 projects on lines 12 through 49 are to be paid
56 from proceeds of revenue bonds as autho-
57 rized by law with projects on lines 12
58 through 25 being made available from date
of passage. It is intended that only complete
and usable units or projects be constructed
and equipped and then only in the listed
order of priority: Provided, however, That
the amounts shown for each unit or project
shall include in said amount matching-grant
funds from governmental or nongovern-
mental sources: And provided further, That
whenever the amount in the Capital Im-
provement Fund including both cash collec-
tions and the proceeds of bond sale, shall be
sufficient to cover all capital expenditures
authorized above, then the listed projects
shall be considered of equal priority and
all of them, or any one or more, may be
constructed as soon as plans can be prepared
and contracts let therefor.

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

Any unexpended balance remaining in this ap-
propriation at the close of the fiscal year
1967-1968 is hereby reappropriated for ex-
penditure during the fiscal year 1968-1969.

The appropriation heretofore authorized by
the Legislature for expenditure during the
fiscal years 1967-68, set forth in the Budget
Bill, regular session, 1967, acts of said ses-
sion, chapter eighteen, section 2, Appropria-
tions from Other Funds, pages 134 and 135,
inclusive, State Board of Education—Special
Capital Improvement Fund, Account No.
854, lines 19 through 62, inclusive, is hereby
voided and superseded by the above appropria-
tion.

Out of funds in excess of the above appropria-
tion of a sum of $80,000.00 shall be made
available to Concord College for the de-
velopment of a recreation field.
CHAPTER 2

(House Bill No. 10—By Mr. Steptoe)

(Passed September 13, 1968; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section one-ee, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court for the thirty-first judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT, CRIMINAL AND INTERMEDIATE JUDGES.

§51-2-lee. Thirty-first circuit.

1 For the county of Morgan, on the first Tuesday in January, April and September.
2 For the county of Jefferson, on the third Tuesday in January, April and September.
3 For the county of Berkeley, on the third Tuesday in February, May and October.

CHAPTER 3

(Senate Bill No. 12—By Mr. Floyd and Mr. Jackson)

(Passed September 14, 1968; in effect from passage. Approved by the Governor.)

AN ACT to amend article thirteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to community action programs.
Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 six-a, to read as follows:

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-6a. Community action agencies.

A county court, a county board of education or a municipal government is hereby authorized and empowered to become a community action program organization or agency pursuant to Title II of the “Federal Economic Opportunity Act of 1964”, as amended. If any one of the foregoing governmental agencies shall be designated under said Title II as a community action program organization or agency, it shall have the power and authority to conduct, operate and manage a community action program in conformity with the requirements of the federal economic opportunity act; to apply for, receive and disburse all federal funds made available to it for the purpose of carrying out its duties under the federal economic opportunity act; and to receive grants and gifts from private or local public sources and disburse the same. Whenever a county court, county board of education or municipal government is acting as a community action program organization or agency, such county court, county board of education or municipal government may establish a governing board to administer such community action program, such governing board to be selected in compliance with the provisions of the federal economic opportunity act and such rules and regulations as may be adopted by such county court, county board of education or municipal government, the promulgation of which is hereby authorized; may transfer any of the funds, grants and gifts referred to above to such governing board, if such transfer is in conformity with the provisions of the federal economic opportunity act; and may delegate to such governing board all authority necessary and convenient to enable it to perform and carry out its duties.
AN ACT to amend article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to participation by the department of employment security in the federal work incentive program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

§21A-2-16a. Work incentive program.

1 The department of employment security, by its commissioner, is hereby designated the sponsor or agent of the United States department of labor for the establishment and operation within the state of West Virginia of the work incentive program for recipients of aid under Part A of Title IV of the Social Security Act. Such work incentive program is provided for in Part C of said Title IV of said Social Security Act. Part C was enacted by the Ninetieth Congress in Social Security Amendments of 1967, Public Law 90-248, under Section 204 thereof.

2 The commissioner, on behalf of the department, may do any and all acts necessary to establish and operate such work incentive program within the state of West Virginia.

3 The commissioner is hereby empowered and authorized to enter into agreements with the secretary of labor, or his designee, for the purpose of establishing and operating said work incentive program, or any part thereof, within the state of West Virginia.
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 eighteen, relating to the creation and establishment of the West Virginia housing development fund, its purposes, board of directors, organization, staff, powers, duties, and tax exemption.

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 eighteen, to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

Section
31-18-2. Legislative findings and purpose.
31-18-4. Creation and establishment of fund; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.
31-18-6. Corporate powers.
31-18-7. Notes or bonds as general obligations of housing development fund.
31-18-8. Notes and bonds as negotiable instruments.
31-18-10. Sale of notes or bonds.
31-18-12. Validity of any pledge, mortgage, deed of trust or security instrument.
31-18-13. Redemption of notes or bonds.
31-18-16. Default in payment of principal or interest.
31-18-17. Investment in notes and bonds.
31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons.
31-18-22. Termination or dissolution.
31-18-23. Services to the state of West Virginia and its political subdivisions.
§31-18-1. Short title.

1. This article shall be known and may be cited as the “West Virginia Housing Development Fund Act.”

§31-18-2. Legislative findings and purpose.

1. (a) The Legislature hereby finds and declares that as a result of public actions involving highways, public facilities, flood control projects, and urban renewal activities, and as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, there exists in the state of West Virginia a serious shortage of sanitary, decent and safe residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is severe in certain urban areas of the state, especially critical in the rural areas of West Virginia, and is inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of West Virginia communities.

2. (b) The Legislature hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of sanitary, decent and safe residential housing at low prices or rentals which persons and families of low and moderate income can afford, or to achieve the urgently needed rehabilitation of much of the present low and moderate income housing stock. It is imperative that the supply of residential housing for persons and families displaced by public actions or natural disaster be increased; and that private enterprise and investment be encouraged both to sponsor land development for residential housing for such persons and families and to sponsor, build and rehabilitate residential housing for such persons and families, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout West Virginia.

3. (c) The Legislature hereby finds and declares further that its intention by enacting this legislation is to provide for the creation and establishment of the
West Virginia housing development fund, the corporate purpose of which is to provide temporary financing for development costs, land development and residential housing construction to public and private sponsors of land development for residential housing or residential housing, new or rehabilitated, for sale or rental to persons and families of low and moderate income; further to provide technical, consultative and project assistance services to public and private sponsors of such land development or residential housing; and finally to assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing.

(d) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia housing development fund, created and established by this article, is acting in all respects for the benefit of the people of the state of West Virginia to serve a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the West Virginia housing development fund, so created and established, is empowered, hereby, to act on behalf of the state of West Virginia and its people in serving this public purpose for the benefit of the general public.


As used in this article, unless the context otherwise requires:

(1) “Development costs” means the costs approved by the housing development fund as appropriate expenditures which may be incurred by sponsors of land development for residential housing or residential housing, within this state, prior to commitment and initial advance of the proceeds of a federally insured construction loan, federally insured mortgage or federal mortgage or other public assistance programs, and for which temporary loans from the operating loan fund, if created, may be made by the housing development fund subject to the provisions of section nineteen of this article, including but not limited to:
(a) Payments for options to purchase properties on the proposed residential housing site, deposits on contracts of purchase, or, with prior approval of the corporation, payments for the purchase of such properties;

(b) Legal and organizational expenses, including payments of attorneys' fees, project manager and clerical staff salaries, office rent and other incidental expenses;

(c) Payment of fees for preliminary feasibility studies, advances for planning, engineering and architectural work;

(d) Expenses for tenant surveys and market analyses;

(e) Necessary application and other fees;

(2) "Federally insured construction loan" means a construction loan for land development for residential housing which is either secured by a federally insured mortgage or a federal mortgage, or which is insured by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a loan;

(3) "Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage;

(4) "Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to make such a mortgage loan;

(5) "Housing development fund" means the West Virginia housing development fund created and established by section four of this article;

(6) "Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including waterlines and water supply installations, sewer lines and sewage
disposal installations, steam, gas, and electric lines and installations, roads, streets, curbs, gutters, sidewalks, whether on or off the site, which the housing development fund deems necessary or desirable to prepare such land for residential housing construction within this state;

(7) "Operating loan fund" means the operating loan fund which may be created and established by the housing development fund in accordance with section nineteen of this article;

(8) "Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, deemed by the housing development fund to be eligible or potentially eligible to occupy residential housing constructed and financed, wholly or in part, with federally insured construction loans, federally insured mortgages, federal mortgages or with other public or private assistance;

(9) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto.

§31-18-4. Creation and establishment of fund; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

(a) There is hereby created and established as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia housing development fund.

(b) The housing development fund is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in improving and otherwise promoting their health, welfare and prosperity.
(c) The housing development fund shall be governed by a board of directors, consisting of eleven members, four of whom shall be the attorney general, the secretary of state, the state treasurer and the commissioner of commerce, as public directors, and seven of whom shall be chosen from the general public residing in the state, as private directors. No more than four of the private directors shall be from the same political party.

(d) Upon organization of the housing development fund, the governor shall appoint, by and with the advice and consent of the Senate, the seven private directors to take office and to exercise all powers thereof immediately, with two each appointed for terms of two years and three years, and with three each appointed for terms of four years, respectively, as the governor shall designate; at the expiration of said terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.

(e) In case of any vacancy in the office of a private director, such vacancy shall be filled by appointment by the governor for the unexpired term.

(f) The governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and may appoint a person for such vacancy as provided in other cases of vacancy.

(g) The chairman of the board of directors shall be designated by the governor from among the private directors appointed. The vice chairman of the board shall be the commissioner of commerce.

(h) Six members of the board of directors shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board of directors.

(i) No action shall be taken by the board of directors except upon the affirmative vote of at least six of the directors.

(a) The management and control of the housing development fund shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the housing development fund, and, in his absence, the vice chairman shall act as chief executive officer.

(c) The board of directors may appoint a chief administrative officer and may fix his title, duties and compensation.

(d) The board of directors of the housing development fund shall annually elect from its membership a treasurer, and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the housing development fund.

(e) The treasurer of the housing development fund shall be custodian of all funds of the housing development fund, and shall be bonded in such amount as the other members of the board of directors may designate.

§31-18-6. Corporate powers.

The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including but not limited to the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development for residential housing for occupancy by persons or families of low and moderate income or residential housing for occupancy by persons or families of low and moderate income.
Ch. 5] HOUSING

10 moderate income who are eligible or potentially eligible for federally insured mortgages or federal mortgages. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

17 (2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund deems reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development for residential housing for occupancy by persons and families of low and moderate income or residential housing construction for occupancy by persons and families of low and moderate income which is eligible or potentially eligible for federally insured construction loans. federally insured mortgages or federal mortgages;

30 (3) To accept appropriations, gifts, grants, bequests, and devises, and to utilize or dispose of the same to carry out its corporate purpose;

37 (5) To collect reasonable fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistant services. Such fees and charges shall be limited to the amounts required to pay the costs of the housing development fund, including operating and administrative expenses, and reasonable allowances for losses which may be incurred;

46 (6) To invest any funds not required for immediate disbursement in obligations of the state of West Virginia or of the United States government, the principal and interest of which are guaranteed by the state of West
Virginia, or the United States government or any instrumentality thereof;
(7) To sue and be sued;
(8) To have a seal and alter the same at will;
(9) To make, and from time to time, amend and repeal bylaws, rules and regulations not inconsistent with the provisions of this article;
(10) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;
(11) To acquire, hold and dispose of personal property for its corporate purposes;
(12) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization;
(13) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the housing development fund has an interest and to sell, transfer and convey any such property to a buyer and, in the event such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;
(14) To sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, land development, mortgage or temporary loan;
(15) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;
(16) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the housing development fund is a party;
(17) To make and publish rules and regulations respecting its federally insured construction lending
and temporary lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;

(18) To borrow money to carry out and effectuate its corporate purpose and to issue its negotiable bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no negotiable bonds or notes shall be issued to mature more than ten years from date of issuance, and except that the amount borrowed and evidenced by the issuance of its negotiable bonds shall not exceed the amount reasonably estimated at the time of the issuance of such negotiable bonds to be required for the purpose of making federally insured construction loans for a period of two years;

(19) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes or refunding bonds shall be issued to mature more than ten years from date of issuance;

(20) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption, or payment of the notes or bonds to be refunded;

(21) To provide technical services to assist in the planning, processing, design, construction or rehabilitation of residential housing for occupancy by persons and families of low and moderate income or land development for residential housing for occupancy by persons and families of low and moderate income;

(22) To provide consultative project assistance services for residential housing for occupancy by persons and families of low and moderate income and for land development for residential housing for occupancy by persons and families of low and moderate income, and for the
129 residents thereof with respect to management, training
130 and social services; and
131 (23) To promote research and development in scient-
132 ific methods of constructing low cost residential housing
133 of high durability.

§31-18-7. Notes or bonds as general obligations of housing de-
velopment fund.

1 Except as may otherwise be provided by the housing
development fund, every issue of its notes or bonds
3 shall be general obligations of the housing development
4 fund payable out of any revenues or moneys of the
5 housing development fund, subject only to any agree-
6 ments with the holders of particular notes or bonds
7 pledging any particular receipts or revenues.

§31-18-8. Notes and bonds as negotiable instruments.

1 The notes and bonds shall be and hereby are made
2 negotiable instruments under the provisions of article
3 eight, chapter forty-six of this code, subject only to the
4 provisions of the notes or bonds for registration.


1 The borrowing of money and the notes and bonds
2 evidencing any such borrowing shall be authorized by
3 resolution approved by the board of directors of the
4 housing development fund, shall bear such date or dates,
5 and shall mature at such time or times, in the case of
6 any such note or any renewal thereof, not exceeding
7 ten years from the date of issue of such original note,
8 and, in the case of any such bond, not exceeding ten
9 years from the date of issue, as such resolution or reso-
10 lutions may provide. The notes and bonds shall bear
11 interest at such rate or rates, be in such denominations,
12 be in such form, either coupon or registered, carry such
13 registration privileges, be executed in such manner, be
14 payable in such medium of payment, at such place or
15 places, and be subject to such terms or conditions of
16 redemption as such resolution or resolutions may pro-
17 vide.
§31-18-10. Sale of notes or bonds.

Any such notes or bonds may be sold by the housing development fund at public or private sale, in accordance with the following procedure. The housing development fund shall first advertise the notes or bonds for sale, on sealed bids, which advertisement shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the corporation's principal office is established. The first publication shall be made at least fourteen days before the date fixed for the reception of bids. Such advertisement shall also be published as a Class II legal advertisement in a financial paper published either in the city of New York or the city of Chicago. The housing development fund may reject all bids. If any of the notes or bonds be not sold pursuant to such advertisement, they may, within sixty days after the day advertised for the reception of bids, be sold by the housing development fund at private sale, but no private sale shall be made at an interest cost to the housing development fund in excess of six per centum per annum.


Any resolution or resolutions authorizing any notes or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract with the holders thereof, as to:

1. Pledging all or part of the mortgage or deed of trust payments, charges and other fees made or received by the housing development fund and other moneys received or to be received to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

2. Pledging all or any part of the assets of the housing development fund to secure the payment of the notes or bonds or any issue of notes or bonds, subject to such agreements with noteholders as may then exist;
(3) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payments of the notes or bonds or of any issue thereof;

(5) Limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;

(6) The procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys to be expended by the housing development fund for operating, administrative or other expenses of the housing development fund;

(8) Vesting in a trustee or trustees such property, rights, powers and duties of any trustee appointed by the bondholders pursuant to section sixteen of this article, and limiting or abrogating the right of the bondholders to appoint a trustee under section sixteen of this article or limiting the rights, powers and duties of such trustee; and

(9) Any other matters, of like or different character, which in any way affect the security or protection of the notes or bonds.

§31-18-12. Validity of any pledge, mortgage, deed of trust or security instrument.

It is the intention hereof that any pledge, mortgage, deed of trust or security instrument made by or for the benefit of the housing development fund shall be valid and binding between the parties from the time the pledge, mortgage, deed of trust or security instrument is made; and that the moneys or property so pledged, encumbered, mortgaged or entrusted shall immediately be subject to the lien of such pledge, mortgage, deed of trust or security instrument without any physical delivery thereof.
or further act. Nothing herein shall be construed to prohibit the housing development fund from selling any property subject to any such pledge, mortgage, deed of trust or security instrument. Such property is not to be sold for less than its fair market value.

§31-18-13. Redemption of notes or bonds.

The housing development fund, subject to such agreements with noteholders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase notes or bonds of the housing development fund.

If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the notes or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be canceled.


The state of West Virginia shall not be liable on notes, bonds or other evidences of indebtedness of the housing development fund and such notes, bonds or other evidences of indebtedness shall not be a debt of the state of West Virginia, and such notes, bonds or other evidences of indebtedness shall contain on the face thereof a statement to such effect.


The state of West Virginia does hereby pledge to and agree with the holders of any notes or bonds issued under this article, that the state will not limit or alter the rights hereby vested in the housing development fund to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds,
together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the housing development fund is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The housing development fund is hereby authorized to include this pledge and agreement of the state in any agreement with the holders of such notes and bonds.

§31-18-16. Default in payment of principal or interest.

(a) In the event the housing development fund shall default in the payment of principal of or interest on any issue of notes or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event the housing development fund shall fail or refuse to comply with the provisions of this article or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county court of any county in which the housing development fund operates and has an office and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(b) Any such trustee upon the written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name, do any one or more of the following:

1. By civil action or other proceeding, enforce all rights of the noteholders or bondholders, including the right to require the housing development fund to perform its duties under this article;
2. Bring a civil action upon such notes or bonds;
3. By civil action or other proceeding, require the housing development fund to account as if it were the
30 trustee of an express trust for the holders of such notes
31 or bonds;
32 (4) By civil action or other proceeding, enjoin any
33 acts or things which may be unlawful or in violation
34 of the rights of the holders of such notes or
35 bonds;
36 (5) Declare all such notes or bonds due and payable,
37 and if all defaults shall be made good, then, with the
38 consent of the holders of twenty-five per centum of the
39 principal amount of such notes or bonds then outstand-
40 ing, annul such declaration and its consequences.
41 (c) In addition to the foregoing, such trustee shall
42 have and possess all of the powers necessary or appro-
43 priate for the exercise of any functions specifically set
44 forth herein or incident to the general representation of
45 bondholders or noteholders in the enforcement and pro-
46 tection of their rights.
47 (d) Before declaring the principal of any notes or
48 bonds due and payable, the trustee shall first give thirty
49 days' notice in writing to the housing development fund.

§31-18-17. Investment in notes and bonds.
1 The notes and bonds of the housing development fund
2 are hereby made securities in which all insurance com-
3 panies and associations, and other persons carrying on
4 an insurance business, all banks, bankers, trust com-
5 panies, building and loan associations, savings and loan
6 associations, investment companies and other persons
7 carrying on a banking business, and other persons, except
8 administrators, guardians, executors, trustees and fiduci-
9 aries, who are now or who may hereafter be authorized
10 to invest in bonds or other obligations of the state,
11 may properly and legally invest funds including capital
12 in their control or belonging to them.

1 The housing development fund shall not be required
2 to pay any taxes and assessments to the state of West
3 Virginia, or any county, municipality or other govern-
4 mental subdivision of the state of West Virginia, upon
5 any of its property or upon its obligations or other evi-
ences of indebtedness pursuant to the provisions of
this article, or upon any moneys, funds, revenues or other
income held or received by the housing development
fund and the notes and bonds of the housing development
fund, and the income therefrom shall at all times be
exempt from taxation, as aforesaid, except for death and
gift taxes, taxes on transfers, sales taxes, real property
taxes and business and occupation taxes.


(a) The board of directors of the housing develop-
ment fund may create and establish a special revolving
loan fund of moneys made available by contribution or
loan, to be known as the operating loan fund and to be
governed, administered and accounted for by the direc-
tors, officers and managerial staff of the housing de-
velopment fund as a public purpose trust account sepa-
rate and distinct from any other moneys, fund or funds
owned and managed by the housing development fund.

(b) The purpose for organizing and operating the
operating loan fund shall be to provide a source from
which the housing development fund may make tempo-
rary loans, with or without interest, but with such secu-
rity for repayment as the housing development fund
deems reasonably necessary and practicable; such loans
to be used to defray development costs to sponsors of
land development for residential housing construction for
occupancy by persons and families of low and moderate
income or residential housing construction for occupancy
by persons and families of low and moderate income which
is eligible or potentially eligible for federally insured con-
struction loans, federally insured mortgages or federal
mortgages or other public assistance programs.

(c) No temporary loans shall be made by the housing
development fund from the operating loan fund except in
accordance with a written loan agreement which shall in-
clude, but not be limited to, the following terms and
conditions:

(1) The proceeds of all such loans shall be used only
to defray the development costs of such proposed resi-
dential housing;
(2) All such loans shall be repaid in full, with or without interest as provided in the agreement;

(3) All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and

(4) Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable to ensure all repayments.

(d) No funds from the operating loan fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.


The housing development fund is hereby authorized to borrow up to thirty million dollars and to issue its negotiable bonds or notes as evidence of such borrowing; and further to borrow such additional sums of money as it deems reasonably necessary or appropriate to effectuate its corporate purpose. Such additional borrowing shall not be accompanied by the issuance of negotiable bonds but may be accompanied by the issuance of negotiable notes to evidence such additional indebtedness.

§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons.

No part of the funds of the housing development fund, or of the operating loan fund, shall inure to the benefit of or be distributable to its directors or officers or other private persons except that the housing development fund shall be authorized and empowered to pay reasonable compensation, other than to the directors, including the chairman, vice chairman and treasurer of the board of directors and the secretary of the board of directors, for services rendered and to make loans as previously
specified in furtherance of its corporate purpose: Provided, That no such loans shall be made to any director or officer of the housing development fund.

§31-18-22. Termination or dissolution.

Upon termination or dissolution, all rights and properties of the housing development fund, including the operating loan fund, shall pass to and be vested in the state of West Virginia, subject to the rights of lienholders and other creditors.

§31-18-23. Services to the state of West Virginia and its political subdivisions.

(a) The housing development fund may provide technical, consultative and project assistance services to the state of West Virginia and any of its political subdivisions and is hereby authorized to enter into contracts with the state of West Virginia and any of its political subdivisions to provide such services.

(b) The state of West Virginia or any political subdivision thereof is hereby authorized to enter into contracts with the housing development fund for such services and to pay for such services as may be provided to it.


The housing development fund shall cause an annual audit to be made by a resident independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans and all other matters relating to its financial operations, including those of the operating loan fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the speaker of the House of Delegates, the president of the Senate and the majority and minority leaders of both houses.

1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are severable.

CHAPTER 6

(House Bill No. 4—By Mr. Myles and Mr. Seibert)

[Passed September 14, 1968; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MONEY AND INTEREST.

§47-6-5. Legal rate of interest; agreements in writing fixing rate of interest.

1 Except in cases where it is otherwise specially provided by law, legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time, and no person upon any contract other than a contract in writing shall take for the loan or forbearance of money, or other thing, above the value of such rate: Provided, That a charge of one dollar may be made for any loan or forbearance of money or other thing, where the interest at the rate aforesaid would not amount to that sum, and the same shall not be a usurious charge or rate of interest.
Parties may contract in writing after the effective date of this section for the payment of interest for the loan or forbearance of money at a rate not to exceed eight dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time, including points expressed as a percentage of the loan divided by the number of years of the loan contract. For the purpose of this section the term points is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute. Notwithstanding the foregoing provisions of this paragraph, if the interest charge on an installment loan made by a banking institution is deducted in advance as permitted by section twenty, article four, chapter thirty-one of this code, such interest charge shall not exceed the six percent per annum maximum provided for in such section.

CHAPTER 7

(Com. Sub. for House Bill No. 5—By Mr. Myles and Mr. Seibert)

[Passed September 14, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to usury and the penalties and forfeitures therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MONEY AND INTEREST.
§47-6-6. Usury and usurious contracts; penalties and forfeitures.
1 All contracts and assurances made directly or indirectly for the loan or forbearance of money or other
thing at a greater rate of interest than is permitted
by law shall be void as to all interest provided for in
any such contract or assurance, and the borrower or
debtor may, in addition, recover from the original
lender or creditor or other holder not in due course
an amount equal to four times all interest agreed to
be paid and in any event a minimum of one hundred
dollars. Every usurious contract and assurance shall
be presumed to have been wilfully made by the lender
or creditor, but a bona fide error, innocently made,
which causes such contract or assurance to be usuri-
ous shall not constitute a violation of this section if the
lender or creditor shall rectify the error within fifteen
days after receiving notice thereof.

CHAPTER 8

(House Bill No. 15—By Mr. McManus and Mr. Payne)

[Passed September 14, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and nineteen,
article sixteen-a, chapter seventeen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend said article by adding
thereto a new section, designated section nineteen-a, all
relating to the acquisition by the state road commission
of the West Virginia turnpike, permitting the issuance
of special obligation bonds for such purposes and granting
the permission of the state for the turnpike commission
to seek voluntary bankruptcy in accordance with Title
11 of the United States Code, §§ 401 to 403, inclusive.

Be it enacted by the Legislature of West Virginia:

That sections five and nineteen, article sixteen-a, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted;
and that said article be further amended by adding thereto a
new section, designed section nineteen-a, all to read as follows:
ARTICLE 16A. WEST VIRGINIA TURNPIKE COMMISSION.

Section
17-16A-19. Article deemed to provide additional and alternative methods.
17-16A-19a. Additional powers of commission; issuance of special obligation bonds; effect of issuance of such bonds; powers and authority of state road commission.

1 The commission is hereby authorized and empowered:
2 (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
3 (b) To adopt an official seal and alter the same at pleasure;
4 (c) To maintain an office at such place or places within the state as it may designate;
5 (d) To sue and be sued in its own name, plead and be impleaded. Any and all actions at law or in equity against the commission shall be brought only in the county in which the principal office of the commission shall be located;
6 (e) To construct, maintain, repair and operate turnpike projects as hereinabove defined at such locations within the state as may be determined by the commission;
7 (f) To issue turnpike revenue bonds of the state of West Virginia, payable solely from revenues, for the purpose of paying all or any part of the cost of any one or more turnpike projects;
8 (g) To fix and revise from time to time tolls for transit over each turnpike project constructed by it;
9 (h) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;
10 (i) To acquire in the name of the state by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or
Ch. 8] WEST VIRGINIA TURNPIKE COMMISSION 1385

33 rights therein, right-of-ways, property, rights, easements and interests, as it may deem necessary for carrying out the provisions of this article. No compensation shall be paid for public lands, playgrounds, parks, parkways or reservations so taken, and all public property damaged in carrying out the powers granted by this article, shall be restored or repaired and placed in its original condition as nearly as practicable;

(j) To designate the locations, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the commission to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(k) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, and to employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation. All such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under the provisions of this article or from revenues;

(l) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(m) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article; and

(n) To file the necessary petition or petitions pursuant to Title 11 United States Code, § 401) being section 81 of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United
73 States," approved July 1, 1898, as amended) and to
74 prosecute to completion all proceedings permitted by
75 Title 11 United States Code, §§ 401-403 (being sections
76 81 to 83, inclusive, of said act of Congress). The state
77 road commission may in behalf of the commission or
78 as successor to the commission pursuant to subdivision
79 (a) of section four of this article file said petition and
80 prosecute to completion all such proceedings as herein-
81 above provided for, and the state of West Virginia hereby
82 consents to the application of said Title 11 United States
83 Code, §§ 401-403, to the West Virginia turnpike commission
84 or to the state road commission in behalf of or as successor
85 to the turnpike commission.

§17-16A-19. Article deemed to provide additional and alter-
native methods.

1 This article shall be deemed to provide an additional
2 and alternative method for the doing of the things
3 authorized thereby, and shall be regarded as supple-
4 mental and additional to powers conferred by other
5 laws, and shall not be regarded as in derogation of any
6 powers now existing. The issuance of special obligation
7 bonds under the provisions of this article need not
8 comply with the requirements of any other law applicable
9 to the issuance of bonds.

§17-16A-19a. Additional powers of commission; issuance of
special obligation bonds; effect of issuance of
such bonds; powers and authority of state road
commission.

1 In addition to all powers granted by the foregoing
2 sections of this article, the commission in connection
3 with a proceeding prosecuted to completion under Title
4 11 United States Code, §§ 401-403 as permitted by sub-
5 division (n) of section five of this article is hereby
6 authorized to provide by resolution for the issuance of
7 special obligation bonds of the state for the purpose
8 of exchanging such special obligation bonds for all
9 bonds then outstanding which shall have been issued
10 under the provisions of this article. Special obligation
11 bonds issued under the provisions of this section shall
not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from pledged property and income therefrom as provided in subdivision (a) of this section. All such special obligation bonds shall contain on the face thereof a statement in accordance with the preceding sentence. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the commission in respect of the same shall be governed by the provisions of this article insofar as the same may be applicable with the following express exceptions:

(a) The principal of and the interest on such special obligation bonds shall not be payable from tolls or revenues of any turnpike project but shall be payable solely from such other property purchased and pledged as security therefor together with the income derived from such property as the commission shall determine which other property may include direct obligations of, or obligations the principal of and the interest on which are guaranteed by, the United States government; and

(b) Following the issuance of such special obligation bonds there shall be no obligation to fix, revise, charge and collect tolls for the use of any turnpike project and any turnpike project shall be transferred to the state road commission and shall thereafter be maintained by the state road commission free of tolls. At such time as the special obligation bonds are issued, then section sixteen of this article shall be of no further force and effect.

Financial, legal, engineering and feasibility consultants may be employed to perform such services as the commission shall deem necessary or desirable in connection with the Title 11 proceedings mentioned above and the issuance and exchange of the special obligation bonds. The entire powers herein granted by this section to the commission may be exercised by the state road commission in which event the special obligation bonds
herein authorized shall be signed by the governor or with a facsimile signature of the governor and by the state road commissioner, and the official seal of the state road commission shall be affixed thereto and attested by the executive secretary of the state road commission, and any coupons attached thereto shall bear the facsimile signature of the state road commissioner. In the event that the state road commission shall elect to exercise the powers granted by this section, it shall file a statement to that effect in the office of the chairman of the commission and in the office of the secretary of state, and upon the issuance of the special obligation bonds herein provided for the state road commission shall succeed immediately to the principal functions of the commission and the commission shall then be abolished.

The state road commission is hereby empowered to acquire by purchase the West Virginia turnpike commission and all its right-of-ways, equipment, facilities and any and all other rights or interest the West Virginia turnpike commission has or had in the West Virginia turnpike project, from any funds available to it, except funds received from the issuance of bonds and to pay any expenses incident to such acquisition under the provisions of this article: Provided, however, That the contribution of the state road commission in making such acquisition shall not exceed the sum of twenty million dollars from all sources of public moneys of the state of West Virginia, excluding any funds reimbursed by the federal government.

CHAPTER 9

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

[Passed September 13, 1968; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section
six, relating to participation by the state of West Virginia in the federal work incentive program.

Be it enacted by the Legislature of West Virginia:

That article one, chapter 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 six, to read as follows:

ARTICLE 1. STATE DEPARTMENT OF WELFARE.

§9-1-6. State's participation in federal work incentive program.

1 The state of West Virginia hereby acknowledges that the Congress of the United States, has enacted legislation amending the Social Security Act to permit states to establish work incentive programs. The commissioner is hereby authorized to transfer moneys from any appropriate public assistance grant account under his control to the special fund, administered by the United States secretary of labor, created by such amendments. Any moneys transferred by the commissioner to the aforesaid special fund shall be considered as money expended for welfare grants. The commissioner is further empowered to promulgate rules, establish plans and perform any other acts necessary to implement this state's participation in the aforesaid work incentive program.

2 The commissioner is directed and authorized to cooperate and coordinate his activities in regard to such program with the commissioner of the West Virginia department of employment security as contemplated by section sixteen-a, article two, chapter twenty-one-a of the code of West Virginia.

CHAPTER 10

(Senate Bill No. 13—By Mr. Carson, Mr. President, and Mr. Moreland)

[Passed September 14, 1968; in effect ninety days from passage. Approved by the Governor.]
one thousand nine hundred thirty-one, as amended, in order to provide for the workmen's compensation commissioner to establish and alter a schedule of the maximum amounts to be paid out of the workmen's compensation fund for medical, surgical, dental and hospital treatment; and to provide that when an injured employee is accepted for such treatment, the person, firm or corporation rendering such treatment is prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

1 The commissioner shall establish, and alter from time to time as he may determine to be appropriate, a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter. Except in case of silicosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required and as are, in the case of medical, surgical, dental or hospital treatment only, within the maximum amount provided for by schedule established by the commissioner as aforesaid, but
not as to any one injured employee in excess of three thousand dollars: Provided, That in special cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of said sum of three thousand dollars, the commissioner may pay out of any available funds such additional sum as may be necessary, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within six months after the cessation of such treatment or the delivery of such appliances: Provided, however, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give
medical or surgical attention therein to any employee
for injury compensable within the purview of this chap-
ter, and no employer shall permit or require any em-
ployee to contribute, directly or indirectly, to any fund
for the payment of such medical, surgical, dental or hos-
pital service within such hospital for such compensable
injury. Any employer violating this section shall be
liable in damages to his or its employees and shall not
avail himself of any of the common-law defenses men-
tioned in section eight, article two of this chapter, and
any employer or hospital or agent or employee thereof
violating the provisions of this section shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
sentenced to pay a fine not exceeding one thousand dol-
lars or undergo imprisonment not exceeding one year,
or both.
RESOLUTION

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION NO. 2
(Originating in the Committee on the Judiciary)
[Adopted September 14, 1968.]

Creating a Purchasing Practices and Procedures Commission
to conduct a comprehensive investigation of vendor/vendee
purchasing procedures employed by the State of West
Virginia, to ascertain the extent of any unlawful acts in
connection therewith and to determine whether additional
legislation is needed to prohibit such activities and whether
prosecution of any violators should be recommended.

WHEREAS, Millions of tax dollars are expended annually from
state appropriations for goods and services rendered to the
State of West Virginia upon bid and negotiation; and

WHEREAS, The Legislature of West Virginia deems itself
called upon to conduct a comprehensive investigation of the
vendor/vendee purchasing practices and procedures of the
State of West Virginia to ascertain if there is reason to believe
that the laws of the State have been violated in connection
therewith, if any criminal or civil statutes relating to purchas-
ing procedures are necessary to protect and control such ex-
penditures of tax moneys and if any criminal prosecution
should be recommended for any violations and/or civil action
recommended for the recoupment of moneys paid vendors in
violation of law; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim legislative committee to be known as
the "Purchasing Practices and Procedures Commission," con-
sisting of five members of the Senate, to be appointed by the
President thereof, no more than three of whom shall be ap-
pointed from the same political party, and five members of the
House of Delegates, to be appointed by the Speaker thereof, no
more than three of whom shall be appointed from the same
political party, to be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House, is hereby created to conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the State of West Virginia to determine if there is reason to believe that the laws or the public policy of the State have been violated in connection therewith, or are inadequate, if any criminal or civil statutes relating to purchasing procedures are necessary to protect and control such expenditures of tax moneys and if any criminal prosecution should be recommended for any violations and/or civil action instituted for the recoupment of moneys paid vendors in violation of law.

That the Commission is hereby expressly authorized to sit during the recess of the Senate and House of Delegates.

That the Commission is hereby authorized to employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it may deem advisable to conduct such comprehensive investigation, and, within the appropriation herein specified, to fix reasonable compensation and expenses of such persons and firms as may be employed.

That the Commission may consult and confer with all persons and agencies, public (whether federal, state or local) and private, as have information and data pertinent to such investigation; and all state and local governmental personnel and agencies shall cooperate to the fullest extent with said Commission, and said Commission is hereby empowered to call upon any department or agency of state or local government for such services, information and assistance as it may deem advisable.

That the Commission may hold such hearings at such times and places as it may deem advisable.

That the Commission is hereby authorized to examine witnesses and to summon such persons and books, records, documents and such other papers as it believes should be examined to make a complete investigation. All witnesses appearing before said Commission shall testify under oath or affirmation, and any member of the Commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books,
records, documents or such other papers, the Commission may issue subpoenas to be signed by one of the cochairmen, all in accordance with section five, article one, chapter four of the Code of West Virginia, one thousand nine hundred thirty-one, as amended. Such subpoenas shall be served by any person authorized by law to serve and execute legal process, and service of such process shall be made without charge. If any person shall be or act in contempt of the Commission, he shall be punished as provided in section five, article one, chapter four of said Code.

The Commission has the right to hold executive sessions for the purpose of establishing business, policy, agenda and the interrogation of a witness or witnesses: Provided, That if the witness desires a public or open hearing he shall have the right to demand the same and shall not be heard otherwise: Provided, however, That if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the Commission may be permitted to attend executive sessions with permission of the Commission.

That the Commission may recommend to the judge of any circuit court or other court of record having criminal jurisdiction that a special grand jury be convened in the manner prescribed by section four, article two, chapter fifty-one of the Code, to consider any matters that the Commission may deem proper in furtherance of the public interest, and in support thereof the Commission may make available to such court the contents of any reports, files or other evidence pertinent thereto.

That the members of the Commission shall receive twenty-five dollars per diem and ten cents per mile for transportation, as expenses actually incurred in the discharge of their duties. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from the appropriation under Account No. 103 for Joint Expenses, but no expenses whatever shall be incurred unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by said Commission; and, be it
Further Resolved, That said Commission shall make reports to the members of the Legislature by mail from time to time as it shall deem advisable, and shall on the first day of each regular session of the Legislature make an annual report to the Legislature embracing its findings and recommendations and shall include in such report drafts of any proposed legislation which it deems necessary to carry the recommendations of the Commission into effect; and, be it

Further Resolved, That the members of the Commission created by this resolution shall be appointed within ten days from the adjournment of this extraordinary session of the Legislature; and the Commission shall call and hold its first meeting not later than fourteen days following the appointment of the members thereof.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column the chapter assigned to it.

Regular Session, 1969

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
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<tr>
<td>501</td>
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<td>161</td>
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<td>123</td>
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<td>958</td>
<td>16</td>
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<td>120</td>
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</table>

[1397]
### Disposition of Bills Enacted

#### Senate Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
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<th>Chapter</th>
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<tr>
<td>2</td>
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<td>104</td>
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<td>135</td>
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<td>14</td>
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<td>19</td>
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<td>266</td>
<td>133</td>
</tr>
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<td>30</td>
<td>163</td>
<td>21</td>
<td>270</td>
<td>82</td>
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<td>294</td>
<td>15</td>
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<td>44</td>
<td>165</td>
<td>23</td>
<td>295</td>
<td>156</td>
</tr>
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<td>75</td>
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<td>176</td>
<td>26</td>
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</tr>
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<td>39</td>
<td>190</td>
<td>29</td>
<td>322</td>
<td>151</td>
</tr>
<tr>
<td>101</td>
<td>78</td>
<td>199</td>
<td>30</td>
<td>330</td>
<td>141</td>
</tr>
<tr>
<td>102</td>
<td>85</td>
<td>201</td>
<td>31</td>
<td>343</td>
<td>67</td>
</tr>
<tr>
<td>103</td>
<td>62</td>
<td>202</td>
<td>32</td>
<td>351</td>
<td>139</td>
</tr>
</tbody>
</table>

### Second Extraordinary Session, 1968

#### House Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>7</td>
</tr>
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<td>10</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>8</td>
</tr>
</tbody>
</table>

#### Senate Bills

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>14</td>
<td>1</td>
</tr>
</tbody>
</table>
## TOPICAL INDEX

### ACTS AMENDED:

<table>
<thead>
<tr>
<th>Acts</th>
<th>Sess.</th>
<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1907</td>
<td>Reg.</td>
<td>25</td>
<td>38e</td>
<td>1308</td>
</tr>
<tr>
<td>1921</td>
<td>Reg.</td>
<td>168</td>
<td>2</td>
<td>1297</td>
</tr>
<tr>
<td>1939</td>
<td>Reg.</td>
<td>151</td>
<td>12a</td>
<td>1250</td>
</tr>
<tr>
<td>1953</td>
<td>Reg.</td>
<td>185</td>
<td>3</td>
<td>1300</td>
</tr>
<tr>
<td>1957</td>
<td>Reg.</td>
<td>174</td>
<td>11</td>
<td>1308</td>
</tr>
<tr>
<td>1964</td>
<td>Reg.</td>
<td>36</td>
<td>14</td>
<td>1309</td>
</tr>
<tr>
<td>1965</td>
<td>Reg.</td>
<td>172</td>
<td>2</td>
<td>1297</td>
</tr>
<tr>
<td>1967</td>
<td>Reg.</td>
<td>209</td>
<td>1</td>
<td>1305</td>
</tr>
<tr>
<td>1968</td>
<td>Reg.</td>
<td>6</td>
<td>3</td>
<td>1333</td>
</tr>
<tr>
<td>1968</td>
<td>Reg.</td>
<td>50</td>
<td>3</td>
<td>1121</td>
</tr>
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</table>

### ACTS REPEALED:

<table>
<thead>
<tr>
<th>Acts</th>
<th>Sess.</th>
<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1933</td>
<td>1st Extra 26</td>
<td>1-14</td>
<td>Municipal waterworks</td>
<td>530</td>
</tr>
<tr>
<td>1933</td>
<td>2nd Extra 49</td>
<td>3, 6, 7, 10</td>
<td>Municipal waterworks</td>
<td>530</td>
</tr>
<tr>
<td>1935</td>
<td>Reg.</td>
<td>15</td>
<td>Exempting banks from security on deposits insured under Federal Reserve Act</td>
<td>92</td>
</tr>
<tr>
<td>1935</td>
<td>Reg.</td>
<td>16</td>
<td>Sale of capital notes or debentures by banks, etc.</td>
<td>92</td>
</tr>
<tr>
<td>1935</td>
<td>Reg.</td>
<td>17</td>
<td>Federal Deposit Insurance Corporation</td>
<td>92</td>
</tr>
<tr>
<td>1935</td>
<td>Reg.</td>
<td>68</td>
<td>Municipal public works</td>
<td>530</td>
</tr>
<tr>
<td>1935</td>
<td>Reg.</td>
<td>113</td>
<td>Loans eligible for federal housing insurance and investment in notes and bonds secured by FHA</td>
<td>92</td>
</tr>
<tr>
<td>1937</td>
<td>Reg.</td>
<td>4</td>
<td>Loans eligible for federal housing insurance and investment in notes and bonds secured by FHA</td>
<td>92</td>
</tr>
<tr>
<td>1937</td>
<td>Reg.</td>
<td>52</td>
<td>Municipal waterworks</td>
<td>531</td>
</tr>
<tr>
<td>1937</td>
<td>Reg.</td>
<td>55</td>
<td>Municipal public works</td>
<td>531</td>
</tr>
<tr>
<td>1937</td>
<td>Reg.</td>
<td>57</td>
<td>1-21</td>
<td>Civil service for police departments</td>
</tr>
<tr>
<td>1939</td>
<td>Reg.</td>
<td>91</td>
<td>1-15</td>
<td>Board of Park Commissioners</td>
</tr>
<tr>
<td>1939</td>
<td>Reg.</td>
<td>95</td>
<td>Civil service for police departments</td>
<td>531</td>
</tr>
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<td>1939</td>
<td>Reg.</td>
<td>97</td>
<td>Municipal waterworks</td>
<td>531</td>
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<td>1939</td>
<td>Reg.</td>
<td>164</td>
<td>Public Library of Marion County</td>
<td>1307</td>
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</table>

(*) Indicates new section.
### ACTS REPEALED—(continued):

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<thead>
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<th>Ch.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1943</td>
<td>Reg.</td>
<td>10</td>
<td></td>
<td>531</td>
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<tr>
<td>1945</td>
<td>Reg.</td>
<td>90</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>91</td>
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<td>Reg.</td>
<td>85</td>
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<td>87</td>
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<td>90</td>
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<td>32</td>
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<td>92</td>
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<td>Reg.</td>
<td>138</td>
<td></td>
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<td>Reg.</td>
<td>137</td>
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<td>531</td>
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<td>Reg.</td>
<td>140</td>
<td></td>
<td>531</td>
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<td>1953</td>
<td>Reg.</td>
<td>134</td>
<td></td>
<td>531</td>
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<td>1955</td>
<td>Reg.</td>
<td>121</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>122</td>
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<td>Reg.</td>
<td>133</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>118</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>117</td>
<td></td>
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<td>Reg.</td>
<td>119</td>
<td></td>
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<tr>
<td>1960</td>
<td>Reg.</td>
<td>14</td>
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<td>Reg.</td>
<td>100</td>
<td></td>
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<td>Reg.</td>
<td>103</td>
<td></td>
<td>531</td>
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<td>1961</td>
<td>Reg.</td>
<td>104</td>
<td></td>
<td>531</td>
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<td>1961</td>
<td>Reg.</td>
<td>105</td>
<td></td>
<td>531</td>
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<td>1963</td>
<td>Reg.</td>
<td>123</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>125</td>
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<td>531</td>
</tr>
<tr>
<td>1963</td>
<td>Reg.</td>
<td>126</td>
<td></td>
<td>531</td>
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<td>Reg.</td>
<td>123</td>
<td></td>
<td>531</td>
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<tr>
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<td>Reg.</td>
<td>124</td>
<td></td>
<td>531</td>
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<td>1968</td>
<td>Reg.</td>
<td>38</td>
<td></td>
<td>531</td>
</tr>
</tbody>
</table>

- Municipal public works
- Definitions, municipal public works
- Members, Board of Park Commissioners
- Charges for services of municipal public works
- Municipal powers in connection with public works
- Civil service for police departments
- Acquisition and operation of waterworks
- Application of other laws to loans, etc., secured by FHA
- Municipal parking facilities
- Acquisition and operation of municipal waterworks
- Municipal parking facilities
- Definitions, municipal public works
- Municipal parking facilities
- Municipal waterworks
- Definitions, municipal public works
- Sinking fund for municipal parking facilities
- Application of certain laws to loans secured by FHA
- Definitions and construction, etc., of municipal public works
- Maximum work week for policemen
- Acquisition, etc., of waterworks
- Grants and loans for waterworks
- Bonds for construction and renovation of municipal jails
- Definition of policeman, etc.
- Repeal of acts inconsistent with policemen's Civil Service Act
- Consolidation of municipal public works functions
- Removal, discharge, suspension, reduction in rank or number of members of police department
- Examinations for policemen and eligible lists; and removal, discharge, suspension, reduction in rank or pay and reduction of members of fire departments
# Index

<table>
<thead>
<tr>
<th><strong>ADOPTION:</strong></th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption procedures</td>
<td>50</td>
<td>343</td>
</tr>
</tbody>
</table>

| **AFFECTIONS:** | |
| Prohibiting actions for alienation of | 101 | 1036 |

| **AGRICULTURE:** | |
| Fences | 99 | 1034 |
| Building and repairing on lands used for agricultural, horticultural, grazing or livestock purposes | 1034 |
| Interagency Pesticide Committee Act | 1 | 1 |
| West Virginia Apiary Law of 1969 | 2 | 5 |

| **AIR POLLUTION:** | |
| Amending Ohio-West Virginia Compact on | 3 | 12 |

| **AIRPORTS:** | |
| Financial assistance to municipal, county and regional airport authorities | 4 | 25 |

| **ALCOHOLICS:** | |
| Providing funds for care and treatment of | 72 | 442 |

| **ALEXANDER FOUNDATION:** | |
| Resolution expressing appreciation for gifts to Concord College | 1324 |

| **APICULTURE:** | |
| Inspection and protection of | 2 | 5 |

| **APPEAL AND ERROR:** | |
| Writ of error to judgment quashing indictment | 5 | 27 |

| **APPRENTICES:** | |
| Repealing statutes relating to binding out girls committed to industrial home for girls as, and minors as | 22 | 273 |

| **APPROPRIATIONS:** | |
| Annual Budget Bill making appropriations of public money out of the Treasury | 6 | 28 |
| Supplementary | 1 | 1333 |

| **AUDITS:** | |
| Postaudits of public offices by chief inspector | 114 | 1094 |

| **BANKING INSTITUTIONS:** | |
| State Banking Code | 7 | 93 |

| **BEAR:** | |
| Black bear as game animal | 87 | 951 |

| **BEER:** | |
| Class A and Class B retail dealers | 8 | 191 |
| License tax on dealers in | 8 | 190 |
| Unlawful acts of brewers | 9 | 196 |
| Unlawful acts of licensees | 8 | 192 |

| **BEES:** | |
| West Virginia Apiary Law of 1969 | 2 | 5 |

| **BENEVOLENT INSTITUTIONS:** | |
| Hopemont State Hospital Management, admission of patients, etc. | 10 | 197 |
| **INDEX** |
|---------------|-----------------|---------------|
| **BERKELEY COUNTY:** | Ch. | Page |
| Special fund for county's bicentennial celebration | 153 | 1296 |
| **BIRTH CONTROL:** | | |
| Establishment of family planning clinics | 60 | 400 |
| **BLIND:** | | |
| Schools for | | |
| White Cane Law | 130 | 1144 |
| **BOARD OF INVESTMENTS:** | | |
| Postaudit | | 11 |
| **BOARD OF REGENTS:** | | |
| Created to have general control and management of state colleges and universities | | 130 |
| **BOARDS OF EDUCATION:** | | |
| See Schools. | | |
| **BOMBS:** | | |
| Offense of conveying false information concerning | | 38 |
| **BONDS:** | | |
| Issuance of industrial development bonds | 63 | 429 |
| Revenue Bond Refunding Act | 12 | 199 |
| Road | | |
| Issuance and sale of $20 million during fiscal year ending 6/30/70 | | 125 |
| Issuance and sale of $70 million during fiscal year ending 6/30/70 | | 128 |
| Removing maximum interest rate on $20 million issue | | 124 |
| **BREACH OF PROMISE TO MARRY:** | | |
| Abolishing civil action for | | 101 |
| **BUDGET:** | | |
| Act making appropriations of public money out of the Treasury | | 6 |
| Duties and authority of governor under Modern Budget Amendment | | 13 |
| **BUILDING AND LOAN ASSOCIATIONS:** | | |
| Authority to accept savings accounts and pay dividends thereon | | 14 |
| **BUILDING COMMISSION, STATE:** | | |
| Powers of, including right of eminent domain | | 15 |
| Resolution approving expenditures for plans and cost estimates of Phases Three and Four of State Capitol Master Plan | | 1326 |
| Resolution approving issuance of revenue bonds for capital improvements at mental hospitals | | 1327 |
| **BUILDINGS:** | | |
| Public, to be accessible to physically handicapped | | 109 |
| **CABELL COUNTY:** | Ch. | Page |
| Jurisdiction of Judge of Domestic Relations Court of | 154 | 1297 |
| **CHIROPODISTS—PODIATRISTS:** | | |
| Participation in medical service plans | 71 | 441 |
| **CHURCHES:** | | |
| Exempting trustees from personal tort liability | | 120 |
| **C** | | |


INDEX

CIGARETTES:
Issuance of dealer's licenses ........................................... 145 1255

CIRCUIT COURTS:
Allowances to judges for stationery, postage and stenographic help ........................................... 30 289
Law assistant to judge of the Thirteenth Circuit .................. 156 1305
Mileage and expenses of judges ........................................ 29 268
Official reporters ....................................................... 33 292
Salary of judges ......................................................... 28 287
Terms and sessions
Tenth circuit .................................................................. 15 290
Thirtieth circuit ........................................................... 32 291
Thirty-first circuit ......................................................... 2 1359

CLAIMS:
Payment of, against the State and its agencies ...................... 16 248
Payment of interest on public construction contracts when final payment is delayed ......................... 17 252

CLOUD SEEDING:
To provide weather modification and control ....................... 18 255

CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
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<tbody>
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<td>1-34</td>
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<td>1-34</td>
<td>216</td>
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<td>15</td>
<td>1-8</td>
<td>1253</td>
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<td>5A</td>
<td>1</td>
<td>1, 2a, 3, 4, 5</td>
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<td>5A</td>
<td>2</td>
<td>1, 2, 10, 13, 16-20, 22-25, 27</td>
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</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>CODE AMENDED—(continued):</th>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel classification of offices and employment in state government</td>
<td>5A</td>
<td>2</td>
<td>34&lt;sup&gt;*&lt;/sup&gt;</td>
<td>227</td>
</tr>
<tr>
<td>Appropriations for officers, commissions, boards and institutions without offices at capitol</td>
<td>5A</td>
<td>2</td>
<td>35&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1181</td>
</tr>
<tr>
<td>Bidding on state purchases</td>
<td>5A</td>
<td>3</td>
<td>14</td>
<td>1109</td>
</tr>
<tr>
<td>Special fund, Purchasing Division</td>
<td>5A</td>
<td>3</td>
<td>18</td>
<td>228</td>
</tr>
<tr>
<td>Powers, etc., of Director of Purchases</td>
<td>5A</td>
<td>3</td>
<td>46&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1111</td>
</tr>
<tr>
<td>Duties of General Services Division</td>
<td>5A</td>
<td>4</td>
<td>1, 6</td>
<td>229</td>
</tr>
<tr>
<td>Salaries of state officers</td>
<td>6</td>
<td>7</td>
<td>2</td>
<td>1138</td>
</tr>
<tr>
<td>Salaries of appointive state officers</td>
<td>6</td>
<td>7</td>
<td>2a</td>
<td>1138</td>
</tr>
<tr>
<td>Clerical assistance, stationery, offices, etc., for state officials</td>
<td>6</td>
<td>7</td>
<td>3</td>
<td>230</td>
</tr>
<tr>
<td>Salaries of judges of circuit courts</td>
<td>6</td>
<td>7</td>
<td>4</td>
<td>288</td>
</tr>
<tr>
<td>Mileage and expenses of judges</td>
<td>6</td>
<td>7</td>
<td>5</td>
<td>289</td>
</tr>
<tr>
<td>Allowances to circuit judges for stationery, postage and stenographic help</td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>290</td>
</tr>
<tr>
<td>Postaudits of local governmental offices</td>
<td>6</td>
<td>9</td>
<td>7</td>
<td>1095</td>
</tr>
<tr>
<td>Rewards and detection of crime</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>274</td>
</tr>
<tr>
<td>Legal counsel for count courts</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>278</td>
</tr>
<tr>
<td>Fines and costs of JP’s; jail improvement fund</td>
<td>7</td>
<td>5</td>
<td>15</td>
<td>444</td>
</tr>
<tr>
<td>Group insurance for county officers and employees</td>
<td>7</td>
<td>6</td>
<td>20&lt;sup&gt;*&lt;/sup&gt;</td>
<td>277</td>
</tr>
<tr>
<td>Salaries of assistants and stenographers to prosecuting attorneys in certain counties</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>279</td>
</tr>
<tr>
<td>County parks and recreation commissions</td>
<td>7</td>
<td>11</td>
<td>1-6</td>
<td>283</td>
</tr>
<tr>
<td>Community action programs</td>
<td>7</td>
<td>13</td>
<td>6a&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1360</td>
</tr>
<tr>
<td>Municipal Code</td>
<td>8&lt;sup&gt;*&lt;/sup&gt;</td>
<td></td>
<td></td>
<td>535</td>
</tr>
<tr>
<td>Work incentive programs</td>
<td>9</td>
<td>1</td>
<td>6&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1389</td>
</tr>
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<td>Aid to libraries</td>
<td>10</td>
<td>1</td>
<td>20</td>
<td>1093</td>
</tr>
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<td>License fees for bowling lanes, pool or bagatelle tables; persons under 18 prohibited from playing at such tables in establishments where beer or intoxicating liquors are sold</td>
<td>11</td>
<td>12</td>
<td>14</td>
<td>1037</td>
</tr>
<tr>
<td>Exemptions under consumers sales and service tax</td>
<td>11</td>
<td>15</td>
<td>2, 3a, 9; and 1a, 31&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1245</td>
</tr>
<tr>
<td>Exemptions under use tax law</td>
<td>11</td>
<td>15A</td>
<td>1, 3; and 1a&lt;sup&gt;*&lt;/sup&gt;</td>
<td>1253</td>
</tr>
<tr>
<td>Retail beer dealers licenses</td>
<td>11</td>
<td>16</td>
<td>4</td>
<td>191</td>
</tr>
<tr>
<td>Unlawful acts of beer licensees</td>
<td>11</td>
<td>16</td>
<td>13</td>
<td>192</td>
</tr>
<tr>
<td>Unlawful acts of brewers</td>
<td>11</td>
<td>16</td>
<td>13a&lt;sup&gt;*&lt;/sup&gt;</td>
<td>196</td>
</tr>
<tr>
<td>Licensing wholesale cigarette dealers</td>
<td>11</td>
<td>17</td>
<td>7b</td>
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</table>

(*) Indicates new chapter, article or section.
CODE AMENDED—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
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<tbody>
<tr>
<td>11</td>
<td>21</td>
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<td>21</td>
<td>17</td>
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</tr>
<tr>
<td>13</td>
<td>2C</td>
<td>7</td>
<td>429</td>
</tr>
<tr>
<td>13</td>
<td>2E*</td>
<td>1-15</td>
<td>199</td>
</tr>
<tr>
<td>14</td>
<td>2</td>
<td>23</td>
<td>232</td>
</tr>
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<td>16</td>
<td>5C</td>
<td>2, 4</td>
<td>1023</td>
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<td>16</td>
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<td>1-12</td>
<td>1025</td>
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<td>20</td>
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<td>5, 19; and 19a*</td>
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<td>3</td>
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(*) Indicates new chapter, article or section.
## CODE AMENDED—(continued):

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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
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<td>16</td>
<td>5, 6</td>
<td>Motor vehicle inspection</td>
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<td>2</td>
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<td>County board of education—Meetings and compensation of members</td>
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<td>7A</td>
<td>13</td>
<td>Teachers Retirement System—Membership and payments for membership rights</td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>14, 26</td>
<td>Teachers Retirement System—Contribution by members and computation of annuities</td>
</tr>
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<td>18</td>
<td>7A</td>
<td>26c*</td>
<td>Teachers Retirement System—Supplemental benefits for certain annuitants</td>
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<td>18</td>
<td>10A</td>
<td>1, 8; and 12*</td>
<td>Vocational rehabilitation</td>
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<td>10B</td>
<td>1-8</td>
<td>Vocational rehabilitation facilities</td>
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<td>10E*</td>
<td>1, 2</td>
<td>Interstate Compact on Qualifications of Educational Personnel</td>
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<td>10F*</td>
<td>1-6</td>
<td>Public buildings to be accessible and functional for physically handicapped</td>
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<td>Schools for deaf and blind</td>
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<td>20</td>
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<td>Special schools and teaching services for exceptional children</td>
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<td>22A</td>
<td>8</td>
<td>Student Loan Trust Fund</td>
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<tr>
<td>18</td>
<td>23*</td>
<td>1-24</td>
<td>Powers, duties, etc., of governing boards of institutions of higher education</td>
</tr>
<tr>
<td>18</td>
<td>24*</td>
<td>1-13</td>
<td>Fees and other moneys collected at institutions of higher education</td>
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<td>25*</td>
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<td>Tax sheltered annuities for teachers and employees</td>
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<td>18</td>
<td>26*</td>
<td>1-12</td>
<td>West Virginia Board of Regents</td>
</tr>
<tr>
<td>18A*</td>
<td></td>
<td></td>
<td>School personnel</td>
</tr>
<tr>
<td>19</td>
<td>12C*</td>
<td>1-7</td>
<td>Interagency Pesticide Committee Act</td>
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<tr>
<td>19</td>
<td>13</td>
<td>1-20</td>
<td>Apairy Law of 1969</td>
</tr>
<tr>
<td>19</td>
<td>17</td>
<td>5, 6, 7</td>
<td>Partition fences</td>
</tr>
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<td>20</td>
<td>1</td>
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<td>Definitions—Game animals, game birds, game fish, etc.</td>
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<td>1</td>
<td>6, 7</td>
<td>Officers, Department of Natural Resources; powers, duties, etc., of director</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>1; and 1a*</td>
<td>Protection of wildlife resources; creating division of wildlife resources</td>
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<td>2</td>
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<td>Unlawful methods of hunting and fishing</td>
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<td>Hunting, trapping or fishing on lands of another</td>
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(*) Indicates new chapter, article or section.
CODE AMENDED—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>2</td>
<td>22; and 22a*</td>
<td>Tagging and reporting deer, wild turkey; black bear as game animal</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>27</td>
<td>Necessity for license to hunt and fish</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>38; and 57, 58*</td>
<td>Refusal or revocation of license; negligent shooting; shooting across road, etc.</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>56</td>
<td>Permit to hold field trial, water race or wild hunt</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>59*</td>
<td>License to take fish and mussels in certain waters</td>
</tr>
<tr>
<td>20</td>
<td>3</td>
<td>5, 6, 10</td>
<td>Forest fire seasons and prevention of forest fires</td>
</tr>
<tr>
<td>20</td>
<td>5A</td>
<td>2-17, 19, 22; and 3a, 8b, 11a, 12a*</td>
<td>Water pollution control</td>
</tr>
<tr>
<td>20</td>
<td>5B*</td>
<td>1-17</td>
<td>Natural Streams Preservation Act</td>
</tr>
<tr>
<td>21A</td>
<td>2</td>
<td>16a*</td>
<td>Work incentive programs</td>
</tr>
<tr>
<td>22</td>
<td>1</td>
<td>7a, 7b, 6, 20; and 7c, 11a*</td>
<td>Administration of mining laws</td>
</tr>
<tr>
<td>22</td>
<td>2</td>
<td>1, 2, 5, 7, 7a, 8, 11, 13, 21, 28, 39, 61</td>
<td>Coal mines</td>
</tr>
<tr>
<td>22</td>
<td>3*</td>
<td>1-6</td>
<td>Oil and gas wells</td>
</tr>
<tr>
<td>22</td>
<td>4</td>
<td>1, 1a, 1f, 1g, 1h, 1i, 2, 2a, 7, 9, 10, 10a, 13, 17; and 1k, 2b, 3a, 4a, 8a, 12a*</td>
<td>Open-pit mines, cement manufacturing plants, underground limestone and sandstone mines</td>
</tr>
<tr>
<td>22</td>
<td>4</td>
<td>1b</td>
<td>Qualifications of deputy director for oil and gas</td>
</tr>
<tr>
<td>23</td>
<td>1</td>
<td>17</td>
<td>Reports by Workmen's Compensation Commission, and occupational pneumoconiosis and occupational diseases medical boards</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>1-4, 6.6a, 8-8e, 10, 14, 15, 15b, 15c</td>
<td>Workmen's disability and death benefits, including occupational pneumoconiosis</td>
</tr>
<tr>
<td>23</td>
<td>4</td>
<td>3</td>
<td>Maximum fees to be paid out of Workmen's Compensation Fund for medical, surgical, dental and hospital treatment, and for mechanical appliances and services</td>
</tr>
<tr>
<td>24</td>
<td>3</td>
<td>6</td>
<td>Special license fees payable by public utilities</td>
</tr>
<tr>
<td>24B*</td>
<td></td>
<td></td>
<td>Gas pipeline safety</td>
</tr>
<tr>
<td>25</td>
<td>1A</td>
<td>1b</td>
<td>Additional registration fees at educational institutions; capital improvement fund; and issuance of revenue bonds</td>
</tr>
<tr>
<td>26</td>
<td>9</td>
<td>1-2</td>
<td>Admission of patients to Hopemont State Hospital</td>
</tr>
<tr>
<td>27</td>
<td>7</td>
<td>4</td>
<td>Readmission of mental patients to hospital</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>3</td>
<td>4, 5, 6, 8, 17, 18</td>
<td>394</td>
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<td>29</td>
<td>1G</td>
<td>2, 3</td>
<td>Ohio-West Virginia Air Pollution Compact</td>
</tr>
<tr>
<td>29</td>
<td>2A</td>
<td>6</td>
<td>State financial assistance for airports</td>
</tr>
<tr>
<td>29</td>
<td>2B*</td>
<td>1-15</td>
<td>Weather modification</td>
</tr>
<tr>
<td>29</td>
<td>14</td>
<td>5, 6</td>
<td>Director and personnel, Commission on Aging</td>
</tr>
<tr>
<td>30</td>
<td>1</td>
<td>3</td>
<td>Officers of boards of examination; bond of secretary</td>
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<tr>
<td>30</td>
<td>3</td>
<td>4, 4a, 5, 7</td>
<td>Licensing of physicians from other states and foreign medical school graduates; registration; reciprocal endorsement fee</td>
</tr>
<tr>
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<td>4</td>
<td>4, 4a, 5, 7, 16, 17a, 17b; and 19*</td>
<td>Board of Dental Examiners</td>
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<tr>
<td>30</td>
<td>5</td>
<td>5, 9, 14; and 14a*</td>
<td>Pharmacists and pharmacies</td>
</tr>
<tr>
<td>30</td>
<td>6</td>
<td>3, 4, 5, 7; and 13, 14, 15, 16*</td>
<td>Embalmers and funeral directors</td>
</tr>
<tr>
<td>30</td>
<td>13A*</td>
<td>1-15</td>
<td>Land surveyors</td>
</tr>
<tr>
<td>31</td>
<td>1</td>
<td>63, 63a, 63a1</td>
<td>Consolidation or merger of corporations</td>
</tr>
<tr>
<td>31</td>
<td>6</td>
<td>42*</td>
<td>Savings accounts, building and loan associations</td>
</tr>
<tr>
<td>31</td>
<td>15</td>
<td>5, 6</td>
<td>West Virginia Industrial Development Authority</td>
</tr>
<tr>
<td>31</td>
<td>18*</td>
<td>1-25</td>
<td>Housing Development Fund Act</td>
</tr>
<tr>
<td>31A*</td>
<td>3</td>
<td>5a</td>
<td>Capital or surplus required of licensed insurers</td>
</tr>
<tr>
<td>33</td>
<td>3</td>
<td>8</td>
<td>Expiration of insurers' licenses</td>
</tr>
<tr>
<td>33</td>
<td>5</td>
<td>32*</td>
<td>Principal place of business of domestic insurers</td>
</tr>
<tr>
<td>33</td>
<td>7</td>
<td>7</td>
<td>Reserves for sickness and accident insurance</td>
</tr>
<tr>
<td>33</td>
<td>12</td>
<td>18</td>
<td>Expiration of licenses of insurance agents, solicitors, brokers, etc.</td>
</tr>
<tr>
<td>33</td>
<td>14</td>
<td>6</td>
<td>Limitation on amount of group life insurance</td>
</tr>
<tr>
<td>33</td>
<td>14</td>
<td>28*</td>
<td>Assignment of interest in group life insurance policies</td>
</tr>
<tr>
<td>33</td>
<td>24</td>
<td>3</td>
<td>Participants in hospital and medical service corporations</td>
</tr>
<tr>
<td>35</td>
<td>1</td>
<td>7</td>
<td>Trustees of church property</td>
</tr>
<tr>
<td>35</td>
<td>4</td>
<td>1</td>
<td>Disposition of property of subordinate lodge of fraternal organizations</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>1</td>
<td>14a*</td>
<td>388</td>
</tr>
<tr>
<td>44</td>
<td>6</td>
<td>2</td>
<td>389</td>
</tr>
<tr>
<td>46</td>
<td>9</td>
<td>302</td>
<td>1261</td>
</tr>
<tr>
<td>47</td>
<td>6</td>
<td>5</td>
<td>1381</td>
</tr>
<tr>
<td>47</td>
<td>6</td>
<td>5a*</td>
<td>518</td>
</tr>
<tr>
<td>47</td>
<td>6</td>
<td>6</td>
<td>1382</td>
</tr>
<tr>
<td>47</td>
<td>11A</td>
<td>12a*</td>
<td>1260</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>1-31</td>
<td>319</td>
</tr>
<tr>
<td>48</td>
<td>2</td>
<td>9, 13,19</td>
<td>328</td>
</tr>
<tr>
<td>48</td>
<td>3</td>
<td>3a*</td>
<td>342</td>
</tr>
<tr>
<td>48</td>
<td>4</td>
<td>1, 3-7</td>
<td>354</td>
</tr>
<tr>
<td>48</td>
<td>5</td>
<td>1, 3</td>
<td>350</td>
</tr>
<tr>
<td>48</td>
<td>7</td>
<td>1, 4, 5, 6, 8</td>
<td>351</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1dd</td>
<td>291</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1ee</td>
<td>1359</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1f</td>
<td>291</td>
</tr>
<tr>
<td>51</td>
<td>7</td>
<td>4</td>
<td>292</td>
</tr>
<tr>
<td>55</td>
<td>12</td>
<td>2</td>
<td>1085</td>
</tr>
<tr>
<td>56</td>
<td>3</td>
<td>2a*</td>
<td>1036</td>
</tr>
<tr>
<td>58</td>
<td>4</td>
<td>18a*</td>
<td>27</td>
</tr>
<tr>
<td>60</td>
<td>3</td>
<td>9c*</td>
<td>443</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>15a*</td>
<td>294</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>24a</td>
<td>295</td>
</tr>
<tr>
<td>61</td>
<td>3</td>
<td>30</td>
<td>297</td>
</tr>
<tr>
<td>61</td>
<td>6</td>
<td>1, 2, 3, 4, 5; and 1a*</td>
<td>298</td>
</tr>
<tr>
<td>61</td>
<td>6</td>
<td>17*</td>
<td>301</td>
</tr>
<tr>
<td>61</td>
<td>6</td>
<td>18*</td>
<td>302</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Code Amended: (continued)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. Art. Sec.</td>
<td></td>
</tr>
<tr>
<td>61 7 5</td>
<td>Officers who may carry dangerous weapons</td>
</tr>
<tr>
<td>61 10 30*</td>
<td>Open water wells prohibited</td>
</tr>
<tr>
<td>61 11 12</td>
<td>Venue of offense committed in more than one county</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Code Repealed:</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. Art. Sec.</td>
<td></td>
</tr>
<tr>
<td>5 4 3-13</td>
<td>Director of the Budget, duties of Board of Public Works as to budget, etc.</td>
</tr>
<tr>
<td>8 8A 11 15A 2a 17C 10</td>
<td>Protection of blind pedestrians on streets and highways</td>
</tr>
<tr>
<td>18 7</td>
<td>School teachers</td>
</tr>
<tr>
<td>18 23</td>
<td>Tax sheltered annuities for teachers and employees</td>
</tr>
<tr>
<td>24 3</td>
<td>Permitting seeing eye dog on common carriers</td>
</tr>
<tr>
<td>25 1 2, 7, 8, 9, 12, 13, 14, 17, 18, 21-34</td>
<td>Supervision and control of state institutions</td>
</tr>
<tr>
<td>25 1A</td>
<td>Fees and other moneys collected at state institutions</td>
</tr>
<tr>
<td>25 3</td>
<td>Claims of citizens against U.S. government for illegal tax payments</td>
</tr>
<tr>
<td>28 2</td>
<td>Colored Childrens Home</td>
</tr>
<tr>
<td>28 2</td>
<td>Industrial School for Colored Boys</td>
</tr>
<tr>
<td>28 3</td>
<td>Binding out girls as apprentices</td>
</tr>
<tr>
<td>28 4</td>
<td>Industrial Home for Colored Girls</td>
</tr>
<tr>
<td>29 16</td>
<td>Department of Personnel</td>
</tr>
<tr>
<td>31 4</td>
<td>Banking institutions</td>
</tr>
<tr>
<td>31 4B</td>
<td>Federal Deposit Insurance Corporation</td>
</tr>
<tr>
<td>31 4C</td>
<td>Nominee registration of fiduciary securities</td>
</tr>
<tr>
<td>31 4E</td>
<td>Bank Service Corporations</td>
</tr>
<tr>
<td>31 8</td>
<td>Operation and supervision of banking institutions and loan companies</td>
</tr>
<tr>
<td>48 1 7, 13, 19, 21</td>
<td>Issuance of marriage license; miscegenation</td>
</tr>
<tr>
<td>48 6</td>
<td>Apprentices</td>
</tr>
<tr>
<td>61 10 24</td>
<td>Admission of blind persons led by dog guide to places of public accommodation</td>
</tr>
</tbody>
</table>

(*) Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th><strong>INDEX</strong></th>
<th>1411</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COLLEGES:</strong></td>
<td>Ch.</td>
</tr>
<tr>
<td>See Schools.</td>
<td></td>
</tr>
<tr>
<td><strong>COMMUNITY ACTION PROGRAMS:</strong></td>
<td>Page</td>
</tr>
<tr>
<td>County courts authorized to operate and manage.</td>
<td>3 1360</td>
</tr>
<tr>
<td><strong>COMPACTS:</strong></td>
<td></td>
</tr>
<tr>
<td>Amending Ohio-West Virginia Interstate Air Pollution Compact</td>
<td>3 12</td>
</tr>
<tr>
<td>Appointment of legislative members of Education Commission under Compact on Education</td>
<td>1348</td>
</tr>
<tr>
<td>Interstate Compact on Qualifications of Educational Personnel</td>
<td>138 1170</td>
</tr>
<tr>
<td><strong>CONSORTIUM:</strong></td>
<td></td>
</tr>
<tr>
<td>Suits by married women for loss of</td>
<td>51 354</td>
</tr>
<tr>
<td><strong>CONSTITUTION, STATE:</strong></td>
<td></td>
</tr>
<tr>
<td>Amendments proposed</td>
<td></td>
</tr>
<tr>
<td>Legislative amendment</td>
<td>1331</td>
</tr>
<tr>
<td>Method of making amendments</td>
<td>1330</td>
</tr>
<tr>
<td><strong>CONSUMERS SALES TAX:</strong></td>
<td></td>
</tr>
<tr>
<td>Exemptions from payment of</td>
<td>143 1245</td>
</tr>
<tr>
<td><strong>CORPORATIONS:</strong></td>
<td></td>
</tr>
<tr>
<td>Consolidation or merger</td>
<td>19 263</td>
</tr>
<tr>
<td>Hospital and medical service corporations</td>
<td></td>
</tr>
<tr>
<td>Who may participate in</td>
<td>71 441</td>
</tr>
<tr>
<td>Service of process upon auditor in tort actions against, etc.</td>
<td>20 269</td>
</tr>
<tr>
<td>West Virginia Industrial Development Authority</td>
<td></td>
</tr>
<tr>
<td>Members of board, powers, etc</td>
<td>63 431</td>
</tr>
<tr>
<td><strong>CORRECTIONAL INSTITUTIONS:</strong></td>
<td></td>
</tr>
<tr>
<td>Repeal of statutes establishing West Virginia Colored Orphans Home, Industrial Home for Colored Boys and Industrial Home for Colored Girls.</td>
<td>21 272</td>
</tr>
<tr>
<td>Repeal of statutes providing for binding out girls committed to Industrial Home for Girls as apprentices.</td>
<td>22 273</td>
</tr>
<tr>
<td><strong>COUNTY COURTS:</strong></td>
<td></td>
</tr>
<tr>
<td>Actions against, for damages occasioned by defective roads, streets, bridges, etc.</td>
<td>86 950</td>
</tr>
<tr>
<td>Approval of rewards for apprehension of persons charged with crime and for detection of crime.</td>
<td>23 274</td>
</tr>
<tr>
<td>As community action program organization or agency</td>
<td>3 1360</td>
</tr>
<tr>
<td>Employment of legal counsel by</td>
<td>24 276</td>
</tr>
<tr>
<td>Establishment of parks and recreation commissions</td>
<td>27 282</td>
</tr>
<tr>
<td>Group insurance plans for county officers and employees</td>
<td>25 276</td>
</tr>
<tr>
<td><strong>COURTS:</strong></td>
<td></td>
</tr>
<tr>
<td>Circuit courts. See Circuit Courts.</td>
<td></td>
</tr>
<tr>
<td>County courts. See County Courts.</td>
<td></td>
</tr>
<tr>
<td>Courts of limited jurisdiction</td>
<td></td>
</tr>
<tr>
<td>Cabell County Domestic Relations Court—Jurisdiction of judge</td>
<td>154 1297</td>
</tr>
<tr>
<td>Kanawha County Intermediate Court—Official reporters</td>
<td>157 1306</td>
</tr>
<tr>
<td>Marshall County Common Pleas Court—Salaries of secretary to judge and juvenile probation officer</td>
<td>159 1308</td>
</tr>
<tr>
<td>Official reporters</td>
<td>33 292</td>
</tr>
<tr>
<td>Supreme Court of Appeals. See Supreme Court of Appeals.</td>
<td></td>
</tr>
<tr>
<td><strong>CREDIT CARDS:</strong></td>
<td></td>
</tr>
<tr>
<td>False or fraudulent use of</td>
<td>35 294</td>
</tr>
</tbody>
</table>
## CRIMES AND OFFENSES:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority of certain officers to carry dangerous weapons</td>
<td>42</td>
<td>305</td>
</tr>
<tr>
<td>Camping upon governmental grounds or lawns</td>
<td>39</td>
<td>303</td>
</tr>
<tr>
<td>Evidence excluded in prosecutions for statutory rape</td>
<td>34</td>
<td>293</td>
</tr>
<tr>
<td>False or fraudulent use of credit cards</td>
<td>35</td>
<td>294</td>
</tr>
<tr>
<td>False reports concerning bombs or other explosive devices</td>
<td>38</td>
<td>301</td>
</tr>
<tr>
<td>Maintenance of open water wells unlawful</td>
<td>40</td>
<td>303</td>
</tr>
<tr>
<td>Removal or destruction of property or monuments designating land boundaries</td>
<td>36</td>
<td>296</td>
</tr>
<tr>
<td>Rewards for apprehension of persons charged with crime and</td>
<td>23</td>
<td>274</td>
</tr>
<tr>
<td>expenditure of public funds for detection of crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suppression of riots</td>
<td>27</td>
<td>237</td>
</tr>
<tr>
<td>Venue of offenses committed in more than one county</td>
<td>41</td>
<td>304</td>
</tr>
</tbody>
</table>

## DEAF:

Schools for _______________________________________________ | 130 | 1144 |

## DENTISTS:

See Professions and Occupations.

## DEPARTMENT OF FINANCE AND ADMINISTRATION:

Division of Purchases
- Approval of powers and duties exercised by director of | 119 | 1110 |
- Bids on state purchases                                  | 118 | 1109 |
- Establishing citizens hearing committee on                | 117 | 1107 |

## DEPARTMENT OF PUBLIC SAFETY:

Communications system for police purposes                   | 47  | 316  |
Criminal Identification Bureau                              | 43  | 307  |
Departmental headquarters                                    | 43  | 306  |
Employment of counsel to defend members                      | 48  | 315  |
Powers of superintendent, officers and members               | 45  | 312  |
Salaries of members                                          | 44  | 310  |
Superintendent                                              | 43  | 308  |

## DIVORCE:

Divorce, annulment and separate maintenance                 | 49  | 326  |

## DOMESTIC RELATIONS:

Adoption                                                    | 50  | 343  |
Change of name                                              | 50  | 350  |
Divorce, annulment and separate maintenance                 | 49  | 326  |
Maintenance of illegitimate children                         | 50  | 351  |
Marriage                                                    | 48  | 319  |
Married women may sue for loss of consortium                | 51  | 354  |
Property, rights and liabilities of married women           | 50  | 342  |

## DRUGSTORES:

See Professions and Occupations.

## EDUCATION:

See Schools.

## ELECTIONS:

Application for absent voter’s ballot, mailing and voting    | 54  | 357  |
- ballot                                                   |     |      |
Challenge and cancellation of voter’s registration           | 53  | 356  |
Electronic voting systems                                    | 55  | 359  |
Voting precincts, precinct maps, etc.                       | 52  | 355  |
INDEX

EMBALMERS AND FUNERAL DIRECTORS:
Board
Officers, salaries and expenses, powers, duties, etc________ 106 1058
Definitions ______________________ 106 1060
Licensing ________________________ 106 1062

EMINENT DOMAIN:
Exercise of power of, by State Building Commission______ 15 248

EMPLOYMENT SECURITY, DEPARTMENT OF:
Exempting certain records as to sex, race, etc., from provi-
sions of the Human Rights Act________________________ 82 428
Work incentive program_____________________________ 4 1381

ESTATES IN PROPERTY:
Doctrine of worthier title and rule that grantor cannot create
limitation in favor of his own heirs or next of kin abolished 58 388

F

FAMILY PLANNING:
Establishment of clinics_______________________________ 60 400

FENCES:
Partition fences on lands used for agricultural, horticultural,
grazing or livestock purposes__________________________ 99 1034

FIDUCIARIES:
Securities in which, may invest trust funds______________ 57 389

FISH:
See Game and Fish.

FLORENCE CRITTENDEN HOME:
Abolished __________________________________________ 58 393

FORESTS:
Forest fire seasons, etc_______________________________ 95 973

FRATERNAL ORGANIZATIONS:
Disposition of property of subordinate lodge___________ 59 399

FUNERAL DIRECTORS:
Board of Embalmers and Funeral Directors
Officers, salaries and expenses, powers and duties, etc____ 106 1058
Definitions ________________________ 106 1060
Licensing ________________________ 106 1062

G

GAME AND FISH:
Black bear as game animal_____________________________ 87 953
Hunting, tagging, reporting, etc_______________________ 87 957
Game fish ________________________________________ 87 953
Hunting, tagging deer and wild turkey__________________ 87 956
Hunting, trapping or fishing on lands of another_______ 90 966
Licenses to hunt and fish
Full-time students as residents_______________________ 87 955
Necessity for ______________________________________ 91 967
Permits to hold field trial, water race or wild hunt____ 93 971
Refusal or revocation_______________________________ 92 968
To take fish and mussels from the Ohio River__________ 94 972
Negligent or unlawful shooting_______________________ 92 970
Unlawful methods of hunting and fishing______________ 99 960
<table>
<thead>
<tr>
<th>GOVERNOR:</th>
<th>Duties and authority under Modern Budget Amendment</th>
<th>Ch. 13</th>
<th>Page 210</th>
</tr>
</thead>
<tbody>
<tr>
<td>HANCOCK COUNTY:</td>
<td>Children's home</td>
<td>155</td>
<td>1300</td>
</tr>
<tr>
<td>HANDICAPPED PERSONS:</td>
<td>Public buildings to be accessible to physically</td>
<td>109</td>
<td>1066</td>
</tr>
<tr>
<td>HEALTH:</td>
<td>Establishment of family planning clinics</td>
<td>60</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td>State-wide system of vital statistics</td>
<td>61</td>
<td>401</td>
</tr>
<tr>
<td>HOPEMONT STATE HOSPITAL:</td>
<td>Eligibility of patients for admission</td>
<td>10</td>
<td>198</td>
</tr>
<tr>
<td></td>
<td>Establishment, name and location, management, qualification and appointment of superintendent</td>
<td>10</td>
<td>197</td>
</tr>
<tr>
<td>HOUSE TRAILERS:</td>
<td>Permits for moving</td>
<td>62</td>
<td>522</td>
</tr>
<tr>
<td>HOUSING:</td>
<td>West Virginia Housing Development Fund created</td>
<td>5</td>
<td>1363</td>
</tr>
<tr>
<td>HUMAN RIGHTS:</td>
<td>Permitting Department of Employment Security to record certain information as to sex, race, etc</td>
<td>62</td>
<td>428</td>
</tr>
<tr>
<td>ILLEGITIMATE CHILDREN:</td>
<td>Maintenance of</td>
<td>50</td>
<td>351</td>
</tr>
<tr>
<td>INDICTMENT:</td>
<td>Writ of error to judgment quashing</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>INDUSTRIAL DEVELOPMENT:</td>
<td>Bond issues to finance industrial plants</td>
<td>63</td>
<td>429</td>
</tr>
<tr>
<td></td>
<td>Industrial Development Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Members of board, powers, etc</td>
<td>63</td>
<td>431</td>
</tr>
<tr>
<td>INDUSTRIAL HOMES:</td>
<td>Repealing statutes establishing, for colored boys and girls</td>
<td>21</td>
<td>272</td>
</tr>
<tr>
<td>INSURANCE:</td>
<td>Assignment of incidents of ownership in group life policies</td>
<td>70</td>
<td>440</td>
</tr>
<tr>
<td></td>
<td>Capital or surplus required of insurers</td>
<td>64</td>
<td>434</td>
</tr>
<tr>
<td></td>
<td>Expiration and renewal of licenses of insurers</td>
<td>65</td>
<td>438</td>
</tr>
<tr>
<td></td>
<td>Expiration of licenses of agents, brokers, solicitors and excess line brokers</td>
<td>66</td>
<td>438</td>
</tr>
<tr>
<td></td>
<td>Hospital and Medical Service Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Eligibility of hospitals, physicians, dentists and chiropodists-podiatrists to participate in</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Limitation on amount of group life insurance</td>
<td>69</td>
<td>439</td>
</tr>
<tr>
<td></td>
<td>Requiring domestic insurers to have principal office of place of business within State</td>
<td>68</td>
<td>437</td>
</tr>
<tr>
<td></td>
<td>Reserves for accident and sickness insurance</td>
<td>67</td>
<td>437</td>
</tr>
<tr>
<td>INTEREST:</td>
<td>On loans payable in installments</td>
<td>79</td>
<td>518</td>
</tr>
<tr>
<td>INTOXICATING LIQUORS:</td>
<td>Increasing price to provide funds for care and treatment of alcoholics</td>
<td>72</td>
<td>442</td>
</tr>
</tbody>
</table>
## INDEX

<table>
<thead>
<tr>
<th>Category</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INVESTMENTS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postaudit of State Board of Investments</td>
<td>11</td>
<td>198</td>
</tr>
<tr>
<td>JAIL:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of proceeds from fines and costs collected by justices of the peace to establish a Jail Improvement Fund</td>
<td>73</td>
<td>443</td>
</tr>
<tr>
<td>JUDGES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Courts of limited jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabell County Domestic Relations Court—Jurisdiction of judge</td>
<td>154</td>
<td>1297</td>
</tr>
<tr>
<td>Kanawha County Intermediate Court—Official reporters</td>
<td>157</td>
<td>1308</td>
</tr>
<tr>
<td>Marshall County Common Pleas Court—Salaries of secretary to judge and juvenile probation officers</td>
<td>159</td>
<td>1308</td>
</tr>
<tr>
<td>JUDICIAL SALES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice of sale of real estate</td>
<td>108</td>
<td>1085</td>
</tr>
<tr>
<td>Contents and publication</td>
<td>108</td>
<td>1085</td>
</tr>
<tr>
<td>KANAWHA COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge of Intermediate Court authorized to appoint more than one official reporter</td>
<td>157</td>
<td>1308</td>
</tr>
<tr>
<td>Salary of law assistant to judge of the Circuit Court</td>
<td>156</td>
<td>1308</td>
</tr>
<tr>
<td>LAND SURVEYORS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creating Board of Examiners of, prescribing its powers and duties, etc.</td>
<td>107</td>
<td>1071</td>
</tr>
<tr>
<td>LEGISLATURE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compelling witness to give evidence against himself and granting immunity to such witness</td>
<td>151</td>
<td>1266</td>
</tr>
<tr>
<td>Providing for Citizens Advisory Commission on</td>
<td>1319</td>
<td></td>
</tr>
<tr>
<td>Resolutions authorizing studies by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint Committee on Government and Finance:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultant service contracts</td>
<td></td>
<td>1336</td>
</tr>
<tr>
<td>County employees</td>
<td></td>
<td>1348</td>
</tr>
<tr>
<td>Cost of hospitalization</td>
<td></td>
<td>1322</td>
</tr>
<tr>
<td>Election laws</td>
<td></td>
<td>1334</td>
</tr>
<tr>
<td>Garbage and rubbish disposal</td>
<td></td>
<td>1350</td>
</tr>
<tr>
<td>Institutions of higher education</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>Highway safety</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>Leasing real estate</td>
<td></td>
<td>1329</td>
</tr>
<tr>
<td>Management, organization, duties, etc., of State Road Commission</td>
<td></td>
<td>1337</td>
</tr>
<tr>
<td>Mental health and public institutions</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>Office of Economic Opportunity policies and programs</td>
<td></td>
<td>1328</td>
</tr>
<tr>
<td>Potomac River Basin Compact</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>Program of taxation and finance</td>
<td></td>
<td>1323</td>
</tr>
<tr>
<td>Revenue bond financing</td>
<td></td>
<td>1342</td>
</tr>
<tr>
<td>Standards for privately operated schools</td>
<td></td>
<td>1341</td>
</tr>
<tr>
<td>State aid to nonpublic schools and institutions of higher learning</td>
<td></td>
<td>1318</td>
</tr>
<tr>
<td>Tax structure of the State</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>Uniform Consumer Credit Code</td>
<td></td>
<td>1347</td>
</tr>
<tr>
<td>Water resources</td>
<td></td>
<td>1344</td>
</tr>
<tr>
<td>West Virginia State College and West Virginia University Graduate Center</td>
<td></td>
<td>1340</td>
</tr>
</tbody>
</table>
### Index

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIBRARIES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial and other assistance through state library assistance to public, school, county or regional</td>
<td>113</td>
<td>1093</td>
</tr>
<tr>
<td>LICENSES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Taxation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MARION COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County library</td>
<td>158</td>
<td>1307</td>
</tr>
<tr>
<td>MARRIAGE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marriage, license procedures, etc.</td>
<td>48</td>
<td>319</td>
</tr>
<tr>
<td>Prohibiting actions for breach of promise to marry</td>
<td>101</td>
<td>1036</td>
</tr>
<tr>
<td>Property, rights and liabilities of married women</td>
<td>50</td>
<td>342</td>
</tr>
<tr>
<td>MARSHALL COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigator of crime for</td>
<td>23</td>
<td>275</td>
</tr>
<tr>
<td>Salaries of secretary to judge and juvenile probation officer, Court of Common Pleas</td>
<td>159</td>
<td>1308</td>
</tr>
<tr>
<td>MASON COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4-H and Youth Camp</td>
<td>160</td>
<td>1309</td>
</tr>
<tr>
<td>MENTALLY ILL:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Readmission of mental patients to hospital</td>
<td>74</td>
<td>445</td>
</tr>
<tr>
<td>MINES AND MINERALS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oil and gas wells</td>
<td>76</td>
<td>480</td>
</tr>
<tr>
<td>Qualifications of Deputy Director for Oil and Gas, Department of Mines</td>
<td>77</td>
<td>514</td>
</tr>
<tr>
<td>Salaries of mine safety instructors, inspectors, rescue teams and electrical inspectors; and mine safety provisions</td>
<td>75</td>
<td>446</td>
</tr>
<tr>
<td>Salaries of oil and gas inspectors</td>
<td>78</td>
<td>514</td>
</tr>
<tr>
<td>MINORS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repeal of statute relating to minors as apprentices</td>
<td>22</td>
<td>273</td>
</tr>
<tr>
<td>MONEY AND INTEREST:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest charges on loans payable in installments</td>
<td>79</td>
<td>518</td>
</tr>
<tr>
<td>Legal rate of interest</td>
<td>6</td>
<td>1381</td>
</tr>
<tr>
<td>Usury</td>
<td>7</td>
<td>1382</td>
</tr>
<tr>
<td>MOTOR VEHICLES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expiration of operator's license, including members of the armed services, renewal and renewal fees</td>
<td>84</td>
<td>526</td>
</tr>
<tr>
<td>Inspection of</td>
<td>85</td>
<td>528</td>
</tr>
<tr>
<td>Liens and encumbrances on motor vehicles</td>
<td>81</td>
<td>521</td>
</tr>
<tr>
<td>Permits for moving house trailers</td>
<td>82</td>
<td>522</td>
</tr>
<tr>
<td>Registration for state, county, municipal and other governmental vehicles</td>
<td>80</td>
<td>519</td>
</tr>
<tr>
<td>Revocation of junior license, and what persons shall not be licensed</td>
<td>83</td>
<td>524</td>
</tr>
<tr>
<td>MUNICIPALITIES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounting principles</td>
<td>88</td>
<td>647</td>
</tr>
<tr>
<td>Airports</td>
<td>88</td>
<td>915</td>
</tr>
<tr>
<td>Annexation of additional territory</td>
<td>86</td>
<td>589</td>
</tr>
<tr>
<td>Area development corporations</td>
<td>86</td>
<td>935</td>
</tr>
<tr>
<td>Bridges, action for damages occasioned by defective</td>
<td>86</td>
<td>950</td>
</tr>
<tr>
<td>Building commissions</td>
<td>86</td>
<td>940</td>
</tr>
<tr>
<td>MUNICIPALITIES—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Charters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing duties of charter boards</td>
<td>86</td>
<td>562</td>
</tr>
<tr>
<td>Election expenses</td>
<td>86</td>
<td>575</td>
</tr>
<tr>
<td>Expenses of incorporation</td>
<td>86</td>
<td>563</td>
</tr>
<tr>
<td>Framing and adopting</td>
<td>86</td>
<td>554, 564</td>
</tr>
<tr>
<td>Revising or amending</td>
<td>86</td>
<td>570</td>
</tr>
<tr>
<td>Consolidation</td>
<td>86</td>
<td>598</td>
</tr>
<tr>
<td>Constitutionality of provisions of chapter</td>
<td>86</td>
<td>950</td>
</tr>
<tr>
<td>Contracts, intergovernmental relations</td>
<td>86</td>
<td>823</td>
</tr>
<tr>
<td>Corporate limits, decrease of</td>
<td>86</td>
<td>694</td>
</tr>
<tr>
<td>Corporate powers, general</td>
<td>86</td>
<td>615</td>
</tr>
<tr>
<td>Creation of municipalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election</td>
<td>86</td>
<td>550</td>
</tr>
<tr>
<td>General provisions</td>
<td>86</td>
<td>547</td>
</tr>
<tr>
<td>Definitions</td>
<td>86</td>
<td>538</td>
</tr>
<tr>
<td>Dissolution</td>
<td>86</td>
<td>947</td>
</tr>
<tr>
<td>Election of officers</td>
<td>86</td>
<td>879</td>
</tr>
<tr>
<td>Extraterritorial powers</td>
<td>86</td>
<td>633</td>
</tr>
<tr>
<td>Federal grants</td>
<td>86</td>
<td>939</td>
</tr>
<tr>
<td>Financial statements</td>
<td>86</td>
<td>650</td>
</tr>
<tr>
<td>Fines and assessments, collection</td>
<td>86</td>
<td>648</td>
</tr>
<tr>
<td>Fire departments</td>
<td></td>
<td>678</td>
</tr>
<tr>
<td>Pension and relief fund for members of</td>
<td>86</td>
<td>815</td>
</tr>
<tr>
<td>Flood control</td>
<td>86</td>
<td>932</td>
</tr>
<tr>
<td>Franchise obligations</td>
<td>86</td>
<td>933</td>
</tr>
<tr>
<td>General provisions</td>
<td>86</td>
<td>542</td>
</tr>
<tr>
<td>Governing bodies</td>
<td>66</td>
<td>606</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>86</td>
<td>615</td>
</tr>
<tr>
<td>Home rule powers</td>
<td>86</td>
<td>616</td>
</tr>
<tr>
<td>Intergovernmental relations, contracting and joint enterprises</td>
<td>86</td>
<td>833</td>
</tr>
<tr>
<td>Judicial review of actions imposing fines and penalties</td>
<td>86</td>
<td>946</td>
</tr>
<tr>
<td>Low cost improvements</td>
<td>86</td>
<td>725</td>
</tr>
<tr>
<td>Museums and cultural centers</td>
<td>86</td>
<td>933</td>
</tr>
<tr>
<td>Officers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflict of interest</td>
<td>86</td>
<td>588</td>
</tr>
<tr>
<td>Election</td>
<td>86</td>
<td>679</td>
</tr>
<tr>
<td>General provisions relating to</td>
<td>86</td>
<td>585</td>
</tr>
<tr>
<td>Oath, term and filling vacancies</td>
<td>86</td>
<td>583</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>86</td>
<td>607, 615</td>
</tr>
<tr>
<td>Ordinance and ordinance procedures</td>
<td>86</td>
<td>610</td>
</tr>
<tr>
<td>Park and recreation commissions</td>
<td>86</td>
<td>792</td>
</tr>
<tr>
<td>Planning and zoning</td>
<td>86</td>
<td>838</td>
</tr>
<tr>
<td>Police departments</td>
<td>86</td>
<td>652</td>
</tr>
<tr>
<td>Retirement and relief fund for members of</td>
<td>86</td>
<td>815</td>
</tr>
<tr>
<td>Powers, duties, etc., general and specific</td>
<td>86</td>
<td>615</td>
</tr>
<tr>
<td>Powers as to taxation and finance</td>
<td>66</td>
<td>639</td>
</tr>
<tr>
<td>Property, sale, etc.</td>
<td>86</td>
<td>627</td>
</tr>
<tr>
<td>Public utility, sale or lease</td>
<td>86</td>
<td>633</td>
</tr>
<tr>
<td>Public works</td>
<td>66</td>
<td>703</td>
</tr>
<tr>
<td>Purpose and short title</td>
<td>86</td>
<td>536</td>
</tr>
<tr>
<td>Regional airports</td>
<td>86</td>
<td>921</td>
</tr>
<tr>
<td>Regional planning</td>
<td>86</td>
<td>678</td>
</tr>
<tr>
<td>Commissions</td>
<td>86</td>
<td>887</td>
</tr>
<tr>
<td>Retirement benefits generally</td>
<td>86</td>
<td>801</td>
</tr>
<tr>
<td>Revenue bond financing</td>
<td>86</td>
<td>711</td>
</tr>
<tr>
<td>Special charges for municipal services</td>
<td>86</td>
<td>644</td>
</tr>
<tr>
<td>Streets, sidewalks and sewers</td>
<td>86</td>
<td>738</td>
</tr>
<tr>
<td>Assessments to improve</td>
<td>86</td>
<td>950</td>
</tr>
<tr>
<td>Defective streets, actions for damages</td>
<td>86</td>
<td></td>
</tr>
</tbody>
</table>
### Index

#### Municipalities—(Continued):

<table>
<thead>
<tr>
<th>Subject</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suits against</td>
<td>86</td>
<td>638</td>
</tr>
<tr>
<td>Taxation and finance</td>
<td>86</td>
<td>639</td>
</tr>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urban Mass Transportation Systems</td>
<td>86</td>
<td>891</td>
</tr>
<tr>
<td>Urban Mass Transportation Systems</td>
<td>86</td>
<td>891</td>
</tr>
<tr>
<td>Waterworks systems</td>
<td>86</td>
<td>759</td>
</tr>
<tr>
<td>Combined waterworks and sewerage systems</td>
<td>86</td>
<td>775</td>
</tr>
<tr>
<td>Retirement benefits for employees</td>
<td>86</td>
<td>831</td>
</tr>
<tr>
<td>Zoning</td>
<td>86</td>
<td>838</td>
</tr>
</tbody>
</table>

#### Name:

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change of</td>
<td>50</td>
</tr>
</tbody>
</table>

#### Natural Gas:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Service Commission regulation of pipeline facilities transporting</td>
<td>116</td>
</tr>
</tbody>
</table>

#### Natural Resources:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>87</td>
</tr>
<tr>
<td>Forest fire seasons</td>
<td>95</td>
</tr>
<tr>
<td>Game and fish</td>
<td>87</td>
</tr>
<tr>
<td>Hunting, trapping or fishing on lands of another</td>
<td>90</td>
</tr>
<tr>
<td>License to take fish and mussels from Ohio River</td>
<td>94</td>
</tr>
<tr>
<td>Necessity for license to hunt or fish</td>
<td>91</td>
</tr>
<tr>
<td>Negligent shooting while hunting, penalty</td>
<td>92</td>
</tr>
<tr>
<td>Permits to hold field trial, water race or wild hunt</td>
<td>93</td>
</tr>
<tr>
<td>Revocation or refusal of license to hunt or fish</td>
<td>92</td>
</tr>
<tr>
<td>Unlawful methods of hunting and fishing</td>
<td>89</td>
</tr>
<tr>
<td>Natural Streams Preservation Act</td>
<td>97</td>
</tr>
<tr>
<td>Water pollution control</td>
<td>96</td>
</tr>
<tr>
<td>Wildlife resources</td>
<td>88</td>
</tr>
<tr>
<td>Division of</td>
<td></td>
</tr>
<tr>
<td>Policy as to</td>
<td>88</td>
</tr>
</tbody>
</table>

#### Nursing Homes:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrators</td>
<td></td>
</tr>
<tr>
<td>Registration, licensing, etc</td>
<td>98</td>
</tr>
<tr>
<td>Definitions</td>
<td>98</td>
</tr>
<tr>
<td>Powers and duties of licensing board</td>
<td>98</td>
</tr>
</tbody>
</table>

#### Oil and Gas:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Powers of the Department of Mines as to drilling, etc., with regard to water pollution</td>
<td>76</td>
</tr>
<tr>
<td>Public Service Commission to prescribe safety standards for pipeline facilities, and regulate persons engaged in transportation of natural gas, etc.</td>
<td>116</td>
</tr>
<tr>
<td>Qualifications of deputy director, Department of Mines, for</td>
<td>77</td>
</tr>
<tr>
<td>Salaries of oil and gas inspectors</td>
<td>78</td>
</tr>
</tbody>
</table>

#### Orphans:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal of statute establishing colored orphans home</td>
<td>21</td>
</tr>
</tbody>
</table>

#### Parks:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>County Parks and Recreation Commission</td>
<td>27</td>
</tr>
</tbody>
</table>

#### Pesticides:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interagency Pesticide Committee Act</td>
<td>1</td>
</tr>
</tbody>
</table>
**INDEX**

<table>
<thead>
<tr>
<th>PERSONNEL:</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abolishing State Department of</td>
<td>100</td>
<td>1035</td>
</tr>
</tbody>
</table>

| PHARMACISTS: | | |
| --------------| | |
| See Professions and Occupations. | | |

| PHYSICIANS AND SURGEONS: | | |
| --------------------------| | |
| See Professions and Occupations. | | |

| PIPELINES: | | |
| -----------| | |
| Regulation of facilities transporting natural gas by Public Service Commission | 116 | 1098 |

| PLEADING AND PRACTICE: | | |
| ----------------------| | |
| Prohibiting actions for breach of promise to marry and alienation of affections | 101 | 1036 |

| PNEUMOCONIOSIS: | | |
| ----------------| | |
| As occupational disease under Workmen’s Compensation Fund | 152 | 1287 |

| POOL ROOMS: | | |
| ------------| | |
| Prohibiting persons maintaining, where intoxicating liquors and beer are sold, from permitting persons under age 18 to play or loiter therein | 102 | 1036 |

| PROFESSIONS AND OCCUPATIONS: | | |
| ----------------------------| | |
| Boards of examination or registration | | |
| Officers and bond of secretary | 103 | 1033 |
| Dentists, dental hygienists and dental corporations | | |
| Board of Dental Examiners | 103 | 1039 |
| Powers and duties | 103 | 1040 |
| Licensing | 103 | 1042 |
| Fees | 103 | 1047 |
| Embalmers and funeral directors | | |
| Board, officers, salaries and expenses, powers and duties, etc. | 106 | 1058 |
| Definitions | 106 | 1060 |
| Licensing | 106 | 1062 |
| Land surveyors | | |
| Creating Board of Examiners of, prescribing its powers and duties, etc. | 107 | 1071 |
| Pharmacists and drugstores | | |
| Operation of drugstores | 105 | 1055 |
| Registration, qualifications | 105 | 1054 |
| Fees | 105 | 1055 |
| Use of increased | 105 | 1058 |
| Physicians and surgeons | | |
| Biennial registration | 104 | 1051 |
| Examinations | 104 | 1052 |
| Licensing of practitioners from other states | 104 | 1050 |
| Permits to practice in prescribed area | 104 | 1050 |
| Reciprocal endorsement fee | 104 | 1053 |
| Who permitted to practice medicine and surgery | 104 | 1050 |

| PROPERTY: | | |
|-----------| | |
| Offense and penalty for destruction of property of another | 38 | 296 |

| PROSECUTING ATTORNEYS: | | |
| -----------------------| | |
| Rewards for apprehension of persons charged with crime and expenditure of funds for detection of crime | 23 | 274 |
| Salaries of assistants and stenographers for, in certain counties | 26 | 279 |

<p>| PUBLICATIONS: | | |
| --------------| | |
| Notice of judicial sale of real estate | 108 | 1085 |</p>
<table>
<thead>
<tr>
<th>Index</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUBLIC EMPLOYEES RETIREMENT SYSTEM:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of trustees</td>
<td>110</td>
<td>1090</td>
</tr>
<tr>
<td>Reemployment after retirement</td>
<td>112</td>
<td>1092</td>
</tr>
<tr>
<td>Service credit</td>
<td>111</td>
<td>1091</td>
</tr>
<tr>
<td>PUBLIC GROUNDS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty for unlawful camping upon, etc</td>
<td>39</td>
<td>302</td>
</tr>
<tr>
<td>PUBLIC OFFICES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postaudits by inspector of</td>
<td>114</td>
<td>1094</td>
</tr>
<tr>
<td>PUBLIC SERVICE COMMISSION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorized to prescribe and enforce safety standards for pipeline facilities</td>
<td>116</td>
<td>1098</td>
</tr>
<tr>
<td>Special license fees paid by public utilities</td>
<td>115</td>
<td>1096</td>
</tr>
<tr>
<td>PURCHASES:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Approval by Commissioner of Finance and Administration of powers and duties exercised by Director of Purchases</td>
<td>119</td>
<td>1110</td>
</tr>
<tr>
<td>Bids on state purchases</td>
<td>118</td>
<td>1109</td>
</tr>
<tr>
<td>Establishing Citizens Hearing Committee on Division of Department of Finance and Administration</td>
<td>117</td>
<td>1107</td>
</tr>
<tr>
<td>Special interim Commission on Purchasing Practices and Procedures created</td>
<td></td>
<td>1393</td>
</tr>
<tr>
<td>PURCHASING PRACTICES AND PROCEDURES COMMISSION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td></td>
<td>1393</td>
</tr>
<tr>
<td>RAILEIGH COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creating Raleigh County Public Library</td>
<td>161</td>
<td>1311</td>
</tr>
<tr>
<td>RAPE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence excluded in prosecutions for statutory</td>
<td>34</td>
<td>293</td>
</tr>
<tr>
<td>REAL ESTATE:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial sale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publication of notice of</td>
<td>108</td>
<td>1085</td>
</tr>
<tr>
<td>RECREATION:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establishment of county parks and recreation commissions</td>
<td>27</td>
<td>222</td>
</tr>
<tr>
<td>RELIGIOUS ORGANIZATIONS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exemption of trustees from personal tort liability</td>
<td>120</td>
<td>1111</td>
</tr>
<tr>
<td>REVENUE BONDS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refunding Act</td>
<td>12</td>
<td>199</td>
</tr>
<tr>
<td>RIOTS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suppression and control of</td>
<td>37</td>
<td>297</td>
</tr>
<tr>
<td>ROADS AND HIGHWAYS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition of West Virginia Turnpike by State Road Commission</td>
<td>8</td>
<td>1383</td>
</tr>
<tr>
<td>Actions against county courts and municipalities for damages occasioned by defective bridges, roads, streets, etc</td>
<td>86</td>
<td>950</td>
</tr>
<tr>
<td>Bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance and sale of $20 million during fiscal year ending June 30, 1970</td>
<td>125</td>
<td>1122</td>
</tr>
<tr>
<td>Issuance and sale of $70 million during fiscal year ending June 30, 1970</td>
<td>126</td>
<td>1130</td>
</tr>
<tr>
<td>Maximum interest rate on $20 million issue removed</td>
<td>124</td>
<td>1121</td>
</tr>
</tbody>
</table>
### INDEX

**ROADS AND HIGHWAYS**—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of interest on construction contracts when final payment is delayed</td>
<td>17</td>
</tr>
<tr>
<td>Relocation assistance to persons dislocated by construction of</td>
<td>121</td>
</tr>
<tr>
<td>Signs along interstate highways</td>
<td>122</td>
</tr>
<tr>
<td>West Virginia Turnpike</td>
<td></td>
</tr>
<tr>
<td>State Road Commissioner empowered to purchase</td>
<td>123</td>
</tr>
<tr>
<td>Acquisition by State Road Commission</td>
<td></td>
</tr>
<tr>
<td>SCHOOLS:</td>
<td></td>
</tr>
<tr>
<td>Governor and other state officers</td>
<td>127</td>
</tr>
<tr>
<td>Officers appointed by the governor</td>
<td>128</td>
</tr>
<tr>
<td>SCHOOLS:</td>
<td></td>
</tr>
<tr>
<td>Board of Regents</td>
<td></td>
</tr>
<tr>
<td>Created, to have general control and management of state colleges and universities</td>
<td>130</td>
</tr>
<tr>
<td>County board of education</td>
<td></td>
</tr>
<tr>
<td>Compensation of members and meetings</td>
<td>131</td>
</tr>
<tr>
<td>Establishment of special schools and teaching services for exceptional children</td>
<td>137</td>
</tr>
<tr>
<td>Deaf and blind</td>
<td></td>
</tr>
<tr>
<td>Management of school for</td>
<td>130</td>
</tr>
<tr>
<td>Institutions of higher education</td>
<td></td>
</tr>
<tr>
<td>Capital improvement funds</td>
<td>141</td>
</tr>
<tr>
<td>Fees and other moneys collected by</td>
<td>139</td>
</tr>
<tr>
<td>Powers, duties and responsibilities of governing boards</td>
<td>139</td>
</tr>
<tr>
<td>Special registration fees</td>
<td>141</td>
</tr>
<tr>
<td>Interstate Compact on Qualifications of Educational Personnel</td>
<td>136</td>
</tr>
<tr>
<td>School personnel</td>
<td>140</td>
</tr>
<tr>
<td>Authority, rights and responsibilities</td>
<td>140</td>
</tr>
<tr>
<td>Salaries, wages and other benefits</td>
<td>140</td>
</tr>
<tr>
<td>Training, certification and licensing</td>
<td>140</td>
</tr>
<tr>
<td>Student Loan Fund</td>
<td></td>
</tr>
<tr>
<td>Special revolving fund created</td>
<td>138</td>
</tr>
<tr>
<td>Teachers</td>
<td></td>
</tr>
<tr>
<td>Authority, rights and responsibility</td>
<td>140</td>
</tr>
<tr>
<td>Retirement system</td>
<td></td>
</tr>
<tr>
<td>Contributions by members and computation of annuities</td>
<td>133</td>
</tr>
<tr>
<td>Payments to maintain membership status</td>
<td>133</td>
</tr>
<tr>
<td>Supplemental benefits for certain annuitants</td>
<td>134</td>
</tr>
<tr>
<td>Salaries</td>
<td>140</td>
</tr>
<tr>
<td>Training of</td>
<td>129</td>
</tr>
<tr>
<td>Vocational education</td>
<td>130</td>
</tr>
<tr>
<td>Area vocational programs</td>
<td>135</td>
</tr>
<tr>
<td>Vocational rehabilitation</td>
<td>135</td>
</tr>
<tr>
<td>Eligibility for training, programs, etc.</td>
<td>135</td>
</tr>
<tr>
<td>Facilities</td>
<td>135</td>
</tr>
<tr>
<td>SMITH, MRS. MARY ALICE:</td>
<td></td>
</tr>
<tr>
<td>Resolution commending accomplishments in beautification and improvement of the Governor's Mansion</td>
<td>1317</td>
</tr>
<tr>
<td>STATE GUARD:</td>
<td></td>
</tr>
<tr>
<td>Expenditure of appropriations for training, etc.</td>
<td>142</td>
</tr>
<tr>
<td>STRIP MINING:</td>
<td></td>
</tr>
<tr>
<td>Requesting federal funds for reclamation of orphan lands</td>
<td>1338</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>STUDENT LOAN FUND:</td>
<td></td>
</tr>
<tr>
<td>Revolving fund for administration of, created.</td>
<td>138</td>
</tr>
<tr>
<td>SUPREME COURT OF APPEALS:</td>
<td></td>
</tr>
<tr>
<td>Allowance to judges for mileage</td>
<td>29</td>
</tr>
<tr>
<td>Salary of judges</td>
<td>127</td>
</tr>
<tr>
<td>TAXATION:</td>
<td></td>
</tr>
<tr>
<td>Cigarette licenses</td>
<td>145</td>
</tr>
<tr>
<td>Consumers sales tax exemptions</td>
<td>143</td>
</tr>
<tr>
<td>License taxes</td>
<td></td>
</tr>
<tr>
<td>Bowling lanes and billiard, pool or bagatelle tables</td>
<td>102</td>
</tr>
<tr>
<td>Personal income tax</td>
<td></td>
</tr>
<tr>
<td>Credits against</td>
<td>146</td>
</tr>
<tr>
<td>Meaning of terms used in law</td>
<td>147</td>
</tr>
<tr>
<td>Use tax exemptions</td>
<td>144</td>
</tr>
<tr>
<td>TEACHERS:</td>
<td></td>
</tr>
<tr>
<td>See Schools.</td>
<td></td>
</tr>
<tr>
<td>TITLE:</td>
<td></td>
</tr>
<tr>
<td>Doctrine of worthier title in property abolished</td>
<td>56</td>
</tr>
<tr>
<td>TRUSTS:</td>
<td></td>
</tr>
<tr>
<td>Securities in which fiduciaries may invest trust funds</td>
<td>57</td>
</tr>
<tr>
<td>Trustees of religious organizations, churches, etc.</td>
<td>120</td>
</tr>
<tr>
<td>TURNPIKE:</td>
<td></td>
</tr>
<tr>
<td>Acquisition by State Road Commission</td>
<td>8</td>
</tr>
<tr>
<td>State Road Commissioner empowered to purchase</td>
<td>123</td>
</tr>
<tr>
<td>UNFAIR TRADE PRACTICES:</td>
<td></td>
</tr>
<tr>
<td>Unsolicited goods</td>
<td>143</td>
</tr>
<tr>
<td>UNIFORM COMMERCIAL CODE:</td>
<td></td>
</tr>
<tr>
<td>Filings to protect security interest</td>
<td>149</td>
</tr>
<tr>
<td>UNIVERSITIES:</td>
<td></td>
</tr>
<tr>
<td>See Schools.</td>
<td></td>
</tr>
<tr>
<td>UNSOLICITED GOODS:</td>
<td></td>
</tr>
<tr>
<td>Receipt deemed gift</td>
<td>143</td>
</tr>
<tr>
<td>USURY:</td>
<td></td>
</tr>
<tr>
<td>Contracts for interest exceeding legal rate void; penalties and forfeitures</td>
<td>7</td>
</tr>
<tr>
<td>UTILITIES:</td>
<td></td>
</tr>
<tr>
<td>Special license fees payable by public</td>
<td>115</td>
</tr>
<tr>
<td>VITAL STATISTICS:</td>
<td></td>
</tr>
<tr>
<td>Providing for a state-wide system of</td>
<td>61</td>
</tr>
<tr>
<td>VOCATIONAL EDUCATION:</td>
<td></td>
</tr>
<tr>
<td>See Schools.</td>
<td></td>
</tr>
</tbody>
</table>
### INDEX

<table>
<thead>
<tr>
<th>W</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Streams Preservation Act</td>
<td>97</td>
<td>1008</td>
</tr>
<tr>
<td>Pollution control</td>
<td>96</td>
<td>977</td>
</tr>
<tr>
<td>Wells, open unlawful</td>
<td>40</td>
<td>303</td>
</tr>
</tbody>
</table>

See Natural Resources.

**WEAPONS:**

- Authority of certain officers to carry dangerous... | 42 | 305 |

**WEATHER MODIFICATION:**

- By artificial methods | 18 | 255 |

**WELFARE:**

- Participation in work incentive programs by Department of | 9 | 1389 |

**WELLS:**

- Maintenance of open water wells unlawful | 40 | 303 |

**WHITE CANE LAW:**

- Providing certain rights for blind persons and penalties for violation | 150 | 1263 |

**WITNESSES:**

- Giving incriminating evidence before legislative committee or commission and power of committee to grant immunity | 151 | 1266 |

**WORKMEN'S COMPENSATION:**

- Disability and death benefits | 152 | 1267 |
- Maximum disbursements for medical, surgical, dental and hospital treatment | 10 | 1390 |
- Pneumoconiosis as occupational disease | 152 | 1269 |
- Reports by commissioner, Occupational Pneumoconiosis Board and Occupational Diseases Medical Board | 152 | 1268 |

**WYOMING COUNTY:**

- Board of education authorized to transfer funds | 162 | 1315 |